

  
सत्यमेव जयते

# भारत का राजपत्र The Gazette of India

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| सं. 44] | नई दिल्ली, अक्टूबर 23—अक्टूबर 29, 2016, शनिवार/कार्तिक 1—कार्तिक 7, 1938   |
| No. 44] | NEW DELHI, OCTOBER 23—OCTOBER 29, 2016, SATURDAY/KARTIKA 1—KARTIKA 7, 1938 |

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् 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

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

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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)

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वित्त मंत्रालय

( राजस्व विभाग )

( हिंदी अनुभाग-2 )

नई दिल्ली, 20 अक्टूबर, 2016

का.आ. 2147.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, राजस्व विभाग के केंद्रीय उत्पाद शुल्क और सीमाशुल्क बोर्ड के अधीन आयुक्तालय सीमा शुल्क (निवारक), जामनगर, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/1/2015-ए.डी. (हिन्दी-2)]

मीमांसक, संयुक्त निदेशक (राजभाषा)

**MINISTRY OF FINANCE****(Department of Revenue)****(HINDI SECTION-2)**

New Delhi, the 20th October, 2016

**S.O. 2147.**—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 notifies Commissionerate of Custom (preventive), Jamnagar, under CBEC, D/o Revenue, where more than 80% staff have acquired the working knowledge of Hindi.

[F. No. E-11017/1/2015-AD (Hindi-2)]

MIMANSAK, Jt. Director (OL)

**कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय****( कार्मिक और प्रशिक्षण विभाग )**

नई दिल्ली, 17 अक्टूबर, 2016

**का.आ.2148.**—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा राज्य सरकार, गृह विभाग के आदेश संख्या 20/09/2016-3एचजीआई दिनांक 04, अक्टूबर, 2016 चंडीगढ़ द्वारा प्राप्त सहमति सोनीपत जिला के राई थाना के अन्तर्गत श्री नरसिंह यादव, अंतर्राष्ट्रीय पहलवान से संबंधित राई थाना प्रथम सूचना रिपोर्ट संख्या 261 दिनांक 27.07.2016 में भारतीय दण्ड संहिता की धारा 328/506/120-बी के अंतर्गत उक्त अपराध से संबंधित प्रयासों, दुष्प्रेरणाओं और षड्यंत्रों या उसी संव्यवहार में किए गए किन्हीं अपराधों के अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों को शक्तियों और अधिकारिता का विस्तार संपूर्ण हरियाणा राज्य में करती है।

[फा. सं. 228/52/2016-एवीडी-II]

डॉ. बी. वी. आर. सी. पुरुषोत्तम, उप सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS****(Department of Personnel and Training)**

New Delhi, the 17th October, 2016

**S.O. 2148 .**—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 State Government of Haryana, Home Department, Chandigarh vide Order No. 20/9/2016-3HGI dated the 4<sup>th</sup> day of October 2016 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation of case FIR No. 261, dated 27.07.2016 under Sections 328, 506, 120-B, of the Indian Penal Code, 1860(Act No. 45 of 1860), registered at police station Rai, District Sonipat, Haryana pertaining to the Dope Test of Sh. Nar Singh Yadav, International Wrestler and attempts, abetments and conspiracies in relation to or in connection with the offences arising out of above mentioned FIR and any other offence or offences committed in the course of the same transaction or arising out of the same fact or facts in relation to the aforesaid case.

[F.No. 228/52/2016-AVD-II]

Dr. B.V. R.C. PURUSHOTTAM, Dy. Secy.

नई दिल्ली, 17 अक्टूबर, 2016

**का.आ.2149.**—केन्द्र सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इलाहाबाद उच्च न्यायालय में दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा संस्थापित एनआरएचएम समूह के मामलों में यथा (i) आरसी 220 2012 ई 0001/सीबीआई, ईओयू-IV, नई दिल्ली (ii) आरसी 220 2012 ई 0002/सीबीआई, ईओयू-IV, नई दिल्ली (iii) आरसी 220 2012 ई 0003/सीबीआई, ईओयू-IV, नई दिल्ली में उपस्थित होने तथा इनसे उत्पन्न प्रासंगिक अन्य मामलों में अपील/पुनरीक्षण का संचालन करने के लिए श्री अनुराग खन्ना, वरिष्ठ अधिवक्ता एवं उनके कनिष्ठ श्री निपुन सिंह, अधिवक्ता को उनकी नियुक्ति की तारीख से तीन वर्षों के लिए अथवा उनको सौंपे गए मामलों के निपटान तक, जो भी पहले हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/04/2016-एवीडी-II]

एल. पी. शर्मा, अवर सचिव

New Delhi, the 17th October, 2016

**S.O. 2149.**—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Anurag Khanna, Senior Advocate and his Junior Shri Nipun Singh, Advocate as Special Public Prosecutor for appearance in NHRM group of cases viz (i) RC 220 2012 E 0001/CBI, EOU-IV, New Delhi (ii) RC 220 2012 E 0002/CBI, EOU-IV, New Delhi (iii) RC 220 2012 E 0003/CBI, EOU-IV, New Delhi by Delhi Special Police Establishment (C. B. I.) in the High Court of Judicature at Allahabad and appeals/revisions or other matters connected therewith and incidental thereto for a period of three years from the date of appointment or disposal of the case entrusted to the counsel whichever is earlier.

[F.No. 225/04/2016-AVD-II]

L. P. SHARMA, Under Secy.

**उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय**

**(खाद्य और सार्वजनिक वितरण विभाग)**

नई दिल्ली, 14 अक्टूबर, 2016

**का.आ. 2150.**—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय (खाद्य और सार्वजनिक वितरण विभाग) के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को राजपत्र में अधिसूचित करती है : -

1. भारतीय खाद्य निगम,  
जिला कार्यालय, देवघर  
देव मेन्शन, जागृतिनगर, करनीबाग,  
देवघर (झारखंड) -814112

[सं. ई-11011/1/2008-हिन्दी]

सुरेश कुमार वशिष्ठ, संयुक्त सचिव

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION**

**(Department of Food and Public Distribution)**

New Delhi, the 14th October, 2016

**S.O. 2150.**—In pursuance of Sub-rule (4) of rule 10 of the Official language (use for official purpose of the Union) Rules, 1976 the Central Government hereby notifies the following offices under the administrative control of the Ministry of Consumer Affairs, Food, and Public Distribution (Deptt. of Food and Public Distribution), where of more than 80% of staff have acquired the working knowledge of Hindi :

1. Food Corporation of India,  
District Office, Deoghar,  
Deo Mansion, Jagritinagar, Karnibagh,  
Deoghar (Jharkhand) -814112

[No. E-11011/1/2008-Hindi]

SURESH KUMAR VASHISHTH, Jt. Secy.

**जल संसाधन, नदी विकास और गंगा संरक्षण मंत्रालय**

नई दिल्ली, 4 अक्टूबर, 2016

**का.आ. 2151.**—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, केन्द्रीय जल आयोग, नई दिल्ली के निम्नलिखित कार्यालय जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है :

जल विज्ञानीय प्रेक्षण, केन्द्रीय जल आयोग, मैथन डैम, धनबाद ।

[सं. ई-11011/16/2015-हिन्दी]

के. एम. एम. अलिमाल्मिगोति, आर्थिक सलाहकार एवं राजभाषा प्रभारी

**MINISTRY OF WATER RESOURCES, RIVER DEVELOPMENT AND GANGA REJUVENATION**

New Delhi, the 4th October, 2016

**S.O. 2151.**—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following office of Central Water Commission, New Delhi, wherein more than 80% staff have acquired the working knowledge of Hindi :

Hydrological Observation Circle, Central Water Commission, Maithon Dam, Dhanbad.

[No. E-11011/16/2015-Hindi]

K. M. M. ALIMALMIGOTI, Economic Adviser and Incharge Official Language

**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 13 अक्टूबर, 2016

**का.आ. 2152.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इन्स्टिट्यूट ऑफ प्लाज्मा रिसर्च एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट संदर्भ (सीजीआईटीए) सं. 116/2012 को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.10.2016 को प्राप्त हुआ था ।

[सं. एल-42012/27/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 13th October, 2016

**S.O.2152.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Ref. (CGITA) No. 116/2012] 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 Institute of Plasma Research & others and their workman, which was received by the Central Government on 07.10.2016.

[No. L-42012/27/2012-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 26<sup>th</sup> September, 2016

**Reference: (CGITA) No. 116/2012**

1. The Administrative Officer,  
Institute of Plasma Research,  
Near Mother Dairy, Village Bhat,  
Gandhinagar (Gujarat)
2. M/s. D.B. Enterprises,  
1<sup>st</sup> Floor, Shivam Complex,  
Near Vegetable Market, Sector – 6,  
Gandhinagar (Gujarat)

...First Party

**V/s**

Shri Parmar Dixit Vinodbhai,  
R/o K J Kadiya'sChawl, Civil Road,  
Baliya Limbadi, Shahibagu,  
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/27/2012-IR(DU) dated 30.07.2012 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 M/s. D.B. Enterprises Contractor of Institute of Plasma Research, Village Bhat, Distt. Gandhinagar in terminating the services of Shri Parmar Dixit Vinodbhaiw.e.f. 26.07.2010 is justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 30.07.2012. Notices were served to both the parties on 30.10.2012 to appear on 21.11.2011. First party The Administrative Officer, Institute of Plasma Research, Near Mother Dairy, Village Bhat, Gandhinagar (Gujarat) submitted vakalatpatra Ext. 4 of his advocate Shri K.V. Gadhia Associates on 03.03.2014 but the second party as well as first party no. 2 despite personal service by way of registered post did not appear and have not filed their response even after a lapse of four years. On 07.01.2016, last opportunity was given to both the aforesaid party to submit their response on 17.05.2016 but to no result even after giving one more date that is 26.09.2016. Thus it appears that the second party workman is not willing to prosecute the case and appears to have settled the dispute with the first party no. 2.
2. Thus the reference is decided as not pressed and the action of the management of M/s D.B. Enterprises Contractor of Institute of Plasma Research, Village Bhat, Distt. Gandhinagar in terminating the services of Shri Parmar Dixit Vinodbhaiw.e.f. 26.07.2010 appears to be justified in the absence of the response of the parties.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2016

**का.आ.2153.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जस टोल रोड कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ सीआर सं. 13/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.10.2016 को प्राप्त हुआ था।

[सं. एल-42011/11/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 17th October, 2016

**S.O. 2153.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. C.R. No. 13/2016) 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 JAS Toll Road Co. Ltd. and their workman, which was received by the Central Government on 17.10.2016.

[No. L-42011/11/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE**

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

DATED : 03 OCTOBER, 2016

**PRESENT :** Shri V. S. RAVI, Presiding Officer

**C. R. No. 13/2016**

**I Party**

The Organising Secretary,  
Bangalore North Industrial Workers Union (CIU),  
CITU Office, No.182/1, 4<sup>th</sup> Cross,  
near St. Mary's Convent Kalyan Nagar, T.  
Dasarahalli, Bangalore – 560 057.

**II Party**

The Management,  
M/s JAS Toll Road Co., Ltd.,  
Kulemepalya, NH-4, Opp, KBDL,  
Nelamangala,  
Bengaluru – 562123.

**AWARD**

1. The Central Government vide Order No.L-42011/11/2016-IR(DU) dated 29.03.2016 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 retirement age of Shri Vasudev Raj Rao is 58 of 60 and his termination at the age of 58 years is legal and justified? If not, to what relief the applicant Shri Vasudev Raj Rao entitled to?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. Served RPAD card for I party received, I party called absent. On behalf of the II Party Sh. Santosh Kumar. K, , HR & Admn for JAS Toll Road present.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to 1<sup>st</sup> party, the 1<sup>st</sup> party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the 1<sup>st</sup> party has no interest to contest the present matter, inspite of the service of notices of hearing issued to the 1<sup>st</sup> party. It is for the 1<sup>st</sup> party to make out a case that 1<sup>st</sup> party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the 2<sup>nd</sup> party, Mr.Santosh Kumar, H.R and Admin. Manager, of the 2<sup>nd</sup> Party, has appeared before this Tribunal and also reported that, the 2<sup>nd</sup> party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the 1<sup>st</sup> party and also, as per the provisions of law, the relevant benefits have been granted by the 2<sup>nd</sup> Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of material available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non- prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the 1<sup>st</sup> party by way of RPAD and the conduct of 1<sup>st</sup> Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it has to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

**AWARD**

Reference is dismissed for non-prosecution.

Dictated, transcribed, corrected and signed by me on 3<sup>rd</sup> October, 2016

V. S. RAVI, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2016

**का.आ. 2154.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बाबासाहेब भीमराव आंबेडकर यूनिवर्सिटी (सी) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 26/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 17th October, 2016

**S.O. 2154.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 26/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Babasaheb Bhimrao Ambedkar University (C) and their workman, which was received by the Central Government on 14.10.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I.D. No. 26/2011****BETWEEN :**

Sri Anand Kumar S/o Sri Gaya Prasad & three others.  
C/o Sri Parvez Alam, Labour Law Advisor  
R/o 283/63 Kha, Garhi Kanora (Premwati Nagar)  
PO Manak Nagar, Distt. Lucknow-2

**AND**

1. The Registrar,  
Babasaheb Bhimrao Ambedkar University (C)  
Vidhya Vihar, Raebareli Road,  
Lucknow-226025
2. Sri Samir Kumar Dixit  
Garden Inspector  
Babasaheb Bhimrao Ambedkar University ( C )  
Vidhya Vihar, Raebareli Road,  
Lucknow-226025

**AWARD**

1 The present petition has been filed by the workmen, Anand Kumar & others under section 2A of the I.D. Act., against alleged termination of their services by the opposite party management. The matter has been adjudicated by my Learned predecessor/Hon'ble Judge vide award dated 20.01.2014. The management was directed to pay Rs.1.00 lacs as compensation to each of the workmen for their act in violation of Section 25F of the IDAct. The award was notified by Govt. of India.

2 The management vide its application dated 13.08.2014 requested to recall the aforesaid award. Objection on behalf of the workmen has also been filed. After going through the record, in the light of the arguments advanced by both the parties, the award dated 20.01.2014 was recalled by me vide order dated 13.08.2015 on the payment of Rs.2000/- as cost. The cost was deposited by the management in the form of DD, then I.D. 26/2011 was revived to its original number.

3 As per claim statement W-I dated 10.20.2011, the workmen Anand Kumar and Suresh Kumar Kanaujia have stated in brief that they were appointed as Gardner under the subordination of the opposite party on 03.03.08, Sri Ram

Karan was appointed on 3.09.07 as Gardner whereas Sri Rajesh Kumar Sonkar was appointed on 02.01.2006 as Security Guard and all the workmen had worked continuously for more than 240 days. It has further been stated in the claim statement that the opposite party did not pay full wages rather it used to pay less sum and when workmen asked for full wages the opposite party got annoyed and terminated their services orally on 30.01.2010 without giving any notice, nor notice pay in lieu thereof. It was gross violation of Section 25F of the I.D. Act.

4. The applicants have emphasized that several other workmen junior to the applicants have been retained and opposite party has engaged some new faces also after their termination which amount to violation of Section 25 G and Section 25H of the I.D. Act. With the aforesaid pleadings the petitioners have prayed for declaration of the aforesaid termination as illegal and relief for their reinstatement with consequential benefits including back wages etc. have also been sought.

5. The management has filed written statement M-5 wherein the allegation of the claim statement have been denied. The management has pleaded that the applicants workmen are not covered under the definition of “workman” under Section 2(s), and more over the opposite party is not an industry as defined under Section 2(j) of the I.D. Act. The management has referred to the pronouncement of Hon’ble Supreme Court in AIR 1963, SC 1873.

6. The opposite party has clearly denied the appointment of the workmen at any point of time, but it has been mentioned in the written statement that the workmen were engaged through an agency viz Good Housing Keeping, to carry out the sewage and cleaning work, no payment was ever made to the petitioners by the Institution directly, the agency was paid by the University and thereafter it used to make payment to the workmen. The management has requested to reject the claim statement with heavy cost. Several annexures have been enclosed along with the written statement. The petitioners while denying the main facts mentioned by the opposite party, have filed rejoinder W-6 wherein the pleas taken in the claim statement have been reiterated. Certain documents have been annexed along with rejoinder. The workmen have filed affidavit of Sri Anand Kumar as W-7, W-8 of Sri Suresh Kumar Kannoja, W-9 of Sri Ram Karan Yadav and W-10 of Sri Rajesh Kumar in evidence. The management did not bother to cross examine them.

7. After recall of the previous award dated 20.01.2014, opportunity for cross examination of workmen witnesses was provided by me, copy of rejoinder and workmen evidence was also furnished to the opposite party. Thereafter several dates were given, adjournment application moved by the opposite party, was also allowed but neither the witness adduced by the workmen was cross examined by the opposite party, nor any oral evidence/affidavit was furnished by the opposite party. However, at the time of argument learned AR of both the parties were present in the court. Both the parties have been heard thoroughly at length and record has been scanned.

8. Learned AR for the workman relies upon the following Rulings;

1. (2004(100)FLR 109) State of UP and PO, Labour Court, Agra and another (Allahabad High Court).
2. (2008 (119)FLR 937 State of UP and PO, Labour Court, Agra and another (Allahabad High Court).
3. AIR 1978 Supreme Court 549 467 Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others.
4. 2001 (88)FLR 508, Supreme Court Deep Chandra vs State of U.P. and another.
5. 2004(103)FLR 146) N. Santosh Hegde vs M/s Pooran Theatre, Hon’ble Supreme Court.
6. State of UP vs Charan Singh in Civil appeal No.2381 of 2007 Hon’ble Supreme Court dt. 26.03.2015.
7. Civil Appeal No. 1020 of 2011 Raj Kumar vs Director of Education & others Hon’ble Supreme Court. Dt. 13.04.2010

9. Learned AR for the opposite party submits that the above Rulings do not apply to the matter in issue.

10. Learned AR for the opposite party refers following Rulings in support of its case;

1. (1997)11 SCC Choksi Tube Company Ltd., vs Union of India and others, page 179
2. 2009(13) SCC, International Airport Authority of India vs International Air Cargo Workers Union, page 374.
3. AIR 2002 SC, Municipal Corporation of Greater Mumbai Vs K.V. Shramik Sangh and others, page 1815.
4. Civil Appeal No. 10605/10 GM Bengal Nagpur Cotton Vs Bharatlal & Anr, Hon’ble Supreme Court, judgment dated 14.12.2010

11. Learned AR for the workman refutes strongly with the submission that the above Rulings do not apply to the present case. Arguments and objections of both the parties are being analysed in the light of the pronouncement of Hon'ble Court.

12. The learned representative of the workman has submitted that the workman has proved the pleadings made by it in the statement of claim; whereas the management has failed to prove the same through oral evidence.

13. Per contra, the learned authorized representative of the management has submitted that the workmen under dispute were never appointed by the management instead they were being engaged through an agency and attendance of the workmen were taken by the said agency, which used to submit the bill for payment before the management. He has also submitted that the engagement of the workman was through the agency in pursuance to the tender notice, followed by a contract between the agency and the management.

14. I have given my thoughtful consideration to the rival contention of the parties and scanned entire evidence available on record documentary as well as oral and also award dated 20.01.2014 passed by my learned predecessor.

15. Having gone through the case file and order sheet, it transpires that the workmen filed their oral evidence in form of their respective affidavits, during the tenure of my learned predecessor years back i.e. on 06.02.2013. The opposite party was absent on the said date; and thereafter none turned up either to put its appearance before this or to move any adjournment, which led to closure of opportunity to cross-examine the workman's witnesses vide order dated 10.05.2012 and date was fixed for opposite party's evidence on 21.06.2012. The opposite party again failed either to adduce its evidence or to put up its appearance before this Tribunal on several dates; and accordingly, 18.10.2012 was fixed for arguments vide order dated 23.08.2012. When the management of Ambedkar University did not turn up on several dates i.e. 18.10.2012, 23.11.2012, 16.01.2013, 01.03.2013, 22.04.2013, 04.06.2013, 26.07.2013, 09.09.2013, 17.10.2013, 02.12.2013 and 16.01.2014 only arguments of the authorized representative of the workmen was heard and file was reserved for award on 16.01.2014; and accordingly, the award dated 20.01.2014 was passed by this Tribunal and the same was sent to the appropriate Government, referring the case, for notification in the gazette, which in turn notified the same vide notification dated 19.02.2014. On receipt of copy of notification, the office of this Tribunal forwarded the copy of the award along with copy of gazette notification vide letter dated 17.07.2014

16. When the management of the Ambedkar University received the award dated 20.01.2014, which directed the management to pay compensation to the tune of Rs. 1 lac to each of the workman, it moved an application dated 13.08.2014 to recall the ex-parte award dated 20.01.2014, which was allowed on the payment of cost of Rs. 2000/- vide order dated 13.08.2015. When the cost was paid by the management, the present industrial dispute revived on its original number vide order dated 23.09.2015 and the management was extended opportunity to cross-examine the workman's witnesses on 24.09.2015.

On 24.09.2015, all the workmen and authorized representatives of the workman as well as management side were present; and the authorized representative of the management received copy of the rejoinder and affidavits, filed by the workmen; but did not cross-examine the workmen, which lead to fixing next date for cross-examination of the workmen witnesses on 05.11.2015. On 05.11.2015, although all the workmen and their authorized representative were present but the authorized representative of the management, neither turned up nor moved any adjournment; resultantly, when he did not turn up till 1.20 PM, it was presumed that the management does not want to cross-examine the workmen's witnesses and the management's opportunity to cross examine the workmen's witness was closed vide order dated 05.11.2016 and next date 26.11.2015 was fixed.

On the next date 26.11.2015 the authorized representative of the management again failed to appear before this Tribunal and simultaneously he also failed either to move any recall application to recall the order dated 05.11.2016 or any adjournment or any application, which led to closure of opportunity of the management to adduce its evidence and next date 12.01.2016 was fixed for arguments.

On 12.01.2016, the authorized representative of the management was present but he again did not move any application to recall the order dated 05.11.2016; rather he moved an adjournment, D-12, praying to adjourn the case to some other date as some important and relevant documents, which were to be placed before this Tribunal, were not available with him on that day. Accordingly, his prayer was allowed and the case was adjourned to 23.02.2016 for argument, at a cost of Rs. 200/- with an observation that undue delay must be avoided, keeping in view the long pendency of the case, since 2011.

On 23.02.2016, again the authorized representative of the management did not turn up and next date 16.03.2016 was fixed for arguments. On 16.03.2016, the authorized representative of the management was present and sought time; and accordingly, 19.04.2016 was fixed. On 19.04.2016 the authorized representative of the management again failed to appear, nor moved any adjournment and 18.05.2016 was fixed for argument. Finally on 18.05.2016, both the authorized representatives of the parties were present and oral arguments were heard.

17. Thus, it is crystal clear that the management and its authorized representative, Sri Rajan Mishra took the proceedings in respect of present industrial very casually and did not bother to be sincere at all. For most of the time the authorized representative of the management neither appeared nor moved any adjournment, which led to embarrassing situation for the other party as well as this Tribunal. However, it is noteworthy to mention that the authorized representative of the workmen, Sri Parvez Alam, kept appearing before this Tribunal on each date; also the unemployed workmen were present as and when their presence was required.

18. Initially, when the management became reluctant to the judicial proceedings and stopped appearing since 08.09.2011, my predecessor after waiting for almost more than two years delivered its award on 20.01.2014; but the management, managed to get it nullified by moving an recall application before this Tribunal; and when the management was afforded another opportunity then it again started same tactic. Also, the management did not make any attempt to get the orders, closing its opportunity to cross-examine the workmen's witnesses or to adduce its evidence, recalled, which shows callous attitude of the management to contest the present case not only previously but presently also. After reinstitution of the case, the management was furnished copy of rejoinder and workmen's affidavit and was afforded opportunity to cross-examine the workmen's witnesses; but the management utterly failed not only to cross-examine the workmen's witnesses but also to adduce its evidence in support of its pleadings, which led its pleadings un-corroborated/not proved.

19. Hon'ble High Court, Allahabad in 2004 (100) FLR 109 *State of UP & another vs Presiding Officer, Labour Court, Agra & another* has observed as under:

**10. For the reasons that the petitioner has failed to establish his case before the Labour Court and has not given any evidence the stand taken by the petitioner was disbelieved. In view of the law laid down in Shankar Chaudhary v. Britannia Biscuits Co. Ltd., V. K. Raj Industries v. Labur Curt, Airtech Pvt. Ltd. Vs. State of U.P., and Meritech India Ltd. V. State of U.P., the case of party which has not discharged his burden of proof by given evidence will fail.**

Further, Hon'ble High Court, Allahabad in 2009 (123) FLR 201 *Gyanendra Pal Singh & others vs Cane Commissioner & others* has observed as under:

**"6. Since no counter affidavit has been filed till date, the ground taken in the writ petition are taken to be correct in view of the decisions rendered in Choksi Tube Company Limited v. Union of India, Naseem Bano v. State of U.P. and others."**

Moreover, the failure of the management to cross-examine the workmen's witnesses, made the evidence of the workmen, in support of their claim to be acceptable. Hon'ble Apex Court in (2006) 3 SCC 276 *State of U.P. vs. Sheo Shanker Lal Srivastava & others* has observed that "**the statement of the witness, having not been controverted would be deemed to be admitted.**"

20. Therefore, in view of the facts and circumstances of the case, observations of Hon'ble High Court and Hon'ble Apex Court and discussions made hereinabove, I am of considered opinion that the workmen have succeeded to prove the averments made by them in their statement of claim by filing their affidavit; on the contrary the management of the Ambedkar University failed to prove its pleading through a counter affidavit, making the claim of the workmen uncontroverted; and resultantly, I come to conclusion that there is no need to interfere with the conclusion drawn out by my learned predecessor in her award dated 20.01.2014, which is on merit of the case.

However, keeping in view, long pendency of the case, the reluctance of the management to contest the present case and making efforts to deprive the workmen of the fruits of the award dated 20.01.2014, it would be just that the each of the workman be compensated with an enhanced amount of Rs. 1.25 lac each instead of 1 lac as provided in award dated 20.01.2014, within 10 weeks of the publication of the award, failing which the compensated amount shall carry interest @ 6% per annum

21. Award as above.

Lucknow

30<sup>th</sup> September, 2016.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2016

**का.आ.2155.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबंध 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. 329/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.10.2016 को प्राप्त हुआ था ।

[सं. एल-42011/17/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 17th October, 2016

**S.O. 2155.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 329/2011) 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 Municipal Corporation of Delhi and their workmen, which was received by the Central Government on 17.10.2016.

[No. L-42011/17/2010-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. 329/2011**

The General Secretary,  
Municipal Employees Union,  
Aggarwal Bhawan, G.T. Road,  
Tis Hazari, Delhi – 110 054

...Workman

#### Versus

The Commissioner,  
Municipal Corporation of Delhi,  
Town Hall, Chandni Chowk,  
Delhi – 110 054

...Management

#### AWARD

A reference was received by this Tribunal under section 10(2)(a) read with clause 1(d) of the Industrial Disputes Act, 1947 from the appropriate Government vide letter No.L-42011/17/2010-IR(DU) dated 11.10.2011 with following terms of reference:

‘Whether the action of the management of Municipal Corporation of Delhi, in not regularizing the services of Shri Ranbir Singh & 3 others (as per list enclosed) is legal and justified? What relief the workmen are entitled to?’

2. It is clear from the statement of claim that four workmen, as per details given hereunder, were appointed by Municipal Corporation of Delhi (management):

| Sl. No. | Name and Father's Name                | Designation | Date of Appointment | Date of Regularization | Present place of posting |
|---------|---------------------------------------|-------------|---------------------|------------------------|--------------------------|
| 1       | Ranbir Singh, S/o Shri Surat Singh    | Driver      | 01.10.1996          | 01.04.2004             | Shahdara (South) Zone    |
| 2       | Vijay Kumar, S/o Shri Deep Chand      | Driver      | 01.10.1996          | 01.04.2004             | Shahdara (North) Zone    |
| 3       | Sarvesh Kumar, S/o Shri H.P. Sharma   | Driver      | 25.09.1996          | 01.04.2004             | Central Zone             |
| 4       | Pramod Kumar, S/o Shri Mahender Singh | Driver      | 12.09.1996          | 01.04.2004             | Shahdara (North) Zone    |

3. Averments, as contained in the statement of claim, are that the workmen were taken on the job as daily rated/muster roll workers and their wages were also revised from time to time under the Minimum Wages Act, while their counterparts doing the identical work, were treated as regular employees. Workmen herein were discharging their services with the management with unblemished and uninterrupted record of service. Workmen herein were supposed to have been regularized inservice from the date of initial date of joining but the management has only regularized them since the dates mentioned in para 2 above.

4. Non regularization of services of the workman from the date of joining on the basis of on the post of drivers in proper pay scale alongwith allowances and non payment of salary to which the workmen are entitled on the principle of equal pay for equal work is totally unjust and malafide and amounts to unfair labour practice. The action of the management is in violation of Article 14, 16 and 39(d) of the Constitution of India.

5. It is alleged that the management has not framed any rules or regulation nor got it passed by UPSC nor noticed in the official gazette for governing conditions of muster roll workers/part time seasonal workmen. Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 are applicable to the workmen herein. Workmen herein have not acquired status of a permanent employee from the initial date of their respective joining into the employment after completing 240 days of continuous days of employment as provided under Model Standing Orders. Even otherwise, claimants have acquired status of permanent employee after completing 240 days of continuous employment on regular basis as has been held by the High Court of Delhi in the case of Harish Kumar Vs. Registrar, Delhi High Court.

6. The workman also served demand notice upon the management vide communication dated 05.03.2009, which was duly received management and it is presumed that the same was rejected due to adamant and non-cooperative attitude of the management. Finally, prayer has been made for regularization of services of the workmen on the post of driver with retrospective effect from the date of their initial joining with the management .

7. Case was contested by the management, who filed written statement thereto, taking various preliminary objections, inter alia that the dispute has not been espoused and reference has been made in a mechanical manner without due application of mind. On merits, it has been denied that the workmen herein are entitled to salary in the pay scale of Rs.4000-6000 (pre-revised) with usual allowances as admissible under the rules from the date of initial engagement as driver as Hon'ble Apex Court in the case of MCD Vs. Gauri Shankar clearly stated that no daily wager is entitled for his salary from the date of intial engagement and he will be entitled to pay scale as well as regularization as per regularization policy of the management. Management has regularized services of the workmen in a phased manner policy of regularization adopted by the management. As such, the workmen herein are not entitled for regularization from the date of their initial engagement.

8. Against this factual background, this Tribunal vide order dated 20.03.2012 framed the following issues on the basis of pleadings of the parties:

- (i) Whether there is no industrial dispute for want of espousal by the Union or considerable of workmen?
- (ii) As in terms of reference

9. Management, in support of its case, examined S/Shri Ranbir Singh, Vijay Kumar, Pramod Kumar, Sarvesh Kumar and Surender Bhardwaj as WW1 to WW5, whose affidavits are Ex.WW1/A to Ex.WW5/A respectively and documents Ex.WW1/1 to Ex.WW1/11 and Ex.WW3/1 to Ex.WW3/3 were also tendered in evidence by them. I shall be advertng to them in the subsequent paras while drawing my conclusion.

10. Management, in order to rebut the case of the workman examined Shri S.C. Gupta, Administrative Officer as MW1. He has also relied upon document Ex.MW1/1 to Ex.MW1/6.

11. I have heard Shri Abhinav Kumar, A/R for the claimant and Shri Vishwajit Mangla, A/R for the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows

#### **Issue No.1**

12. So far as the question of espousal in the present case is concerned, learned A/R for the management has not seriously pressed this issue. It is clear that from the affidavit filed by Shri Surender Bhardwaj, Ex.WW5/A that workmen herein had approached their union for redresssal of their grievance as is clear from para 4 of the affidavit. Consequently, a resolution was passed in the meeting of the union held on 20.02.2009, copy of which is Ex.WW1/11, which clearly shows that the case of the workman was espoused by the Municipal Employees Union. There is no cross examination of any of the witness examined by the workmen herein on the point of espousal by the management nor the management has whispered even a single word in their affidavit Ex.MW1/A regarding non-espousal of the case. It is, thus, clear from recital contained in the affidavit as well as Ex.WW1/11 that the case of the workman herein was

espoused by the union. It has been held by the Hon'ble High Court in the cases of Management of M/s Hotel Samrat Vs. Government of NCT of Delhi (2007 (136) DLT 290) that the workman are simply to allege and prove that they have raised their grievance through their union and the expression espousal simply means that the dispute of the workman is adopted by the union as its own dispute or a large number of workmen have given their support to the case of the individual workman so involved in such dispute. Accordingly, it is held that this issue of dispute is decided in favour of the workman and against the management.

13. Now, the next question is whether the workmen herein are entitled for regularization with retrospective effect, i.e. from the date of their initial appointment as per model standing orders. In this regard., it is appropriate to refer to the statements of WW1 to WW5 and affidavits of the workmen herein are on the same lines as the averments contained in the claim statement and it clearly shows that the workmen, WW1 to WW4 are continuously discharging their duties with the management since the date of their respective dates of joining of services with the management. Management has regularized services of the workmen, as stated in para 2 above, whereas regularization of services of the workman was to be from the date of their initial engagement or joining. It was strongly urged on behalf of the workmen that they are performing the same duties which their regular counterparts are performing and there is substantial difference in their salary of such daily rated workers vis-à-vis regular drivers employed by the management.

14. It is clear from perusal of Ex.WW1/1 that the workmen have approached the management against the non-regularization of their services and non-payment of difference in their salary. There is specific reference in the above letter to the case of Harish Kumar Vs. Registrar, Delhi High Court which deals with disparity in the salary of workmen. Further Ex.WW1/3 is acknowledgement of the said letter and Ex.WW1/4 is appointment letter of Shri Ranbir Singh. Similarly letter of employment of Shri Vijay Kumar is Ex.WW2/1 and Ex.WW2/2 is his letter of regularization. Similarly, Ex.WW3/2 is the appointment letter of Shri Pramod Kumar and Ex.WW3/3 is his letter of regularization. Letter of appointment and acceptance of Shri Pramod Kumar and office order Ex.W3/3 clearly shows that vide order dated 25.05.2005, MCD has regularized services of the above Pramod Kumar.

15. Similarly, letter of appointment of Shri Sarvesh Kumar is Ex.WW4/1 and Office order x.WW4/2 shows that he was appointed as driver on daily wages initially for a period of six months @ 0.80 paise per day and he was called upon to join CSE Department and posted at Shahdara Sough Zone. Later regularization of services of Shri Sarvesh Kumar was done through Ex.WW4/3, which shows that vide order 01.08.2005.

## Issue No.2

16. Now, question which arises for consideration is whether the workmen herein are entitled for regularization of their services from the dates of their initial date of appointment or whether they are entitled for entitled for equal pay which their regular counterparts are getting in the management. Reliance was placed upon the case titled 'Umralla Gram Panchayat Vs. The Secretary, Municipal Employees Union (MANU/SC/0354/2015)'. In this case also, workmen were appointed initially as casual/daily wage workers and later on their services were regularized from different dates in an arbitrary manner without following any policy. Claim of the workman was upheld by the Hon'ble High Court by observing as under:

'It is an admitted fact that the work which was being done by the concerned workmen was the same as that of the permanent workmen of the appellant- Panchayat. They have also been working for similar number of hours, however, the discrepancy in the payment of wages/salary between the permanent and the non-permanent workmen is alarming and the same has to be construed as being an unfair labour practice as defined under Section 2(ra) of the ID Act r/w Entry No.10 of the Fifth Schedule to the ID Act, which is prohibited under Section 25(T) of the ID Act. Further, there is no documentary evidence produced on record before the Labour Court which shows that the present workmen are working less or for lesser number of hours than the permanent employees of the appellant-Panchayat. Thus, on the face of it, the work being done by the concerned workmen has been permanent in nature and the Labour Court as well as the High Court have come to the right conclusion on the points of dispute and have rightly rejected the contention of the appellant-Panchayat as the same amounts to unfair labour practice by the appellant-Panchayat which is prohibited under Section 25(T) of the ID Act and it also amounts to statutory offence on the part of the appellant under Section 25(U) of the ID Act for which it is liable to be prosecuted.

Further, Section 25(T) of the ID Act clearly states that unfair labour practice should not be encouraged and the same should be discontinued. In the present case, the principle "equal work, equal pay" has been violated by the appellant-Panchayat as they have been treating the concerned workmen unfairly and therefore, the demand raised by the respondent-Union needs to be accepted. The High Court has thus, rightly not interfered with the Award of the Labour Court as the same is legal and supported with cogent and valid reasons.

In view of the reasons stated supra and in the light of the facts and circumstances of the present case, we hold that the services of the concerned workmen are permanent in nature, since they have worked for more than 240 days in a calendar year from the date of their initial appointment.'

17. Similarly, in *Union of India vs. Dineshan K.K.* (MANU/SC/0395/2008) where the question of equal pay for equal work was considered and similar view was taken by holding that having due regard to the constitutional mandate of equality and inhibition against discrimination in Article 14 and 16 of the Constitution. As such, workmen are entitled for equal pay when they were performing similar kind of work.

18. Yet again in the case of *Union of India Vs. Rajesh Kumar Gond* (MANU/SC/0769/2013), *MCD vs. Ram Milan* (MANU/DE/3969/2015) and *MCD Vs. Smt. Krishna* (MCD/DE/3966/2009) consistent view has been taken by the Hon'ble Apex Court and High Court on the principle of equal pay for equal work which have been applied in a catena of decisions, workmen were held to be entitled to the same pay and allowances with their counterparts performing similar duties.

19. There is no merit in the contention of the management that the workmen herein are not entitled for regularization with retrospective date on the grounds that as and when post falls vacant, workmen are regularized. Regularization is not done till seniority list of such workmen is prepared. Learned A/R for the management could not cite any policy of regularization so as to support his submission. Hon'ble High Court in the case of *MCD Vs. Ram Milan* (Manu/DE/3979/2015) has dealt with the question of regularization wherein workman was working as chowkidar since 1987. Plea of the management that the workman was only employed on casual basis when there was no regular workman, as such, he was not entitled for salary of regular workman as well as regularization was turned down by the Hon'ble High Court by placing reliance on a number of cases. It was also observed that the workman in that case were performing same duties which permanent workmen were performing. He was also working for similar number of hours. However, there was discrepancy in the payment of wages/salary between the permanent and non-permanent workmen, which was quite alarming. Accordingly, it was held that the workmen have worked for 240 days in a calendar year from the date of their initial appointment, which is clear from the evidence on record, as such the management was legally required to make services of such workers permanent.

20. In view of the ratio of the law discussed above in the various rulings relied upon by the workmen, it is held that the workmen herein are entitled for regularization of their services like their other counterparts whose services have been regularized by the management. Action of the management in not regularizing services of Shri Ranbir Singh and 3 other workmen is held to be neither legal nor justified. It is, further, held that the workmen herein, S/Shri Ranbir Singh, Vijay Kumar, Sarvesh Kumar and Pramod Kumar are entitled for entire difference of salary on the principles of equal pay for equal pay, alongwith all consequential benefits from the date of their initial appointment. 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.

October 3, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2016

**का.आ.2156** .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन पोस्टल डिपार्टमेंट रत्नागिरी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ सं. सीजीआईटी-2/101 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.10.2016 को प्राप्त हुआ था।

[सं. एल-40012/70/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th October, 2016

**S.O. 2156.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Ref. No. CGIT-2/101 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Indian Postal Department, Tatnagiri and their workman, which was received by the Central Government on 18.10.2016.

[No. L-40012/70/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT : M. V. DESHPANDE, Presiding Officer****REFERENCE NO.CGIT-2/101 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIAN POST DEPARTMENT**

The Superintendent of Post  
Indian Post Department  
Division-Ratnagiri  
Ratnagiri  
Maharashtra-415 612.

**AND****THEIR WORKMAN**

Shri Mahesh Jagannath Surve  
R/o. Nawdi (Bhandarwadi)  
Tal. Sangmshwar  
Distt. Ratnagiri  
Maharashtra-415 612.

**APPEARANCES:**

FOR THE EMPLOYER : No appearance

FOR THE WORKMAN : No appearance

Mumbai, dated the 14<sup>th</sup> September, 2016

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-40012/70/2014-IR (DU), dated 25.11.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the action of the management of Department of Post in terminating the service of Shri Mahesh Jagannath Surve, Ex-Gramin Dak Sevak w.e.f. 21.02.2014 is legal and justified? If not, what relief the workman is entitled to?”*

2. After receipt of the Reference, notices were issued to both the parties. Acknowledgement of notice served on the second party Workman is at Ex-4. Matter was adjourned on several occasions for filing Statement of Claim by second party/ Workman. Neither second party/ Workman appeared before this Tribunal nor filed his Statement of claim. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Thus I pass the following order:

**ORDER**

Reference stands dismissed for want of prosecution.

Date: 14.09.2016

M. V. DESHPANDE, Presiding Officer/Judge

नई दिल्ली, 19 अक्टूबर, 2016

**का.आ. 2157.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल टेक्सटाइल कारपोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 2/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.10.2016 को प्राप्त हुआ था।

[सं. एल-42011/109/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th October, 2016

**S.O. 2157.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 2/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the National Textile Corporation Ltd. and their workman, which was received by the Central Government on 19.10.2016.

[No. L-42011/109/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

# **ANNEXURE**

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

Wednesday, the 5<sup>th</sup> October, 2016

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

### **Industrial Dispute No. 2/2015**

(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 National Textile Corporation and their workman)

#### **BETWEEN :**

- |                                                                                                                                                      |   |                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------------------------------------------|
| 1. The Joint Action Committee of NTC<br>Showroom Employees Union (BMS, CITU & INTUC)<br>No. 381, CITU Building<br>Anuparpalayam<br>Coimbatore-641009 | : | 1 <sup>st</sup> Party/1 <sup>st</sup> Petitioner Union |
| 2. Bharathiya Entyce RMD Showroom<br>Employees Association                                                                                           | : | 1 <sup>st</sup> Party/2 <sup>nd</sup> Petitioner Union |
| 3. National General Employees Union (CITU)                                                                                                           | : | 1 <sup>st</sup> Party/3 <sup>rd</sup> Petitioner Union |

#### **AND**

- |                                                                                                                                                                                                                 |   |                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------------------------------------|
| 1. The Executive Director<br>National Textile Corporation Ltd.<br>Southern Regional Office<br>NTC House, PO Box No. 2409<br>35-B, Somasundaram Mills Road<br>Coimbatore-641009                                  | : | 2 <sup>nd</sup> Party/1 <sup>st</sup> Respondent |
| 2. The Deputy General Manager<br>National Textile Corporation Ltd.<br>Retail Marketing Division<br>Southern Regional Office<br>NTC House, PO Box No. 2409<br>35-B, Somasundaram Mills Road<br>Coimbatore-641009 | : | 2 <sup>nd</sup> Party/2 <sup>nd</sup> Respondent |

#### **Appearance:**

- |                                                                                                    |   |                                           |
|----------------------------------------------------------------------------------------------------|---|-------------------------------------------|
| For the 1 <sup>st</sup> Party/1 <sup>st</sup> , 2 <sup>nd</sup> & 3 <sup>rd</sup> Petitioner Union | : | B. Rajagopal, K. Sathiyamurthi, Advocates |
| For the 2 <sup>nd</sup> Party/1 <sup>st</sup> & 2 <sup>nd</sup> Respondent                         | : | M/s. T.S. Gopalan & Co., Advocates        |

#### **AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/109/2014-IR (DU) dated 22.12.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

*“Whether the denial of HRA @ 15% and medical allowance @ 10% to NTC Showroom employees of Tamilnadu and Kerala is justifiable while the other NTC employees of Patna, Guwahati, Kolkata and Bhubhaneswar are extended the same benefit? If not to what relief, they are entitled to?”*

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 2/2015 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively. Subsequently supplemental petitioners 2 & 3 were impleaded and they have also filed Claim Statement. Rejoinder has also been filed by the petitioners.

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

The petitioner is representing Three Trade Unions, BMS, CITU and INTUC. The National Textile Corporation is entirely under the Central Government which has several showrooms to sell its products throughout the country. Earlier the Corporation was divided into several divisions for the purpose of administration. The Showrooms were also governed by respective divisions. The salary and other perks of the employees were finalized according to the decisions of the divisions. There happened to be huge differences in wages and other perks from one division to the other. Even within these divisions there were such differences from one department to the other. The result was that when the loading employee of the Retail Marketing Division obtained very high salary the employee at the rank of Manager in the Showrooms was not getting even 50% of this. In the circumstance the Management of NTC southern Region and the petitioner unions had discussion and accordingly a settlement was entered into on 07.06.2011 regarding the scale of pay. One of the clauses of the settlement was regarding HRA and Medical Benefits. It was decided that only after confirmation from the National Head Office these benefits would be extended to the employees on par with the employees of other showrooms in other states who were already extended with such benefits. However, the benefits were not given to the employees even after a period of two years of the settlement. The Unions again approached the Management and the Management agreed for extending the benefits with due approval of the NTC Ltd. This settlement was concluded by the Minutes of the Meeting dated 13.03.2013. In spite of the second settlement the Respondent refused to extend the benefits of HRA and medical Benefits to the employees of the Southern Region. So the Petitioner Unions issued strike notice on 06.09.2013. The Regional Labour Commissioner (Central), Madurai considered the issue of strike and submitted a failure report. The reference has been made accordingly. The employees are entitled to get 15% of the Basic Pay as House Rent Allowance and 10% of the Basic Pay as Medical Allowance. An award may be passed directing the Respondent to pay the benefits to the employees from 07.06.2011, the date of the settlement entered into between the Respondent and the Unions

4. The Second Petitioner has filed Claim Statement in tune with the statement filed by the First Petitioner. The Third Petitioner has filed Claim Statement adopting the Claim Statement of the Second Petitioner.

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

The wages and other service conditions of the employees working in the Retail Showrooms under various regions were determined depending on the local conditions. There was no parity of wages or service conditions among the employees of the Retail Showrooms on All India Basis. In the Eastern and Western Regions the concept of HRA came into being in view of statutory provisions. This was not prevalent in the Showrooms of the Southern Region. The employees of Southern Region were enjoying Incentive Bonus under three heads which are much more than what the employees elsewhere were getting by way of HRA and Medical Allowance. The Showroom employees in Tamil Nadu are paid Rs. 1,500/- per year and employees in Kerala are paid Rs. 1,000/- as Medical Allowance on quarterly basis. Thus the employees of Southern Region were compensated by other incentives for the absence of HRA and Medical Allowance. In the year 2011 the Respondent Corporation adopted uniform scale of wages and Dearness Allowance to all the employees. Uniformity in other matters including incentives would be possible only when the differences under various heads of earnings are solved. The demand of the petitioner could be allowed only if the employer has the financial capacity to bear the additional burden. The financial capacity of the Corporation as well as the Retail Showroom Division do not allow extending of the benefits of HRA and Medical Allowance to the employees of Tamil Nadu and Kerala. A Long Term Settlement on wages was made on 07.06.2011 covering the period 01.04.2011 to 31.03.2016. During the period of settlement the service conditions of the employees are not subject to variation. The petitioners are not entitled to any relief.

6. In the rejoinder filed the petitioners have reiterated the case in the Claim Statement and denied the allegations in the Counter Statement.

7. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W4 and Ext.M1 to Ext.M4.

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

- (i) Whether the Respondents are justified in denying HRA and Medical Allowance to the NTC Showroom Employees of Tamilnadu and Kerala?
- (ii) What, if any is the relief to which the petitioners are entitled?

**The Points**

9. The petition is filed on behalf of the NTC Showroom Employees of Tamilnadu and Kerala. The grievance of the employees is that they are not given HRA and Medical Allowance while the Showroom employees of Patna, Guwahati, Kolkata and Bhubhaneswar are extended such benefits.

10. The claim of the petitioners is based on Ext.W2-the copy of the Memorandum of Settlement entered into under Section-18(1) of the Industrial Disputes Act by which the benefit of HRA and Medical Allowance is conferred on the employees. Clause-7 of Ext.W2 states that House Rent and medical Allowance @ 15% and 10% respectively is payable on the new Basic Pay which is arrived at as per the agreement. It is pointed out on behalf of the petitioners that parity has been brought in pay and dearness allowance but they are not given HRA and Medical Allowance alongwith their counterparts in Patna, Kolkata, etc.

11. It could be seen from Ext.W1 that the petitioners have raised the issue even before Ext.W2 settlement was entered into. Ext.W1 is the settlement under Section-18(1) of the ID Act bringing about wage revision for the concerned employees. Clause-14 of this settlement states that the issue of HRA, target based incentive scheme and medical benefits for Showroom Employees of Tamilnadu and Kerala will be implemented in line with decision, if any, taken in this respect at National Level. In spite of such a clause in Ext.W1 nothing concrete had taken place even after Ext.W2 settlement was signed by the Unions in Patna, Kolkata, etc. The petitioners raised the issue again resulting in Ext.W3 minutes. As could be seen from this, a meeting had taken place regarding the issue on 13.03.2013 consequent to the Demand Notice of the Unions. Clause-2 of this states that in line with Ext.W2-settlement entered into by Patna, Kolkata, Guwahati and Bhubhaneswar regarding HRA and Medical Allowance, it has been agreed to adopt and implement the same clause to the Showroom Employees of Tamil Nadu and Kerala after due approval from NTC Ltd. in New Delhi within 2 months or at the earliest.

12. Even after the outer limit of two months given in Ext.W3 the employees were not conferred with the benefit and they have issued Ext.W4 notice proposing to strike on the issue.

13. The Respondents have raised two contentions resisting the claim of the petitioners. One is that incentives are always decided with reference to the locality and it was not granted on a national level. The second contention is that a Long Term settlement has been entered into on 07.06.2011 as per Ext.W1 and this acts as a bar to the petitioners in raising the issue.

14. In support of the first contention the argument advanced on behalf of the Respondents is that HRA and Medical Allowance have been allowed to the employees of Patna, Kolkata, etc. because of the law existing in those regions. It is further pointed out that the concerned employees are getting bonus under three heads and other incentives and these are more than sufficient to make up for the absence of HRA and Medical Allowance. In was brought out in cross-examination of WW1 that there is statutory obligation to pay HRA to the workmen of Mumbai and Kolkata. However the witness has stated that even in other places where such statutes are not available also HRA is paid. So this is not a bar for raising the claim. No documents are produced to prove the case that the total benefits available to the concerned employees will be equal to the benefits now received as per Ext.W2. Even otherwise, I do not think, it would be proper to deny the benefits on the basis of such a reason. Wage parity has already been brought out regarding the Showroom employees. Earlier the employees of Patna, Kolkata, etc. also were not given the benefit of HRA and Medical Allowance. When these were granted to them there is no reason to deny such benefit to the concerned employees. It could be seen from Ext.W1 and Ext.W3 that it was never the case of the Management that the concerned employees are not eligible for the benefits. On the other hand, they had given the assurance that the benefits would be given when consent is obtained at the national level. Ext.W3 minutes specifies a time limit also. It is not stated why the Corporation at the National Level has refused to extend the benefits to the concerned employees.

15. The Apex Court had occasion to consider the claim of parity in incentives for the employees of National Textiles Corporation even earlier. 26 employees of the Showrooms of National Textile Corporation, Karnataka had claimed emoluments at par with the employees of the Head Office of the National Textile Corporation. The Industrial Tribunal had allowed the claim and this was affirmed by the Karnataka High Court. The Corporation filed Civil Appeal No. 6036-6037 of 2009 before the Apex Court. The Apex Court had refused to interfere with the order of the Industrial Tribunal confirmed by the High Court. The case of the petitioners is fortified by the decision.

16. The contention on behalf of the Respondents that the issue could not have been raised during the period of Ext.W1 also could not be accepted. Even as per Ext.W1, the Management has agreed to grant HRA @ 15% of the

Basic Pay and Medical Allowance @ 10% of the Basic Pay subject to the approval of NTC Limited, Delhi. However, the same was not complied with. The petitioners are entitled to the relief claimed.

17. In view of my discussion above an award is passed as below:

The Respondents are directed to pay HRA @ 15% and Medical Allowance @ 10% to the NTC Showroom Employees of Tamilnadu & Kerala w.e.f. 21.08.2013. Arrears shall be paid within two months of publication of the Award.

The reference is passed accordingly.

(Dictated to the PA transcribed and typed by him, corrected and pronounced by me in the open court on this the 5<sup>th</sup> October, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1<sup>st</sup> Party/1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Petitioner Union : WW1, Sri N. Krishnan  
For the 2<sup>nd</sup> Party/1<sup>st</sup> & 2<sup>nd</sup> Management : MW1, Sri n. Gunasekaran

**Documents Marked:**

**On the petitioner's side**

| Ex.No. | Date       | Description                                                                                                                                                     |
|--------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ext.W1 | 07.06.2011 | Copy of Memorandum of Settlement under Section-18(1) of ID Act, 1947                                                                                            |
| Ext.W2 | 06.07.2012 | Copy of the Memorandum of Settlement under Section-18(1) of ID Act, 1947 with representatives of Marketing Division of Patna, Kolkata, Guwahati and Bhubaneswar |
| Ext.W3 | 13.03.2013 | Copy of Minutes of Meeting                                                                                                                                      |
| Ext.W4 | 13.03.2013 | Copy of Minutes of Meeting                                                                                                                                      |

**On the Management's side**

| Ex.No  | Date       | Description                                                                                                                                      |
|--------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Ext.M1 | 13.06.2013 | Revised Minutes of the meeting between the Management and Union Representatives of RMD Show Room Employees on the demand notice dated 11.02.2013 |
| Ext.M2 | 31.08.2013 | Reply of Respondent to the Strike Notice dated 21.08.2013                                                                                        |
| Ext.M3 | 30.09.2014 | Conciliation failure report issued by Regional Commissioner (Central), Madurai                                                                   |
| Ext.M4 | 2013-2014  | Balance Sheet.                                                                                                                                   |

नई दिल्ली, 20 अक्टूबर, 2016

**का.आ.2158.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण नं. 2, कोल्हापुर के पंचाट (संदर्भ सं. 2/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.10.2016 को प्राप्त हुआ था।

[सं. एल-12012/108/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 20th October, 2016

**S.O.2158.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. (IT) No. 2 of 2008) of the Industrial Tribunal No. 2, Kolhapur as shown in the Annexure, in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 13.10.2016.

[No. L-12012/108/2007-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**  
**IN THE INDUSTRIAL TRIBUNAL NO. 2, MAHARASHTRA AT KOLHAPUR**  
**REFERENCE (IT) NO. 2 OF 2008**

**Between :**

The Regional Manager,  
 Bank of Maharashtra,  
 Tarabai Chowk, Kolhapur

...First Party

**And**

Milind Yeshwant Kamble  
 Plot No.1, Baba Jarag Nagar, Layout-2,  
 Maratha Bank Road, Kolhapur

...Second Party

**Coram** : Shri D.V. Thakare, Industrial Tribunal

**Appearances** : Mr.B.D. Manolkar, Advocate for First Party

Mr.U.B. Jadhav, Advocate for Second Party

**PART-1 AWARD**

(Delivered on 9th August, 2016)

This is a reference made by the Government of India, Ministry of Labour, New Delhi vide its Order No.L-12012/108/2007-IR(B-II) dt.28/01/2008 in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 and referred the said dispute for adjudication to this Tribunal in respect of demand specified in Schedule to the reference order.

2. According to second party workman, he was working with first party bank as 'peon' since 27/12/2004. His entire service record is unblemished. He has not committed any misconduct. The first party issued false charge sheet dt.6/04/2004 and the second party has not committed any misconduct mentioned in the charge sheet. No show-cause notice before issuing charge sheet was given to the second party. He has given explanation to the charge sheet dt.17/08/2004. S.R. Utangale was appointed as enquiry officer and second party made request to get advocate to defend him in the enquiry but this request was rejected and therefore second party could not defend himself and principles of natural justice are violated. The enquiry officer and management representative frequently pressurised him and completed enquiry. It was assured that no serious action will be taken against him and relied on them he participated in the enquiry only at the instance of enquiry officer and management representative and not on his own.

3. The first party did not lead any evidence nor second party was asked to lead evidence. The documents produced in the enquiry are not provided to him. The enquiry is conducted only on the basis of documents produced in the enquiry. By taking disadvantage of ignorance of law of second party the enquiry is completed. On the basis of enquiry the enquiry officer submitted enquiry report on 16/09/2004 which is totally illegal and perverse. Without proving any document findings are given deliberately to support the management. It is one sided decision. The enquiry officer has not considered the explanation of second party and neglected factual position.

4. The second party has no concern with the allegation being a peon and some incidence have been taken place in absence of second party. On the basis of false and perverse enquiry report vide order dt.27/12/2004 the first party imposed punishment and compulsorily retired him. This punishment is highly disproportionate, illegal and wrong and needs to be set aside. The appeal preferred against said order dt.7/02/2005 has been rejected deliberately. Even Central Bureau of Investigation (CBI) did not take any action against second party and only prosecuted those who were involved in this scam. Even then the first party has deliberately and intentionally imposed punishment of compulsory retirement. Hence he raised this dispute and prayed that reference be allowed and first party be directed to reinstate him with continuity of service and full back wages and consequential benefits.

5. Vide written statement at Ex.C-4 the first party denied all the allegations levelled against it in the statement of claim. It is contended that second party worked at Tarabai Chowk branch from 14/06/1999 to 17/11/2003 as a bill collector and charge sheet was issued to him, vide memorandum dt.6/04/2004, for the below mentioned misconducts/irregularities committed by him while working at that place. He was facing charges viz.(i) he did not give cheques received through clearing to officers for checking but gave it directly on the counter thereby violating rules, (ii) he misused bill purchase facility, (iii) he was indebted excessively, (iv) abnormal and extraordinary transactions in staff S.B. A/c.

6. It is contended that during the course of enquiry he was provided every opportunity to defend himself. He was also allowed to present his evidence and to cross-examine the management witnesses and to defend his evidence with the help of representative of union. All these facts clearly mentioned in the findings of enquiry officer dt.16/9/2004. One S.R. Utangale, senior manager was appointed as enquiry officer and V.S. Prabhudesai was appointed as presenting officer. During the course of enquiry the second party submitted his deposition orally as well as in writing. The presenting officer also submitted his deposition alongwith evidence/witnesses orally as well as in writing on behalf of management. In the enquiry all the charges levelled against the second party are duly proved. The report of enquiry officer provided to second party vide letter dt.16/09/2004 for offering his say/comments on the same. After receiving the report the disciplinary authority gave personal hearing to second party on 27/11/2004 and informed him about proposed punishment. The second party attended hearing. During hearing no new points putforth by him. The disciplinary authority found that enquiry conducted against him was fair and proper and by following principles of natural justice and all charges levelled against him are duly proved and awarded punishment of compulsory retirement vide final order dt.21/12/2004. It is contended that being aggrieved by the said decision the second party preferred appeal, vide letter dt.7/02/2005 he was given personal hearing on 15/03/2005 with his defence representative. On that day he did not put any new point/facts before the appellate authority. Hence appellate authority rejected the appeal and it was communicated vide letter dt.18/03/2005.

7. Against it he preferred mercy petition on 20/04/2006. It was also rejected and conveyed to him on 18/07/2006. It is denied that the charge sheet issued to the second party is false. It is denied that enquiry conducted against him is against the principles of natural justice. It is denied that findings given by enquiry officer are perverse and illegal. In fact the first party had vide letter dt.15/11/2002, issued show cause notice before issuing charge sheet to the second party and he was deputed to Turkewadi branch from 7/10/2002 which is not brought on record by the second party workman. All the points raised by the delinquent employee are clearly replied. The enquiry officer read out and explained all the contents of charge sheet to the second party. On 28/07/2004 the second party verified the documents produced in the enquiry. The presenting officer submitted written arguments on 9/08/2004 and second party was asked to submit defence argument before 18/08/2004 and he submitted his argument on 17/08/2004. Again the presenting officer submitted his counter argument on 30/08/2004. It is contended that the disciplinary authority provided reasonable opportunity to the second party to defend himself. On denial of request to appoint advocate the second party himself informed that he will defend his case. The second party inspected all the documents. Every reasonable opportunity was given to him at every stage which he availed. The enquiry was conducted in proper and fair manner without any influence. The charges are based on documentary evidence. Both sides submitted their documents in the enquiry. On 30/07/2004 the second party did not submit any additional document, list of witness or any other record. Therefore there was no question of adducing oral evidence. The charges are based on documents only. The enquiry is properly conducted.

8. The enquiry officer has prepared enquiry finding after carefully consideration of all the relevant documents and also gone through the written arguments, cross arguments and facts of the case. After completion of enquiry the finding provided to the second party vide letter dt.16/09/2004 and he replied on 28/09/2004. After carefully evaluating the facts of the case, findings of enquiry officer and the reply submitted by the second party dt.23/11/2004 the first party communicated proposed punishment to the second party and granted him personal hearing on 27/11/2004. During hearing the second party did not putforth any new point. Hence vide final order dt.27/12/2004 the competent authority imposed punishment of compulsory retirement. It is contended that CBI, Mumbai external agency filed charge sheet against another dismissed clerk S.Y.Karande who was directly involved in the fraud and accordingly the proceeding is going on. The charge sheet issued to the second party was for the irregularities/misconducts committed by him during the period from 14/06/1999 to 17/11/2003 while working as bill collector. It is contended that second party has committed gross misconduct. As per the provisions of bipartite settlement applicable to one staff employees of the bank. Hence the punishment is just and appropriate and as per procedure laid down in bipartite settlement. Misconduct was of serious nature. The second party was of dishonest nature and continuance of such employee in the service is detrimental to the interest of the bank. Hence bank has lost trust in him and effected the punishment. Lastly, it is contended that the claim of the second party is false and frivolous. Hence reference be dismissed.

9. My learned Predecessor Mrs.S.V. Suvarna issues framed at Ex.O-7 are amended and recasted on 22/09/2009 and held that issue Nos.2, 3 and 4 will be treated as preliminary issues and I noted my findings thereon as under -

| <u>Preliminary Issues</u>                                                                          | <u>Findings</u>    |
|----------------------------------------------------------------------------------------------------|--------------------|
| (2) Whether the reference is maintainable ?                                                        | In the affirmative |
| (3) Whether the domestic enquiry held against the second party workman is fair, legal and proper ? | In the affirmative |
| (4) Whether the findings of enquiry officer are proper ?                                           | In the affirmative |

### Reasons

10. Issues Nos.2 to 4 :- In support of the claim the second party workman examined Milind Yashwant Kamble at Ex.U-6 and additional evidence at Ex.U-10 and closed evidence vide pursis at Ex.U-11. The first party employer did not lead oral evidence and filed pursis to that effect at Ex.C-17.

11. The second party workman deposed on oath and reiterated all the facts mentioned in the statement of claim. According to him, false charge sheet issued to him and the enquiry was conducted by not following principles of natural justice who was not given opportunity to defend himself in the enquiry. He is studied upto 9<sup>th</sup> Standard and he has no legal and technical knowledge of conducting enquiry. The charge sheet was complicated and therefore he applied for appointment of advocate as his defence representative, that application was rejected on 13/7/2004 and as he was not member of union he could not avail service of union representative. Therefore, he could not defend him properly in the enquiry. The enquiry officer has not given knowledge of conducting enquiry. The first party has not lead any oral evidence even he was not allowed to tender evidence. The documents produced in enquiry are not proved by the first party and charges against him are not proved. Even then the enquiry officer gave perverse finding and held that the charges levelled against second party are proved. On 5/07/2005 he submitted another application for conducting fresh enquiry but the first party employer did not conduct fresh enquiry nor replied his application.

12. In cross-examination he admitted that vide order dt.21/12/2004 he has been removed from the employment as punishment of compulsory retirement. He received his terminal dues, PF and gratuity. He signed PF and gratuity form. He was issued charge sheet dt.6/4/2004. He admitted that he was informed vide letter Ex.C-14 dt.15/06/2004 about first date of enquiry as 24/06/2004. He further stated that thus enquiry posted on 8/7/2004. He was present on 24/06/2004 and 8/07/2004 and again it was adjourned till 21/07/2004. He was present on 21/07/2004. He was asked to take inspection of documents and to produce documents required for his defence and to produce witnesses. He admitted that he took inspection of documents and took six days time to produce the documents of defence. He completed inspection of documents on 28/07/2004 and exhibited these documents on 28/07/2004 as Ex.ME-1 to ME-16 and documents as DE-1 to DE-6. On 28/07/2004 the enquiry officer asked him whether he want to bring further documents and to produce witnesses. Thus he took one days adjournment which was granted and enquiry adjourned till 30/07/2004. On 30/07/2004 he produced two documents and he has been served with the documents relied on by management. Thereafter the enquiry officer asked him and management to bring further documents or to lead further evidence on 30/7/2004 and on that day the delinquent and management both did not lead oral evidence nor produced documents. He further admitted that management was asked to submit written arguments within 7 days and management filed the copy and he was given opportunity to give his written arguments and he also gave notes of arguments in the enquiry. He received the notes of arguments on 9/8/2004 Ex.C-14/3. He received copy of findings of enquiry officer vide letter dt.16/09/2004. He admitted on the first date of enquiry that enquiry officer told him about the procedure to be followed in the enquiry. He admitted that the proceedings of enquiry is correct. He admitted that as per the noting mentioned in the letter dt.27/11/2004 he had placed his explanation at the time of his personal hearing on 27/11/2004.

13. He further admitted that he was given permission to engage co-worker or union representative in the enquiry. He admitted that his application for engagement of advocate was rejected as there were no rules in the bank for engaging advocate. Vide letter dt.13/7/2004 he was allowed to co-worker or union representative Ex.C-16. Vide letter dt.2/12/2002 he was allowed to take inspection of documents from the concerned branch Ex.C-16/2. He admitted that from 24/06/2004 to 30/7/2004 he has not made any correspondence with the respondent that the enquiry is not held properly. Even he did not make this grievance with the enquiry officer in writing. The documents at sr.nos. D-1 to D-8 are the documents filed in respect of the defence. He also received the documents sr.nos. ME-1 to ME-16 filed by the management in the enquiry. He has admitted that enquiry officer has conducted the enquiry proceeding as per principles of natural justice.

14. Vide Ex.U-20 the learned advocate Mr.U.B. Jadhav on behalf of second party argued that first party has not proved the charges levelled against the second party workman, even then enquiry officer held that charges are proved against second party. He argued that it can be conferred from letter dt.15/06/2004 that only preliminary enquiry will be held and no enquiry is conducted as contemplated under law. The preliminary enquiry conducted against the principles of natural justice. The application dt.8/7/2004 submitted by second party is not considered. Deliberately application for engagement of advocate is rejected by the management. The second party workman was unaware of verification of documents for want of legal knowledge. Therefore he is deprived of defending the enquiry. Copies of documents produced in the enquiry are not supplied to the second party workman. Therefore he could not study the same in order to defend himself. The documents are mostly related to accounts. The second party was not given opportunity to cross-examine the concerned witnesses pertaining to documents produced on record. He was not allowed to lead oral evidence. The letters dt.5/7/2005, 28/9/2004 and 7/7/2005 are not considered. He further argued that Sambhaji Karande was responsible for the misconducts and charges levelled against second party workman and this employee admitted that second party workman is not concerned with that scam even CBI has not prosecuted against second party workman. The enquiry officer has not given perverse finding without considering the documents and evidence on

record. There is clear cut breach of principles of natural justice on the part of enquiry officer while conducting the enquiry. The second party had no concerned with the work of clearing. Many cheques have been sent for clearing during the leave period of second party workman. Without placing service conditions on record it is held by enquiry officer that the transactions took place against the service conditions. He is placing reliance on,

- (i) Amar Chakravarty and Ors. v/s Maruti Suzuki India Ltd. (2011 I CLR 22-Hon'ble Supreme Court)

Ratio : Held that (a) the assertion to the effect that it was not practicable to hold domestic enquiry to prove the misconduct of the workman was by the employer and this assertion has to be proved by the employer and not by the workman, (b) when no enquiry is conducted before terminating the services of a workman and termination is being justified because of misconduct of employee, the onus to prove that it is valid termination of service is on the management, (c) order passed by Labour Court is fallacious and the High Court should have quashed it.

- (ii) Modern Food Industries (India) Ltd. v/s Government of N.C.T. Of Delhi (2000 (85) FLR 493-Hon'ble Delhi H.C.)

Ratio : Industrial Disputes Act, 1947 -Sec.10-Industrial Tribunal-Has to confine the adjudication within the terms of reference.

There is a force in this submissions. The dispute as to whether the punishment was legal or valid was not referred and the terms of reference clearly stipulate that the Industrial Tribunal was to go into the question as to whether the punishment was 'disproportionate' or not. It is the accepted principle of law that the Industrial Tribunal has to confine the adjudication within the terms of reference. He derives jurisdiction from the terms of reference and therefore we cannot enlarge the scope of reference.

- (iii) Kaushik J. Gandhi v/s Sandesh Ltd. and Anr. (2003 I CLR 1009-Hon'ble Gujarat H.C.)

Ratio : It is a settled principle of law that once a reference is made and the dispute is raised by the workman or the union, the subject matter which is referred to for adjudication is the terms of such reference and the labour court is having no jurisdiction or power to travel beyond such subject matter namely terms of reference.

- (iv) Sarabhai M. Chemicals Ltd. v/s Rajnikant V. Shah (2008 II CLR 472-Hon'ble Gujarat H.C.)

Ratio : Labour Court has no jurisdiction to travel beyond the terms of reference and even while having incidental powers also, validity of reference cannot be examined by the labour court as per the various decisions of the apex court and this court.

15. According to him, no legal procedure has been followed while conducting enquiry. The second party workman was a peon only and he was not having requisite legal knowledge to defend himself in the enquiry. The enquiry is concluded only in three dates. Both have not lead any oral evidence. The purpose of enquiry is not fair. The bipartite settlement is not placed on record. It is held that the charges are proved on the basis of bipartite settlement. Findings are not based on evidence therefore findings are perverse. There is no document about the procedure of enquiry. The documents which are not admitted are not proved in the enquiry and the findings are based on the same, therefore it is a clear perverse finding. Only on the basis of presumption findings are given. The second party was on leave. Therefore, there was no question about doing any work. The second party was not assigned work of clearing cheques even then charges are levelled against him. Only xerox copies of documents are filed on record. It was incumbent on the first party to prove the charges. Not a single witness examined. Documents produced on record are not admitted by second party workman. On the basis of muster roll it is clearly seen that he was on leave without evidence. Findings are given by enquiry officer. There is no need to consider the personal account of second party and personal loan obtained by him. There are allegations against another employee Karande but he has given letter and second party workman is not concerned with the said allegation. Thus the enquiry is not conducted in proper and fair manner and findings are perverse.

16. On the contrary, learned advocate Mr.B.D. Manolkar on behalf of first party argued that in respect of misconduct documents are filed alongwith annexure. The show cause notice is filed below Ex.C-16/3. There is no provision of engaging advocate in the rules of bank in the enquiry therefore application for engagement of advocate is rejected. Though there was opportunity to lead oral evidence but both sides did not avail this opportunity and both sides mostly relying on documentary evidence. The enquiry officer adopted the procedure as per law while conducting enquiry. The enquiry is legal and proper. So far as perversity of finding is concerned second party workman in cross-examination admitted that he received all the benefits and dues from the first party. It is also admitted that on the first day enquiry officer explained him procedure of enquiry. There is false story raised in the statement of claim. Relevant documents are filed in the enquiry.

17. Only the management has right to allow the delinquent to engage advocate for defending the delinquent. The role of enquiry officer was in accordance with the law. He never acted contrarily as alleged. It is admitted that show cause notice was issued and served on the delinquent. There is improvement in the evidence and evidence differs from the pleading. The enquiry is fair and proper. The enquiry officer has considered all the documents carefully and came to the right conclusion that charges are proved against the second party. There is variance in the statement of claim and defence statement. There is no perversity in the finding of enquiry officer so far as maintainability of reference is concerned.

18. The learned advocate further argued that actually all the legal dues are paid to the second party and he accepted the punishment therefore there is no cause of action and reference is liable to be dismissed. Considering the proved misconduct compulsory retirement is the proper punishment. The claim of second party workman is vague. The second party workman failed to establish that enquiry is unfair and improper and conducted against the principles of natural justice and findings are perverse.

19. In reply, the learned advocate Mr.U.B. Jadhav for second party argued that it is for the employer to prove the charges. Documents are not proved properly by the management representative and hence cannot be considered. The enquiry officer wrongly relied on those documents. The findings are perverse. The second party workman was on leave for 8 days but it is wrongly held that charges are proved. The second party was not involved in criminal case. His name is not appearing in the charge sheet. Availing facility of bill purchase cannot be termed as misconduct. Lastly he argued that second party workman has led sufficient evidence and proved that enquiry is unfair and findings are perverse.

20. In view of bipartite submissions, I scrutinized the entire evidence and documents placed on record. Vide dt.6/04/2004 the first party issued charge sheet to the second party workman making allegation that during the period from 14/06/1999 to 17/11/2003 he failed to hand over all the cheques received from clearing process of Tarabai Chowk branch to concerned officer without sorting and distributing the same and also handed over the cheques directly to the concerned counter. By joining hands with S.Y. Karande to get financial gain he did not submit the cheques to concerned counter which he received from clearing and issued from the account number No.505 and Joint A/c No.13745 of Karande. Therefore, the amounts mentioned in these cheques were not credited to the account of Karande and the first party suffered heavy financial loss.

21. He availed bill purchase facility of Rs.2,79,000/- on 17 times from time to time which is disproportionate to his assets. Moreover he availed the bill purchase facility as a staff member illegally without keeping any balance amount in the original account. He has taken obtained loan disproportionately because his salary is less than the amount of one installment of the loan. There is heavy transaction of huge amount in his staff A/c No.501 of Tarabai Branch. From time to time on 13 occasions he deposited cash of Rs.1,93,000/-. Vide transfer he deposited amounts of Rs.1,68,960/- on 7 occasions. There are two entries of credit by clearing worth Rs.27,500/- on 40 occasions he withdrawn amount from his account during the period from 11/12/1999 to 26/09/2002 and all these entries are extra entries other than the entries of salary. He has made many doubtful transactions in his account Nos.910, 319 of Laxmipuri branch. Thus there are disproportionate entries in his account which are contrary to his salary. Due to his misconduct there is breach of clause-19.5 (j) of bipartite agreement of 1966 causing prejudice to legal rights and interest of first party and by doing these transactions he acted against the interest of first party and therefore first party suffered heavy financial loss. By using facility of bill purchase illegally he has committed breach of rules of bank and thus deceived the bank. By obtaining loan of huge amounts he has committed breach of clause-19.7(i) of bipartite agreement. In this matter S.R. Utangale, branch manager was appointed as enquiry officer. He was allowed to engage office bearer of concerned union. He was allowed to lead evidence and conduct cross-examination.

22. The enquiry proceeding started on 24/06/2004 in presence of second party and second party sought adjournment for engaging defence representative the matter kept on 8/07/2004. On 8/07/2004 the second party submitted application for appointment of advocate as defence representative and sought adjournment for 15 days, accordingly adjournment granted till 21/07/2004. On 21/07/2004 all concerned remained present and second party submitted that his application for appointment of advocate has been rejected by the management and second party will defend himself and he sought adjournment of 7 days for producing documents and list of witnesses and for verification of document. His request was granted and enquiry was kept on 28/07/2004. On 28/07/2004 the enquiry proceeded. The second party verified the documents filed alongwith charge sheet. Thereafter second party produced documents for evidence. Again second party sought adjournments to produce two documents and adjournment granted till 30/07/2004. On 30/07/2004 all concerned were present. The second party submitted defence documents and thereafter the first party and second party mentioned that both do not want to produce any documents. Thereafter enquiry officer held that operational part of enquiry is over and he asked the presenting officer to produce notes of arguments within 7 days i.e. on or before 7/08/2004 and directed second party to produce notes of argument within 7 days after receiving the notes of arguments of presenting officer of management. The presenting officer submitted notes of argument on 9/08/2004. The second party submitted copy of argument on 17/08/2004. The presenting officer submitted counter argument on 30/08/2004.

23. The second party workman in his cross-examination conducted by advocate Mr.B.D. Manolkar admitted that he received the charge sheet alongwith Ex.1, the details of cheques which had come for clearance and Annexure-2 is the details of the amount received from S.R. Karande and Annexure-3 is the details of bill purchase and Annexure-4 discloses the details of amounts misused in respect of bill purchase. Annexure-5 is in respect of other excess loan amounts and disproportionate leaving standard against the earning source of complainant and Annexure-6 is the information of documents in respect of charge sheet. Admittedly he received the letter dt.15/06/2004 about the date of enquiry as 24/06/2004 Ex.C-14/1. The second party admitted that the proceedings which are taken place are correct. He admitted that on 21/07/2004 he was asked to take inspection of the documents placed in the enquiry and he was also directed to produce documents which are required for his defence. Admittedly he has taken inspection of the documents and took six days time to produce documents in his defence. He completed inspection of documents on 28/07/2004 Ex.ME-1 to ME-16. Admittedly all the documents have been served on him which were produced by the management in the enquiry. The enquiry officer asked the management and second party whether they want to produce further documents and to lead evidence and both declined to lead oral evidence.

24. Admittedly he received the copy of arguments of management and he also submitted notes of arguments. He also received the copy of findings drawn by enquiry officer vide letter dt.16/09/2004. The enquiry officer made him acquainted about the procedure of enquiry on the first day of the enquiry. Admittedly the enquiry initiated on 24/06/2004 and concluded on 30/07/2004. He admitted that he was given permission to engage a co-worker or union representative in the enquiry. He admitted that his application for engaging an advocate was rejected as there were no rules in the bank for engaging an advocate in the enquiry. Vide letter dt.13/07/2004 he was allowed to engage union representative/ co-worker. He admitted that from 24/06/2004 to 30/07/2004 he did not make any correspondence with the first party stating that enquiry is not conducted properly. Even he did not make such grievance with the enquiry officer. Admittedly DE-1 to DE-8 are the documents filed by him in his defence. He also received the documents at ME-1 to ME-16 relied on the by management. He admitted that the enquiry officer completed the enquiry as per the principles of natural justice.

25. Thus from perusal of evidence of the second party it is clear that he is left out of the option to blame that he was not given proper opportunity in defending himself in the enquiry considering the glaring admissions given by him in the cross-examination. From these vital admissions it is clear that second party was given every opportunity to defend himself properly and thoroughly in the enquiry further he was allowed to produce documents required for his defence and he had received the documents relied on and produced in the enquiry by the first party management. Admittedly the enquiry was conducted in accordance with principles of natural justice. So it cannot be said that there is substance in the grudge of second party that enquiry is illegal and improper.

26. From the perusal of findings of enquiry officer, it appears that after verifying the documents he came to the conclusion that it was incumbent on the second party to sort out the cheques which were received in clearing from Tarabai branch and to handover the same to concerned officer but he handed over the same illegally and caused heavy loss to the bank. Moreover he availed bill purchase facility from the said branch on 17 occasions worth Rs.2,79,000/- when was drawing maximum salary of Rs.3833.49/- and this amount is disproportionate to his source of income. On 13 occasions he had deposited Rs.1,93,000/- and by internal transfer deposited Rs.1,68,960/- on 7 occasions and vide clearing deposited Rs.27,500/- on two occasions and on these entries are excluding the entries of salary entries. Moreover in Laxmipuri branch in Saving A/c No.910319 he deposited Rs.52,000/- on two occasions, vide clearing deposited Rs.11,300/- and vide cheques on 4 occasions deposited Rs.3,98,000/-. The enquiry officer after considering the evidence and documents placed on record had drawn the conclusion that considering the meager salary of second party it was not possible for him to indulge in such heavy fiscal transactions and no satisfactory details are given by the second party and therefore the enquiry officer held that the charges levelled against the second party in the charge sheet duly proved against him.

27. Though it is the stand point of the second party that the bank has held another employee Karande responsible for this scam and CBI investigation was done and in that matter he was given clean chit by the CBI as he was not prosecuted but this defence is of no avail as it was another matter and therefore cannot be considered.

28. The learned advocate Mr.U.B. Jadhav for second party is strongly harping that second party was not given opportunity to engage advocate to defend the enquiry and this act on the part of first party management amounts to violation of principles of natural justice as a result the second party could not defend himself properly in the enquiry and eventually got the punishment of compulsory retirement. Therefore the enquiry is not fair and proper. No doubt the management has refused to engage the advocate to defend the second party in the enquiry. But at the same time he was allowed to engage co-worker/union representative to defend himself in the enquiry. Therefore no injustice caused to the second party when he was duly represented by union representative therefore it cannot be said that by refusing to engage advocate to defend the second party there is violation of principles of natural justice. Moreover the presenting officer was also not an advocate. Therefore no harm and prejudice caused to the second party in defending the enquiry.

29. Though it is contended by learned advocate Mr.B.D. Manolkar for first party that considering the nature of proved misconduct of second party the management has imposed proper punishment of compulsory retirement therefore reference is not maintainable. No material brought on record by the first party to show that reference is not maintainable. Therefore, there is no substance in this objection.

30. Though the second party has challenged the findings of enquiry officer as perverse but there is nothing on record to show that the findings are improper and not based on evidence. Here the enquiry officer accepted evidence of management which was in noway contradicted by the second party without being supported by either documentary evidence or oral evidence in the form of defence evidence. I do not find any lacuna in the findings given by enquiry officer because one cannot expect that he should come to a particular conclusion while assessing the evidence and material on record. Here the assessment made by him cannot be said to be poor and irrelevant. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All material which is logically probative for a prudent mind is permissible. The enquiry officer also held that first party led sufficient evidence to prove the misconduct committed by second party and the charges levelled against him are duly established in the enquiry. From the perusal of findings it is clear that it is not a cryptic report without stating any reason for the conclusions arrived at. The enquiry officer has not travelled beyond the limit of charges framed. The enquiry officer has drawn his conclusions within the framework of the charges and all the facts adduced in the evidence by both sides. There is nothing on record to show that the findings are based on extraneous discussion and not supported by legal evidence. In the light of above said circumstances, I hold that the second party failed to establish that the enquiry is illegal and unfair and findings are perverse and first party failed to show that the reference is not maintainable. Resultantly, I answer preliminary issue Nos.2 to 4 in the affirmative and proceed to pass the following award.

#### AWARD

- (i) The reference is maintainable.
- (ii) The enquiry conducted by enquiry officer is fair, legal, and proper.
- (iii) The findings of enquiry officer are proper.
- (iv) The office is hereby directed five copies of this Part-1 Award be sent to the Desk Officer, Ministry of Labour, Government of India, New Delhi for publication and necessary action.

Kolhapur

Date : 9<sup>th</sup> August 2016

D. V. THAKARE, Member

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ.2159.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 111 ऑफ 1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-20012/356/1994-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O. 2159.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 111 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.10.2016.

[No. L-20012/356/1994-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

**Reference: No. 111/1995**

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

**AND**

Their workman

**Present :** Shri R.K.Saran, Presiding Officer**Appearances:**

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated 12/09/2016

**AWARD**

By order No. L-20012 /356/1994-IR(C-1) dated 05/09/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

“Whether the demand of the Union that the management of M/s. BCCL discriminated against the non-executive ex-employees of Coal Mines Labour Welfare oraganisation at the time of fixing their pay consequent on their absorption in M/s. BCCL w.e.f. 01/01/1987 is justified ? If so, to what benefit are these workmen entitled to ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ. 2160.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 58 ऑफ 2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[ सं. एल-20012/82/2015-आईआर (सीएम-1) ]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O. 2160.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 58 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.10.2016.

[No. L-20012/82/2015-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD****PRESENT :** Shri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

**REFERENCE NO. 58 OF 2015**

**PARTIES :** The Area Secretary,  
United Coal Workers Union,  
E.J.Area, Bhowra, PO: Bhowra, Dhanbad

**Vs.**

The General Manager  
E.J.Area of M/s. BCCL,  
P.O. Bhowra, Dhanbad

Order No. **L-20012/82/2015-IR(CM-I) dt.27.07.2015**

**APPEARANCES :**

On behalf of the workman/Union : None

On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 19<sup>th</sup> July, 2016

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. **L-20012/82/2015-IR (CM-I) dt.27.07.2015.**

**SCHEDULE**

“Whether the action of the Management of Bhowra (S) Colliery of M/s. BCCL in not providing employment to Ms. Rita Deswali, dependent daughter of Late Adri Deswali under the provisions of NCWA is fair and justified? To what relief the concerned person is entitled to?”

Neither the workman/ the Representative of the workman nor Management Advocate appeared on date nor did even before by the workman side since inception of the case and subsequently coming into existence as I.D. bearing Ref. No. 58 of 2015. Though Regd. Notice dt.28.08.2015 was sent to the both parties concerned at the addresses referred in the Order of the Reference itself for appearance and filing WS on the part of the workman but they did not respond to it rather let the Tribunal keep on posting of dates taking six adjournments. Mr.D.K. Verma, Ld. Advocate earlier filed his Authority and made appearances in a couple of dates. The case deals with not providing employment dependent daughter of the late workman Late Adri Deswali.

By going through the record and materials available on records, it is beyond doubt the Sponsoring Union/workman- side seems to be in no hurry to file the documents. Since onus of filing documents/WS before the Court rests with workman with appearance of Representative, for which they desperately failed. The way and conduct the workman side walks, there is little doubt the Union/petitioner is any more interested to proceed with the case and get it to finality through adjudication as sufficient opportunity was made available to workman to come out with W.S. to stake claim. It seems that workman is no longer interested to contest the case. As such it will not be proper and in the natural interest of justice to keep the case alive and to set it rolling for indefinite period. Accordingly an ‘Award of No Dispute’ is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ.2161.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 46 ऑफ 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-20012/238/2004-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O. 2161.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 46 of 2005) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.10.2016.

[No. L-20012/238/2004-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD****PRESENT :** Shri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

**REFERENCE NO. 46 OF 2005**

**PARTIES :** The Regional Secretary,  
Indian National Mines Officials' Supervisory Staff Association, Kuju  
Area, PO : Toppa Colliery, Distt : Hazaribagh

**Vs.**

The Project Officer,  
Toppa Colliery, of M/s. CCL, PO: Topa, Distt; Hazaribagh

Order No. **L-20012/238/2004-IR(C-I) dt. 31.03.2005****APPEARANCES :**

On behalf of the workman/Union : Mr. U.N. Lal, Ld. Advocate

On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 4<sup>th</sup> July, 2016**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. **L-20012/238/2004-IR(C-I) dt. 31.03.2005.**

**SCHEDULE**

“Whether the action of the Management of Topa Colliery of M/s CCL in not rectifying the pay anomaly of Shri B.Vishwakarma, Sr. Overman, Grade-A compared to his junior S/Shri R.V.Bhagat, S.P.Thakur, Ismail Ansari & Suraj Nath Mahato, Sr.Overman, Grade-A is justified? If not, to what relief is the workman entitled and from what date?”

2. No representation on the side of the Management on date .Whereas Union Representative is reported to be present but no step is reported moved ahead in the matter of evidence of the workmen long awaiting one despite giving so many opportunity to the workmen .The case is related to removal of alleged reportedly pay anomaly between the workman and amongst his all juniors. Though two formal notices dt. 13.05.2005 and 08.08. 2005 were sent to both the litigant parties on the addresses referred in the order of the Reference.

On going through the case record and materials meticulously, available in the case record, it appears apparent clear that the Union side miserably failed to get even completed the W Witness as ex -parte pending since 16.06.2006 .Prima facie it stands clear as there has been no merits in the case, as of now, as they did not assign cogent reasons .The Union side do not want to get the case to the bottom of the fact through adjudication due sheer lack of interest. The case turned into merely posting of dates and adjournments which will never end of the natural justice .Under such circumstances, the case has lost its relevancy and no merits to drag it up rather close it down presuming non-existent of Industrial Dispute between the parties. Accordingly, an Award of ‘No Dispute’ is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ. 2162.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 177 ऑफ 1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10. 2016 को प्राप्त हुआ था।

[ सं. एल-20012/226/1993-आईआर (सीएम-1) ]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O. 2162.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 177 of 1994) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.10.2016.

[No. L-20012/226/1993-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

**Reference: No. 177/1994**

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

**AND**

Their workman

**Present :** Shri R.K.Saran, Presiding Officer

#### Appearances:

For the Employers : Shri N.M. Kumar, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 06/09/2016

### AWARD

By order No. L-20012 /226/1993-IR(C-1) dated 25/27.07.1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

### SCHEDULE

“Whether the action of the management of Kenduadih Colliery of M/s. BCCL. P.B.Area in superannuating workman, Shri Ram Kripal Pandey, Asstt. Foreman w.e.f. 17/03/1993 is justified? If not, what relief concerned workman entitled to ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ. 2163.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 76/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-30012/18/1997-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O. 2163.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2004) of the Central Government Industrial Tribunal-cum-

Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the management of M/s. ONGC and their workmen, received by the Central Government on 21.10.2016.

[No. L-30012/18/1997-IR (C-I)]

M. K. SINGH, Section Officer

### ANNEXURE

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

##### Present :

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

Dated 24<sup>th</sup> August, 2016

##### Reference: (CGITA) No. 76/2004

The Director (Personnal),  
Oil & Natural Gas Corporation Ltd.,  
Tel. Bhavan, Dehradun (Uttarakhand)

...First Party

##### V/s

The Chairman,  
ONGC Employees Union,  
8, Samarpan Shopping Complex, Highway Road,  
Mehsana (Gujarat) – 384002

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri Yogen N. Pandya

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/18/1997-IR(C-I) dated 18.03.1998 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 management of ONGC, Mehsana in denying promotion to Shri Omkar Chand on the post of Supervisor (HV) from 01.01.1985 and up gradation in higher grade from 01.01.1986 as per Memorandum of Settlement dated 04.01.1988 in the guide of disciplinary action vide order No. MNH/Dise/1/(636)/87/490 dated 12.11.1987 is legal and justified? If not, to what relief the concerned workman is entitled to?

1. The reference dates back to 18.03.1998. Second party submitted the statement of claim Ext. 5 on 21.12.1999 and the first party submitted the written statement Ext. 6 on 01.02.2000. Since then the second party has not been leading evidence, therefore it appears that the second party has not been willing to prosecute the case and to prove that the action taken by the first party was not legal and justified.
2. Thus the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ. 2164.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 20 ऑफ 2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[ सं. एल-20012/166/2015-आईआर (सीएम-1) ]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2164.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 20 of 2016) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.10.2016.

[No. L-20012/166/2015-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D.Act. 1947

#### Reference: No. 20 of 2016

Employer in relation to the management of P.B. Area, M/s. BCCL

#### AND

Their workman

**Present :** Shri R.K.Saran, Presiding Officer

#### Appearances:

For the Employers : Shri Gopal Tiwari, Legal Asstt.

For the workman : Shri Vivek Kumar Singh, Rep.

State : Jharkhand

Industry : Coal

Dated- 09/09/2016

#### AWARD

By order No.-L-20012/166/2015 IR-(CM-I), dated. 15/02/2016 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub –Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

“Whether the action of the management of Burragarh Colliery under P.B.Area of M/s. BCCL in dismissing Shri Ganesh Mahato M/Loader vide letter dated 15.03.2003 is fair and justified? To what relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour on 22.02.2016 After receipt of reference , both parties are noticed. The Sponsoring Union files their written statement on 21.03.2016. The management files their written statement -cum-rejoinder on 26.05.2016. Document of management is marked as M-1 to M-10 as well as document of workman is also marked as W-1 to W-7.
3. The short point involved in this reference is that the workman has been dismissed from his services on absenteeism.
4. During Preliminary hearing, it is revealed that the case is dismissal of workman for long absence on duty. But he has already out of service for 13 years. It is felt to give another chance to the workman to serve.
5. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee as cat-I scale. But the workman be kept under probation for a period two year . Therefore the question of back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ.2165.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 239/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/74/2007-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2165.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 239/2011) 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 21.10.2016.

[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. 239/2011**

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

This application was filed by the management of Food Corporation of India under Section 33 of the Industrial Disputes Act, 1947(in short the Act) for implementation of Circular No.18/2005 dated 15.12.2005 in public interest due to sustained recurring financial loss to the public exchequer. It is necessary to point out that , in fact, a reference petition under sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received by this Tribunal vide letter No.L-22012/74/2007-IR(CM-II) dated 16.10.2007 and in the said reference, the dispute which was required to be adjudicated by this court was 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. It was during pendency of the above reference that this application was filed by the management under Section 33 of the Act. There are averments that the FCI has employed more than 22,000 manual workers known as departmental labour, who have been granted regular pay scale as per their designation. They are required to handle fixed number of bags and their working hours are 7 ½ hours , including lunch break etc. After achieving the prescribed datum norms of bags, workers are entitled for extra wages known as incentive wages as per rates mentioned in the wage scheme. The said scheme initially contained rates for handling bags of 66 kg and above. Later on, Government of India accepted International Labour Organization recommendation relating to 50 kg bags which can be carried manually. Government also conducted a study through Delhi Productivity Council and subsequently review of the report was done by the Saxena Committee after deliberation with the workers union. Workmen union had different views in respect of the recommendations. As a result, management entrusted further study to Shri P.K. Saxena, ex-General Manager, Food Corporation of India. Recommendations of Saxena Committee were accepted by FCI after due examination and it was thereafter the instant circular was issued. The instant circular/instructions were implemented during the period December 2005 to March 2006 in some of the Depots at Gujarat, West Bengal, Orissa, Haryana and Punjab. However,

these instructions were kept in abeyance in compliance of the statutory requirement of Section 33 of the Act as workers union had raised industrial dispute before the Conciliation Officer at New Delhi. The dispute ended in failure of conciliation in October 2006 and November 2007 respectively. Thereafter a reference was received by this Tribunal with the following terms:

‘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. Finally, prayer has been made in the application for implementation of the circular.

3. Reply to the application was filed on behalf of FCI workers Union wherein specific preliminary objections regarding abuse of process of law and violation of the provisions of the Act etc. were taken. Workers union have denied most of the averments on merits. It is denied that no discussion or negotiation was held by the FCI management with the Union before unilaterally changing scheme of change of 50 kg bag and increase the same from 105 to 135 kg per bag per day. It is also denied that payments made to the workmen for handling bag was excessive. Workmen union also alleged that there is violation of mandatory provisions of Section 9A of the Act, which has been completely ignored by the management.

3. Against this factual background, my learned predecessor framed the following issues vide order dated 01.0.2011:

- (i) Whether the applicant can be permitted to implement circular dated 15.12.2005?
- (ii) Whether the application has been moved with a view to frustrate the pending dispute
- (iii) Relief

4. Management, in support of its case, examined Shri Tej Singh as MW1 and Shri A.K. Singh as MW2 who also tendered in evidence affidavits Ex.MW1/A and Ex.MW2/A. Documents Ex.MW1/1 to Ex.MW1/3 and Ex.MW2/1 to Ex.MW2/3 respectively were also tendered in evidence. Workmen in support of their case examined Shri Umesh Gupta as WW1 and Shri Pramod Kumar Gupta, whose affidavits are Ex.WW1/A and Ex.WW2/A respectively. Documents Ex.WW1/1 to Ex.WW1/6 and Ex.WW2/1 and Ex.WW2/2 were tendered in evidence.

5. Issue No.1 and 2 are being taken up together for discussion as they can be conveniently disposed of. It is necessary to mention at the outset that in ID No.192/2011 titled ‘President, FCI Workers Union vs Food Corporation of India’ this Tribunal has passed award on 05.07.2016 which was finally notified vide Section 17 of The Act on 11.07.2016. It is clear from perusal of the award passed by this Tribunal, this Tribunal has held that in the wake of the judgement of Hon’ble High Court of Bombay (Nagpur Bench) in PIL No.84 of 2014 titled ‘Court of its own Motion vs. Union of India & anr.’ Decided on 20.11.2015 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 and approved by the Hon’ble High Court in the above judgement, as such this Tribunal, was of the 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 was 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. The award passed by this court on 05.07.2016 has now become final. There is nothing on record to show that any writ has been filed before the Hon’ble High Court wherein any kind of stay order has been granted against the said award. Since the issue involved in the present application is directly connected with findings rendered by this Tribunal in ID No.195/2011, as such the applicant management can be permitted to implement circular No.18/2005 dated 15.12.2005 as demand of the union regarding non-implementation of the above circular has already been held to be not legally justified vide award dated 05.07.2016, which has been duly published in the official gazette on 11.01.2016.

6. In view of the above discussion, there is no need to discuss the evidence in detail adduced by the parties when in the reference made to this Tribunal has already taken view after considering comparative merits of the case as well as evidence on record that demand of FCI Workers union for withdrawing the new incentive scheme announced vide circular No.18/2005 dated 15.12.2005 was held to be neither legal nor justified under the law. Resultantly, it is held that the Government of India as well as FCI can implement the said circular No.18/2005 dated 15.12.2005. Let copy of the award dated 05.07.2016 passed in ID No.192/2011 titled ‘President, FCI Workers Union vs Food Corporation of India’ be placed on record. 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.

October 7, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ.2166.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 57/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22011/58/2010-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O. 2166.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2014) 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 21.10.2016.

[No. L-22011/58/2010-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. 57/2014**

The General Secretary,  
FCI Shramik Sangh, Uttarakhand,  
32, Chakrata Road, Dehradun,  
Dehradun

...Workmen

**Vs.**

1. The Chairman,  
Food Corporation of India,  
16-B, 12 Khamba Lane, New Delhi
2. The Senior Regional Manager,  
FCI 5/6, Habibullah Estate,  
Hazratganj, Lucknow,  
Lucknow
3. The District Manager,  
Food Corporation of India,  
Haldwani, Nainital,  
Nainital

...Managements

**AWARD**

A reference was received from the Ministry of Labour vide letter No.L-22011/58/2010-IR(CM-II) dated 24.03.2011 under sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act), terms of which are as under:

‘Whether the action of the management of FCI in terminating the services of workmen Shri Ram Naresh S/o Shri Nanhe Lal and Shri Ram Pal S/o Shri Ghasi Ram is legal and unjustified? To what relief they are entitled to?’

2. Briefly, it is alleged in the statement of claim that Shri Ram Naresh and Shri Ram Pal (hereinafter referred to as the workmen) were appointed as watchman/guard by the management in 1984-85 and were posted at different places, i.e. Shankar Rice Mill, Aggarwal Modern Rice Mill, Shakti Rice Mill and other godowns of FCI situated at Bilaspur, District Rampur under the management and control of Food Corporation of India Haldwani, Respondent No.3. In fact FCI has taken the aforesaid rice mills on rent and converted the same to godowns, which were under the control of management of Food Corporation of India (hereinafter referred as the management). Claimant has worked with the management for more than 2 ½ years without any break in their service and completed in a calendar year. The

workmen performed their duties honestly, sincerely and with full devotion and without chance of complaint. Though the workmen were performing their duties regularly, but were not being paid wages as per the Government normal norms nor other legal benefits like PF, ESI, Dearness Allowance, TA etc. were being paid to the workmen. The workmen were being paid Rs.400.00 per month while other similarly placed workmen doing the same nature of work in the management were getting Rs.1200.00 per month, which is against the norms of equal pay for equal work. Workmen raised their voice against the management against this, as a result of which the workmen were thrown out of job. Thereafter, workmen filed writ petition before the Lucknow Bench of the Hon'ble High Court of Allahabad through Bhartiya Kranti Nigam Mazdoor Sangh, Lucknow against the management wherein interim stay was granted on 16.09.1987 directing the management not to terminate services of the workmen till further orders. Management intentionally disobeyed the directions of the High Court and terminated services of the workmen on 07.10.1987 without any notice. Workmen also informed the police but no step was taken for implementation of the order of the Hon'ble High Court. Claimant visited premises of the management on 21.10.1987 but they were told that their services were no longer required and entry of the claimant was banned. Claimant also wrote to the local SHO, Bilaspur, but in vain.

3. Thereafter, claimant moved contempt application before the Hon'ble High Court and in the meantime the counsel for the workmen expired and due to bifurcation of State of Uttar Pradesh into two States, this matter was transferred to Uttarakhand High Court for adjudication and it was decided on 25.11.2009 wherein Hon'ble High Court observed that in view of the law laid down by the Apex Court, factual aspect of the case cannot be examined and the petitioners can move the appropriate authority for relief. Incompliance of the order of the Hon'ble High Court, workmen approached the Regional Labour Commissioner, Uttarakhand and the same was transferred to Shram Mantralaya, New Delhi for proper adjudication. Though oral assurance was given by the management to the workmen to retain their services, but of no use. Services of the workmen have been terminated wrongly, illegally and in an arbitrary manner. Same is also against principles of natural justice as well as provisions of Industrial Disputes Act, 1947. Workmen have been made a scape-goat as they were demanding statutory entitlements under the law. This order of termination is totally bad in law. Prayer has been finally made to direct the management to reinstate the workmen with all consequential benefits.

4. Reference was contested by the management who filed reply thereto and took various preliminary objections. It was alleged on merits that the claimant herein are workers of contractors, namely Moradabad Security Company was to exercise unassailable administrative control over the security guards, who made payment to them directly. Moreover, workmen were never issued appointment letters by the management and they were engaged and deployed by the contractor. It has been admitted in para 7 of the written statement that the workmen worked for the management through the contractor but they were neither appointed by management nor they were on the pay roll of the management. Workmen were not regular workers of FCI and they were engaged as security guard through contractor on the basis of requirement. They were removed when there was no requirement. Consolidated contract amount was paid to the contractor and thereafter wages of the workmen were paid by the contractor and not by FCI. These workmen were never under the direct administrative control of Food Corporation of India as such, reference is liable to be answered against the workmen.

5. Workmen filed replication to the written statement filed by the management and reasserted the stand taken in the statement of claim and denied the material averments contained in the written statement.

6. It is clear from order dated 10.10.2012 passed by my learned predecessor that no specific issue were framed in the above reference as it was observed that the terms raised in the reference is enough and same is required to be answered.

7. Thereafter, workmen in order to prove the claim against the management examined Shri Ram Naresh as WW1, whose affidavit is Ex.WW1/A and tendered in evidence documents Ex.WW1/1 to Ex.WW1/52. The workmen also examined Shri Rampal as WW2, whose affidavit is Ex.WW2/A. He relied on documents Ex.WW1/1 to Ex.WW1/52. Management, in order to rebut the case of the claimant, examined Shri Mrinal, Area Manager as MW1, whose affidavit is Ex.MW1/A. He tendered in evidence documents Ex.MW1/1 to Ex.MW1/5.

8. It is clear from matrix of the case that the claimant herein have come with the specific plea that they were engaged in the year 1984-85 by the management at Aggarwal Rice Mill, Bilaspur, which was under supervision and control of the management of FCI and they have worked for more than 240 days. Admittedly, Services of the workmen herein were terminated without any show cause notice or one month salary in lieu of such notice. Plea has been taken by the management in its written statement that the workmen herein were not in the employment of FCI and they were workers of the contractor, M/s Moradabad Security Company, who exercised full administrative control over them and they were directly in the pay roll of the contractor. However, in Para 7 it stands admitted by the management that the workmen were working for the FCI management through the contractor and in Para 8 it is alleged that the workmen were not regular workers of the management and payment of wages was made directly by the contractor to the workmen. The workmen have filed a number of documents, Ex.WW1/1 to Ex.WW1/52 to prove that they were appointed as watchmen/security guard. Perusal of all these documents shows that there were other co-workers who were performing duties at Aggarwal Rice Mills at Bilaspur. In Ex.WW1/4, there is clear mention of the name of Shri

Ram Naresh, whose rank is mentioned as Guard. Similarly in Ex.WW1/5 again the name of Shri Ram Naresh has been mentioned in the extract of attendance. Name of Shri Rampal has been mentioned as Pal Singh, whose name is also mentioned alongwith the name of Shri Ram Naresh in Ex.WW1/8 which pertains to the month of August, 85. In Ex.WW/9, Ex.WW1/10 and Ex.WW1/11, names of watchman/guard is mentioned and the name of Shri Ram Naresh as well as Rampal Singh finds mention in the above documents and the date mentioned is 01.05.1987; it further shows that the workmen were working for 8 hours. Again in Ex.WW1/14, name of both the workmen is mentioned and the date of the document is 31.05.1987. Similarly in the other documents also, name of the workmen is mentioned. A careful appraisal of Ex.WW1/4 to Ex.WW1/52 that the workmen were in the employment of FCI at Bilaspur. It is also mentioned that Shankar Rice Mill, Aggarwal Modern Rice Mill, Shakti Rice Mill and other godowns of FCI situated at Bilaspur, District Rampur were storing depots and they were engaged as watchman/guard.

9. Since the management has come in the present case with specific plea that the workmen herein were not directly in the employment of FCI and they were engaged by Moradabad Security Company to provide security guards on contract basis to FCI, who was making payment to the above company/contractor, who was further making payments to the workmen. Shri Mrinal, Manager, while appearing as MW1 tried to prove the stand taken by the management in the written statement. However, careful examination of his statement would show that the management of FCI have failed to prove the stand taken in its pleadings. This witness is not aware whether any letter of request was sent to the contractor to provide security guard/watchman at the given depots. No such letter has been filed or proved by the management so as to prove its stand. There is also no list filed as to the number of persons deployed by the said security agency for the management. Further, there is no document on the file to show that Moradabad Security Company was asked to provide security personnel to the management. He has further admitted that letter Ex.MW1/1 is regarding misbehaviour of Malkhan Singh and letter Ex.MW1/2 does not reflect payment of wages to the workmen. Management of FCI was directly making payments to the security company. However, there is no letter or document filed by the management so as to show that during the relevant period from 1984 to 1987 how much payment was made by FCI to the above security agency as payment of wages which the contractor was required to disburse to the workmen. This witness is also not aware whether such record is available in the office of the management or not. He is not even aware whether Rs.400.00 was being paid to each workman. He has specifically admitted that normally management maintains record in respect of permanent employees and no record in respect of daily wage employees engaged through Moradabad Security Company is available in the office of the management. Only attendance sheet is kept in the office. He has denied the suggestion that the workmen herein was an employee of the management or not. He has feigned ignorance regarding order passed by the Allahabad High Court. He is not aware whether any amount towards provident fund was being paid to the workmen. He has made a vital submission that the documents Ex.WW1/1 to Ex.WW1/52 is correct. He further admitted that the workmen herein worked with the management upto 1987. Thus, overall examination of the statement of this witness clearly shows that the claimant herein have worked with the management till 1987, which is also the case of the workmen herein as per the pleadings contained in their statement of claim.

10. In the present case, it was incumbent upon the management of FCI to have filed contract documents vide which the contractor regarding engagement of the contract workers, i.e. Workmen herein was given to the Moradabad Security Company. In Section 7 of the Contract Labour Regulation & Abolition Act, 1970, every principal employer, i.e. FCI in the present case, is required to register itself by making an application to the Registering Officer in the prescribed manner for registration of the establishment. Before awarding of contract to any private contractor, it is required under Section 13 of the said CLRA Act that such contractor has to obtain license before executing any work through contract labour in the manner prescribed under the law. Before grant of such licence, the Licensing Officer may make such investigation in respect of application filed by the contractor and if any violation of the terms and conditions of the contract is made out, under Section 14, the Licencing Officer has powers to suspend or revoke the license granted in favour of such contractor. In the case in hand, management has not taken pains either to file copy of registration of its establishment in terms of Section 7 of the Act and copy of the license granted in favour of the private agency, i.e Moradabad Moradabad Security Company, whose services were hired by the management of FCI as per the stand taken in the pleadings. Since no such document has been filed by the management of FCI, only reasonable inference that can be drawn is that the so called contractor was not at all licensed. There is no documentary evidence filed so as to show what were the payments being made to the contractor for disbursing the said amounts to the workers employed by the contractor. In such a situation, it can be claimed that the workmen herein were not in fact working under the supervision of the contractor and they were working under the direct management of FCI. It is pertinent to mention here that under Section 21 of the CLRA Act, 1970, it is the duty of every principal employer to nominate a representative who is required to be present at the time of disbursement of wages by the contractor. Further, the principal employer is also required to take all steps for the welfare of the workers regarding which there are various provisions under the Act as well as the rules. Management has also not examined any such contractor so as to legally prove its stand that during the year 1984-85 till 1987, the said contractor has deployed the workmen herein as watchman/guard and payments were also being made to such workmen directly by the contractors. In the absence of

any such evidence, both oral as well as documentary, this Tribunal is of the considered opinion that the management has badly failed to prove its case, as required under the law.

11. There is nothing on record to suggest that an notice before terminating services of the workmen herein was served upon them as required under Section 25F of the Act, as there is no evidence that one month notice or salary in lieu of such notice was paid to the workmen herein. Thus, examining the matter on the principles of natural justice as well as provisions of the law, it is held that the workmen herein were in the employment of the management of FCI and termination of their services is neither legal nor justified under the law.

12. Now, the residual question is as to what relief the workmen herein are entitled to. It was urged on behalf of the workmen that they are unemployed since the time of their termination, as such, workmen should be reinstated with full back wages whereas the management has strongly urged that there is no question of reinstatement at such a belated stage and FCI is now not employing such casual or daily wage workers, which was the practice earlier. As such, at the most, they can be granted reasonable retrenchment compensation. Hon'ble Apex Court in the case of BSNL Vs. Bhurumal (2014 AIR SCW 528), while dealing with the question as to whether reinstatement with back wages should be granted as a matter of course and it was held as under:

'The ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of [Section 25-F](#) reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under [Section 25-F](#), even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization.'

13. Same view has been taken by the Hon'ble Apex Court in the case of MP Administration vs Tribhuban, Jagbir Singh vs HP Agricultural marketing (2009 (15) SCC 327), Nagar Mahapalika vs State of U.P. (Civil appeal No.2411 of 2006 decided on 02.05.2006) and Madhya Pradesh Administration Vs. Tribhuban (Civil Appeal No.1817 of 2007 decided on 05.04.2007). I have gone through the ratio of law enunciated in the above authorities and perusal of the same clearly suggests that reinstatement of a workman whose services have been terminated wrongly and illegally is not to be done in a routine manner and as a matter of course by Tribunal. The Tribunal is required to take a number of factors into consideration, such as, whether the post in question from which the workmen was terminated was a sanctioned post or selection was made in accordance with rules and regulations by inviting applications, whether there is delay in making reference to the Tribunal by the workmen was engaged as a daily wager etc. Since in the case in hand, there is no sanctioned posts of such casual or daily wage workers and there is considerable lapse of time after 1987, as such at this belated stage reinstatement cannot be granted, as such, this Tribunal is of the opinion that it is in the larger interest of justice, a reasonable amount of compensation is paid to the workmen instead of reinstating them. Hence, having regard to the overall circumstances of the case, including length of service etc., an amount of Rs.1,50,000.00 appears to be just and reasonable, which is awarded to the workmen. 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.

October 3, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ.2167.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 88/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/409/1998-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O. 2167.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Victoria West Colliery of M/s. BCCL and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/409/1998-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. 88 OF 1999****PARTIES:**

The management of Victoria West Colliery of M/s. BCCL

Vs.

Sh. Nibaram Gope

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

For the union (Workman) : Sri Sudip Kumar Sharma, Learned Advocate

Industry : Coal

State : West Bengal

Dated: 18.08.2016

**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-22012/409/98-IR(CM-II) dated 07/07/1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

“Whether the action of the management of Victoria West Colliery of M/s. BCCL in dismissing Sh. Nibaram Gope, U. G. Loader is legal and justified? If not, to what relief the workman concerned is entitled? ”

1. Having received the Order NO. L-22012/409/98-IR(CM-II) dated 07/07/1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 88 of 1999 was registered on 23.07.1999/19.09.2001 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. None appears on behalf of the workman. Sri P. K. Das, learned advocate appears on behalf of the management.

3. Case record shows that the Workman last appeared before the court on 11.12.2014 but after that neither the Workman nor his advocate ever appeared before the court even after granting 7 adjustments. Registered notice was also sent to the Union on 07.03.2016 but to no effect. It seems that neither the Workman nor the Union is now interested to proceed with the case. The case is also one of the oldest case pending in the Tribunal. But under such circumstance I have no option but to close the case as the case is of the year 1999. As such the case is closed and accordingly a ‘No Dispute Award’ is hereby passed.

**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, 21 अक्टूबर, 2016

**का.आ.2168.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 32/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/278/2000-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O. 2168.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Victoria West Colliery of M/s. BCCL and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/278/2000-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. 32 OF 2001**

#### PARTIES:

The management of Victoria West Colliery of M/s. BCCL

Vs.

Sh. Suresh Yadav

#### REPRESENTATIVES :

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

For the union (Workman) : None

Industry : Coal

State : West Bengal

Dated: 23.08.2016

#### 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-22012/278/200-IR(C-II) dated 10/01/2003 has been pleased to refer the following dispute for adjudication by this Tribunal.

#### SCHEDULE

“Whether the action of the management of Victoria West Colliery under BCCL in not regularizing the services of Sh. Suresh Yadav, Mining Sirdar w.e.f. 01.01.1997 is legal and justified? If not, to what relief the workman is entitled to? ”

1. Having received the Order No. L-22012/278/2000-IR(C-II) dated 10/01/2003 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 32 of 2001 was registered on 31/12/2001 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. Both Parties are absent.

3. On perusal of the case record I find that the then Presiding Officer ( Late Sri M. R. Patnaik) had reserved an award in this case because the Workman/Union neither took any step nor filed W.S. Since the Workman neither

appeared nor took any step in spite of giving sufficient opportunities, it seems that the Workman is not at all interested to proceed with the case further. As such the case is closed and accordingly a 'No Dispute Award' is hereby passed.

### 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, 21 अक्टूबर, 2016

**का.आ.2169.**—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. 70/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/423/2003-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2169.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of North Searsole Colliery M/s. Eastern Coalfields Ltd. and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/423/2003-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. 70 of 2004**

#### PARTIES:

The management of North Searsole Colliery of M/s. ECL

**Vs.**

Sh. Sukhdev Bouri

#### REPRESENTATIVES :

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

For the union (Workman) : Sri Rakesh Kumar, President of the Union

Industry : Coal

State : West Bengal

Dated: 06.09.2016

### 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-22012/423/2003 - IR(CM-II) dated 22.11.2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

### SCHEDULE

"Whether the action of the management of North Searsole Colliery of M/s. ECL in dismissing Shri Sukhdev Bouri from the services vide order dated 21/25.8.1997 is legal and justified? If not, to what relief the workman is entitled? "

Having received the Order No. L-22012/423/2003-IR(CM-II) dated 22.11.2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 70 of 2004 was registered on 06.12.2004 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.

Case called out. Sri Rakesh Kumar, President of the Union appears for the Workman and Sri P.K. Goswami, Ld. Advocate appears for the management.

Sri Rakesh Kumar submits that the case may be closed as he has got no instruction from the Workman since long. The Workman himself is also not appearing before the case. Since the Workman is not attending the Court and has not sent any instruction to his representative 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, 21 अक्टूबर, 2016

**का.आ.2170.**—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. 24/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/120/1996-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2170.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/1997) 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 Coalfields Limited and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/120/1996-IR (C-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. 24 of 1997**

#### PARTIES:

The management of Lower Kenda Colliery of M/s. ECL

**Vs.**

Sh. Manguni Jana

#### REPRESENTATIVES :

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

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

Industry : Coal

State : West Bengal

Dated: 07.09.2016

**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-22012/120/1996-IR(C-II) dated 30.04.1997 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

“Whether the action of the management of Lower Kenda Colliery of M/s. ECL in protecting the wages of Sri Manguni Jana, U.G. Loader on his transfer from Lakhimati Colliery to Lower Kenda Colliery w.e.f. 19.12.1992 is legal and justified. If not, to what relief is the workman entitled? ”

1. Having received the Order No. L-22012/120/1996-IR(C-II) dated 30.04.1997 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 24 of 1997 was registered on 08.05.1997. 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 Sri Manguni Jana has stated, in brief, in his written statement that he is permanent employee of M/s. Eastern Coalfields Limited and presently posted at Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited. The concerned workman was previously posted at Lakhimata Colliery, Mugma Area of M/s. Eastern Coalfields Limited. Lakhimata Colliery, Mugma Area of M/s. Eastern Coalfields Limited had been closed and Sri Manguni Jana had been transferred to Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited by Head Quarter vide Office Order No. ECL/CMD/C-6B/TRA/2473 dated 11.09.1992. Sri Manguni Jana has been deployed as Driller since the date of joining at Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited on 19.12.1992 by the management of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited. Since then he had been working as Driller and was regularize as Driller in May, 1994. He had been paid the starting basic of Category- IV. He is entitled to get protection of wages which he used to draw prior to his transfer along with Special Piece Rated Allowance. The concerned workman never applied for posting him as Driller nor he ever submitted any undertaking to take less payment for his conversion from piece rated to time rated one. After conversion of Sri Manguni Jana he is getting less payment. After diversion no protection of pay has been given to him. Sri Manguni Jana used to draw payment of Group- V Wages plus SPRA, being Quarry Miner but after transfer he had been paid Category- I wages which is unfair, unjustified, illegal and unfair labour practice. The workman as well as the union approached the management several time for giving pay protection, but the management did not give any heed. The workman has prayed that management be directed to give pay protection to Sri Manguni Jana from 19.12.1992 and passed further order which tribunal may deem fit.

3. The Agent of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited has stated in his written statement that Sri Manguni Jana is an employee of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited who came on transfer from Lakhimata Colliery under Kapasara Area of M/s. Eastern Coalfields Limited on 07.01.1993. As per L.P.C. his designation was Quarry Miner in P.R. He had applied and given undertaking to accept Category-I wages in T/Rated category. Accordingly he was allowed in Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited and allowed T/R in Category-I wages. Since then he is getting Category- I wages. Question of pay protection does not arise as per undertaking basis. The claim of pay protection is not justified and not maintainable as per undertaking submitted by him.

4. The union has filed following documentary evidences :

(i) Xerox copy of the order of Dy. C.P.M., Kenda Area for posting Sri Manguni Jana, Quarry Miner at Lower Kenda Colliery of M/s. Eastern Coalfields Limited after receiving the transfer order issued from ECL HQ vide letter no. Ref. Pers/KND/44/2732 dated 21.12.1992, (ii) Xerox copy of the letter of Personnel Manager (IC) of Kenda Area addressed to Personnel Manager of Mugma Area dated 09.02.1995 requesting therein for confirming that Sri Manguni Jana had given undertaking for accepting the initial wages or not?, (iii) Xerox copy of the letter of Personnel Manager (IC) of Mugma Area confirming the Sri Manguni Jana and other workers transferred to Kenda Area had not given written undertaking to the management of Mugma Area, (iv) Xerox copy of the Order issued by the ECL Head Quarter dated 03/05.08.2000 and subsequent address of Personnel Manager of Kenda Area and Personnel Manager of New Kenda Colliery dated 26.09.2000 for granting wage protection to Sri Bhasker Suin and 7 others protecting the Basic and SPRA, (v) Xerox copy of the Pay Slip of September, 1992 i.e. before his transfer to Kenda Area and Pay Slip of April, 1993, March, 1993, May 1993, June 1993 and December 2012. From the Pay Slip it is clear that at Lakhimata Colliery he

was getting Rs.11.42 as SPRA and Basic of Group IV was Rs.41.13 and after conversion at Kenda Area he got wages/Basic of Rs.38.47. Thus he got huge financial loss, (vi) Xerox copy of Area wages of N.C.W.A. in which also seen that he got less wages.

The workman Sri Manguni Jana has examined himself as witness. He has been cross-examined by the learned advocate of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited.

The agent of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited has filed following documentary evidences:-

(i) L.P.C. in respect of the workman dated 07.01.1993 issued by the office of the Agent, Lakhimata Colliery, Kapasara Area of M/s. Eastern Coalfields Limited, (ii) Written undertaking dated 17.12.1992.

5. I have heard Sri Rakesh Kumar, learned union representative on behalf of the workman and Sri P. K. Das, learned advocate on behalf of the management.

6. Sri Rakesh Kumar has argued that due to closure of Lakhimata Colliery of M/s. Eastern Coalfields Limited concerned workman Sri Manguni Jana transferred to Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited. At the time of transfer he was receiving basic of Category- IV and Special Piece Rated Allowance but after transfer he is getting pay of Category- I which is illegal and unfair labour practice. On the other hand Sri P. K. Das has argued that workman is not entitled for pay protection.

7. It is undisputed that the concerned workman Sri Manguni Jana, a permanent employee was under employment at Lakhimata Colliery of M/s. Eastern Coalfields Limited on the post of Quarry Miner. The copy of service excerpts has been filed by the agent of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited. It is also undisputed that due to closure of Lakhimata Colliery of M/s. Eastern Coalfields Limited the concerned workman Sri Manguni Jana had been transferred from Lakhimata Colliery of M/s. Eastern Coalfields Limited to Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited. The Lower Kenda has relied on the undertaking submitted by concerned workman to function in T/R in Category- I. Whereas the basis of claim of workman is that after transfer he ought to have been granted pay protection. The vital question arises for consideration that whether on transfer from one Colliery to another the workman is entitled for pay protection as claimed by him? The Certified Standing Order of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited the provision is as below:

**“21. Transfer:**

21.1. *Workmen may be transferred due to the exigencies of work from one station to another, from one coal mine to another or from one establishment / department / section to another, within the same company or same holding company provided that the pay, grade and other conditions of service including continuity of service of the workmen are not adversely affected by such transfer and provided further that , if a workman is transferred from one job to another, the job should be of similar nature and such as he is capable of doing and provided further that (i) except in case of emergency minimum notice of two weeks is given of such transfer, and (ii) reasonable joining time is allowed in case of transfer from one station to another.”*

Form perusal of above rule it is apparent that the transfer from one coal mine to another coal mine or department the pay, grade and other conditions of service will remain unaffected so as not to cause prejudice to concerned workman after transfer.

8. The concerned workman has filed the copy of Office Order Ref.Pers/KND/44/2732 dated 21.12.1992 which is as follows :

*“Sri Manguni Jana, Q/Miner, U.M. No. 859096 of Lakhimata Colliery under Nirsha Area has been transferred to Kenda Area vide HQ’s Office Order No. ECL/CMD/C-6B/Trf/2473 dated 19.11.1992 and subsequently released by the Agent Lakhimata Colliery vide release order no. ECL/LM/PER/Rel.Ord/92/578/2349 dated 16/17.12.1992. He is hereby posted at Lower Kenda Colliery in his existing capacity with immediate effect. He is reported at Agent Office on 19.12.1992. The Agent, Lower Kenda Colliery is requested to allow the above named employee after proper verification of his identity. Sri Jana is directed to report for duty to the Agent of Lower Kenda Colliery.”*

From perusal of above Office Order it is clear that the transfer order 21.12.1992 reflects that he was transferred to Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited in his existing capacity. Personal Personnel Manager of Mugma Area of M/s. Eastern Coalfields Limited by letter Ref.ECL/GM/MA/95/5448 dated 01.03.1995 has informed Personnel Manager of Kenda Area of M/s. Eastern Coalfields Limited that at the time of transfer of Sri Manguni Jana no worker has submitted written undertaking at Mugma Area of M/s. Eastern Coalfields Limited. The workman has filed copy of letter Ref.No. Pers/KND/26/1079 dated 03/05.08.2000. From perusal of this letter it transpires that the competent authority has accorded approval that the pay of the transferred workman will be re-fixed

in taking into account their respective Group Wages and amount of SPRA which they were getting prior to their diversion but they will not be given financial benefits for the back period.

All these documents indicate that management of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited was determined to allow pay protection to transferred workman including Sri Manguni Jana.

9. The agent of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited has relied on the undertaking of Sri Manguni Jana dated 17.12.1992. Sri Manguni Jana has written a letter to Dy. CME / Agent, Lakhimata Colliery of M/s. Eastern Coalfields Limited Coalfields Limited on 17.12.1992 that :

*“As directed by G.M. (P) ECL/CMD/C-6B/Trf/2473 dated 19.11.1992. I do hereby give under taking that I will perform duty in U/G against T/Rated vacancy Category- I. In view of above I request you to kindly relige me to join at Kenda Area against T/Rated vacancy.”*

It is relevant to mention that the Personal Manager of Mugma Area of M/s. Eastern Coalfields Limited by his letter 01.03.1995 has denied the fact of undertaking of any transferred worker from Mugma Area of M/s. Eastern Coalfields Limited. In view of the denial of Personal Manager of Mugma Area of M/s. Eastern Coalfields Limited the letter of Sri Manguni Jana arouses suspicion. The letter G.M. (P) ECL/CMD/C-6B/Trf/2473 dated 19.11.1992 which has been mentioned in the letter of Sri Manguni Jana has not been filed by the Agent of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited. Even the Agent of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited has not stated about the letter dated 19.11.1992 in his written statement. Even if for sake of imagination if it is presumed that though letter no. G.M. (P) ECL/CMD/C-6B/Trf/2473 dated 19.11.1992 has not been filed by the Agent of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited on the record, it had been in existence. Even then there will no statutory force in such letter, because such letter has been issued in exercise of executive order whereas provisions of Certified Standing Order are framed under Article 309 of the Constitution of India. If any rules have been framed by government it will prevail the executive or administrative direction of the department concerned.

10. The hon'ble Apex Court in **Public Service Tribunal v/s J.C.S. Bora, 2014 (141) FLR 966 SC** has held that :

*“It is settled proposition of law, that the executive orders can not supplant the rules framed under Article 309 of Constitution of India.”*

In view of law laid down by hon'ble Apex Court even if there was any administrative direction it will not override the provisions of Certified Standing Order which supports the case of workman.

11. In view of discussion above the action of the management of Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited in not protecting the wages of Sri Manguni Jana, Under Ground Loader on his transfer from Lakhimata Colliery of M/s. Eastern Coalfields Limited to Lower Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited w.e.f. 19.12.1992 is illegal and unjustified. The concerned workman Sri Manguni Jana is entitled for pay protection w.e.f 19.12.1992.

### 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, 21 अक्टूबर, 2016

**का.आ.2171.**—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. 127/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/464/1998-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2171.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 127/1999) of the Central Government Industrial Tribunal-cum-

Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Dhemomain Colliery of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/464/1998-IR (CM-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE**

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

*Ref.: Ministry's Order No.: L-22012/464/98/IR (CM-II) dated 26/28.07.1999*

*This office Reference No. 127 of 1999*

Management of Dhemomain Colliery of M/s. E.C.L

**Vs.**

Sh. Tilak Mahato

**SETTLEMENT IN LOK ADALAT**

Held on 08<sup>th</sup> September, 2016 at CGIT-cum-LC, Asansol.

**AWARD**

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The **Form 'H'** containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ.2172.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल 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. 106/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/313/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2172.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 106/1999) 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 Coalfields Limited and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/313/2004-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. 106 OF 1999**

**PARTIES:**

The management of Lachipur Colliery of M/s. ECL

**Vs.**

Sh. Kashi Patra

**REPRESENTATIVES :**

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

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

Industry : Coal

State : West Bengal

Dated: 08.09.2016

**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-22012/89/1999–IR(CM-II) dated 30.07.1999 (and its corrigendum dated 08.07.2002) has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

“Whether the action of the management of Lachipur Colliery of M/s. ECL in not considering the mid point of the age of Sri Kashi Patra assessed by the Apex Board on 20.03.1996 is legal and justified? If not, to what relief the workman is entitled? ”

1. Having received the Order No. L-22012/89/1999–IR(CM-II) dated 30.07.1999 (and its corrigendum dated 08.07.2002) of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 106 of 1999 was registered on 18.08.1999. 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 brief, in his written statement that Sri Kashi Patra, Wagon Loader of Lachipur Colliery of M/s. Eastern Coalfields Limited had applied for correction of his Date of Birth. The Apex board of the company assessed the age of workman as 45 to 50 years on 20.03.1996. As per guidelines of the company the age of concerned workman should be accepted mid point i.e. 47½ (Forty Seven & Half) years on 20.03.1996. But management accepted higher side of age i.e. 50 years on 20.03.1996 which is wrong and the same is under dispute. That in all other cases management has accepted the mid point formula and accordingly the age of Sri Kashi Patra should be accepted as 47½ (Forty Seven & Half) years as on 20.03.1996 instead of 50 years. By not accepting the mid point the company has violated his own guidelines. The workman has prayed that the Date of Birth of Sri Kashi Patra should be accepted as 47½ (Forty Seven & Half) years as on 20.03.1996 as per mid point formula and guidelines of the company and concerned workman should be awarded all consequential benefits accordingly.

3. The agent of Lachipur Colliery of M/s. Eastern Coalfields Limited has stated in his written statement that Sri Kashi Patra is an employee of Lachipur Colliery of M/s. Eastern Coalfields Limited. He raised dispute with regard to his Date of Birth as recorded in service record. He was referred to Apex Medical Board. His age was assessed 50 years as on 20.03.1996 by the Apex Medical Board which is nearest to the age as per Form ‘B’ Register. Such assessment was done in full knowledge of the concerned employee. The age was assessed as per circular letter no. E.C.L/C.MD/C-6D/98/19/KAJ/2890 dated 28.08.1990 by Dy. C.P.M(L) of M/s. Eastern Coalfields Limited Head Quarter, Sanctoria. The Agent of Lachipur Colliery of M/s. Eastern Coalfields Limited has denied in his written statement that as per guide line of the company the age of the concerned workman should be accepted 47 years as on 20.03.1996. It has been denied that by accepting the age of workman as 50 years is wrong. Management has not violated guidelines of medical jurisprudence by not accepting the mid point of age. The concerned workman is not entitled for any relief.

4. The workman has filed rejoinder written statement. The workman has stated that statement of management that workman accepted the assessed age is not correct rather workman and the union raised the objection. When management did not hear the voice of union and of workman, then workman raise the dispute before Assistant Labour Commissioner (Central) and Ministry of Labour for reference of dispute. Management has accepted the mid point age in lot of cases. Even now management is accepting the mid point of the assessed age of some workman. Management should submit relevant circulars regarding assessment of age and guidelines. The decision of the management is wrong and illegal. The age of Sri Kashi Patra should be assessed mid point age, 47½ (Forty Seven & Half) years as on 20.03.1996. As per physical appearance also Sri Kashi Patra was not more than 45 years of age.

5. The union has filed following documentary evidences :

(i) Xerox copy of the Service Excerpts format in which he disputed his Age/Date of Birth, (ii) Xerox copy of the result of Apex Board in which his age was decided as 45 to 50 years on 20.03.1996, (iii) Xerox copy of the Assessment Orders of others where age decided on the basis of mid point formula.

Sri Kashi Patra has filed affidavit in his evidence. He has been cross-examined by the learned advocate of Lachipur Colliery of M/s. Eastern Coalfields Limited

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

6. I have heard Sri Rakesh Kumar, learned union representative appeared on behalf of the workman and Sri P. K. Das, learned advocate appeared on behalf of the management of Lachipur Colliery of M/s. Eastern Coalfields Limited.

7. Sri P. K. Das has argued that age of the concerned workman has been assessed as per opinion of Apex Medical Board which is binding. Workman can not challenge the assessment of age. On the other hand Sri Rakesh Kumar has argued that as per guidelines of the company the mid point of age should be accepted i.e. 47½ (Forty Seven & Half) years as on 20.03.1996. During course of argument Sri Rakesh Kumar relied upon the Circular Letter of Director (Personnel) of M/s. Eastern Coalfields Limited and has referred Circular Letter Ref:-ECL:D(P):47...158... dated 01.07.1998. He has argued that in some cases the management has accepted the mid point of assessed age of Medical Board. The action of management is arbitrary.

8. It is not disputed that concerned workman Sri Kashi Patra has been the workman in Lachipur Colliery of M/s. Eastern Coalfields Limited. It is admitted fact by both the parties that the age of concerned workman Sri Kashi Patra was assessed by medical board on 20.03.1996 as between 45 to 50 years. As per Circular Letter Ref:-ECL:D(P):47...158... dated 01.07.1998 issued by Dr. S. S. Roy, the then Director (Personnel), procedures and guidelines has been prescribed for assessment of age which is reproduces below :

*"In case of medical assessment of age for any reason including medical examination for new appointees, the mid point of the assessed range of age on the date of medical assessment will be accepted as the authentic age. The date of birth /age recorded in Form B register in respect of the workmen appointed up to 31<sup>st</sup> March, 1993 will no longer be subjected to change through request, appeal or reference. However, pending disputes under considerations covering the earlier period also will be resolved either way by 31<sup>st</sup> August, 1998. Thereafter, the subject matter of modification in the date of birth be revision of age will come to an end. "*

9. From perusal of above guidelines it is evident that mid point of assessed age by Apex Medical Board will be accepted in determination of Date of Birth. The Date of Birth of Sri Kashi Patra has been assessed by Apex Medical Board as 45 to 50 years on 20.03.1996. Therefore as per above circular letter of M/s. Eastern Coalfields Limited his age should be accepted as 47½ (Forty Seven & Half) years on 20.03.1996 as mid point. I am unable to understand why the Agent of Lachipur Colliery of M/s. Eastern Coalfields Limited flouted these guidelines. The workman has filed copy of the Office Order, AGENT:S:PER:0.0:93:811 dated 06.04.1993 / 26.05.1993. From perusal of the Office Order it is evident that age has been assessed by the Apex Medical Board of the company of the workman mentioned in the above Officer Order. The age of the concerned workman mentioned in the Office Order has been assessed in the month of March and April of 1992. The mid point of the assessed age has been accepted by management. The age of workman has been assessed on 20.03.1996 then the same procedure ought to have been applied in the case of concerned workman Sri Kashi Patra.

10. In the view of above discussion the action of the management of Lachipur Colliery of M/s. Eastern Coalfields Limited in not considering the mid point of the age of Sri Kashi Patra assessed by the Apex Medical Board on 20.03.1996 is not legal and unjustified. The age of workman Sri Kashi Patra should be accepted as mid point i.e. 47½ (Forty Seven & Half) years on 20.03.1996. Accordingly he is entitled for service benefits.

#### 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, 21 अक्टूबर, 2016

**का.आ.2173.**—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. 28/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/252/1998-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2173.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/1999) 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 Coalfields Limited and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/252/1998-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. 28 OF 1999**

**PARTIES:**

The management of Parascole Colliery of Kajora Area of M/s. ECL

Vs.

Sh. Narayan Dausaad

**REPRESENTATIVES :**

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

For the union (Workman) : Sri Rakesh Kumar, President of the Union

Industry : Coal

State : West Bengal

Dated: 09.09.2016

**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-22012/252/98-IR(CM-II) dated 26.05.1999/27.05.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

“Whether the action of the management of Parascole Colliery of Kajora Area of M/s. ECL in not providing employment to the dependent of Sh. Narayan Dausaad, Tyndal as per provisions of NCWA-IV is legal and justified? If not, to what relief is the workman entitled? ”

Having received the Order No. L-22012/252/98-IR(CM-II) dated 26.05.1999/27.05.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 28 of 1999 was registered on 07.06.1999 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.

Case called out. Sri Rakesh Kumar, President of the Union appears for the Workman and Sri P.K. Das, Ld. Advocate appears for the management.

Sri Rakesh Kumar submits that the case may be closed as he has been unable to contact the Workman since long. On perusal of the case record I find that the case was fixed for filing evidence of the Workman on 26.03.2015 but thereafter 7 chances have been given to the Union to produce the Workman physically for his evidence. But the Union could not produce the Workman physically in spite of giving sufficient opportunities. The reference case is very old - of the year 1999. The Workman in spite of giving ample opportunity did not turn up before the Court. Perhaps he has lost his interest to proceed with the case. Under such circumstance I have 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, 21 अक्टूबर, 2016

**का.आ.2174.**—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. 35/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/122/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2174.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2005) 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 Coalfields Limited and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/122/2004-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. 35 OF 2005**

**PARTIES:**

The management of Parasea Colliery of M/s. ECL

Vs.

Sh. Shree Routh

**REPRESENTATIVES :**

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

For the union (Workman) : Sri Narayan Chandra Pandit, President of the Union

Industry : Coal

State : West Bengal

Dated: 14.09.2016

**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-22012/122/2004 - IR(CM-II) dated 10.05.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

“Whether the action of the management of Parasea Colliery of M/s. ECL in denying correction of date of birth in respect of Sri Shree Routh is legal and justified? If not, to what relief the workman is entitled?”

Having received the Order No. L-22012/122/2004-IR(CM-II) dated 10.05.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 35 of 2005 was registered on 31.05.2005 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.

Case called out. Sri P.K. Das, Ld. Advocate appears on behalf of the management but none appears on behalf of the workman.

From the case record I find that the representative of the workman last appeared before this Tribunal on 23.02.2015. After that 7 dates have been granted but to no effect. It seems that neither the Workman nor the Union is now interested to contest the case. The case is also very old – of the year 2005. 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, 21 अक्टूबर, 2016

**का.आ.2175.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल 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. 30/1993) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/85/1993-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2175.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/1993) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Damagoria Colliery of M/s. BCCL and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/85/1993-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. 30 OF 1993**

#### PARTIES:

The management of Damagoria Colliery of M/s. BCCL

Vs.

Sri Subhas Kr. Singh & Sri Rajeshwar Singh

#### REPRESENTATIVES :

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

For the union (Workman) : Sri Subhas Kumar Singh, Union Representative

Industry : Coal

State : West Bengal

Dated: 15.09.2016

### 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-22012/85/1993-IR(C-II)** dated 17.06.1993 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

“Whether the action of the management of Damagoria Colliery in not regularizing Sri Subhas Kumar Singh and Sri Rajeswar Singh as a permanent teacher of Damagoria Primary School and thereby depriving the concerned workmen is justified? If not, to what relief the concerned workmen entitled to? ”

1. Having received the Order No. L-22012/85/1993–IR(C-II) dated 17.06.1993 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 30 of 1993 was registered on 22.06.1993. 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 workmen Sri Subhas Kumar Singh and Sri Rajeshwar Singh have stated in their written statement that they are teachers in Damagoria Primary School. Damagoria Primary School was established by erstwhile management of Damagoria Colliery of M/s. Bharat Coking Coal Limited in Damagoria Colliery premises in the year 1957. The erstwhile management got a building for school and provided facilities and accessories and appointed permanent teacher to run the school since 1957. The management has been bearing entire expenses of the school. The Ministry of Labour & Employment, Government of India has set up a Central Wage Board for coal mining industry on 10.08.1962. After nationalization of coal mines the management of Damagoria Colliery of M/s. Bharat Coking Coal Limited acquired the right, title and assets and liabilities of erstwhile management including Damagoria Primary School. Teacher working in the school became the employees of the colliery's management. M/s. Bharat Coking Coal Limited, the owner of Damagoria Colliery was first and foremost employer to accept and implement the recommendation of Central Wage Board for coal mining industry. The teachers of Damagoria Primary School became employees of the colliery management and Damagoria Colliery of M/s. Bharat Coking Coal Limited who stepped into their shoes and accepted the recommendation. Damagoria Primary School is a school of the employer company and all the teachers working therein are workmen for all the intents and purposes. The so called management committee is for advising improvement in the school. Management committee has no power regarding payment of wages and disciplinary action. Management committee has no control over the working of school which is exercised by the colliery management. There is employer - employee relationship between teachers of Damagoria Primary School and management of Damagoria Colliery of M/s. Bharat Coking Coal Limited. Sri Subhas Kumar Singh and Sri Rajeshwar Singh were appointed as teachers in 1985. But they are not being paid prescribed wages of teachers and they have not been regularized so far though the posts are permanent. Sri Jagannath Das is a senior teacher of Damagoria Primary School where the workmen of the dispute are also teachers. Sri Jagannath Das is a permanent teacher on company's roll and is being paid wages prescribed in N.C.W.A., whereas the concerned workmen have not even been regularized and are paid quite less wages in comparison to their counter parts. They have been deprived form other facilities of a permanent teacher of the nationalize school run by the company. Damagoria Primary School is solely run by the colliery management and entire expense of the school is borne by the colliery management. The supervision and disciplinary action is initiated by colliery's official. Sri Subhas Kumar Singh and Sri Rajeshwar Singh have prayed though their union that Award may be passed with direction to regularize them on colliery's role and payment of correct graded scale and other facilities with retrospective effect.

3. The management of Damagoria Colliery of M/s. Bharat Coking Coal Limited has denied the allegation of workmen by filing written statement. Damagoria Colliery of M/s. Bharat Coking Coal Limited has alleged in his written statement that though Sri Subhas Kumar Singh and Sri Rajeshwar Singh both are the teachers of Damagoria Free Primary School situated at Damagoria Colliery, but they are not workman of Damagoria Colliery of M/s. Bharat Coking Coal Limited. Therefore, the reference is not maintainable. There are Ten numbers of such school situated in the vicinity of various colliery of Chanch Victoria Area. These schools are not run or managed by Damagoria Colliery of M/s. Bharat Coking Coal Limited, but by a committee in the name and style of Managing Committee. There is only one representative of Damagoria Colliery of M/s. Bharat Coking Coal Limited in such committee with the intention of ensuring proper utilization of the grant-in-aid to such schools by Damagoria Colliery of M/s. Bharat Coking Coal Limited. The appointment of teachers of such schools are entirely under the jurisdiction of such committee. The management of Damagoria Colliery of M/s. Bharat Coking Coal Limited has no part to play in the administration of such schools. Terms and conditions of appointment of such teachers is within the jurisdiction of Managing Committee. Management of Damagoria Colliery of M/s. Bharat Coking Coal Limited has no right or responsibility for any appointment or termination of any teacher in such school. There is no existence of employer - employee relationship. The workmen are not entitled to any relief. The action of management in not regularizing Sri Subhas Kumar Singh and Sri Rajeshwar Singh as teachers is justified.

4. Sri Subhas Kumar Singh and Sri Rajeshwar Singh have filed rejoinder written statement. They have denied the allegation of management of Damagoria Colliery of M/s. Bharat Coking Coal Limited. They have alleged in their written statement that Sri Jagannath Das, Head Teacher of Damagoria Colliery has been performing the job of teacher prior to nationalization. He has been getting the wages as per norms and recommendation of Wages Board for the coal mining industry itself. Damagoria Primary School is a nationalize institution of Damagoria Colliery of M/s. Bharat Coking Coal Limited. The Damagoria Primary School is a nationalize property and Damagoria Colliery of M/s. Bharat Coking Coal Limited is owner of Damagoria Primary School. The Damagoria colliery management has selected all the teachers of Damagoria Primary School. The management of Damagoria Colliery of M/s. Bharat Coking Coal Limited has been paying wages and other remuneration to the teachers including Sri Subhas Kumar Singh and Sri Rajeshwar Singh. Grant of leave by the Agent of Damagoria Colliery of M/s. Bharat Coking Coal Limited itself proves that the management of Damagoria Colliery of M/s. Bharat Coking Coal Limited is owner / master and have right to control for functioning of the employee. The letter of Dy. C.M.E, Sri S. N. Tiwary indicates that management of Damagoria Colliery of M/s. Bharat Coking Coal Limited is in position of masters. The school management committee is not the master of Damagoria Primary School. It is only advisory committee. It only supervises the educational system for the school, like other schools of state government.

5. The workmen have filed three documents as their documentary evidence:

(i) Copy of the letter from Dy. CME, Damagoria Colliery to Sri Subhas Singh, (ii) Copy of the report of the Central Wage Board for the coal mining industry, (iii) Copy of letter of leave of Sri Subhas Kumar Singh.

6. Sri Subhas Kumar Singh has examined himself as witness. He has been cross-examined by the learned advocate of Damagoria Colliery of M/s. Bharat Coking Coal Limited.

The Damagoria Colliery of M/s. Bharat Coking Coal Limited has filed the following documents as documentary evidence:

(i) Receipt issued by Sri Subhas Kumar Singh and Sri Rajeshwar Singh, (ii) List of school managing committee of Damagoria Primary School, (iii) Resolution book of the said school managing committee, (iv) Saving Account, Pass book of Damagoria Primary School

The Damagoria Colliery of M/s. Bharat Coking Coal Limited has examined Sri Jagannath Das MW-1. Sri Jagannath Das has been cross-examined on behalf of the workman.

7. I have heard Sri Subhas Kumar Singh, learned union representative on behalf of the workmen and Sri P. K. Das, learned advocate on behalf of the management of Damagoria Colliery of M/s. Bharat Coking Coal Limited.

8. Sri Subhas Kumar Singh, learned union representative has argued that the management of Damagoria Colliery of M/s. Bharat Coking Coal Limited is controlling authority of Damagoria Primary School. The Agent of Damagoria Colliery of M/s. Bharat Coking Coal Limited has been sanctioning the Casual Leave of concerned workmen. Damagoria Colliery of M/s. Bharat Coking Coal Limited has administrative control over the workmen. They have issued warning letter to Sri Subhas Kumar Singh. These documents indicate that employer - employee relationship exists there. On the other hand Sri P. K. Das, learned advocate has argued that there is no employer - employee relationship exists between the concerned workmen and the management of Damagoria Colliery of M/s. Bharat Coking Coal Limited. Besides he also argued that Sri Subhas Kumar Singh and Sri Rajeshwar Singh are teachers, they are not workmen. Therefore the reference is not maintainable under Industrial Dispute Act, 1947. They have pledged reliance on **Mr. Karthiyayani and others v/s Union of India (UOI) and others, 1984 IILJ 259, Kerala High Court.**

9. The concerned workmen / teachers Sri Subhas Kumar Singh and Sri Rajeshwar Singh have not filed their copy of Appointment Letter. The concerned workmen / teachers have disclosed in Para-12 of their written statement that they were appointed by the management as teachers in 1985, which has been denied by the management. PW-1 Sri Subhas Kumar Singh has stated in his examination-in-chief that he was appointed as Hindi teacher in 1981 whereas MW-1 Sri Jagannath Das has stated in Para-5 of his evidence that Sri Subhas Kumar Singh and Sri Rajeshwar Singh were appointed as teachers in 1982. There is material contradiction in year of appointment of these teachers. However it is admitted fact by both the parties that Sri Subhas Kumar Singh and Sri Rajeshwar Singh had been teachers in Damagoria Primary School situated at Damagoria Colliery. A vital question arises for consideration whether Sri Subhas Kumar Singh and Sri Rajeshwar Singh are 'workmen' as defined in Industrial Dispute Act, 1947? Whether there exists employer - employee relationship?

10. PW-1 Sri Subhas Kumar Singh has stated in Para-7 of his evidence that his name was not recorded in the Form 'B' Register of the colliery. The name of his colleague Sri Jagannath Das was entered in the colliery record. In Para-11 & 12 of his evidence he has stated that there is no deduction from his pay towards G.P.F. and no pay slip was issued to

him. Entry in service excerpts in the concerned department and entry in the Form 'B' Register is natural consequence of any workman working in the coal industry.

**11. The term 'workman' has been defined in the Industrial Dispute Act, 1947**

*" '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 purpose 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."*

**12. The learned advocate of the management has relied on Mr. Karthiyayani and others v/s Union of India (UOI) and others, 1984 IILJ 259, Ker.**

The hon'ble Kerala High Court in Mr. Karthiyayani and others v/s Union of India (UOI) and others, while interpreting the word 'workman' under Industrial Act, 1947 has held that:

*" teachers are not workmen since the work of teaching is not skilled or unskilled manual work."*

Therefore in view of law laid down by Kerala High Court, since Sri Subhas Kumar Singh and Sri Rajeshwar Singh have been performing the duty of teachers. They are outside purview of workmen therefore present reference is not maintainable under Industrial Dispute Act, 1947.

**13. The hon'ble Apex Court in National Aluminium company Limited and others v/s Ananta Kishore Rout and others, 2014 (142) FLR 643 has held that :**

*" Employees of schools setup by appellant-NALCO for wards of its employees working in the company, these schools vest in managing committee. Schools have their own independent managing committee. However any kind of remote control would not make NALCO as employer of these schools."*

In view of law laid down by the hon'ble Apex Court the concerned teachers Sri Subhas Kumar Singh and Sri Rajeshwar Singh are not employees of Damagoria Colliery of M/s. Bharat Coking Coal Limited.

**14. In view of discussion above the action of management of Damagoria Colliery of M/s. Bharat Coking Coal Limited in not regularizing Sri Subhas Kumar Singh and Sri Rajeshwar Singh as a permanent teacher of Damagoria Primary School is justified. The concerned workmen are not entitled to any relief.**

**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, 21 अक्टूबर, 2016

**का.आ.2176.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 07/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/32/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2176.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2005) 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 Coalfields Limited, and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/32/2004-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. 07 OF 2005****PARTIES:**

The management of Amritnagar Colliery of Kunustoria Area of M/s. ECL

Vs.

Sh. Rabin Bouri

**REPRESENTATIVES :**

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

For the union (Workman) : Sri S.K. Pandey, Union Representative

Industry : Coal

State : West Bengal

Dated: 19.09.2016

**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-22012/32/2004-IR(CM-II)** dated 06.01.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

“Whether the action of the management of M/s. ECL in dismissing Sri Rabin Bouri, UG Loader from services w.e.f. 28.04.2003 is legal and justified? If not, to what relief the workman is entitled? ”

1. Having received the Order **NO. L-22012/32/2004-IR(CM-II)** dated 06.01.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **07 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 Sri Rabin Bouri has pleaded in his written statement that he was in employment of the company as Under Ground Loader having his Man No. 470755 at Amritnagar Colliery of M/s. Eastern Coalfields Limited. He was chargesheeted for his unauthorized absence from his duty for the period from 16.12.2002 to 13.02.2003 vide Chargesheet No. Pers/4100/2003/489 dated 17/18.02.2003. He was sick for which he sent information to the management. Being declared fit by the doctor workman reported for resumption of his duty to the management, but he was not allowed. The Enquiry Officer recorded finding against the workman ignoring the sick certificate, submitted by the workman during enquiry proceeding. The Enquiry Officer ignoring all the document and facts on record submitted biased inquiry report. Workman was dismissed from service w.e.f. 28.04.2003. Dismissal of Sri Rabin Bouri from the service of the company is illegal and unjustified. The workman has prayed that the Tribunal may kindly direct the management of Amritnagar Colliery of M/s. Eastern Coalfields Limited to reinstate the workman in service with payment of full back wages for the period from the date of dismissal with all consequential benefits.
3. The Agent of Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited has filed written statement. He has stated in his written statement that Sri Rabin Bouri, Ex-Under Ground Loader of Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited was charge sheeted by the management vide Chargesheet No. Pers/4100/2003/489 dated 17/18.02.2003 for his unauthorized absence from his duty since 16.12.2002 without any information. The ex-workman was also chargesheeted for habitual absenteeism under clause 26:23 and 26:29 of the Certified Standing Order. Workman was directed to submit written explanation within 48 hours. But as the ex-workman failed to submit written explanation within the stipulated time and as such a domestic enquiry was held into the said Chargesheet by the Enquiry Officer. The ex-workman duly participated in the enquiry. The ex-workman in

course of enquiry tried to defend himself by producing a certificate of Private Medical Practitioner. He further pleaded that he duly intimated about his sickness to the management. The Enquiry Officer after a careful consideration of the enquiry proceeding and the connected papers submitted his finding by holding the ex-workman to be guilty of both the charges. The ex-workman was issued 2<sup>nd</sup> Show Cause notice by the management vide Ref. no. 1018 dated 27/31.03.2003, directing the workman to submit his reply within 7 (Seven) days from the date of issuance of the letter. But the ex-workman failed to submit any explanation. After careful consideration of the Chargesheet, Enquiry Proceeding, Enquiry Report and other connected papers the G. M. of Kunustoria Area of M/s. Eastern Coalfields Limited passed the order of termination of service from the company with immediate effect, considering the gravity of misconduct vide Order of Dismissal dated 25/28.04.2003. Considering the past performance the punishment awarded to the ex-workman is totally proportionate and it is denied that the punishment awarded to the ex-workman is disproportionate in any manner. The action of management is totally justified in dismissing the ex-workman from his service. The ex-workman is not entitled to get any relief as prayed by him.

**4. The workman has filed following documentary evidences :**

- (i)** Copy of the dismissal letter, **(ii)** Copy of the Enquiry report & proceedings, **(iii)** Copy of the Chargesheet, **(iv)** Copy of the Identity Card of the employee.

The workman, Sri Rabin Bouri has filed affidavit in his evidence. He has been cross-examined by the learned advocate of Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited.

The management has filed following documentary evidences :

- (i)** Copy of the Chargesheet, **(ii)** Copy of letter dated 24/27.02.2016 to the workman, **(iii)** Copy of the letter dated 08/13.03.2003 to P.M., Amritnagar Colliery of Kunustoria Area, **(iv)** Copy of the letter to the Manager, Amritnagar Colliery of Kunustoria Area received on 18.02.2003, **(v)** Medical Certificate of the workman dated 13.03.2003, **(vi)** Copy of the letter to the Manager, Amritnagar Colliery of Kunustoria Area, **(vii)** Copy of the Notice of enquiry dated 14.03.2003, **(viii)** Copy of the Enquiry Proceeding, **(ix)** Copy of the Enquiry Report, **(x)** Copy of the 2<sup>nd</sup> Show Cause Notice to the workman, **(xi)** Copy of the note sheet from Dy. C.M.E. to the G.M., Kunustoria Area, **(xii)** Copy of the letter dated 25/28.04.2016 to the workman.

The management of Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited has not filed any oral evidence.

**5. I have heard Sri S. K. Pandey, learned union representative on behalf of the workman Sri Rabin Bouri and Sri P. K. Das, learned advocate on behalf of Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited.**

**6. Sri S. K. Pandey, learned representative of the workman has argued that the Enquiry Officer has conducted enquiry without affording opportunity of cross-examination to the workman Sri Rabin Bouri. The Enquiry Office has not considered the sick certificate of the workman. Enquiry has been conducted in biased manner. Punishment of dismissal for alleged absence of 2 months is too harsh and disproportionate. There is no evidence regarding previous punishment but Enquiry Officer has wrongly relied on previous punishment which is illegal. On the other hand Sri P. K. Das, learned advocate of the management has argued that the concerned workman had been habitual absentee for which he had been chargesheeted. He did not sent any information to the management about his sickness. In reply Sri S. K. Pandey has replied that duty of Under Ground Loader is hazardous duty. Under Ground Loader is often becomes sick. Punishment of dismissal under compelling circumstance of sickness is illegal.**

**7. It is admitted fact that Sri Rabin Bouri was Ex-Under Ground Loader in Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited. He has been dismissed from service after domestic enquiry. The workman has challenged the validity of domestic enquiry which has been denied by the Agent of Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited. The concerned workman, Sri Rabin Bouri has been chargesheeted under clause 26:23 and 26:29 of Certified Standing Order of M/s. Eastern Coalfields Limited for unauthorized. As per Chargesheet his presence in the year 2002 had been 85 days only, in each month he had been absent. As per Chargesheet he has been punished by stoppage of 11 (Eleven) SPRA (Special Piece Rated Allowance).**

**8. From perusal of Chargesheet it is manifest that there is no recital in the Chargesheet about any witness proposed to be examined by the Enquiry Officer. Even there is no description of any document proposed to be relied by Enquiry Officer. Before proceeding with the domestic enquiry against any offending workman the Enquiry Officer must inform the workman not only the charge in precisely and accurately labelled against the workman but it is the duty of Enquiry Officer to inform about the documents upon which the charges are based. The witnesses proposed by the Enquiry Officer to be examined before commencement of enquiry proceeding. This is all the more necessary where the charges are of a general nature and relates to a considerable period of time. The Chargesheet should not only specifically set out all charges, which the workman is called upon to show cause against, but also all the documents upon which the**

Enquiry Officer has to reply. Without all these formalities the delinquent workman can not defend himself. The object of this requirement is that the delinquent workman must know what he is charge with and have the amplest opportunity to meet the charge and to defend himself by giving a proper explanation after knowing the nature of the charge with which he is charged, otherwise it will amount to his being condemned unheard. Though off course previous punishment can be referred in the Charge sheet and can be considered in the enquiry proceeding. But the particulars of previous punishment and copy of the documents of previous punishment must be supplied to the delinquent workman before proceeding further. The Enquiry Officer can not justify his action on any ground other then those contained in the Charge sheet. If the workman has no opportunity to reply then the enquiry will not be in conformity with the rules of natural justice.

9. Clause 28:1 and 28:10 of Certified Standing Order prescribes procedures of enquiry. It mandates the Enquiry Officer that not less than 3 (Three) days time will be given to delinquent employee to submit his explanation. At the enquiry the workman concerned shall be afforded reasonable opportunity of defending himself. The proceeding of the departmental enquiry shall be in writing in Hindi, English or in Regional Language at the choice of the concerned workman and copy of the Enquiry Report shall be given to the concerned workman day to day after the adjournment of the daily proceeding. The workman should also be given an opportunity to inspect the day to day records / documents of the enquiry proceeding.

10. Hon'ble apex court in **Pawan Kumar Agarwala v/s General Manager – II and Appointing Authority, State Bank of India and Others, 2016 (148) FLR 865** has held that :

*“If copies of documents and list of witnesses was not furnished to the workman during enquiry, the enquiry was vitiated on account of non-compliance of statutory rules and violation of principle of natural justice.”*

11. In view of law laid down by Hon'ble Apex Court, since the Enquiry Officer has neither furnished the copy of documents and list of witness to the delinquent workman nor mentioned in the Charge sheet. The enquiry is vitiated due to non-compliance of principle of natural justice. If enquiry is proceeded in a manner which indicates that the Enquiry Officer was proceeding on the basis of standard of proof, which is wrong in law and not consistent with principle of natural justice. Then in that event the enquiry proceeding will be vitiated. The prejudice will be caused to delinquent workman.

12. The enquiry proceeding was concluded on 20.03.2003. The examination-in-chief of management representative and three other management witnesses was recorded on same date i.e. 20.03.2003. The statement of Sri Rabin Bouri as defence evidence was recorded on 20.03.2003. He was cross-examined on 20.03.2003. But from perusal of enquiry proceeding it is apparent that the delinquent workman was not afforded opportunity of cross-examination. The opportunity of cross-examination is valuable right of delinquent workman which can never be denied. If opportunity of cross-examination is not afforded, it is settled law that the statement contained in examination-in-chief will be inadmissible in evidence. Though the Enquiry Officer has recorded the enquiry proceeding the charge sheeted workman denied to cross-examine the management witness. But it does not inspire confidence. It is relevant to mention that the workman is illiterate. They are ignorant about rules. But it does not mean and can never mean that due to illiteracy and ignorance delinquent workman ought to be denied opportunity of cross-examination. The enquiry commences after issuance of Charge sheet. The Enquiry Proceeding commenced on 20.30.2003 and concluded on 20.03.2003 on the same very date. The examination-in-chief of management representative and all other three witnesses and defence evidence recorded on the very date 20.03.2003. The enquiry has been conducted in very haste manner, denying all the principles of natural justice. The workman has been charge sheeted for the period of absence relating to period in the year 2002. He has not been charge sheeted for the period of absence in the year 2000 and 2001. But management representative Sri A. K. Karmakar has tendered evidence regarding absence of delinquent for the period of absence in the year 2000, 2001 and 2002. At the cost of repetition it is necessary to mention that the delinquent workman has not been charge sheeted for absence in the year 2000 and 2001. It is settled law that if workman is not chargesheeted for any misconduct then for that misconduct there can be no departmental enquiry.

13. When a departmental enquiry is conducted against a Government servant it can not be treated as casual exercise. The enquiry proceeding also can not be conducted with a closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only the justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a Government servant is treated fairly in proceeding which may culminate in imposition of punishment of dismissal from service. **The Hon'ble Apex Court in D. K. Yadav v/s J. M.A. Industries Limited, 1993 (67) FLR 111 (SC)** has held that :

*“The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of*

*natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily effecting the rights of the concerned person.”*

14. From perusal of material available on record it is manifest that the Enquiry Officer has conducted the enquiry proceeding in utter violation of principle of natural justice, non-supply of copies of documents, list of witnesses, and right of cross-examination. Several factors are required to be considered before passing order of punishment, the misconduct and gravity of charge, nature of duties, work place, right of delinquent employee in the enquiry proceeding as well as validity of enquiry proceeding etc. Failure to take into account these materials before passing order of punishment will be fatal to order of punishment. The order of dismissal is a major punishment without a valid unvitiated and proper enquiry the punishment of dismissal of any delinquent workman for absence from duty is illegal, unjustified and quite disproportion to the guilt of the delinquent workman which needs to be modified.

15. The workman has stated in Para- 10 & 11 of his affidavit that his pecuniary condition is very miserable and he intends to resume his duty to earn bread for the family members. He has been cross-examined by the learned advocate of Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited. In his cross-examination his evidence is un-rebutted. It transpires from the evidence of the delinquent workman that he was not gainfully employed anywhere during period of dismissal i.e. from 28.04.2003. He is illiterate and belongs to Schedule Cast community. His date of birth as per his Identity Card is 18.07.1965. He is near about 52 years of age at present. Considering all the factors into consideration there is no possibility to get alternate job in near future.

The Hon'ble Apex Court in **Pawan Kumar Agarwala v/s General Manager-II & Appointing Authority State Bank of India & Others, 2016 (148) FLR 865** has relied on **Deepali Gundu Surwase v/s Kranti Junior Adhyapak Mahavidyalaya and Others, (2013) 10 SCC 324** :

*“The case in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and / or the principles of natural justice or is guilty of victimizing the employee or workman, then the Court or Tribunal concerned will be fully justified in directing payment of full back wages.”*

16. It is settled law that ‘consequential benefits’ does not mean only back wages. Consequential benefits includes apart from back wages other service benefits such as promotion, fixation of seniority, increments and grant of other financial benefits admissible to the post, had he been in service.

17. In view of discussion above the action of management of Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited in dismissing Sri Rabin Bouri, Under Ground Loader from service w.e.f. 28.04.2003 is illegal and unjustified. The dismissal order of Sri Rabin Bouri, Under Ground Loader dated 28.04.2003 is hereby set-aside. The management of Amritnagar Colliery of Kunustoria Area of M/s. Eastern Coalfields Limited is directed to reinstate Sri Rabin Bouri with full back wages from the date of dismissal from 28.04.2003 till his reinstatement. It is further directed that Sri Rabin Bouri will be entitled to get consequential service benefits from date of dismissal onwards e.g. promotion, fixation of seniority, increments, etc. Sri Rabin Bouri will imposed punishment of stoppage of 2 (Two) annual increments without 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, 21 अक्टूबर, 2016

**का.आ.2177.**—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. 2/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/382/2007-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2177.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. Western Coalfields Limited and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/382/2007-IR (C-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****NO. CGIT/LC/R/2011**

Shri Md. Names Sidike Zonal General Secretary,  
Se Maya Zonal WCL,  
Branch Ward No.10,  
Gudde PO Palachore,  
Distt. Chhindwara

...Workman/Union

Versus

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

...Management

**AWARD**Passed on this 12<sup>th</sup> day of August, 2016

1. As per letter dated 9-12-2010 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-22012/382/2007-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of M/s. West Coal Fields Limited in superannuating by allegedly correction of date of birth in respect of Shri Sattan S/o Shri Bhati is justified and legal? To what relief claimant workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/7. Case of Ist party workman is that he entered in service of 2<sup>nd</sup> party in 1973. He disclosed his date of birth at the time of entry as 25-1-54. His date of birth was not correctly recorded. He was not informed about the same. He is not able to read Hindi or English, he puts thump mark. He was prematurely retired on 30-6-04 as per notice dated 11-12-03. He submitted representation regarding his date of birth. He was directed to appear before Age Determination Committee on 7-7-04 and again on 24-6-05. The Ist party raised dispute immediately after receiving notice of superannuation. The Age Determination Committee assessed his age 50-60 years. That he received letter dated 9-6-05. That as per circular dated 7-7-92, the age of the Ist party would come to 56 years as on 9-7-04 on the basis of mean point.

3. Ist party further submits that identical circumstances, employees working under 2<sup>nd</sup> party have been reinstated in service after long lapse of retirement. That he relies on bipartite settlement and I I No. 76 issued by the management. He reiterates his date of birth is 25-1-15 was prematurely retired on 13-6-04. On such ground, Ist party submits that his premature retirement is illegal. He prays for wages from the date of premature retirement with 18 % interest.

4. 2<sup>nd</sup> party filed Written Statement opposing claim of Ist party. After dispute was raised by Ist party before Conciliation Officer and failure report was submitted, Government had refused to make reference as the dispute was belatedly raised after 7 years after retirement. After Writ Petition No. 839/10 filed by Ist party, the dispute has been referred. Initially Ist party was appointed on 18-6-73. At that time, he declared his age 29 years. In 1982, form B register was introduced. The age of workman was 38 years, his date of birth was recorded 1-1-44. As per date of birth recorded in service record, Ist party was superannuated on 13-6-04. The service excerpts were served on Ist party on 22-5-87. He had not submitted any objection about his date of birth. After representation submitted by Ist party, matter was referred to Age Determination Committee for settlement of the dispute. Notice was issued to the Ist party for

appearing before ADC on 9-7-04. ADC declared his age between 55 to 60 years as per Notification dated 7-7-92, the nearest age was tallying with date of birth shown in Form B register was considered and date of birth of Ist party 1-1-44 was confirmed. On such ground, 2<sup>nd</sup> party prays for rejection of claim.

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

|                                                                                                                                                                                                      |                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| (i) Whether the action of the management of M/S West Coal Fields Limited in superannuating by allegedly correction of date of birth in respect of Shri Sattan S/o Shri Bhati is justified and legal? | In Affirmative                         |
| (ii) If not, what relief the workman is entitled to?"                                                                                                                                                | Workman is not entitled to any relief. |

### REASONS

6. The terms of reference pertains to superannuation of workman on his disputed date of birth 1-1-1944. Claim of Ist party is opposed by 2<sup>nd</sup> party denying all material contentions of workman. Workman filed affidavit supporting his contentions in statement of claim that he joined service of 2<sup>nd</sup> party on 18-6-73 as Trammer. Documents about his date of birth were not asked from him. He could not read or write Hindi and English he was served with notice dated 11-12-03 for his superannuation on 30-6-04. Accordingly to Ist party, his date of birth was recorded as 1-7-44 is incorrect. He was illegally superannuated. Matter was referred to Age Determination Committee. However report of the committee was not made available to him. He received copy of report on 16-6-07. The Age Determination Committee shown his age 55-60 years. From his evidence, Exhibit W-1 is admitted in evidence, date of birth of workman is shown 25-1-54. Ist party has not examined any witness as to who had given information about his date of birth in the office. Ist party workman in his cross-examination says he received certificate of his birth from Umri Thana in 2003. He was appointed in 1973. He had not received education in any school. Initially he was working under contractor, then he was appointed in Ambara Mine. When he was working in Ambara Mine, his age was shown 22 years. He did not tell his age by approximation. He had received notice of superannuation. He had not submitted application for correction of his date of birth. He had not submitted W-1 to management.

7. Affidavit of evidence of management's witness Umesh Kumar is supporting contentions in Written Statement that Ist party workman was appointed on 18-6-73, he declared his age 29 years when Form B Register was introduced in 1982, age of workman was recorded 38 years. Accordingly his date of birth was recorded 1-7-44. Workman was served retirement notice dated 11-12-03. Workman was superannuated on 13-6-04. From evidence of management's witness, documents M-1 to M-7 are admitted in evidence. In his cross-examination, management's witness claims ignorance whether at the time of appointment, documents were asked from workman about his date of birth. He claims ignorance on what basis, his date of birth was recorded in Form B. That after notice of retirement was served on workman, he had complained about his date of birth. The date of birth of workman is correctly shown in M-6. From evidence of management's witness Shri Gulam Hussain, Document M-9,10 w.r.t. report of Age Determination Committee are admitted in evidence. Date of birth of Ist party shown in Form B Register has been confirmed. In Documents Exhibit M-1, age of Ist party workman is recorded 29 years and date of his appointment 18-6-73. In M-2 Form B Register, his date of birth is recorded 1-7-44, on the basis his age 38 years was recorded. In service excerpts M-3, document of personal information M-8, his date of birth is recorded 1-7-44. Exhibit M-5, 6,9,10 – date of birth of workman 1-7-44 shown in Form B Register was confirmed. The document W-1 produced by workman regarding date of birth is not reliable as workman has not adduced evidence as to who had given information about his date of birth. Said document was obtained by workman in 2003. The workman was appointed in 1973, he had not submitted objection regarding his date of birth.

8. Learned counsel for Ist party Arun Patel during course of argument pointed out my attention of I.I.No.76 circular dated 7-7-92. Para-a of said circular provides- "Where age is recorded in statutory record and the Medical Board/ Age Assessment Committee decide an age range, the mid point of the age range concerned employee., (b) where there is variation of age in the various statutory records, the nearest point of the age range as recorded in Form B register will be accepted as the age of the employee concerned. Though learned counsel for Ist party emphasized that the age dispute of Ist party is covered under Clause A and mean point between age annexed by Age Determination Committee between 55 to 60 so be decided as correct age of Ist party. Above argument cannot be accepted as 2<sup>nd</sup> party has produced documents in Form B Register and service records and other documents, date of birth of Ist party is recorded 1-7-44. Therefore controversy about age of workman would be covered by Clause b of above said circular. Besides above, learned counsel for 2<sup>nd</sup> party Shri A.K.Shashi pointed out my attention to the rules under I.I.No.76 as the educational documents are to be considered and no correction of date of birth is permissible before 5 years of the retirement. From

evidence discussed on record, date of birth of workman 25-1-54 is not established therefore date of birth of workman is recorded 1-7-44 in Form B as per Clause (b) of Circular dated 7-7-92 date of birth recorded in Form B Register is legal. Claim of workman is not established. For above reasons, I recorded my finding in Point No.1 in Affirmative.

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

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ.2178.**—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. 81/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/249/2000-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2178.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. Western Coalfields Limited and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/249/2000-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

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

NO. CGIT/LC/R/81/2001

General Secretary,  
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),  
Po Chandametta,  
Distt.Chhindwara (MP)

... Workman/Union

#### Versus

General Manager,  
Nandan Washery of WCL,  
PO Damua,  
Distt. Chhindwara (MP)

... Management

#### AWARD

Passed on this 22nd day of August, 2016

1. As per letter dated 27-4-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/249/2000-IR(C-II). The dispute under reference relates to:

“Whether the action of the Chief General Manager, WCL, Kanhan Area, PO Dungaria, Distt. Chhindwara (MP) in dismissing from services of Shri Salim Khan S/o Fakruddin, General Mazdoor of Nandan Washery of WCL, Kanhan Area w.e.f. 4-10-98 is legal and justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/5. Case of Ist party workman is that he was working in Nandan Washery of WCL. Chargesheet was issued to him dated 11-7-98 alleging misconduct under Clause 26.4, 26.8 pertaining to gambling, drunkenness, fighting or riotous disorder indecent behavior at place of work at the colliery, assault, threat to assault co-worker and superiors. He submitted reply to the charges denying misconduct alleged against him. Shri V.R.Chouhan Personal Manager was appointed Enquiry Officer. Said Enquiry Officer himself filed complaint against workman to the management and Suptd. of Police, Chhindwara along with other office bearer of their Union for taking serious action against him. That Enquiry Officer was witness cannot act as a judge in his own course. Enquiry Officer did not apply his mind independently. As Enquiry Officer himself was witness to the incident, the Enquiry Report submitted by him is liable to be declared as null and void. Ist party further submits that under Clause 2,3 of standing orders. Competent Authority has been defined Notification dated 11-1-94 that Chief General Manager, WCL is not competent authority as per above said notification. Chargesheet was not issued by Competent Authority as per Clause 2.3 of standing orders. Enquiry Officer was biased, he recorded findings against workman. That pistol was found with workman. Any of the witness of management had not given such evidence. That after search, it was found that pistol was of workman. Ist party further contends that enquiry was conducted is empty formality. He filed application before Enquiry Officer on 29-9-98 for adjournment of enquiry. However enquiry was declared ex-parte on 29-9-98. He was denied reasonable opportunity for his defence violating principles of natural justice. That he was not supplied copy of Enquiry Report which is necessary as per judgment in Case of Union of India versus Mohd. Ramzam Khan reported in AIR-1991-471. The punishment of dismissal was imposed against him vide order dated 3-10-98. The order of dismissal was challenged by him by filing appeal but his appeal was not considered. On such ground, workman prays for his reinstatement with all benefits.

3. 2<sup>nd</sup> party filed Written Statement at Page 5/1 to 5/11 opposing claim of workman. 2<sup>nd</sup> party submits that Ist party workman is member of RKKMS Union. The dispute is raised by office bearer of said Union. Union cannot delegate its power. The reference is not tenable. Workman was dismissed from service on 4-10-96, the dispute is raised in the year 2001 is not tenable. 2<sup>nd</sup> party has further contented that chargesheet was issued to workman for misconduct alleged. Workman had entered bungalow of Shri A.N.Pandey General Manager in night of 10-7-98 around 1.30 AM requesting to arrange ambulance. When Shri A.N.Pandey told that ambulance was sent to Nagpur for some other patient, Ist party workman along with his 10 associates had entered the bed room where Shri Pandey was threatened to be killed. He damaged his car, and window glass. After issuing charge sheet, enquiry was conducted on various dates giving opportunity for defence to the workman. 2<sup>nd</sup> party reiterates that principles of natural justice were followed. Ist party workman had executed muscle power against his superior of under the guise of sympathy. It is denied that complaint was submitted by Shri Chouhan to District Magistrate, Chhindwara. 2<sup>nd</sup> party denies that Enquiry Officer denied opportunity for his defence to the workman. 2<sup>nd</sup> party reiterates that action taken by management is proper and legal.

4. Ist party filed rejoinder at Page 7/1 to 7/3 reiterating its contentions in statement of claim.

5. As per order dated 8-1-11, enquiry conducted against workman is found vitiated. Management was permitted to prove misconduct in Court.

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

|                                                                                                                                                                                                                                                                        |                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| (i) Whether 2 <sup>nd</sup> party management prove misconduct alleged against Ist party workman?                                                                                                                                                                       | In Negative         |
| (ii) Whether the action of the Chief General Manager, WCL, Kanhan Area, PO Dungaria, Distt. Chhindwara (MP) in dismissing from services of Shri Salim Khan S/o Fakruddin, General Mazdoor of Nandan Washery of WCL, Kanhan Area w.e.f. 4-10-98 is legal and justified? | In Negative         |
| (ii) If not, what relief the workman is entitled to?"                                                                                                                                                                                                                  | As per final order. |

#### REASONS

7. Enquiry conducted against workman is found vitiated. Management was granted permission to prove misconduct in Court. Management has filed affidavit of evidence of Shri R.B. Jha. Said witness of management in his affidavit says the incident occurred on 10-7-98. Around 2 AM, he heard loud voice. He came out of his house, Shri A.K.Mishra also came out of his house. He heard noise at Bungalow of A.N.Pandey, General Manager. His house was at

vicinity of his residence. When they rushed towards the place of incidence, some persons were found running away. When they reached close to the place of incident, they noticed a fiat car was damaged, glass of window was broken, security guard told that Shri Salim Khan and his associates had come to assault Pandey and after causing damage, they ran away from the place. The security guard also told him that Shri Salim Khan had come with Katta in his hand. He threatened to kill Mr. Pandey. After sometime, police inspector came to the place of incident. In his cross-examination, management's witness says he was acquainted with Shri Salim personally he had seen the incident. He has not mentioned in his affidavit that he had personally seen the incident. Security Guard told him that many persons ran away from place of incident.

8. The evidence of management's witness Shri R.B. Jha is hearsay. He had not personally seen Shri Salim with pistol or causing damage to the car or damaging window glass. No other witness is examined by the management despite repeated efforts were made issuing notice.

9. During course of argument, Shri A.K.Shashi submits enquiry was found vitiated as Enquiry Officer Shri U.V.Chouhan had submitted complaint that Shri A.N.Pandey has retired and shifted to London, his presence could not be secured. Shri Chanchal Prasad had died, he was security guard at Bungalow of Shri A.N.Pandey, could not be examined because of his death. Shri Abdul Hakim- other witness met with accident and unable to move. Shri Amarnath Pandey retired in July 2004. The evidence of Mr. R.B. Jha is regarding circumstances of the incident. The hearsay evidence is not admissible. On the basis of hearsay evidence, misconduct cannot be proved.

10. Workman filed affidavit of his evidence denying allegation against him. The Ist party has produced copy of judgment in Criminal Case at Exhibit W-7. All the material witnesses were examined in Criminal case considering the discrepancies in evidence of material witnesses, Ist party workman and others were acquitted.

11. Shri A.K.Shashi relies on ratio held in

Case between Union of India and others versus Mohd Rafique Ali Ahmed reported in 1999 SCC(L&S) 634. Their Lordship dealing with scope of judicial review held court cannot substitute his own view for that of disciplinary authority in matters of proved grave misconduct.

In present case, management has failed to prove alleged misconduct against workman. The punishment of dismissal against workman cannot be upheld. There is no question of substituting the view by this Tribunal in the matter of punishment. Rather as misconduct alleged against workman are not proved, punishment of dismissal cannot be sustained and deserves to be quashed therefore ratio held in above cited case cannot be applied to case at hand.

12. Reliance is placed in case of

Nand Kishore Prasad versus State of Bihar and others reported in 1978(3)SCC-366. Their Lordship considering disciplinary proceeding orders short but disclosing that there was some evidence pointing to the guilt of delinquent officer. High Court may examine record to satisfy itself that the authority acted on some evidence.

The ratio cannot be beneficially applied to case at hand.

Ist party workman cannot be denied reinstatement and discretionarily granted compensation considering his age shown in his affidavit of evidence 44 years. At present, his age may be around 46 years. Considering remaining period of service, granting compensation would result in denial of employment to him. For above reasons, in my considered view as order of dismissal of workman cannot be sustained for absence of evidence, workman deserves reinstatement with 40 % backwages. Accordingly I record my finding in Point No. 2.

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

- (1) The action of the management is not proper.
- (2) Order of dismissal of Ist party workman dated 4-10-98 is set-aside. 2<sup>nd</sup> party is directed to reinstate workman with continuity of service with 40 % back wages.

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, 21 अक्टूबर, 2016

**का.आ.2179.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 278/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22011/1/2011-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O.2179.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 278/2011) 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 21.10.2016.

[No. L-22011/1/2011-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. 278/2011**

The General Secretary,  
Food Corporation of India (Handling ) Workers Union  
8654, Arakshan Road,  
New Delhi

...Workmen

Vs.

The General Manager,  
Food Corporation of India,  
TC/3C, Vibhuti Khand,  
Gomti Nagar, Lucknow

The Area Manager,  
Food Corporation of India,  
Distt. Office: Bulandshahar,  
Uttar Pradesh

...Management

### AWARD

Brief facts giving rise to the reference are that an order No.L-22011/1/2011-IR(CM-II) dated 29.06.2011 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 action of the management of Food Corporation of India, Bulandshahar Depot to deploy workers through the contractor at Railhead, Bulandshahar and depriving the regular DPS workers is valid and justified? To what relief are the workman entitled to?”

2. Vide Corrigendum dated 18.08.2011, the terms of reference were amended as follows:

“Whether the action of the management of Food Corporation of India, Bulandshahar Depot to deploy workers through the contractor at Railhead, Bulandshahar and depriving the regular DPS workers of FCI Chandpur and Imaliya Depots (Districts Bulandshahar is valid and justified? To what relief are the workman entitled for?”

2. Statement of claim was filed by the Food Corporation of India Handling Workers' Union (in short the Union) alleging that it is a duly registered union. Food Corporation of India (in short the management) is an industry established by the Act of Parliament under Section 3 of the Food Corporation Act, 1964. At Food Corporation of India, District Office, Bulandshahar various industrial establishments, i.e. FCI FSD Chandpur and Imaliya, including Railhead under the administrative control of District Office, Food Corporation of India Bulandshahar, are performing the food handling work of procurement, storage, preservation, salvaging, weighing, standardization, transportation, loading/ unloading and distribution of food grains. Workers deployed at Chandpur and Imaliya are Direct Payment System (DPS) workers, who have been working in these depots for the last more than 12 years under the direct employer-employee relationship with the management and are discharging food handling work at Railhead Bulandshahar as and when work of loading/unloading of foodgrain is made available to them and they were being paid

Rs.50 per day as interim relief. Since the workers have been working at the Railhead Bulandshahar, it has become service condition of the said workers. District office, Bulandshahar and Chandpur have issued letters stating that the workers of Chandpur and Imaliya Depot would be deployed at the above depots to attend the specials/racks. All of a sudden, the management without holding discussion with the workers or the union, floated tender for appointment of Handling & Transport contractor at Railhead Bulandshahar without issuing any notice for change of service conditions of workers. The union, apprehending deployment of contractor at Railhead, raised an industrial dispute, followed by strike notice. During pendency of the Dispute, management appointed M/s National Transport Company, Panni Nagar and labour licence was issued by the Licencing Officer for handling transport work of Railhead Bulandshahar. This act of the management was bad in law and tantamount to total violation of Section 33 of the Industrial Disputes Act, 1947 (in short the Act). Hence, the act of the management is illegal and amounts to changing the service conditions of the DPS workers, thereby affecting the earnings of the workers. Finally, a prayer has been made to answer the reference in favour of the workman.

4. Claim was demurred by the management and various preliminary submissions were made. It was averred that the management is legally entitled to engage Handling Transport Contractors at Rail Head as it is not an establishment of the management and are also used by other users for receipt, issue, transport of their respective goods through railways. Hence, Railheads are not to be considered for abolition of contract labour system and introduction of direct payment system by the management. Railhead Bulandshahar is under the administrative control of Indian Railways. Loading and unloading of foodgrain for FCI at Railhead Bulandshahar cannot be construed as extension of work place of FCI Depot. Abolition of contract labour system is confined to depots of FCI only, which fact has been deliberately concealed by the workmen in their statement of claim.

5. An objection was raised by CAG with regard to extra expenditure incurred by the management due to non-appointment of HTC contractor at Railhead Bulandshahar. Hence, General Manager, being the competent authority, floated tender for appointment of HTC at Railhead Bulandshahar. It is perfectly in accordance with the policy formulated by the management and as such is not in violation or breach of any circular abolishing engagement of contract labour at Depots of the management. In view of this, FCI is at liberty to make their own arrangement for transporting the goods to the respective depots. HTC is being appointed at various Railheads in Uttar Pradesh for handling goods.

6. It is pertinent to mention here that writ petitions were filed before the High Court at Gauhati, challenging appointment of HTCs at Railheads by the union. The said writ petition has been dismissed by the Hon'ble High Court of Gauhati. The union had sought quashing of the award of contract of handling foodgrains packets/bags in the Railway siding at Jorhaat pursuant to the tenders floated by the management. The union has indulged in forum shopping by re-agitating the same issue through the present petition.

7. Various preliminary objections have been taken by the management, inter alia of the claim being misconceived, there being no alteration in the service conditions of the workmen, claim being not signed and verified by a competent and authorized person. Management has denied the various averments made in the statement of claim and prayed that the claim may be dismissed.

8. On perusal of pleadings of the parties, my learned predecessor, vide order dated 18.11.2011, was of the opinion that no other issue, than those referred for adjudication is made out.

9. Claimant, in support of their pleadings, examined Shri Hari Kant Sharma as WW1 and his affidavit is Ex.WW1/A, who was cross examined at length on almost every point. However, after part cross examination, it was brought to the notice of the Tribunal that Shri Sharma ceased to be President of FCI Handling Workers Union and wanted to examine Shri Srinath Singh, Joint Secretary. However, the Union filed affidavit of Shri Madan Singh, who failed to put in his appearance despite giving various opportunities. Thus, it was obvious that Shri Madan Singh was not interested in deposing in support of the statement of claim. Shri Deepak Sharma, A/R for the claimant union made a statement in court that the claimant union is no more interested in adjudication of the matter on merits and he would like to withdraw the present petition/reference.

10. In view of the fact that the claimant union is no more interested in pursuing the present case on merits, the Tribunal is left with no alternative but to pass a 'No dispute/Claim' award. Contents of statement dated 28.09.2016 of Shri Deepak Sharma, A/R for the claimant union, will form an integral part of the award. 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.

October 7, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2016

**का.आ. 2180.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट वाद संख्या 4/2015 एवं 7/2015 (संदर्भ सं. 138/97 के तहत) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2016 को प्राप्त हुआ था।

[सं. एल-22012/170/1996-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st October, 2016

**S.O. 2180.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Complaing No. 4/2015 & 7/2015 (Arising out of Ref. No. 138/97) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of FCI and their workmen, received by the Central Government on 21.10.2016.

[No. L-22012/170/1996-IR (CM-II)]

RAJENDER SINGH, Section Officer

# ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A COMPLAINT U/S 33(A) OF I.D. ACT, 1947

### COMPLAINT NO. 4 of 2015

(Arising out of Ref.No. 138/97)

Ministry Order No. 22012/170/96-IR(C-II)

1. Lalan Prasad Singh , Ex-AG I (D), FCI, FSD, Dhanbad
2. Shiv Shankar Singh, AG III(D) FCI, FSD, Dhanbad ...Complainants

**Vrs.**

Executive Director, East Zone  
Food Corporation of India  
10-A, Middleton Row, Kolkata – 71

...Opposite party

### COMPLAINT NO. 7 of 2015

1. S.N.Singh, Ex- Manager (D), FCI,FSD,Dhanbad  
Flat No. D/1 Ushakunj near SBI Chiragora  
PO + Distt. Dhanbad
2. Jiten Chandra Modak FCI,FSD Dhanbad  
C/o Sri S.N.Singh,Flat No. D/1 Ushakunj  
Near SBI Chiraghora  
PO + Distt. Dhanbad

**Vrs**

Executive Director, East Zone  
Food Corporation of India  
10-A, Middleton Row  
Kolkata – 71

...Opposite party

**Present :** Sri Ranjan Kumar Saran, Presiding Officer

### Appearances :

For complainant : Shri Vijayendra Kumar, Authorised representative

For opposite party : Shri P.P.Goswami, AGM (Vig), RO, FCI, Jharkhand

State : Jharkhand

Industry : Food

Dated 26/09/2016

**AWARD**

1. Instant complaint is filed by the complainant against an order of penalty dated 31.12.2014 passed by the Opp.Party where under the penalty of reduction of pay to the initial pay in the time scale of pay of AG1(D) ( from 29650 to 11100) in respect of complainant No.1 and reduction of 10 stages pay with cumulative effect without any further increment till the retirement in respect of complainant No .2 of Complaint Case No.4 of 2015 and reduction of 8 increment in respect of complainant No. 1 and to initial pay of AG-2 (D) in respect of complainant No. 2 of complaint case No. 7 of 2015.
2. According to the complainants a reference No 138/97 was pending before this Tribunal in since 1997 in respect of all the workmen of FCI Bihar Region and FCI Jharkhand was also in Bihar region during that time as such the complainant is concerned and connected to this dispute and reduction of pay is certainly a change in their service condition and as such this complaint is filed under Sec. 33 A for violation of 33 (1) of the ID Act 1947 as Opp.Party has not taken any permission before issuing the order of penalty from this Tribunal which was mandatory on the part of the Opp.Party.
3. A charge sheet was issued by the Opp. Party under regulation 58 of the FCI staff regulation 1971 and an inquiry was Set-up to enquire the allegation against the complainants & others and on the basis of the said inquiry report the said penalty under challenge which was passed by the Opp. Party.
4. It is submitted by the Complainant, that the procedure of inquiry though technically accepted but it is said that finding of the IO is beyond the FCI provisions and against the records as such perverse. Technically the procedure of inquiry was admitted as such fairness of enquiry was not challenged but the complainant has a right to raise the point of perversity in the IO report and quantum of punishment.
5. According to the complainant the charge sheet is about storage loss not any misappropriation, defalcation or theft. Storage loss is the natural phenomena in FCI. Even 50 or 100 Kg. rice or wheat is kept in own house even in sealed container and it is weighted after some time there will be variation in weight and in FCI, the stock is kept in a go down and in open space and pilferage is going on, operational loss during loading, unloading and handling of stock are natural phenomena and the same shall not be a basis of charge sheet.
6. There are several reasons of variation of weight i.e. the stock is unloaded from wagon and during unloading only 10 % stock is weighed and weights of entire 100 % stock are taken in record. 10 % means that 90% stock are kept in the go down un weighed and its weight is also recorded as per estimation at par with 10 % and this is the main and primary reason of variation in weight and occurrence of storage loss.
7. Beside the above, variation in moisture content is also a major factor of storage loss. Dhanbad is a hot place and after receipt of food grain there is a loss of moisture and for 1% MOISTURE LOSS 0.7% loss takes place and the same is permissible as per policy of FCI. Period of storage is also a factor and certain % is also allowed by the FCI against storage loss. Technical treatment is also a factor apart from rats and bird problem. Condition of go down is also not proper as per norms but these vital facts are not considered either by the inquiry officer or by the OP while passing the order of penalty. It was further submitted that the above storage loss was regularised and written off from the records of FCI after considering the reason given by the complainants as such no action was required to be taken against the complainant.
8. To regulate the storage loss a detailed circular dated 12.12.2012 Ext-D-1 was issued by the FCI Hqrs. and in other circular dated 10.11.2006 the authorities are specified to write off / regularise the storage losses. The storage losses/operational losses and its reason are also given in storage manual chapter 13.3.1 & 13.3. Ext-2/1 and there is clear provision that if in charge sheet allegation of theft is not mentioned then no action is required for any storage loss. The concerned District Manager has to fix the quantum of storage loss for each & every depot but the same was not done.
9. Opp. party while framing the charge has not taken into consideration of these provisions and issued the charge sheet in mechanical manner in violation of the policy as stated above. The charge sheet is vague and this point was raised before the IO and he was requested to take into consideration the mandatory provision regarding occurrence of storage loss, which is natural in nature.
10. The IO has failed to consider the said provision and submitted his report to the disciplinary authority as such his report is fully against the mandatory provision of FCI and perverse. The IO has simply stated in the report that it is up to the authority to consider these things, which is evident from his report and it goes to show that he has not investigated the cases /reason and submitted the report as per charge sheet and held that losses are proved and on this report the disciplinary authority awarded the penalty, which is also illegal.

11. From the report itself it is apparent that the above points were raised by the CO but the IO has not considered and submitted his report which is against the provision of FCI. It was his duty to go into the details of the causes of storage loss and IO has failed to do the same which proves that he has not acted as an IO but acted like a prosecutor to prove the charge anyhow and, therefore, it was prayed to pass an award in favour of the complainant.

12. That the management Opp.Party has filed a series of petition including Written Statement, and raised preliminary issues but it was decided to dispose of the said petition at time of final hearing of the complaint petition. In their Written Statement, the Opp.Party has also stated that the instant complainant petition is not maintainable and the workmen who retired during the pendency of reference, cannot be treated as workmen. They have also stated that punishment was awarded after holding inquiry as per FCI Staff Regulation and as such this Tribunal has no jurisdiction to interfere with the disciplinary matter and accordingly prayed for dismissal of the complainant petition.

13. In this case technically, fairness of inquiry was accepted by the complainant after reserving his right to raise the point of perversity in the report as well as quantum of punishment as such in this case evidence of the parties was not required. But on prayer one witness was examined by the Opp.Party and cross examined by the complainant and the case was closed and fixed for argument. Heard argument of both side.

14. That before entering into the merit of the case it is desirable to decide the objection petition filed by the Opp.Party. In their objection petition the Opp.Party has stated that punishment was awarded against complainant on 31.12.2014 as such this complaint petition is not maintainable. This admission of the Opp.Party is sufficient to prove that the contravention of Sec 33 took place on 31.12.2014 was during the pendency of the reference No 138 of 1997 and as such petition under Sec 33 A for violation under Sec 33(I) is maintainable. It is also an admitted fact that OTA to the workman is linked with the Basic pay of the employees and in this case basic pay was reduced to initial pay scale and 10 and 8 stages below then the entitlement of the complainants to get OTA will be badly affected as such this is an alteration in service condition and Sec 33(1) is applicable in this case. Other objection that the complainant is not the workmen is also rejected in view of Hon'ble Delhi High Court judgement passed on 5.8.2011 in between FCI versus Govt. of India in W.P (C) 2084 of 1988 in which it is specifically held that even Manager is workmen under ID Act and admittedly all the complainant are clerk except one who is Manager, therefore, it is held that the complainant are the workmen of the Opp.Party and the instant complaint petition is quite maintainable in the eye of law.

15. In this case both parties have filed their documents which were marked exhibits on the admission of the parties. The documents filed on behalf of the Opp.Party are Marked exhibits M-1 to M-5 and the documents filed on behalf of the complainants are W-1 to W-5. Ext. M-1 is memorandum which was issued against the complainant on the basis of which the instant punishment is awarded. Ext- M-2 is the inquiry report, M-3 is punishment order, and M-4 & M-5 are the copy of regulation 67 to 73 of FCI staff regulation and about disciplinary authority.

16. The document of the workmen W-1 is a circular of FCI dated 12.12.2012 about occurrence & regularisation of storage loss. W-2 is delegation of power to regularise and write off of storage loss. Ext- W-2/1 is provision of FCI manual chapter 13 regarding storage loss and Ext- W-3 & W-4 are deposition of prosecution witness taken during inquiry. One witness who was presenting officer was examined by the OP who has said in her written deposition that complainant are not concerned with ref no 138/97 and the action of the management against the Opp.Party is justified. In her cross examination she said that the charge sheet is of storage loss and storage loss takes place due to infestation, difference in moisture content and also there are other causes. She has further said that loss is calculated which can be justified and un-justified, and long period storage creates storage loss. She has also admitted the content of Ext- W-1 to W-4. She has further said that the document on the basis of which she presented the case are not before the Tribunal.

17. During argument the Opp.Party has raised a point that a remedy to file appeal was available to the complainant but without availing the remedy they have approached the Tribunal as such this complaint petition may not be entertained. But they have forgotten that the Industrial Dispute Act is a special legislation to resolve the dispute between employer and employee and as per Sec.33 for any contravention there is express provision to file a complaint under Sec.33 A and there is no bar in the ID act that complaint be filed after filing appeal as such the said argument is not tenable. Further they have argued that if the inquiry is held fair and proper then Tribunal has got no power to alter the punishment is also not tenable as the complainant has accepted the procedure of inquiry only after reserving their right to raise the perversity in the IO report with a view to avoid delay in disposal of case as such liberty is available to the complainant to raise the point of perversity as well as quantum of punishment.

18. On perusal of documents, evidence, pleadings and argument of the parties advanced in this case it is crystal clear that storage loss is accruing in every go down in FCI and calculation of storage loss has to be done stack wise and month wise and as per circular dated 12.12.2012 Ex- W-1, its calculation has to be made by the Opp.Party after due consideration of period of storage, difference in moisture content, lack of technical treatment, rat and bird menace as well as condition of go down, recording of hypothetical weight of 90% stock is also an important factor and thereafter it has to be divided into two parts i.e. justified loss and unjustified loss and if the unjustified losses are beyond the

delegation of power of the authority to regularise and in the charge sheet if theft and misappropriation is alleged then only action is required to be taken against the employee of the corporation. The above provision is thoroughly mentioned in Ext- W-1, W-2 and storage manual Ext.2/1 and the authority of the corporation is bound to act as per the said provision but it is surprising that in memorandum Ext-M-1 these mandatory factors were not taken into consideration and the charge sheet M-1, was issued in violation of the aforesaid provision. In memorandum Ex- M-1 there is no calculation of storage loss month wise, stack wise and period of storage and difference in moisture content as well justified and unjustified losses. There is also no allegation of theft and misappropriation against the complainant and the said memorandum is completely vague. The entire losses of the entire period of a particular shed is shown in consolidated manner without taking into account all the mandatory factors as said above and as such the said memorandum Ex- M-1 is illegal and unjustified.

19. It was also submitted by the complainant that the report of the Inquiry Officer is perverse and he has also not considered the aforesaid mandatory provision despite repeated prayer of the defence and submitted his report in mechanical manner which is against the evidence of the witness examined in the domestic inquiry and no reasonable person can arrive on such conclusion as has been arrived by the IO as such the said report Ex- M-2 is also perverse and the punishment based on the vague charge sheet Ex- M-1 and perverse report is also illegal and unjustified. The complainant has specifically pointed out the evidence of PWs adduced during domestic inquiry.

20. On the perusal of the evidence adduced during domestic inquiry, I find that witnesses who were examined during domestic inquiry before the inquiry officer has admitted that at the time of arrival of stock in go down by rail only 10 % stocks are weighed and weight of 90 % stock has been recorded at par with the weight of 10 % stock and at the time of issue of stock to state govt. 100 % weight is taken and thus not correct arrival weight can be ascertained but employees working in the depot are compelled to record weight of 90% unweight stock at par with 10 % of the weighed stock and at the time of issue if lessor weight is found they are being charged for storage loss. Witness has also confirmed that storage loss may be increased due to variation of weight in 10 % and 100 % stock. Witness has also confirmed that Dhanbad is hot place and in summer season the storage loss are increased at high rate. They have also said that analysis of storage loss has to be done as per circular dated 12.12.12 before issue of the charge sheet i.e. M-1. PW-6 during inquiry has confirmed Exhibit –D-11 by which the general manager (S&C), Zonal office Kolkata has written to GM Jharkhand about the instant case that “ ***in this regard it is observed that your office is merely indicated general % of storage loss in respect of 100 % without analysing the same with reference to Hqr circular dated 12.12.2012.. It would be appreciated that without such analysis with reference of acceptable and non-acceptable portion of the loss the action remains incomplete***”.

21. This witness has also fairly admitted that i) timely qc treatment ii) rate & bird problem (iii) difference in moisture content (iv) period of storage loss (v) operational losses during loading & unloading (vi) variation of weight due to 10% and 100 % are main factors of the storage loss. PW -3 has said that % of moisture at the time of receipt is more than the % of moisture at the time of issue. As per Ex- W-1 for 1 % moisture loss there will be a storage loss of 700 Gr per quintal of rice beside further losses due to period of storage but the IO has not taken into consideration those facts and not given any reliance to the above vital deposition of the PWs during the inquiry and has simply observed at last page of his report that aforesaid facts may be considered by the disciplinary authority while taking decision in his report. The said observation is reproduced as under-.

***“Two vital things were discussed during the course of inquiry (1) mode of weighment at Dhanbad and (2) analysis of loses as per circular dted 12.12.2012. It is correct that Dhanbad is served with own siding where stocks are received on 10 % weighment and issued on 100 %. This declared on estimated rate of 10 % weighment which may not be correct all the times. It may not be denied that all the times TL is correct. Some times TL arrived at estimated weight causes effect on SL also but this may not accumulate so much what predicted by all the CO. I hope that competent authority while deciding this DE, will take this aspect into consideration as well as analysis of the losses as per circular dated. 12.12.2012.”***

22. That to inquire the issue of storage loss was the duty of the IO but he has failed to discharge his duty for which he was appointed by the disciplinary authority and also not considered the circular dated 12.12.2012, the provision of the storage manual and the instruction of zonal office to analyse the loses as per circular dated 12.12.2012 (Ex- W-1) as well as the evidence of the PWs as discussed above and if the said provisions, circular and evidence was considered by the IO in true spirit, then the result would have been reverse.. In short no reasonable person may reach to the conclusion as has been reached by the IO; therefore, the report is perverse. Despite the observation made in the report disciplinary authority has also failed to analyse the losses as per circular dated 12.12.2012 and awarded the penalty in mechanical manner based on the said perverse inquiry report EX- M-2 and vague charge sheet Ex- M-1 and the same is shockingly disproportionate. From the perusal of the punishment order it is apparent that in respect of three complainant the punishment order is given retrospective effect. It is also not legal as no retrospective effect should be given to any statutory order so as to impair or take away an existing right and privilege of an employee.

23. It is necessary to observe that the procedure of recording arrival weight of the food grain in FCI is quite defective. FCI is handing over the stock to its employees in the depot only after 10 % weighment of stock and they are compelled to record weight of rest 90 % stock at par with 10 % stock and the time of issue 100 % weight is being done and if any difference is found then they are being charge sheeted for storage loss or shortages. It is made clear that until and unless the stock is handed over to them after 100 % weight they cannot be held responsible for any kind of variation in weight or storage loss. There is clear cut unfair labour practice on the part of management and the employee are being victimised on this score which should not be expected from the part of an employer like FCI.

24. From the discussion made above it is held that the memorandum Ex- M-1 is vague and drafted in violation in circular date 12.12.2012 and provision of FCI storage manual, therefore, the same is illegal and unjustified and initiation of inquiry on such vague memorandum was a nullity. Further the I O has also failed to discharge his duty and also not considered the aforesaid provisions and evidence of PW s during inquiry as discussed above, therefore, his report M-2 is perverse and accordingly the punishment against complainant of both the cases Ext. M-3 are also held illegal and unjustified and are set aside and their pay are restored ante the date of punishment. The Opp.Party is directed to implement the award within one month from the date of publication of award in Gazette of India.

This is my award.

R. K. SARAN, Presiding Officer