

सत्यमेव जयते

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सं. 25]	नई दिल्ली, जून 24—जून 30, 2018, शनिवार/ आषाढ़ 3—आषाढ़ 9, 1940
No. 25]	NEW DELHI, JUNE 24—JUNE 30, 2018, SATURDAY/ ASADHA 3—ASADHA 9, 1940

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

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

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

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)
नई दिल्ली, 4 जून, 2018

का.आ. 987.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उपधारा (4) के साथ पठित उपधारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री महेश कुमार जैन (जन्म तिथि: 5.5.1961), प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी, आईडीबीआई बैंक को उनके पदभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक के डिप्टी-गवर्नर के पद पर नियुक्त करती है।

[फा. सं. 1/6/2013-बीओ-।]

एस. आर. मेहर, उप सचिव

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

New Delhi, the 4th June, 2018

S.O. 987.—In exercise of the powers conferred by clause (a) of sub-section (1) read with sub-section (4) of section 8 of The Reserve Bank of India Act, 1934, the Central Government hereby appoints Shri Mahesh Kumar Jain (Date of Birth: 5.5.1961), MD & CEO, IDBI Bank as Deputy Governor, Reserve Bank of India for a term of three years from the date of assumption of charge or until further orders, whichever is earlier.

[F. No. 1/6/2013-BO-I]

S. R. MEHAR, Dy. Secy.

शुद्धि-पत्र

नई दिल्ली, 4 जून, 2018

का.आ. 988.—भारत सरकार, वित्त मंत्रालय, वित्तीय सेवाएं विभाग की 05 अप्रैल, 2018 की अधिसूचना संख्या का. आ. 665, जो भारत के राजपत्र भाग-II, खण्ड 3, उप-खंड (ii) में प्रकाशित हुई थी, की तालिका के स्तंभ (2) में 'देबाशिश पांडा' के स्थान पर 'देबाशीष पण्डा' पढ़ा जाए।

[फा.सं. 6/3/2012-बीओ-1]

ज्ञानतोष राय, अवर सचिव

CORRIGENDUM

New Delhi, the 4th June, 2018

S.O. 988.—In the notification of the Government of India in the Ministry of Finance, Department of Financial Services, number S.O.655, dated the 5th of April 2018, published in part II, sub-section (ii) of section (3) of the Gazette of India, in column (2) of the table, for the words "Shri Debashish Panda", read "Shri Debasish Panda".

[F. No. 6/3/2012-BO-I]

JNANATOSH ROY, Under Secy.

कृषि एवं किसान कल्याण मंत्रालय**(कृषि अनुसंधान एवं शिक्षा विभाग)**

नई दिल्ली, 18 जून, 2018

का.आ. 989.—केन्द्रीय सरकार, कृषि एवं किसान कल्याण मंत्रालय कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली 1976 के नियम 10 के उपनियम (4) के अनुसरण में भा.कृ.अ.प.-राष्ट्रीय पादप अनुवांशिक संसाधन ब्यूरो, क्षेत्रीय कार्यालय, काजरी परिसर, जोधपुर, राजस्थान को, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है।

[फा. सं. 13-10/2009-हिंदी/165-98]

राजेश कुमार, अवर सचिव

MINISTRY OF AGRICULTURE AND FARMER WELFARE**(Department of Agricultural Research and Education)**

New Delhi, the 18th June, 2018

S.O. 989.—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, Ministry of Agriculture & Farmer Welfare, Department of Agricultural

Research & Education hereby notifies the ICAR- Regional Office of National Bureau of Plant Genetic Resources, CAZRI Complex, Jodhpur, Rajasthan where more than 80% of staff have acquired the working knowledge of Hindi.

[F.No. 13-10/2009-Hindi/165-98]

RAJESH KUMAR, Under Secy.

नई दिल्ली, 25 जून, 2018

का.आ. 990.—केन्द्रीय सरकार, कृषि सहकारिता एवं किसान कल्याण मंत्रालय कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली 1976 के नियम 10 के उपनियम (4) के अनुसरण में भा0कृ0अ0प0-भारतीय चारागाह एवं चारा अनुसंधान संसाधन, ग्वालियर रोड झांसी के पश्चिमी क्षेत्रीय अनुसंधान केन्द्र, अविकानगर (राजस्थान) को, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है।

[फा. सं. 13-10/2009-हिंदी/202-36]

राजेश कुमार, अवर सचिव

New Delhi, the 25th June, 2018

S.O. 990.—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, Ministry of Agriculture, Cooperation & Farmer Welfare, Department of Agricultural Research & Education hereby notifies the ICAR-Indian Grassland and Fodder Research Institute, Gwalior Road Jhansi, Western Region Research Centre, Avidknagar, Rajasthan where more than 80% of staff have acquired the working knowledge of Hindi.

[F. No. 13-10/2009-Hindi/202-36]

RAJESH KUMAR, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(खाद्य और सार्वजनिक वितरण विभाग)

नई दिल्ली, 21 जून, 2018

का.आ. 991.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (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 हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को राजपत्र में अधिसूचित करती है :-

1. केन्द्रीय भंडारण निगम,
क्षेत्रीय कार्यालय, वेयरहाऊसिंग कॉम्प्लेक्स,
रावाभाटा, डाकघर-बीरगांव
रायपुर-493321

[सं. ई-11011/1/2008-हिंदी]

कमल दत्ता, संयुक्त सचिव

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Food and Public Distribution)

New Delhi, the 21st June, 2018

S.O. 991.—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 office under the administrative control of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution), whereof more than 80% of staff have acquired the working knowledge of Hindi :

1. Central Warehousing Corporation,
Regional Office, Warehousing Complex,
Rawabhata, P.O. Birgaon
Raipur-493321

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

KAMAL DATTA, Jt. Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 16 अक्टूबर, 2012

का.आ. 992.—केन्द्रीय सरकार भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उप- धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय आयुर्विज्ञान परिषद से परामर्श करने के बाद, एतद्वारा विश्वविद्यालय के नामावली में परिवर्तन के कारण उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात्:-

- क) उक्त प्रथम अनुसूची में "बिहार विश्वविद्यालय" और "आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार" से सम्बंधित प्रविष्टियों को जोड़ा जायगा और "आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार" के सामने शीर्षक 'मान्यताप्राप्त चिकित्सा अर्हता' (इसके बाद कॉलम (2) के रूप में संदर्भित) के अन्तर्गत अंतिम प्रविष्टि और उससे सम्बंधित प्रविष्टि के बाद शीर्षक 'पंजीकरण के लिए संपेक्षण' (इसके बाद कॉलम (3) के रूप में संदर्भित) के अंतर्गत निम्नलिखित अंतःस्थापित किया जायगा, नामतः

2	3
"बैचलर ऑफ़ मेडिसिन और बैचलर ऑफ़ सर्जरी"	एम.बी.बी. एस. (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"एनेस्थेशिया में डिप्लोमा"	डी ए (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"बाल स्वास्थ्य में डिप्लोमा"	डी सी एच (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"प्रसूति एवं स्त्री रोग में डिप्लोमा"	डी जी ओ (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार

	द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"अस्थि रोग विज्ञान में डिप्लोमा"	डी ऑर्थो (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"चिकित्सा विकीरण निदान में डिप्लोमा"	डी एम आर डी (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (संवेदना ह्रास विज्ञान)"	एम डी (संवेदना ह्रास विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (जैव रसायन)"	एम डी (जैव रसायन) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (चर्म रोग ज्ञान, रतिज रोग विज्ञान एवं कुछ रोग)"	एम डी (डी वी एल) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (फॉरेंसिक मेडिसिन/ फॉरेंसिक मेडिसिन एवं विष विज्ञान)"	एम डी (एफ एम/ एफ एम एवं टी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (जनरल मेडिसिन)"	एम डी (जनरल मेडिसिन) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना

	मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो।
"डॉक्टर ऑफ़ मेडिसिन (माईक्रोबायोलॉजी)"	एम डी (माईक्रोबायोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो।)
"डॉक्टर ऑफ़ मेडिसिन (बाल चिकित्सा)"	एम डी (बाल चिकित्सा) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो।)
"डॉक्टर ऑफ़ मेडिसिन (पैथोलॉजी)"	एम डी (पैथोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो।)
"डॉक्टर ऑफ़ मेडिसिन (फार्माकोलॉजी)"	एम डी (फार्माकोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो।)
"डॉक्टर ऑफ़ मेडिसिन (भौतिक चिकित्सा एवं पुनर्वास)"	एम डी (पी एम आर) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो।)
"डॉक्टर ऑफ़ मेडिसिन (फिजियोलॉजी)"	एम डी (फिजियोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो।)

"डॉक्टर ऑफ़ मेडिसिन (मनोचिकित्सा)"	एम डी (मनोचिकित्सा) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (विकिरण निदान/विकिरण)"	एम डी (आर डी/ विकिरण) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (रेडियोथैरेपी)"	एम डी (रेडियोथैरेपी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (समाजिक एवं निवारक चिकित्सा/ सामुदायिक चिकित्सा)"	एम डी (एस पी एम / सामुदायिक चिकित्सा) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन/मास्टर ऑफ़ सर्जरी (एनाटॉमी)"	एम डी/एम एस (एनाटॉमी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन/मास्टर ऑफ़ सर्जरी (प्रसूति एवं स्त्री रोग)"	एम डी/एम एस (ओ बी जी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन/मास्टर ऑफ़ सर्जरी (नेत्र रोग विज्ञान)"	एम डी/एम एस (नेत्र रोग विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।

	द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ़ सर्जरी (ऑटो राईनो लैरिंगोलोजी)"	एम एस (ई एन टी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ़ सर्जरी (जनरल सर्जरी)"	एम एस (जनरल सर्जरी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ़ सर्जरी (अस्थि रोग विज्ञान)"	एम एस (अस्थि रोग विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पटना मेडिकल कॉलेज अस्पताल पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"बैचलर ऑफ़ मेडिसिन और बैचलर ऑफ़ सर्जरी"	एम.बी.बी.एस. (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (संज्ञाहरण विज्ञान)"	एम डी (संज्ञाहरण विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (बायोकेमिस्ट्री)"	एम डी (बायोकेमिस्ट्री) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (चर्म रोग विज्ञान, यौन रोग विज्ञान एवं कुष्ठ रोग)"	एम डी (डीवीएल) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के

	सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (फॉरेंसिक चिकित्सा/फॉरेंसिक चिकित्सा एवं टोकसीलोजी)"	एम डी (एफ एम/एफ एम एवं टी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (जनरल मेडिसिन)"	एम डी (जनरल मेडिसिन) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (माइक्रोबायोलॉजी)"	एम डी (माइक्रोबायोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों में सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (बाल रोग विज्ञान)"	एम डी (बाल रोग विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (फार्माकोलॉजी)"	एम डी (फार्माकोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (फिजीओलोजी)"	एम डी (फिजीओलोजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (समाजिक एवं निवारक चिकित्सा/ सामुदायिक चिकित्सा)"	एम डी (एस पी एम / सामुदायिक चिकित्सा) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन/मास्टर ऑफ़ सर्जरी (एनाटॉमी)"	एम डी/एम एस (एनाटॉमी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा

	मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन/मास्टर ऑफ सर्जरी (प्रसूति एवं स्त्री रोग)"	एम डी/एम एस (ओ बी जी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ सर्जरी (ऑटो राईनो लैरिंगोलोजी)"	एम एस (ई एन टी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ सर्जरी (जनरल सर्जरी)"	एम एस (जनरल सर्जरी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ सर्जरी (अस्थि रोग विज्ञान)"	एम एस (अस्थि रोग विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नालंदा मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"बैचलर ऑफ मेडिसिन और बैचलर ऑफ सर्जरी"	एम.बी.बी. एस. (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह ए. एन. मगध मेडिकल कॉलेज, पटना में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"बैचलर ऑफ मेडिसिन और बैचलर ऑफ सर्जरी"	एम.बी.बी. एस. (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह जवाहर लाल मेडिकल कॉलेज, भागलपुर में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"बैचलर ऑफ मेडिसिन और बैचलर ऑफ सर्जरी"	एम.बी.बी. एस. (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।

	द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"अस्थि रोग विज्ञान में डिप्लोमा"	डी ऑर्थो (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (संज्ञाहरण विज्ञान)"	एम डी (संज्ञाहरण विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (फॉरेंसिक चिकित्सा/फॉरेंसिक चिकित्सा एवं टोकसीलोजी)"	एम डी (एफ एम/एफ एम एवं टी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (जनरल मेडिसिन)"	एम डी (जनरल मेडिसिन) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (माइक्रोबायोलॉजी)"	एम डी (माइक्रोबायोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (बाल रोग विज्ञान)"	एम डी (बाल रोग विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन (पैथोलॉजी)"	एम डी (पैथोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।

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"डॉक्टर ऑफ़ मेडिसिन (फार्माकोलॉजी)"	एम डी (फार्माकोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (फिजीओलोजी)"	एम डी (फिजीओलोजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (मनोचिकित्सा)"	एम डी (मनोचिकित्सा) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (रेडियो निदान/रेडियोलोजी)"	एम डी (आरडी/ रेडियोलोजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन (सामाजिक एवं निवारक चिकित्सा/ सामुदायिक चिकित्सा)"	एम डी (एस पी एम / सामुदायिक चिकित्सा) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ़ मेडिसिन/मास्टर ऑफ़ सर्जरी (एनाटॉमी)"	एम डी/एम एस (एनाटॉमी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।

"डॉक्टर ऑफ मेडिसिन/मास्टर ऑफ सर्जरी (प्रसूति एवं स्त्री रोग)"	एम डी/एम एस (ओ बी जी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसिन/मास्टर ऑफ सर्जरी (नेत्र रोग विज्ञान)"	एम डी/एम एस (नेत्र रोग विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ सर्जरी (ऑटो राईनो लैरिंगोलोजी)"	एम एस (ई एन टी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ सर्जरी (जनरल सर्जरी)"	एम एस (जनरल सर्जरी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ सर्जरी (अस्थि रोग विज्ञान)"	एम एस (अस्थि रोग विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह दरभंगा मेडिकल कॉलेज, लहरियासराय में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।
"बैचलर ऑफ मेडिसिन और बैचलर ऑफ सर्जरी"	एम.बी.बी. एस. (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह श्री कृष्ण मेडिकल कॉलेज, मुजफ्फरपुर में प्रशिक्षित किए जा रहे विद्यार्थियों के सम्बन्ध में आर्यभट्ट नॉलेज विश्वविद्यालय, बिहार द्वारा दिनांक 6.9.2011 को अथवा उसके पश्चात प्रदान की गई हो)।

[सं. यू-12012/59/2012-एमई(पी-II)]

अनिता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 16th October, 2012

S.O. 992.—In exercise of the powers conferred by sub-section(2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:-

(a) In the said First Schedule before “**Bihar University, Bihar**” and entries thereto “Aryabhatta Knowledge University, Bihar” shall be added and against “Aryabhatta Knowledge University, Bihar” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely:-

(2)	(3)
“Bachelor of Medicine and Bachelor of Surgery”	MBBS (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Diploma in Anaesthesia”	DA (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Diploma in Child Health”	DCH (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Diploma in Obstetrics & Gynaecology”	DGO (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Diploma in Orthopaedics”	D.Ortho. (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Diploma in Medical Radio Diagnosis”	DMRD (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine (Anaesthesiology)”	MD(Anaesthesiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine (Biochemistry)”	MD(Biochemistry) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar

	in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine (Dermatology, Venerology & Leprosy)”	MD(DVL) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine (Forensic Medicine / Forensic Medicine & Toxicology)”	MD(FM/FM&T) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine (General Medicine)”	MD(General Medicine) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine (Microbiology)”	MD(Microbiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine (Paediatrics)”	MD(Paediatrics) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine(Pathology)”	MD(Pathology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine(Pharmacology)”	MD(Pharmacology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine(Physical Medicine & Rehabilitation)”	MD(PMR) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine(Physiology)”	MD(Physiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine(Psychiatry)”	MD(Psychiatry) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar

	in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine(Radio Diagnosis /Radiology)”	MD(Radio Diagnosis/ Radiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine(Radiotherapy)”	MD(Radiotherapy) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine(Social & Preventive Medicine/ Community Medicine)”	MD(SPM/Community Medicine) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine/Master of Surgery(Anatomy)”	MD/MS(Anatomy) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine/Master of Surgery(Obstetrics & Gynaecology)”	MD/MS(OBG) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Doctor of Medicine/ Master of Surgery(Ophthalmology)”	MD/ MS (Ophthalmology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Master of Surgery(Oto-Rhino-Laryngology)”	MS(ENT) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Master of Surgery(General Surgery)”	MS(General Surgery) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Master of Surgery(Orthopaedics)”	MS(Orthopaedics) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Patna Medical College Hospital, Patna on or after 6.9.2011.)
“Bachelor of Medicine and Bachelor of Surgery”	MBBS (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar

	in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine(Anaesthesiology)”	MD(Anaesthesiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine(Biochemistry)”	MD(Biochemistry) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine(Dermatology, Venerology & Leprosy)”	MD(DVL) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine(Forensic Medicine/Forensic Medicine & Toxicology)”	MD(FM/FM&T) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine(General Medicine)”	MD(General Medicine) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine(Microbiology)”	MD(Microbiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine(Paediatrics)”	MD(Paediatrics) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.09.2011.)
“Doctor of Medicine(Pharmacology)”	MD(Pharmacology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine(Physiology)”	MD(Physiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)

“Doctor of Medicine (Social & Preventive Medicine/Community Medicine)”	MD(Social & Preventive Medicine/Community Medicine) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine/Master of Surgery(Anatomy)”	MD/MS (Anatomy) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Doctor of Medicine/Master of Surgery(Obstetrics & Gynaecology)”	MD/ MS (OBG) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Master of Surgery (Oto-Rhino-Laryngology)”	MS (ENT) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Master of Surgery(General Surgery)”	MS (General Surgery) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.09.2011.)
“Master of Surgery(Orthopaedics)”	MS (Orthopaedics) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Nalanda Medical College, Patna on or after 6.9.2011.)
“Bachelor of Medicine and Bachelor of Surgery”	MBBS (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at A.N. Magadh Medical College, Gaya on or after 6.9.2011.)
“Bachelor of Medicine and Bachelor of Surgery”	MBBS (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Jawaharlal Nehru Medical College, Bhagalpur on or after 6.9.2011.)
“Bachelor of Medicine and Bachelor of Surgery”	MBBS (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Diploma in Orthopaedics”	D.Ortho. (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar

	in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine(Anaesthesiology)”	MD(Anaesthesiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine(Forensic Medicine/Forensic Medicine & Toxicology)”	MD (FM/FM&T) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine(General Medicine)”	MD (General Medicine) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine(Microbiology)”	MD(Microbiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine (Paediatrics)”	MD(Paediatrics) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine(Pathology)”	MD (Pathology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine (Pharmacology)”	MD (Pharmacology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine (Physiology)”	MD (Physiology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine (Psychiatry)”	MD (Psychiatry) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine (Radio Diagnosis/ Radiology)”	MD(Radio Diagnosis/ Radiology)

	(This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine(Social & Preventive Medicine/Community Medicine)”	MD(SPM/Community Medicine) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine/ Master of Surgery(Anatomy)”	MD / MS(Anatomy) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine / Master of Surgery (Obstetrics & Gynaecology)”	MD / MS (OBG) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Doctor of Medicine / Master of Surgery (Ophthalmology)”	MD/ MS (Ophthalmology) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Master of Surgery (Oto-Rhino-Laryngology)”	MS (ENT) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Master of Surgery (General Surgery)”	MS (General Surgery) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Master of Surgery (Orthopaedics)”	MS (Orthopaedics) (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Darbhanga Medical College, Laheriasarai on or after 6.9.2011.)
“Bachelor of Medicine and Bachelor of Surgery”	MBBS (This shall be a recognised medical qualification when granted by The Aryabhatta Knowledge University, Bihar in respect of students being trained at Shri Krishna Medical College, Muzaffarpur on or after 6.09.2011.)

[No. U-12012/59/2012-ME(P-II)]

ANITA TRIPATHI, Under Secy.

पोत परिवहन मंत्रालय

नई दिल्ली, 22 जून, 2018

विषय: उर्वरकों के तटीय संचलन हेतु वाणिज्यिक पोत परिवहन अधिनियम, 1958 की धारा 406 के तहत रियायत।**का.आ. 993.—**

1. जबकि, कृषकों की आय को दोगुना करना भारत सरकार की घोषित नीति का मुख्य आधार है, तथा जबकि कृषकों की आय बढ़ाने के लिए कृषि के इनपुट्स जैसे अच्छी कोटि के उर्वरकों और बीजों की उपलब्धता में सुधार लाने की संबंधित आवश्यकता है। देश के विभिन्न हिस्सों तक माल पहुंचाने हेतु परिवहन व्यवस्था और लॉजिस्टिक को लचीला और विश्वसनीय बना कर इनपुट्स की उपलब्धता में वांछित सुधार लाया जा सकता है।
2. जबकि, कृषकों की आय को दोगुना बनाने की समिति, कृषि, सहयोग तथा कृषक कल्याण विभाग, कृषि तथा कृषक कल्याण मंत्रालय की रिपोर्ट कृषकों को वैश्विक स्तर पर प्रतिस्पर्धी बनाने के लिए एक रणनीति बनाने पर जोर देती है। ऊपर उल्लिखित रिपोर्ट उत्पादन लागत को कम करने के लिए मिट्टी के स्वास्थ्य के आधार पर उर्वरकों की संतुलित मात्रा के उपयोग पर भी प्रकाश डालती है, तथा बताती है कि वांछित मात्रा, प्रकार तथा कीमत में उर्वरकों की अनुपलब्धता कृषकों के लिए नुकसान पैदा करती है।
3. जबकि, विभिन्न प्रकार की परिवहन संबंधी बाधाओं के कारण देश के कुछ भागों में उर्वरकों की उपलब्धता में विलम्ब होने की रिपोर्ट मिली है, जिसके कारण सतत और लागत कुशल उत्पादन सुनिश्चित करने के लिए परिवहन कनेक्टिविटी और लॉजिस्टिक आधारित संरचना को समयबद्ध तरीके से उर्वरकों तथा कृषकों की अन्य आवश्यकताओं के भंडारण और परिवहन में सक्षम होना चाहिए।
4. जबकि, जल आधारित परिवहन में रेल तथा सड़क आधारित परिवहन की तुलना में माल के परिवहन की प्रतिटन-किमी लागत में छठवें भाग तक की कमी लाने के साथ ही साथ लंबी दूरी तक माल के परिवहन से होने वाले प्रतिटन-किमी ग्रीनहाउस गैस उत्सर्जन को एक तिहाई तक कम करने की क्षमता है।
5. जबकि जल आधारित परिवहन के माध्यम, जिनमें तटीय पोत परिवहन शामिल है, जो कि तुलनात्मक रूप से सस्ता परिवहन माध्यम होने के कारण उर्वरकों को पहुँचाने में किफायती रूप से सक्षम होगा तथा इस वजह से उत्पादकता में संपूर्ण लागत में कमी लाएगा।
6. जबकि तटीय मार्ग द्वारा सब्सिडीकृत उर्वरकों का आवागमन फ्रेट सब्सिडी की प्रतिपूर्ति के लिए योग्य है जो कि न्यूट्रीएंट आधारित सब्सिडी (एन बी एस) नीति के अंतर्गत उर्वरक के तटीय आवागमन को बढ़ावा देगा।
7. जबकि सागरमाला कार्यक्रम की राष्ट्रीय परिप्रेक्ष्य योजना उर्वरकों के तटीय आवागमन के लिए 6-7 मिलियन टन प्रति वर्ष की क्षमता का अनुमान करता है।
8. जबकि वाणिज्यिक पोत परिवहन अधिनियम 1958 की धारा 406 के अनुसार कोई बाहर का पोत और भारत के नागरिक अथवा भारत में निगमित कम्पनी अथवा भारत में पंजीकृत कोऑपरेटिव सोसाइटी द्वारा चार्टर्ड किए गए के अलावा कोई अन्य पोत जो उपर्युक्त अधिनियम की धारा 21 के खण्ड (ख) में विनिर्दिष्ट अपेक्षाओं को पूरा करते हैं, वे इस धारा के अंतर्गत नौवहन महानिदेशालय द्वारा प्रदत्त लाइसेंस के तहत ही भारत के अंदर अथवा उसके बाहर किसी पत्तन या स्थान से समुद्र में ले जा सकेंगे।
9. जबकि राजिस्ट्री हेतु निर्धारित पत्तनों पर पोतों के पंजीकरण के आधार पर भारतीय पोत धारा 406 के अंतर्गत लाइसेंस के लिए अनुमोदित माने जाते हैं और इन्हें तटीय व्यापार के लिए अनुमति प्राप्त है।
10. जबकि अन्य पोत जो भारत के नागरिक अथवा भारत में निगमित कम्पनी अथवा भारत में पंजीकृत को-ऑपरेटिव सोसाइटी द्वारा चार्टर्ड किए गए हो, जो भारत के अंदर तथा बाहर किसी स्थान से समुद्र में जाने के लिए धारा 406 के अंतर्गत लाइसेंस की आवश्यकता होगी और इसलिए उन्हें तटीय व्यापार के लिए अनुमति प्राप्त है।
11. जबकि व्यापार को बढ़ावा देना तथा भारत में व्यापार करने में आसानी भारत सरकार का प्रमुख रूप से जोर दिये गए क्षेत्रों में एक है और कार्गो के नौवहन एवं जलयानों के परिचालन के लिए प्रक्रियाओं को सरल करने की आवश्यकता है।
12. अतः केन्द्र सरकार वाणिज्यिक पोत परिवहन अधिनियम, 1958 की धारा 406 की उप-धारा (3) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार इसे जनहित में आवश्यक और समीचीन मानते हुए एतत् द्वारा निदेश देती है कि:
- 12.1 विदेश व्यापार महानिदेशक, वाणिज्य एवं उद्योग मंत्रालय द्वारा अपनाए एवं संशोधित किए गए भारतीय व्यापार वर्गीकरण (आईटीसी), हार्मोनाइज्ड प्रणाली (एचएस) में 2-आंकड़ों वाला कोड 31 में विनिर्दिष्ट उर्वरक के समुद्र द्वारा परिवहन के लिए तटीय व्यापार में शामिल होने वाले भारत के नागरिक अथवा भारत में निगमित कम्पनी अथवा भारत में पंजीकृत को-ऑपरेटिव सोसाइटी द्वारा चार्टर्ड किए गए पोतों पर धारा 406 की उप-धारा (1) के प्रावधान लागू नहीं होंगे।

- 12.2 पैरा 12.1 पर पोतों के लिए छूट इन शर्तों के अधीन भी होगी, कि नौवहन की जानकारी अनुबंध - I पर निर्धारित फॉर्मेट में नौवहन महानिदेशक को प्रस्तुत कर दी जाएगी तथा इसे भारत के पत्तन से पोत के चलने से कम से कम 24 घंटे पहले dgsd6-ship@gov.in ई-मेल पर नौवहन महानिदेशक के साथ साझा करना होगा।
- 12.3 उपरोक्त रियायत निम्नलिखित शर्त के अधीन होगी कि भारतीय नौसेना, तट रक्षक, राज्य समुद्री पुलिस एवं सीमा शुल्क के साथ-साथ भारतीय कानून प्रवर्तन एजेंसियों को उक्त पोतों/कू के वास्तविक परिचय पत्रों की पुष्टि करने के लिए किसी भी समय समुद्र में इन पोतों पर बोर्ड करने की अनुमति होगी।
13. पूर्ववर्ती रियायतें व्यापार करने की आसानी के लिए और केन्द्र सरकार के अधिकार के प्रति बिना किसी पूर्वाग्रह के जो भी हो, इस आदेश के किसी भी प्रावधान में परिवर्तन/संशोधन करने के लिए जनहित में दी गई हैं।
14. यह आदेश तत्काल प्रभाव से लागू होगा और इसे अगले आदेश होने तक वैध माना जाएगा, जब तक इसमें संशोधन न किया जाए अथवा वापिस न लिया जाए।
15. इसे सक्षम प्राधिकारी के अनुमोदन से जारी किया जाता है।

[फा. सं. एस डब्ल्यू-15011/7/2015-सी एस]

संजय मित्तल, अवर सचिव

अनुबंध-I

नौवहन महानिदेशालय के साथ साझा की जाने वाली जानकारी के लिए फॉर्मेट

(i)	मालिक और ऑपरेटर का नाम एवं पता	
(ii)	आई एम ओ संख्या सहित पोत का नाम	
(iii)	पोत का ध्वज	
(iv)	चार्टर की अवधि	

टिप्पणी : नौवहन महानिदेशालय के साथ ई-मेल dgsd6-ship@gov.in पर साझा किए गए दस्तावेज शिपिंग कम्पनी अथवा ऑपरेटर के प्राधिकृत हस्ताक्षर द्वारा डिजिटल रूप में अथवा अन्य रूप से हस्ताक्षरित किए जाएं।

MINISTRY OF SHIPPING

New Delhi, the 22nd June, 2018

Subject: Relaxation under Section 406 of Merchant Shipping Act, 1958 for coastal Movement of Fertilizers**S.O. 993.—**

1. Whereas doubling farmers' income is a core fulcrum of the stated policy of the Government of India and whereas to enhance farmers' income, there is the related need to improve access to farm inputs such as good quality fertilizers and seeds. The desired improvement in access to inputs can be achieved by enabling transportation and logistics to be flexible and reliable for transporting goods within various parts of the country.

2. Whereas the Report of the Committee on Doubling Farmers' Income, Department of Agriculture, Cooperation and Farmers' Welfare, Ministry of Agriculture & Farmers' Welfare calls for a strategy towards enabling farmers to compete at a global scale. The aforementioned report also highlights application of a balanced dose of fertilizers on the basis of soil health as a requirement for reducing the cost of production, and that unavailability of fertilizers in the desired quantity, type and cost is a disadvantage for farmers.

3. Whereas there have been reports of delay in availability of fertilizer in some parts of the country due to transport bottlenecks of various kinds and thus the transport connectivity and logistics infrastructure needs to enable storage and transportation of fertilizers and other inputs to the farmers, in a timely manner, to ensure sustainable and cost efficient production.

4. Whereas water borne transportation has the potential of simultaneously reducing the per tonne-km cost of transporting goods to one-sixth as well as reducing the greenhouse gas emission per tonne-km of transporting the goods over long distances by one-third, compared to rail and road based transportation.

5. Whereas water borne transportation modes, including coastal shipping, being comparatively cheaper modes of transport would enable cost efficient transportation of fertilizers and, thus, enable overall cost reduction in production.
6. Whereas movement of subsidized fertilizers by coastal route also qualifies for reimbursement of freight subsidy which will encourage the coastal movement of fertilizer, under the Nutrient Based Subsidy (NBS) policy.
7. Whereas the National Perspective Plan of the Sagarmala Programme estimates a potential of 6-7 Million Tonnes Per Annum for coastal movement of fertilizers.
8. Whereas as per Section 406 of Merchant Shipping Act, 1958, no Indian ship and no other ship chartered by a citizen of India or a company incorporated in India or a cooperative society registered in India, which satisfies the requirements specified in clause (b) of section 21 of the above state Act shall be taken to sea from a port or place within or outside India except under a license granted by the Director General, Shipping under this section.
9. Whereas Indian ships by virtue of the registration of ships at designated ports of registry are deemed approved for license under Section 406, and have allowance for coasting trade.
10. Whereas other ships which may be chartered by citizens of India or a company incorporated in India or a corporate society registered in India still require to be granted license under Section 406 to be taken to sea from a port or place within or outside India and therefore have allowance for coasting trade.
11. Whereas promotion of trade and ease of doing business in India is one of the major thrust areas of the Government of India, and there is a need to simplify processes for shipping of cargo and operation of vessels.
12. Now, therefore, in exercise of the powers conferred upon it under proviso of section 406 of the Merchant Shipping Act, 1958, the Central Government being of the opinion that it is necessary and expedient in the public interest, hereby directs that:
 - 12.1 The provisions of sub-section (1) of section 406 shall not apply to ships chartered by citizen of India or a company incorporated in India or a cooperative society registered in India to engage in the coasting trade of India for the carriage by sea of fertilizers specified in the Indian Trade Classification (ITC), Harmonized System (HS) under 2-digit code 31, as adopted and modified by the Director General of Foreign Trade, Ministry of Commerce and Industry.
 - 12.2 The relaxation for ships at Para 12.1 shall further be subject to the conditions that the information about the charter/voyage will be submitted to the Director General of Shipping in the format prescribed in Annexure 1 and must be shared at least 24 hours prior to sail of ship from the port in India, by email at dgsd6-ship@gov.in.
 - 12.3 The aforesaid relaxation shall be subject to the following condition that Indian law enforcement agencies including inter alia Indian Navy, Coast Guard, State Maritime Police and Customs, shall be allowed to board such ships any time in the sea for ascertaining the bonafide credentials of the said ships/crew.
13. The forgoing relaxation has been put in place in public interest, for ease of doing business and without prejudice to the right of the Central Government, whatsoever, to alter/modify any of the provisions of this order, going forward.
14. This order shall come into force with immediate effect, and continue to be valid till further order, unless otherwise amended or withdrawn.
15. This issues with the approval of competent authority.

[F.No. SW-15011/7/2015-CS]

SANJAY MITAL, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 20 जून, 2018

का.आ. 994.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी होटल कार्पोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 16/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.06.2018 को प्राप्त हुआ था।

[सं. एल-11012/55/2009-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 20th June, 2018

S.O. 994.—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, Mumbai (Ref. No. 16/2010) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Hotel Corporation of India and their workmen, which was received by the Central Government on 07.06.2018.

[No. L-11012/55/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT :** M. V. Deshpande, Presiding Officer**REFERENCE NO. CGIT-2/16 of 2010**

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

THE HOTEL CORPORATION OF INDIA LTD.

The Chief Executive Officer,
The Hotel Corporation of India Ltd., DFC Unit,
Transport Annexe Building, Air-India Complex,
Old Airport, Santacruz [East],
Mumbai – 400 029.

AND

THEIR WORKMEN

Shri.Ramchandra B. Ghewade,
606, B-Building, 6th Floor,
VrindavanApartment ,Yeshwant Nagar,
Kamble Marg, Opp. Shiv Sena Shakha,
Vakola, Santacruz [East],
Mumbai – 400 055.

APPEARANCES:

FOR THE EMPLOYER : Ms. Geeta Raju, Advocate

FOR THE WORKMEN : Mr. M.B. Anchan, Advocate

Mumbai, dated the 22nd May, 2018.**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-11012/55/2009 – IR (CM-I) dated 02.02.2010. The terms of reference given in the schedule are as follows :

“Whether the action of the management of The Hotel Corporation of India Limited (HCL) in terminating Shri R.B. Ghewade, Steward, from services by w.e.f. 29.05.2008 is justified and legal ? To what relief is the workman concerned entitled ?“

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. The second party workman has filed statement of claim Ex.7. According to the second party workman, he was employed as a Handyman in the year 1976 firstly as a casual worker on daily wages @ Rs.4/- per day. Thereafter he was given his appointment as a staff of the first party company as Handyman on probation on 6 months by their letter dt. 17.12.76 and he was advised to report on duty from 1.1.77 as per terms set out in the appointment letter dt. 17.12.76. Until he became Assistant Steward, he worked as Handyman which required him to watch the vests used for cooking and also assist Stewards and Assistant Stewards, pantry staff and cook etc. in his capacity as Handyman. His basic pay was then Rs.85/- p.m. and Rs.65/- p.m. as D.A. He has been the member of the United Labour Union, the representative

union of the staff of DFC/HCIL, the first party company until his services were terminated by the order of Appellate Authority of the first party company dt.30.12.2008.

4. It is also the case of the second party workman that in the year 2005, United Labour Union submitted charter of general demands on behalf of the staff of DFC and in the same demanded that the promotion should be made according to law. The second party workman's case for promotion from the grade of Assistant Stewardship was to be made. While the said demands were pending consideration by the first party company, a letter was received by the second party workman dt.9.2.05 from the first party company requiring him to produce the caste certificate. By his letter dt. 23.2.05, the second party workman submitted his affidavit dt. 23.2.05 setting out the facts that caste stated in school leaving certificate was wrong and that he has already obtained a certificate of his caste on or about 7.11.76 from Tahsildar at Makahazan in Ratnagiri. However, by letter dt. 23.11.05 / 8.2.06, charge sheet dt. 8.2.06 was given to him holding as under.

“That the second party workman has committed following misconduct under the Model Standing Orders:

Clause no. 22(d) – Theft, fraud, or dishonesty in connection with the employer's business property.

Clause no. 22(i) – Commission of any act subversive to discipline or good behavior.”

5. According to the concerned workman, he was called upon to give explanation to the said charge sheet on 10.2.06. He sent a reply to the first party company. His explanation was not accepted by the management. Thereafter the enquiry started on or about 9.5.06. Secretary of the United Labour Union Miss S.V. Navalkar was to represent him in the enquiry proceedings but his request was turned down by Mr. Kale taking objection to that request. Enquiry Officer refused to grant permission on the ground that General Secretary was advocate and not a co-worker. Therefore the second party workman moved to the Industrial Court alleging that the action of the first party company was unfair labour practices as the E.O. has no right to refuse the General Secretary of the representative union to defend the cause of the staff. Thereafter the first party company informed the court that it had no objection to allow the General Secretary of the union Miss S.V. Navalkar to appear for the second party workman in the enquiry against him.

6. According to the concerned workman, he opposed the appearance of Mr. Kale as management representative. However, the E.O. rejected his objection and allowed Mr. Kale to proceed with the enquiry. The second witness of the management Mr S.K. Patil was not available on the dates kept for hearing. He could not be made available for cross examination due to his retirement. As such the management representative and the E.O. had planned to close the cross examination of this witness abruptly and discharged the said witness. Even the E.O. and the management representative were putting and recording questions and answers as they like and on many occasions second party workman's representative had objected to this method adopted by the E.O. and the management representative. Even E.O. did not allow second party workman to examine his witnesses nor the E.O. allowed the second party workman to submit his written arguments on the evidence recorded. E.O. made wrong note of the answers given by the second party workman in the enquiry. As such the enquiry was not fair and was not in accordance with the law.

7. It is also the case of the second party workman that the first party company had not furnished the list of documents, list of witnesses. The E.O. in his findings had come to the conclusion contrary to the record of the evidence by the E.O. The enquiry was not fair and just. The charge sheet has been vague. The allegations in the charge sheet were not explained. The charges are vague and as such the concerned workman is prejudiced by the management by not clearly explaining the charge sheet, the circumstances which constituted the alleged misconduct under clause 22 (d) of Model Standing Orders.

8. It is also the case of the second party workman that Mr. Ashok Tambe who was the complainant at whose instance the enquiry started was not examined as a witness of the management and therefore the second party workman has been clearly deprived from bringing on record positive facts.

9. According to the concerned workman, he was not permitted to examine Mr. Sukhtankar as his witness and the refusal to examine him has caused prejudice to him. Even the E.O. had not noted the questions put in cross examination in the manner they were asked to, and recorded the questions & answers in improper style which he adopted to confuse the second party workman. As such the E.O. made wrong recording. The E.O. also refused to allow Mr. Rao to produce the service regulations under which the code of discipline for which the charge sheet was given. For the staff of DFC, the services were governed by the code of conduct for HCIL and not Model Standing Orders as reflected in the order dt. 30.12.08 passed by the Appellate Authority. As such the E.O.'s performance was not fair & just and was pre-judicial to the defence of the second party workman.

10. It is also the case of the concerned workman that the findings of the E.O. are perverse. The E.O. in his findings has not recorded that the second party workman had given application stating that he has objection to Mr. Kale conducting the part of the representative of the management. The findings of the E.O. that the workman has admitted the document is not correct since the second party workman had admitted certificate particulars given by his father who had

given information to the school at the time of getting admitted in the school. Even the original certificate that is school leaving certificate of the second party workman is not produced during the enquiry but the Xerox copy is produced. As such the findings of the E.O. based on Xerox copy has no value. The evidence relied upon by the E.O. i.e. the commentary of swamy, author of book on commentary on the Constitution of India to prove the existence of the proof as regards the rule of reservation appointment is improper and therefore story put up by the management that the reservation policy was in existence at the time of recruitment of second party workman in 1976 was not correct. As such the E.O. failed to consider that he gets the promotion on account of his seniority and not on reserved appointment and as such the findings of the E.O. that the second party workman did not attend Sane Guruji Vidyalyay is contrary to the case of witness of the company Mr. Patil who deposed that the second party workman was never the student of Sane Guruji Vidyalyay.

11. It is then case of the concerned workman that the E.O. was biased and non cooperative. The enquiry was sheer farce as co-employee Mr. Ashok Tambe, Assistant Manager, Mr. Kale, E.O., Mr. Suvarna and V.P. of HCIL, DFC Mr. Patil Lakra had complained to remove second party workman on the ground of his caste for benefitting the co-employee Mr. Ashok Tambe who happened to be SC/ST and also the Secretary of SC/ST Employees' Association.

12. According to the second party workman, even the disciplinary authority did not apply his to the facts of the matter. The Appellate authority though indicated that he would consider if anything can be done to reduce the penalty and directed the concerned workman to give fresh appeal memo focusing on penalty part only has not considered fresh appeal memo and confirmed the dismissal penalty of the second party workman. As such both the V.P. & M.D. erred in holding that the charges set out in the charge sheet can be said to be legally applicable to the case of second party workman.

13. It is thus case of the concerned workman that the disciplinary rules which were applicable to the first party company were prevented from being brought on record in the enquiry proceedings. The charge sheet referred to General Disciplinary Rules which are known Model Standing Orders which infact were not applicable to first party company in the absence of specified rules on discipline for the employees of the first party company. As such the main defect in the charge sheet remained which entitled the second party workman to submit that the charge was illegal, unjust and uncalled for.

14. It is then case of the concerned workman that the material before the Appellate authority regarding notification of the Govt. of Maharashtra prohibiting the dismissal of the employee on the ground of caste consideration and the involvement latter on by the SC/ST Association to recommend lenient penalty and not dismissal from the service of the person who served without blemish for nearby 30 years. These points had not been considered by disciplinary authority and therefore order of Appellate authority also deserved to be quashed. Second party workman is therefore asking to hold & declare that the enquiry conducted by the first party company against him is not legal & proper and the findings of the E.O. are perverse. He is therefore asking to direct the company to reinstate him with full back wages, continuity of service from the date of his dismissal i.e. from 27/29-5-08 and other consequential benefits.

15. The first party company resisted claim by filing written statement Ex.9 contending therein that the concerned workman has played a fraud on the first party company by mis-representing himself to be of "Hindu Chambar caste" which is classified as SC community and obtained an employment as Handyman against reserved post. He had furnished a forged school leaving certificate to show that he belongs to said SC group and even his promotions to the next higher posts were on the basis of caste. These facts has been proved in the enquiry and in view of grave and serious nature of charges the concerned workman was issued the charge sheet under the Model Standing Orders applicable to him in respect of act of misconduct proved against him. The second party workman fully participated in the enquiry along with his Defence Representative of his choice. The enquiry conduct was fair & proper and the findings are not perverse. The first party company conducted domestic enquiry by duly complying with the principles of nature justice.

16. It is then contention of the first party company that a complaint was issued from the Air Corpn. SC/ST Employees' Association [DFC Unit] that the declaration made by the concerned workman at the time of his appointment was false and he did not belong to reservation category. In view of that the first party company directed the second party workman to produce valid caste certificate to which the second party workman submitted his reply which was not satisfactory. Even during the enquiry whatever documents were produced by both the parties and recorded copies of the same were handed over to both the parties. First party company produced two witnesses in this enquiry. The said witnesses were made available for cross-examination by the second party workman. The second party workman cross-examined both the management witnesses at length. Shri S.K. Patil, Principal of Sane Guruji Night High School was called as management witness No.2 and he led his evidence before the E.O. Second party workman wanted to produce two witnesses but failed to produce the witnesses and also failed to disclose their names and thereafter the enquiry was closed on 6.9.07. E.O. submitted his report on 28.11.07 holding the concerned workman guilty of charges leveled against him. The notice was served to the second party workman to make the final decision in the matter by letter dt.28.11.07 which was received by the concerned workman on 3.12.07. He submitted his explanation on 7.12.07 which was not found satisfactory and thereby the first party company issued show cause notice to him dt. 7.3.08. The second

party workman replied the said letter by letter dt. 2.4.08. Explanation submitted by him was not satisfactory and thereby his services came to be terminated by letter dt. 29.5.08. The second party workman applied to M.D. vide letter dt. 3.6.08 and it was observed that the submission made by the second party workman in his appeal have already been taken into account by the V.P. The M.D. therefore agreed the punishment order passed by the disciplinary authority.

17. It is then case of the first party company that at the time when the second party workman submitted his application in the prescribed form, he made declaration in application form that he belongs to Chambar Caste which is notified by the government as S.C. but then school leaving certificate submitted by the second party workman was found to be fake and false. Even during enquiry the concerned workman was given full opportunity to cross examine the management witness No.2 Shri S.K. Patil. He was given opportunity to defend himself through his D.R. Miss. Navalkar who is a practicing advocate. It is thus denied by the first party company that the E.O. closed enquiry even after the D.R. raised objection that the cross examination of management witness – 2 was not over.

18. According to the first party company the departmental enquiry can be conducted by an employee of the company in his capacity as E.O. There is no bar in any way on appointing the company's officer as E.O. The E.O. has not abruptly closed the cross examination of witness No.2 Mr. Patil. He was made available for the cross examination to the second party workman. The second party workman had cross examined him at length and therefore the contention of concerned workman to the effect that E.O. refused to permit him to bring his witnesses is denied by the first party company.

19. It is also contention of the first party company that author Mr. Swamy in his complimentary on the Constitution of India emphasis the protection of all rights of SC & backward classes and during the enquiry the evidence of Mr. Rao on behalf of the management has shown that the policy on recruitment is followed by the first party company and no injustice is done to the second party workman. As such the enquiry held against the concerned workman is fair & proper and the findings of the E.O. are based on evidence.

20. It is then case of the first party company that the charge sheet was issued to the second party workman according to the Model Standing Orders which is applicable to the second party workman. The enquiry was also conducted as per the Model Standing Orders and therefore the question of producing the service regulation of HCIL did not arise. Even there is no question of approaching the first party company by the second party workman again for taking lenient view as he had committed mistake and as such the punishment of dismissal of service awarded to the second party workman is just & proper.

21. It is then case of the first party company that the second party workman has got the promotion on the basis of his declaration as SC and he was considered for the post of Steward in the year 1995. The second party workman never declared himself as belonging to OBC prior to 28.2.05. Even during enquiry the second party workman confessed that at the time of appointment the declaration made by him was incorrect and therefore he did not deserve any leniency with respect to the punishment of dismissal awarded to him for the grave & serious misconduct committed by him. The M.D. agreed with the punishment order passed by the disciplinary authority since he found that there was no merit in the appeal and the same deserves to be rejected. As such there is no question of granting lesser punishment. So according to the first party company there was no lacuna in the decision of Appellate Authority. The first party company has thus sought rejection of the reference.

22. The second party workman filed rejoinder Ex.10 and reiterated that recruitment of the Handyman was not on the basis of reserve post for SC group. It was open category. It is then contended that HCIL disciplinary rules are applicable to the employees of HCIL-DFC unit. The disciplinary rules are different from the agreement terms of service and hence merely because of agreement of each of the unit of the HCIL are different that does not mean that the rules of discipline of HCIL employee for HCIL employees are different for each unit employees of HCIL.

23. It is reiterated that the plea of the first party company that the workman was taken up in the reserve category is untenable and unwarranted. What is contended is that the promotions that were granted to the workman prior to 2005 had always been on the seniority grounds and not on the reservation policy.

24. It is again reiterated that the concerned workman was not allowed to put the questions to the management witnesses and even cross examination of the witness Shri S.K. Patil was not thoroughly done. The E.O. did not allow the concerned workman to put the questions to the management witnesses in the enquiry proceedings and as such E.O. was biased. Even the complainant Shri Ashok Tambe of SC/ST Employees' Association was not examined to establish the fact of assignment. Original roster was not produced in the evidence and what has been produced are the Xerox copies which do not tally with original roster. The Roster-keeper was also not examined and therefore roster has no evidentially value. Therefore the concerned workman is entitled to be reinstated in service w.e.f. 28.5.08 with continuity in service and consequential benefits.

25. Following issues are framed at Ex.12. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the inquiry conducted by the management against the second party workman was fair and proper ?	Yes
2.	Whether the findings of inquiry officer are perverse ?	No
3.	If not, Whether the punishment of termination from the service is adequate to the alleged misconduct ?	Yes
4.	What relief the workman is entitled to ?	No
5.	What order ?	As per final order

REASONS

Issue No.1 & 2.

26. So far this issue is concerned, the concerned workman in his cross examination has admitted that during enquiry proceedings, copies of all the papers filed in the enquiry proceedings were given to him. He even admits that the copies of the documents produced by the management were also given to him. Admittedly, he received the enquiry report. As per his glaring admission, his services came to be dismissed for filing false school certificate. Ms. Sunder Navalkar was his D.R. during enquiry proceedings as against him. She admits that the concerned workman participated in the enquiry along with her and she even cross examined the first witness. It appears from the evidence on record and on going through the enquiry proceedings that the workman participated in the enquiry, he was represented by Ms. Navalkar who is an advocate and also an active member of the union.

27. Even then the Learned Counsel for the concerned workman submitted that during enquiry proceedings, certain documents came to be exhibited without following the procedure but then after taking objection by the D.R., the documents were taken on record subject to objection and in that way the documents came to be exhibited as K, L, M, N, O are not proved documents.

28. In this respect, it can be said that the documents exhibited as M, N, O were handed over to the second party workman at the time of enquiry. The documents are referred to in the evidence and therefore they are relevant because Ex. M is the letter of the concerned workman dt. 20.9.05 addressed to the Head Master of Sane Guruji School whereas the Ex. N is the school leaving certificate of the concerned workman which was forwarded to the Head Master for verifying its correctness and in response to the same the Head Master reverted the said school certificate with endorsement that this school leaving certificate is not issued by the school. Ex. O is the letter of Head Master of Sane Guruji School addressed to the Manager wherein he had mentioned that G.R. No. 360 issued to one GaikwadRanjana Robert and GhevadeRamchandraBabu, the concerned workman is not the student of the said school namely Sane Guruji School. It cannot be said therefore that the E.O. without giving an opportunity to the concerned workman or his D.R. has taken on record these documents. Neither the first party company nor the second party workman objected to any of the documents produced in the enquiry. When the proceedings were going on and it clearly appears from the enquiry proceedings that both the parties were given opportunity by the E.O. to submit their documents. The documents submitted by the first party company are being taken during the enquiry proceedings by the E.O. since the documents are relevant.

29. It is then submission of the Learned Counsel for the concerned workman that question No.28 asked to the witness namely Rao during the enquiry was recorded by the E.O. in otherwise manner which is not correct. In short the submission is that the recording of the questions and answers by the E.O. during enquiry proceedings is incorrect. This submission is also not acceptable since the concerned workman did not take objection to the recording of the questions and answers by the E.O. during enquiry proceedings and then it appears that opportunity was given to the D.R. to cross examine Mr. Rao. Mr. Rao was cross examined and then the matter was adjourned to 10.9.96 for bringing another witness Mr. Patil.

30. In respect of the evidence of Mr. Patil, it has been pointed out by the Learned Counsel for the concerned workman that though defence representative for the concerned workman wanted to cross examine Mr. Patil further, it was not allowed by the Inquiry officer and Inquiry officer made a note that the management representative closes the cross examination of Mr. Patil. In this view the submission is that there was no fair enquiry by the Inquiry officer.

31. In this respect, on going through the enquiry proceedings, it can be seen that Mr. Patil, Management witness was cross examined by the D.R. on 27.7.07. Near about 22 questions were asked to him in his cross examination by the D.R. and then thereafter the E.O. noted that the cross examination concerning the school leaving certificate submitted by the

charge sheeted employee Ex.1 is satisfactorily completed and no further cross examination is required. It appears that thereafter the D.R. objected and the E.O. has overruled the said objection of the D.R. on the ground that the admission register form 344 to 435 is not relevant to the charge sheet and therefore no further cross examination is required. It is thereafter the management representative informed to the E.O. that the examination of the witness of management is over and the management did not want to produce any more witness. It appears therefore that the sufficient opportunity was given to the D.R. to cross examine Mr. Patil, he was cross examined by the D.R. by putting near about 22 questions and further objection was overruled on the ground that admission register form 344 to 435 was not relevant to the charge sheet. That does not mean that the opportunity was not given to the D.R. to cross examine Mr. Patil. Mr. Patil was made available for cross examination and he was cross examined during the course of enquiry. It is for the E.O. to decide as to which question was relevant and which was not. If he did not allow the irrelevant questions to be put, that does not mean that the enquiry was not fair & proper and that the opportunity was not given to cross examine the witness of the management.

32. Precisely, it is submission of the Learned Counsel for the management that Shri S.K. Patil, Principal of Sane Guruji School was produced by the management as witness No.2 and he was made available for the cross examination to the concerned workman. Mr. Patil has answered all the questions put to him in his cross examination by the second party workman in the enquiry but on the contrary second party workman failed to produce the witnesses nor disclosed the names of their witnesses even after sufficient opportunity was given to the second party workman to examine the witnesses on his behalf. On going through the enquiry proceedings, it certainly appears to me that Mr. Patil was cross examined during the enquiry proceedings by the D.R.

33. It is then submission of the Learned Counsel for the concerned workman that during enquiry the E.O. refused the second party workman to bring his witness Mr. Sukhtankar and also during enquiry the E.O. denied opportunity to second party workman to defend their case. However, on going through the enquiry proceedings, it appears that E.O. upheld the objection put by the management in respect of question No. 65 & 67. It cannot be said that the E.O. had not considered the objections of the second party workman during the course of enquiry but then objections were raised to question No. 69, 70, 72, 73 and 74 by the management representative on the ground that the questions are irrelevant and the E.O. had upheld the objections. That does not mean that the enquiry was improper & unfair. What is necessary is that the opportunity to put up his defence has to be given to the concerned workman and it certainly appears on going through the enquiry proceedings that the copy of charge sheet was given to the concerned workman, he replied the same then the management has examined 2 witnesses, they were cross examined by the D.R. who is an advocate and active member of the union, copies of documents relied upon by the management are given to the D.R. and opportunity was also given to rebut these documentary evidence to the D.R. Merely saying that some questions are wrongly recorded or the objection of the D.R. were not considered by the E.O. does not mean that the E.O. was biased or that no fair enquiry was conducted.

34. It is the case of second party workman that he was employed as a Handyman in the year 1976 firstly as a casual worker on daily wages @ of Rs 4/- per day. Thereafter he submitted his application for regular appointment on 19.8.1976 and that time he was called upon to submit prescribed application form for such employment. As the said form was in English the officer in-charge of said department Mr. Kotian filled the particulars in English on 9.9.1976. after making enquiry with him and then he signed the said form in the presence of Mr. kotian. In his evidence the second party stated that he had no reason to believe at the time of submitting application that the school leaving certificate was necessary to register his caste. He believed that the said certificate was relevant for noting his birth date and in-fact at the time of appointment for the post of Handyman there was no reservation of service for the employees on the ground of caste and hence the question of caste at the time of appointment as Handyman did not arise. As such the evidence of the concerned workman is to the effect that initial appointment as Handyman was not on the basis of caste.

35. This sort of evidence of the concerned workman is not acceptable. It appears that in 1976 the first party company invited application for the post of Handyman from eligible candidate as per the guidelines following the reservation policy of government. On going through the application of the concerned workman vide Exhibit-62. It clearly appears that the concerned workman submitted application and furnished the information that he was working with Prabhask Press Girgaum previously as Handyman and in this application he has clearly made the declaration that he belongs to Hindu Chambhar and as such he belongs to Schedule caste. In support, it appears that he submitted copy of the school leaving certificate along-with the application. It is thus clear that in his application he had made declaration that he belongs to Schedule Caste as Hindu Chambhar. That information was not in respect of his birth date but in his application he was called upon to give information whether he belongs to Schedule Caste and he has made declaration that he belongs to SC being Hindu Chambhar caste which is notified by the Government as Schedule Caste. In view of that it appears that he was appointed as Handyman on 17.12.1976 by the first party company.

36. Not only that, but the further promotion was given to the concerned workman as 'Steward' in the grade of pay of Rs. 1780-20-1920-25-2120-30-2510 by internal promotion. Ex-66 is the Promotion Panel Report for the post of 'Steward' in the said pay scale. In this promotional panel report it has been stated that the said panel perused the personal file of Assistant Steward and as per Promotion Roster Point 1 is reserved for SC and Point 4 is reserved for ST. it is

further clear from this report that the concerned workman was recommended for promotion as Steward as per the provisions contained in the Recruitment and Promotion Policy procedure and also the Government directives regarding the reservation for SC/ST for the post filled in by promotion. It is clearly mentioned that the name of concerned workman is recommended for the promotion as Steward being SC candidate.

37. It appears that on 9.2.2005 letter was issued to the concerned workman mentioning there in that he has not submitted the caste certificate at the time of his appointment since he has declared in pre-employment application form that he belongs to SC and availed this reservation in first party corporation. By way of this letter he was advised to submit his caste Certificate. Thereafter on 23.2.2005 the concerned workman submitted his application mentioning therein that he belongs to Hindu Kunbi caste and submitted copy of Caste Certificate issued by Executive Magistrate, Sanghmeshwar to show that he belongs to Kunbi caste. From the document on record it clearly appears that initially at the time of submitting application for appointment as Handyman the concerned workman has made declaration that he belongs to S.C. being Hindu Chambhar and also got promotion claiming himself to be S.C. But then he submitted the Caste Certificate issued by Executive Magistrate to show that he belongs to OBC (Other Backward Classes). It cannot be accepted that initially his appointment was not on Caste basis and he submitted the School leaving certificate believing that it was required to be produced by him for noting the birth. It is because the record shows that he got promotion on the basis of Schedule Caste and on the basis of declaration and School leaving certificate along-with application submitted by him showing that he is Hindu Chambhar by caste.

38. Realizing this difficulty Ld. Advocate for the concerned workman submitted that at the time when the concerned workman was admitted in school the information was given by his father and therefore the Xerox copy of school leaving certificate on which the Enquiry Officer has relied is not the reliable piece of evidence and therefore the base of charge itself not reliable.

39. In the context, it is necessary to see that management has examined Mr. S.K. Patil the principal of Sane Guruji Night High School situated at Andheri (E) as management witness 2. He was also made available at the time of Cross Examination for second party workman. On the basis of his evidence the E.O. has given the finding that the certificate submitted by concerned workman at the time of submitting Application is a 'fake' school leaving certificate. The Head master of the Sane Guruji School has endorsed on school leaving certificate that he verified and found that this school leaving certificate is not issued by the said School and it is a fake School leaving certificate. The said endorsement is at Ex-N and it appears that the concerned workman has cross examined the MW-2 in detail with respect to Ex-N i.e. School Leaving Certificate.

40. It is contention of the concerned workman that he approached to the school through his father to collect School leaving certificate in the year 1970. However the death certificate issued to the second party workman, on 8.2.2005 by Group Panchayat, Makhajan, TalukaSangmeshwar, District Ratnagiri shows that his father expired on 8.12.1965.

41. Even then Ld. Advocate for the concerned workman submitted that workman Mr. Ghewade in his affidavit on oath has stated that his father was trying to get the birth Certificate while he was serving in Prabhat Press. In this view he submitted that the concerned workman believed that the certificate was obtained by his father for showing birth certificate and therefore there was no reason for concerned workman to submit before the authority about the caste mentioned by him in his application on the basis of his School Leaving Certificate. Submission is to the effect that in such circumstances even the management did not take action against the concerned workman by filling complaint to the police on the ground that he has made false affidavit. Submission is also to the effect that the concerned workman was not given any opportunity to adduce evidence of PrajaSamajwadi Party to prove the recognition of the said School from the government and therefore findings of the E.O. are perverse.

42. It is not possible to accept this submission. As seen earlier in his application itself concerned workman has made declaration about his caste as Schedule Caste and then thereafter got promotion on the basis of reservation. That time he did not inform to the authorities that the caste mentioned in his application is incorrect. It is only after the letter given to him by management, he has come out a case that he belongs to OBC caste and submitted the certificate of Collector showing that he belongs to OBC caste. In his letter to the management he submitted that the certificate issued by the school was submitted by him to show his birth date as he believed that the certificate was necessary to show the birth date and not the caste. It shows that concerned workman did not mention about the wrong caste mentioned in School Leaving Certificate at any time before he was asked to submit the caste certificate.

43. It is pertinent to note that in his affidavit dated 23.2.2005 the concerned workman has stated "I say that if there is any lapse found by the authorities regarding details of my caste shown in School Leaving Certificate which is based on information supplied by father and not on my information, that lapse be condoned and no action be taken against me."

This would show that in his affidavit also he has stated that the wrong information was supplied about his caste at the time of submitting his application for getting appointment mentioning therein that he belongs to S.C. i.e. Hindu Chambhar.

44. Ld. Advocate for the management refers to Exhibit-X which is General School Admission Register wherein Sr No. 6 is allocated to student Gaikwad Ranjana Robert and not to the second party workman and two photocopies of General School Admission Register wherein name of second party workman Ramchandra Babu Ghewade did not appear anywhere in the General School Admission Register. In view of this it was pointed out that in his Cross-examination concerned workman admitted that the School Leaving Certificate produced by him at the time of enrollment in the Corporation is bogus. Considering all these facts, it can be said that the findings of Enquiry Officer are based on evidence.

45. Ld. Advocate for the management seeks to rely on the decision in case of **R. Vishwanath Pillai V/s. State of Kerala and others. Supreme Court (2004) 2 SCC 105** to submit that, "if the appointment in the service was obtained on the basis that the applicant belongs to SC community and when it was found by the Scrutiny committee that he did not belong to SC Community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing false caste certificate."

46. He also seeks to rely on the decision in case of **Bansi Ram V/s. Union of India & Ors., Delhi High Court, 2011** to submit that, "Whenever it is found that a government servant who was not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment should not be retained in service. After inquiry as provided in Rule 14 of the CCS (CCA) Rules, 1965 if the charges are proved, the government servant should be removed or dismissed from service and under no circumstances any other penalty should be imposed."

47. Considering all these facts, I find that the inquiry conducted by the management was fair and proper and the findings of E.O. are not perverse. Issue No. 1 & 2 are therefore answered accordingly as indicated against each of them.

ISSUE NO. 3

48. So far this issue is concerned it appears from the pleadings of the party that second party workman made an appeal to the managing director vide his letter dated 3/6/2008. The managing director agreed with the punishment order passed by the disciplinary Authority and declared it as just proper and appropriate and thus the Appeal came to be rejected.

49. Precisely it is submission of the first party management that at the time of employment the second party workman had furnished false information and school leaving certificate handed over to the first party company at the time of taking up employment was found to be fake and therefore second party workman did not deserve any leniency with respect to the punishment of dismissal awarded to him for grave and serious employment misconduct committed by him.

50. So far the legal position is concerned, the court would not interfere with the administrative decision unless it was illegal or suffered from procedural impropriety or irrational in the sense it was outrageous, defiance of logic or moral standards. It is held in the decision in case of **Domoh Panna Sagar Rural Rational Bank & Ors V/s. Munnalal Jain CA No. 8258 of 2004 [SC]** that

"Unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

51. In this respect it can be laid on the decision in case of **LIC of India & Ors. V/s. S. Vasanti, Civil Appeal No. 7717 of 2014** wherein Hon'ble Apex Court with reference to decision in case of **Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr. V/s. Rajendra Singh (2013) 12 SCC 372** has held;

- a) *when charge(s) of misconduct is proved in an enquiry, the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*
- b) *The courts cannot assume the function of disciplinary / departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.*
- c) *Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.*
- d) *Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case."*

52. In the facts of the present case I find that the punishment imposed by the disciplinary authority on account of misconduct of the concerned workman cannot be said to be shockingly disproportionate. It appears that at the time of employment of the second party workman he had furnished false information and school leaving certificate submitted by him to the first party company at the time of taking up the employment was found to be fake. Considering the gravity of charges and the scope to interfere with the punishment imposed by the disciplinary authority, I find that the punishment of termination from service is adequate to the alleged misconduct. Issue No.3 is therefore answered accordingly in the affirmative.

Issue No. 4 & 5.

53. In view of my findings to the above issues, the workman is not entitled to any relief. The reference is liable to be rejected. Hence order.

ORDER

The reference is rejected with no order as to costs.

Date: 22.05.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 20 जून, 2018

का.आ. 995.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रणदिव के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 18/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2018 को प्राप्त हुआ था।

[सं. एल-11012/35/2010-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2018

S.O. 995.—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, Mumbai (Ref. No. 18/2011) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Randive and their workmen, which was received by the Central Government on 15.06.2018.

[No. L-11012/35/2010-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/18 of 2011

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

M/s. RANDIVE

M/s. Ranadive,
D/21, Balgovind Co-op. Housing,
Society, Taikalwadi Road, Mahim,
Mumbai – 400 016.

AND

THEIR WORKMEN

Shri Sudesh Chandrakant Chavan,
384, Yadav Patilwadi, Room No. 4,
Prabhadevi,
Mumbai – 400 025.

APPEARANCES:

FOR THE EMPLOYER : Mr. Satyaraj Alva, Advocate

FOR THE WORKMEN : In person

Mumbai, dated the 16th May, 2018**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-11012/35/2010 – IR (M-I) dated 05.05.2011. The terms of reference given in the schedule are as follows :

“Whether the retrenchment of Shri Sudesh Chandrakant Chavan w.e.f. 03.05.2010 by M/s. Ranadive is proper and justified ? To what the workman is entitled to get benefits and from which date?”

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through Rozanama it appears that the concerned workman remained absent since long i.e. since 23/9/2016. The concerned workman has not filed his affidavit or any other evidence to substantiate the Statement of Claim, despite the fact that ample opportunity is given to the concerned workman to adduce evidence by way of affidavit or by otherwise.

4. It appears from the proceedings and submissions of first party that the first party has decided to close down permanently irrevocably for good and the service of all the employees on the rolls of the firm to terminate on account of permanent and irrevocably closing down of its business activities.

5. In these circumstances, it appears that the concerned workman has failed to adduce the evidence to substantiate the claim. Therefore, the Reference is liable to be rejected for want of evidence and accordingly the Reference is rejected.

ORDER

Reference is rejected.

Date: 16.05.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 21 जून, 2018

का.आ. 996.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, भारतीय प्रौद्योगिकी संस्थान, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 10/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.06.2018 को प्राप्त हुआ था।

[सं. एल-42011/105/2016-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st June, 2018

S.O. 996.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 10/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Indian Institute of Technology, Kanpur & Others and their workmen, which was received by the Central Government on 13.06.2018.

[No. L-42011/105/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE SHRI SHUBHENDRA KUMAR, HJS PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR**

ID No 10/2017**Between :**

Sh. Pradeep Kumar Singh,
3/86-A, Block 'F', Panki
Kanpur(U.P.)-208020

And

1. The Director,
Indian Institute of Technology
Kalyanpur, G.T. Road,
Kanpur (U.P.)-208016.
2. The Proprietor,
M/s United Refrigeration Works,
A-5, Vivek Cinema Building, Chunniganj,
Kanpur(U.P.)-208001.

AWARD

1. Central Government, MOL, New Delhi, vide notification no. L-42011/105/2016-IR (DU) dated 01/03/2017 has referred this Industrial Dispute to this Tribunal for adjudication.
2. “Whether the action of the management of Indian Institute of Technology, Kanpur/M/s United Refrigeration Works, Kanpur in terminating the services of Shri Pradeep Kumar Singh workman with effect from 01.02.2016 is just fair & legal? If not, to what relief the workman concerned is entitled to?”
3. Case of the worker Pradeep Kumar Singh is that he was appointed on 1/07/2013 at substation no. 2 as Electrical Supervisor under O.P. no.1 and his appointing authority was Shri Vinay Tiwari who deputed the worker under Vijay Kumar, Assistant Engineer. Worker states that he was discharging his work satisfactorily but Shri Vijay Kumar started giving him mental torture because he was interested to get appointed his real Bhatija and when he could not success in his mission then he brought his real relatives before him who started extending threat to the worker. It is further stated by worker that he was terminated on 22.04.2015 against which he made a complaint before SSP/ DM Kanpur Nagar and also sent a letter to Central Labor Court, Kanpur and the Labor authorities in turn vide letter dated 25.05.2015 through register post in which Mr. Rajeev Kapoor and the worker was directed to put their appearance on 10.06.15 before Shri Dendrapra Mohan Verma, LEO and the worker get justice which was not liked by Shri Vijay Kumar and whatever behavior was being suffered by the worker he intimated the same to the higher officer and the higher authorities after calling the worker and Shri Vijay Tiwari tried to reconcile the matter. In consultation with Vijay Kumar one Shri Ishwar Singh highly skilled man was posted at substation no. 2 and worker was removed from there and ultimately Ishwar Singh was appointed as electrical supervisor and the worker was asked to perform the work of A/C audit in the premises of IIT and this work was done by the worker in the routine manner. It is further pleaded that on 22/01/2016 under the order of Shri Vinay Tiwari worker was placed as plant operator but he did not resume the charge and stated that w.e.f 01.02.16 he is attending his duty daily but no work was allotted to him.
4. Apart from above it is stated by the worker that he was interviewed by Shri Vinay Tiwari Executive engineer in which he was declared successful and he was allotted work at substation no. 2 which was under M/s Kapoor Electrical Company India. He was paid fixed salary at Rs 13,000 which was paid to him by the officer of IIT and also the same was enhanced by them but whatever staff was present at substation no. 2 their salary was enhanced by Ministry of Labor. An amount of Rs 1560/month was deducted against EPF and Rs 227.50 was deducted by way of contribution against ESI from his salary and in this way a total amount of Rs 11,212/- was received by him as salary. He has further stated that he was posted as highly skilled worker in the firm of SM Engineer where he was paid his salary Rs 461/- per day thereafter he was asked to join M/s United Refrigeration Works on 1.11.2015 thereafter from 22.01.2016 he was posted as plant operator in new IME building by way of transfer from where w.e.f 1.02.2016 he was removed from the service.
5. Worker has further stated no show cause notice was ever received by him alleged to have been sent by IIT and when meeting was organized through labor department then these notices were provided to him by one Anil Srivastava .
6. Under the facts and circumstances as above, worker has requested that justice should be done in the matter.
7. Opposite party no. 1 that is the Director IIT Kanpur has filed their reply/ written statement, inter alia, stating that reference order speaks existence of Industrial Dispute between Opposite party no. 1/ opposite party no. 2 and workman as a party to the dispute which renders the impugned reference order ambiguous , self contradictory and evasive; that without application of proper mind Central Government has referred the dispute to this Tribunal ignoring daily wage, casual and contract labors have no lien in the employment of public sector; that the establishment of opposite party no. 1 does not fall in purview of Industry and there had never been the relationship of master and servant between Opposite party no. 1 and the concerned workman in any capacity whatsoever ; that the present matter is not an Industrial Dispute for this reason; because neither the service of the claimant is dismissed, retrenched, terminated nor has he been deprived from the work from 01.02.16 from OP. No. 1; because no cause of action could have accrued to the claimant from 1.02.16 against O.P. no.1 as he had never been

appointed by it at any point of time in any capacity and because neither prima facie any case is made out nor balance of convenience lies in favor of the claimant.

8. On merit management in reply to unnumbered opening para of the statement of the claim has stated that the same are denied emphatically being contrary to the facts on record as also being not related with O.P. NO.1. Worker has never been appointed or engaged by O.P. NO.1, however, it is stated that worker had been engaged by its contractor in the past and lastly by O.P. NO.2. It is admitted by O.P. NO.1 that M/s Kapoor Electric Company(India) was engaged with them as contractor and rest of the assertions are denied being fabricated, misleading and contrary to the facts on record. In the present reference O.P. NO.1 had no role accept to ascertain that the workers engaged by its contractors were paid wages etc as commensurate to their category of employment fixed by Central Gov. from time to time. It is also denied by O.P. NO.1 that they had no power, authority, jurisdiction and competence to fix or enhance the salary of claimant as he had never been its employee; however, power was vested with the O.P. NO.2 under whose employment he had been working. On the basis of internal working it was gathered that the claimant had in fact been engaged by M/s United Refrigeration Works, the O.P. NO.2, the contractor of OP NO.1 w.e.f 1/11/2015 for completion of contract assigned to it and thereafter from 1/02/16, he started absents from his duties for which workers were served letters dated 22/02/16, 2/02/16, 9/03/16 which were never responded by him. He made false SMS to the district officer ultimately causing his own appearance before Police station Kalyanpur where he regretted in writing so the services of the worker have been dispensed by it. O.P. NO.2 vide their letter dated 1/04.2016 informed the Executive Engineer of OP NO.1 that worker had not surrendered his identity card issued by O.P. NO.2, therefore, entry of worker in the premises of O.P. NO.1 may not be allowed else O.P. NO.2 shall not be responsible. It is also stated by O.P. no.1 that the worker had been engaged with M/s Kapoor Electric Company for sometimes and thereafter with M/s SM Engineer, the contractor of O.P. NO.1 which is evident from the own contention of the worker and the documents enclosed with the statement of the claim. The worker is habitual of accusing against his employer as well as officers of O.P. no.1.
9. On the basis of above it is requested by O.P. no.1 that the claim of the worker is liable to be rejected being devoid of merit.
10. O.P. no.2 in its written statement has stated that they have been awarded contract as per tender entered into with IIT Kanpur for day today maintenance of AC and domestic Air conditioning unit of academic area, all hostels, visitor hostel, VFA and Health Centers etc., which was for the period of 12 months effective from 1.11.15 . It is also alleged as per contract O.P. no.2 had to employ, Unskilled Labor-7, Semi Skilled Labor-17, and skilled labor 4, High Skilled labor-1. All these labors have been employed to perform contract on temporary and daily wage basis and they were paid their wages as per provisions of Minimum Wages Act and ESI and PF benefit is also extended to the labor as per contract. Worker Pradeep Kumar Singh has been appointed as highly skilled labor and has drawn wages for the month of Nov. 2015 to Jan. 2016 from O.P. no.2 which is not in dispute. It is further submitted that the worker remained absent from work w.e.f 01.02.16 without giving any written or oral notice to the firm and due to absence of the worker O.P. no.2 has to suffer work loss and accordingly due notice dated 22/02.16, 2.03.16 and 9.03.16 were dully served upon the address at 3/86 A , Block F, Panki, Kanpur of the worker and also intimated to the concern person of IIT requiring the worker to explain the reason of his absence from his work. Notice served upon the worker has not been deliberately received by him and returned by the postal authority. Due to his personal grievance with officers of IIT, worker has created nuisance and threatened for committing suicide to the officers of IIT and its management and the matter was dealt with by PS Kalyanpur and OP NO.2 was called upon in the matter where the worker himself admitted his guilt and since he was continuously absent from the work O.P. no.2 vide letter dated 01.04.16 addressed to the Suptd. Engineer, ITW, IIT Kanpur, informed that worker has been terminated from the work for his misconduct by way of unnecessary absence from the work without giving any notice to the O.P. no.2. Worker has received payment on 15.02.16 for the month of Jan 2016 through cheque dated 13.02.16 and has admitted his absence without any notice while receiving the cheque and no reason for his absence was explained by him. Worker was appointed on temporary/daily wages basis hence; he has no right of work under the O.P. no.2 after committing continuous misconduct by him as above. It appears that worker has some problem with some alleged officers of IIT and the O.P. no.2 is not concerned with his personal grievance with the officers of IIT and his illegal demand of the post of supervisor. Worker has not whispered even a single word in the name of complaint against O.P. no. 2 expect his termination that was done due to misconduct committed by him. Lastly it is pleaded that due to completion of tenure of work in terms of work contract entered into with IIT and O.P.no.2 all the workers has been discharged on Oct 2016 by O.P. no.2. And on the basis of above the O.P. no.2 prayed that in view of facts and circumstances as explained above, the claim petition of the worker be rejected.
11. Worker on the order sheet dated 27.06.17 had made an endorsement that he has not to file any rejoinder in the case.
12. Worker Pradeep Kr. Singh has examined himself as W.W.1. Opposite party no. 1 has examined Sri Vinay Kumar Tiwari, Ex. Engineer, I.I.T, Kanpur, as M.W.1 & opposite party no.2 Proprietor United Refrigeration Works examined its Manager Sri Anil Srivastava as WW2.

13. Worker Pradeep Kumar Singh has filed copy of reference paper no. 4/6 and the copy of public grievance paper no.4/7, copy of complaint to DLC 4/8-9, termination of worker order dated 30/4/15 issued by M/s Kapoor Electric company 4/10, copy of complaint made to DLC 4/11-12. Letter sent to ACM-VII Kanpur Nagar by Shri Omkar Dixit 4/13-14 , copy of order passed by DLC with regard to the complain by worker 4/15 & 4/17 and an order of LEO dated 19.04.16 paper no. 4/16 and 4/19 , copy of order dated 20.05.16 paper no. 4/18, 4/21 and 4/22-23 and copy of complaint made by worker to ALC paper no. 4/24-26,4/ 27-29, paper cutting 4/30, copy of order passed by ACM-VII Kanpur Nagar dated 20.03.16, copy of ID card of worker 4/32-33 pay slip of worker 4/34 and other documents which shall be discussed at appropriate stage.
14. Opposite party no. 1 has filed documents through list 9/1 which are letters dated 22.02.16, 2.03.16, 9.03.16 and 1.04.16 served to worker by opposite party no. 2 paper no. A-1 to 4, copy of complaint of worker paper no. B1-3 and letter of ACM-VII paper no. C, letter sent to ACM-VII by Omkar Dixit D to D1 and an apology tendered by worker Pradeep Kumar Singh paper no.E, paper regarding contract with M/s Kapoor Electric Company, paper no. F1-F36, record of attendance of employees of contractor M/s Kapoor Electric Company G1-10, paper regarding contract with opposite party no. 2 paper no. H1-H38 and record of attendance of its employees paper no. L1-L6, contract with M/s SM Engineers paper no. J1-J10 and record of attendance of its employees paper no. K1-K12, written statement of opposite party no. 1 paper no. L1-L4 and letter dated 23.01.17 of IIT Kanpur ALC(C) paper no. M1-M11.
15. Opposite party no. 2 M/s United Refrigeration has also filed w/s paper no.6/1-7 and filed documents through list 6/8 which are letter of acceptance dated 9.10.15 by superintending Engineer to M/s United refrigeration paper no. 6/9 including terms of contract paper no. 6/10-13, order of LEO with regard grievance of worker dated 19.04.16 paper no. 6/14, grievance of worker 6/15-16 copy of cheque dated 13.02.16 received by worker 6/17 copy of personal data of worker 6/18, copy of attendance sheet for the month of Dec. 15 and Jan 16 paper no. 6/19-22, copy of letter sent to ACM-VII Kanpur dated 6.04.16 by Omkar Dixit paper no. 6/23-24, copy of notice dated 22.02.16,2.03.16 and 9.03.16 along with postal envelopes 6/25-29, and letter of termination dated 1/04/14 paper no. 6/30.
16. I have heard the worker in person and AR for opposite party no. 1 and 2 and have also perused the record.
17. M.W.1 Sri Vinay Kumari Tiwari, Ex.Engg. of opposite party no.1 has filed his affidavit in evidence stating that opposite party no.1 has no control over the employees provided to the IIT by contractors nor they have any relationship of master and servant between them and attendance of such employees provided by the contractor is taken by the contractor and payment of wages is also made by the contractor. M.W.1 has also proved the attendance register maintained by the contractor where attendance of worker is also taken. He further alleged that the worker has never given any application for appointment nor his written examination or interview was taken and he was never issued any appointment letter. In fact worker is in habit of making false complaint against the officers of the opposite party no. 1 and the worker himself absconded from his duties from 01.02.16 and thereafter opposite party no.2 has given him three notices dated 22.02.16, 02.03.16 and 09.03.16 but worker did not appear to resume his duties and thereafter opposite party no.2 contractor has removed the worker from the service by letter dated 01.04.16 copy of letter has been proved by this witness. As worker was never in the employment of opposite party no.1 hence question of termination of the service of the worker does not arise. His services were terminated by opposite party no. by letter dated 1.04.16.
18. In his cross examination the witness has denied that interviews of worker was taken by him and other officers for his appointment. In fact worker was engaged by the contractor for the work. He further denied that the increment of worker was granted by opposite party no.1.
19. It appears from the cross examination of this witness that the worker did not cross examined the witness on the point of his absence w.e.f. 1.2.16. Neither he has controverted the witness by suggesting that notices issued by opposite party no.2 was not received by him nor he has cross examined the worker in his termination by opposite party no.2 vide letter dated 01.04.16. As such the facts proved by the witness supported by documentary evidence are not rebutted or challenged by the worker therefore, the testimony of M.W.1 is liable to be accepted.
20. On behalf of opposite party no.2 M/s United Refrigeration works his manager Sri Anil Srivastava has filed his evidence through affidavit as M.W.2 wherein he has deposed that the opposite party no.1 IIT awarded a work tender for a period of 12 months effective from 1.11.15 by letter of acceptance dated 09.10.15 worker was engaged on 01.11.15 and has performed the work up to Jan 16 in the category of skilled labor and received the wages as such worker has not completed 240 days of continuous working. He absented from 01.02.16 upon which registered notices dated 22.03.16, 02.03.16 and 09.03.16 were sent at the address of the worker but the notices were refused and returned undelivered with the postal remark that the worker did not received notices deliberately. As such opposite party no.2 through letter dated 01.04.16 terminated the services of the worker due to his unauthorized absence from the place of work and he has received payment on 15.02.16 for the month of Jan., 16 vide cheque of PNB endorsing his absence with without notice while receiving the cheque.

21. Worker has asked a very few questions in the cross examination where this witness admitted that the worker Pradeep Kumar Singh was not attending his duties from 01.02.16 and therefore, the services were terminated. He has denied that the worker has continuously attended the duties up to 20.02.16. He has also admitted that on the address provided by the worker three notices were sent through registered post but the worker did not received the notices. Opposite party has also filed unopened all the three envelopes through which the notices were sent to the worker. A perusal of envelopes reveals that they were returned to the opposite party no.2 with remarks of postman as refused. As such service of notices is held sufficient by refusal of worker to receive the notices. This witness has not been cross examined on relevant points stated by him and the evidence of M.W.2 is also supported by documentary evidence which witness has not been rebutted or controverted in his cross examination. As such the testimony of this witness is also liable to be accepted.
22. Worker Sri Pradeep Kumar Singh has examined himself as w.w.1 who has denied acceptance of notices sent to him by opposite party no.2. In his cross examination. He has stated that the opposite party no.2 has changed his post from supervisor to operator and from that day he did not work himself but he has requested to Mr. Vinay Tiwari to allot him another work but he was not given another work. He has further admitted that he was paid his wages by opposite party no.2 and his EPF and ESI was deducted by the contractor. He was never given any appointment letter by IIT that is why he was not the employee of IIT. He admitted his signature on paper no.4/44 which is receiving payment of wages through cheque dated 13.02.16 wherein it is written that worker remained absent without any information from 01.02.16 and today he has come to receive the payment.
23. He further admitted that his attendance was taken by contractor opposite party no.2 and wages was also paid by opposite party no.2.
24. From the perusal of evidence of worker it is clear that he has also admitted to be the employee of opposite party no.2 and also admitted receiving of wages through opposite party no.2. As such he has admitted the case of opposite parties that he was the employee of opposite party no.2 from whom he was receiving his wages. He has further admitted for not attending duties after change of work from supervisor to operator and all the three notices sent to him by opposite party no.2 are held to be sufficiently by refusing to accept the notices. He has received the payment for the month of Jan. through cheque of opposite party no.2 dated 13.2.16. As such it indicates that he has received full and final payment of wages endorsing that he himself absented and now he has come to receive wages. It is also evident that opposite party no.2 contractor given sufficient opportunity to the worker by issuing three notices but the worker has refused to accept the same and did not resume his duties.
25. As such termination of his service by opposite party by letter dated 01.04.16 with effect from 01.02.16 is just and legal.
26. One more point is to be discussed that the worker has not worked continuously for 240 days under opposite party no.2 therefore, worker is not liable to get any benefit under the provisions of the Industrial Disputes Act.
27. For the reasons discussed above, it is held that the termination of services of the worker w.e.f.1.2.16 is just fair and legal and the worker is not entitled for any relief pursuant to the present reference order.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 21 जून, 2018

का.आ. 997.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रजिस्ट्रार, इलाहाबाद विश्वविद्यालय, इलाहाबाद एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 51/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/20/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st June, 2018

S.O. 997.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 51/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Registrar, Allahabad University, Allahabad and their workmen, which was received by the Central Government on 31.05.2018.

[No. L-42012/20/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE SHRI SHUBHENDRA KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR****Industrial Dispute No.51/2017****Between-**

Sri Arjun Prasad Tiwari son of Nand Kishore Tiwari,
Village Janwamau Pure Negi Ka Purwa,
P.O. Saiyad Yasinpur, Kunda,
Pratapgarh U.P.

And

The Registrar,
Allahabad University,
Allahabad.

AWARD

1. Central Government, Mol & Employment New Delhi, vide notification no. L-42012/20/2017-IR(DU) dated 06.07.17, has referred the following dispute for adjudication to this tribunal.
2. Whether the worker Sri Arjun Prasad Tiwari son of Sri Nand Kishore Tiwari can be said to be the workman of Allahabad University. 2. And if so whether the termination of the services of the worker is legal and justified? 3. If not to what relief the concerned workman is entitled and from which date?
3. In this case after receipt of reference order from the Ministry, repeated notices were issued to the workman for filing of his claim statement. Today when the case was taken up for hearing, neither the worker was present nor any claim statement is filed in the case. The representative for the management present.
4. By a bare perusal of the order sheet it is amply clear that the worker has been given sufficient opportunity to file his claim petition but on none of the dates fixed in the case worker was present before the court.
5. It is, therefore, abundantly clear that the worker is not interested in prosecuting his case and in the absence of claim petition as also for want of evidence and proof the reference is bound to be decided against the worker holding that the worker is not entitled for any relief pursuant to the present reference order.
6. Reference is answered accordingly against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 21 जून, 2018

का.आ. 998.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिवीजनल इंजीनियर, टेलीकॉम प्रोजेक्ट, रायपुर एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (सीजीआईटी/एनजीपी/31/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.06.2018 को प्राप्त हुआ था।

[सं. एल-40012/64/2004-आईआर (डीयू.)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st June, 2018

S.O. 998.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT/NGP/31/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Divisional Engineer, Telecom Project, Raipur and their workmen, which was received by the Central Government on 13.06.2018.

[No. L-40012/64/2004-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/31/2009

Date: 16.05.2018

Party No.1 : The Divisional Engineer,
Telecom Project,
7, Sahakari Marg-II,
Choubey Colony, Raipur

Versus

Party No.2 : Shri Rewa Ram Banjare
S/o Shri Jhagru Ram,
Village Akolikala,
PO: Chhatera, PS: Aarang,
Distt. Raipur (Chhattisgarh)

AWARD

(Dated: 16th May, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of The Divisional Engineer, Telecom Project ("Party No. 1" in short) and their workman, Shri Rewa Ram Banajare (the "workman" in short), for adjudication, as per letter **No.L-40012/64/2004- IR(DU) dated 23.09.2009**, with the following schedule:-

"Whether the action of the management of Divisional Engineer, Telecom Project, BSNL, Raipur in terminating the services of Shri Rewa Ram Banjare w.e.f. 31.12.1990 is legal and justified? If not, what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 22.10.2009, statement of claim was filed and on 18.11.2009, written statement was filed and on 05.04.2011, rejoinder was filed.
3. By filing of statement of claim, workman stated that, he was appointed as a labour on 18.04.1985, but his service was terminated by order dated 11.12.1990, but according to the workman, his service was actually terminated on 31.12.1990.
4. According to the workman, he worked for more than 240 days in each calendar year, but Party No. 1 had not given any proper opportunity being heard before termination of his service. According to the workman, he was also very severe harassed and disproportionate punishment was passed against him.
5. So, he prayed that, order of termination dated 11.12.1990 is illegal, improper and unjust. So, he is entitled for reinstatement with full back wages.
6. All major facts were denied by the Party No. 1 by filing written statement, but it is admitted that, workman was terminated on 31.12.1990, because he was casual labour on the basis of contract. There was no appointment order and the question of termination does not arise. According to the Party No. 1, workman was engaged on the availability of the work, if work was not available, his service was not required. He was a casual labour, there is no appointment order and the question of termination does not arise.
7. It was denied that, the workman worked for more than 240 days in each calendar year. All mazdoors on roll in the year of 1990 were retrenched by the department by giving proper notice and compensation. In the same line, workman was also terminated by giving notice and paid the compensation in 1990.
8. According to the Party No. 1, statement of claim is also hopeless and devoid of by limitation. According to the Party No. 1, the workman is not entitled to any relief.
9. By filing rejoinder, workman asserted all most all facts, which were mentioned in the statement of claim. According to him, he had completed more than 240 days in every calendar year. It is denied that, still work is available with Party No. 1. He had not been paid the retrenchment compensation at the time of termination of service. According to the workman, he filed a claim before Central Administrative Tribunal and the case was dismissed by the court. So, this court has the jurisdiction to entertain this dispute.

10. Point of determination:

- a. Whether the action of the management in termination of service of the workman is legal and justified?
- b. Whether the workman is entitled to any relief?

Reasons for observation:

On behalf of the workman, in support of the statement of claim, he filed evidence on affidavit on 13.09.2011. On the contrary, on behalf of the Party No. 1, evidence on affidavit of Shri R.R. Yadav was filed, but both the parties were not present in the court for further examination and cross-examination, so, their evidence is incomplete. As far as the affidavits are concerned, no document was produced and proved on behalf of the both parties, so these evidences treated as oath against oath. We fail to understand, what facts are proved and what are not proved. In my opinion, burden of proof is lying on the workman. So, workman failed to prove those facts, which were raised in the statement of claim and rejoinder. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 21 जून, 2018

का.आ. 999.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रजिस्ट्रार, इलाहाबाद विश्वविद्यालय, इलाहाबाद एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 50/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/19/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st June, 2018

S.O. 999.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 50/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Registrar, Allahabad University, Allahabad and their workmen, which was received by the Central Government on 31.05.2018.

[No. L-42012/19/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE SHRI SHUBHENDRA KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR****Industrial Dispute No. 50/2017****Between-**

Sri Muneshwar Shukla son of Kakedeen Shukla,
Village Ojha Ka Purva ,
P.O. Saiyad Yasinpur, Kunda,
Pratapgarh U.P.

And

The Registrar,
Allahabad University,
Allahabad.

AWARD

1. Central Government, Mol & Employment New Delhi, vide notification no. L-42012/19/2017-IR (DU) dated 06.07.17, has referred the following dispute for adjudication to this tribunal.

2. Whether the worker Sri Muneshwar Shukla son of Sri Kakedeen Shukla can be said to be the workman of Allahabad University. 2. And if so whether the termination of the services of the worker is legal and justified?
3. If not to what relief the concerned workman is entitled and from which date?
3. In this case after receipt of reference order from the Ministry, repeated notices were issued to the workman for filing of his claim statement. Today when the case was taken up for hearing, neither the worker was present nor any claim statement is filed in the case. The representative for the management present.
4. By a bare perusal of the order sheet it is amply clear that the worker has been given sufficient opportunity to file his claim petition but on none of the dates fixed in the case worker was present before the court.
5. It is, therefore, abundantly clear that the worker is not interested in prosecuting his case and in the absence of claim petition as also for want of evidence and proof the reference is bound to be decided against the worker holding that the worker is not entitled for any relief pursuant to the present reference order.
6. Reference is answered accordingly against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 21 जून, 2018

का.आ. 1000.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, नेशनल इंस्टीट्यूट ऑफ इंडस्ट्रियल इंजीनियरिंग, मुंबई एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. II, मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी-2/48 ऑफ 2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.06.2018 को प्राप्त हुआ था।

[सं. एल-42012/99/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st June, 2018

S.O. 1000.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT-2/48 of 2015) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, National Institute of Industrial Engineering, Mumbai and their workmen, which was received by the Central Government on 07.06.2018.

[No. L-42012/99/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/48 of 2015

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

NATIONAL INSTITUTE OF INDUSTRIAL ENGINEERING

The Director,
National Institute of Industrial Engineering,
Campus Vihar Lake,
Powai,
Mumbai – 400 087

AND

THEIR WORKMEN

Mr. Bhagwan Jagannath Nithnaware,
A-17, Ramanuj CHS Ltd.,
Chinchpada Road, Near Saket College,
Kalyan [E], Pin – 421 306,
Dist. Thane.

APPEARANCES:

FOR THE EMPLOYER : Mr. A.M. Nathani, Advocate

FOR THE WORKMEN : Mr. S.V. Patil, Advocate

Mumbai, dated the 30th May, 2018.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/99/2015 – IR (DU) dated 01.09.2015. The terms of reference given in the schedule are as follows :

“Whether National Institute of Engineering (NITIE) is “industry” within the meaning of Section 2(j) of the Act ?
(2) Whether the applicant namely Shri Bhagwan Jagannath Nithnaware is workman within the meaning of section 2(s) of the Act ? (3) If it is so, whether the termination of applicant from services is lawful and justified ? and (4) If not, to what relief the applicant is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. The second party workman has filed statement of claim Ex.7. According to the second party workman, on 21.7.89 he joined as Computer Operator, a Group-B post with employer, National Institute of Industrial Engineering, an academic institute under Ministry of HRD, Govt. of India. Then he got promoted as Programmer w.e.f. 9.10.1990 and subsequently again got promoted to the post of Sr. Programmer in the year 2000. Since then he had been serving as Sr. Programmer with the office of employer.

4. According to the concerned workman, the post of Sr. Programmer is a post falling into academic staff and classified as Group-A officer by NITIE Service Rules and NITIE [Classification, Control & Appeal] Rules 1988 and NITIE Conduct Rules 1988, relating to condition of service of second party workman. While serving as Sr. Programmer, he was in receipt of the scale pay of Rs.15600 – 39100 + Grade pay of Rs.7600/- which corresponds to 6th CPC.

5. It is the case of the concerned workman that while serving as Sr. Programmer with the employer, he had blown the whistle against the corruption by some of the office bearers / officials of the employers NITIE. He addressed a complaint dt. 20.5.10 to the then Director of NITIE thereby pointing out as to how there was financial irregularities in the computer centre being under the control of one Mr. Anand Naidu, Manager, Computer Centre, NITIE. Having received no response on his complaint dt. 20.5.10, he had to resort to RTI Act, 2005 vide his RTI application dt. 1.12.11 so as to gather the relevant information to substantiate the financial irregularities in computer centre, NITIE thereby causing loss to the public money funded by Govt. of India to NITIE. The information so received disclosed that purchase orders were being given to a particular supplier for the years together and most importantly an amount of Rs.599935/- was shown as spent for purchasing some software items for 2006 which were renewable for 2nd and 3rd year i.e. for the year 2007 & 2008. However, even in 2007 an amount of Rs.681592/- was again shown as spent for purchasing some software items which were already purchased and were to be renewed for 2007-08. He therefore reported the aforesaid irregularities vide his complaints dt. 21.2.12 & 29.2.12 to the Director of NITIE namely Mr. Amitabha De and requested him to take the action. He had specifically brought to the notice of the Director of NITIE namely Mr. Amitabha De that in case of no response, he would be constrained to inform the CBI and made it clear that the Director of NITIE namely Mr. Amitabha De may also get implicated as an officer trying to protect the subordinates. Thereafter he addressed a complaint dt. 9.3.12 to the Chairman of NITIE thereby reporting the financial irregularities in the purchase of computers, laptops, software items etc. by Mr. Anand Naidu, Manager, Computer centre and also inaction of Director of NITIE namely Mr. Amitabha De. Having not received any response on the aforesaid complaints, he addressed a complaint on 9.4.12 to DIG, CBI, Mumbai thereby requesting him to unearth the ongoing financial irregularities and corruption in NITIE by holding the enquiry.

6. It is then case of the concerned workman that Mr. Amitabha De had developed bias and prejudiced mind set against him for the reason that he was trying to unearth the irregularities concerning purchase of equipments causing to the tune of Rs.6.68 crores [Approx.] but kept in scraps even till date and hence Mr. Amitabha De started displaying his mind set against the second party workman in every possible way.

7. It is thus case of the concerned workman that Mr. Amitabha De the then incharge of the Director of NITIE suspended him on 24.9.12 without any authority of law or approval from the competent authority of NITIE i.e. Board of Governors headed by Chairman. Mr. Amitabha De then issued a Memorandum of charge sheet dt. 24.9.12 proposing to hold enquiry against him for imposing major penalty under rule 10 of NITIE Classification, Control & Appeal Rules 1988 read with Rule 11, 20 & 24 of NITIE Conduct Rules 1988 on 12 charges. He submitted his written statement of

defence dt. 28.9.12 thereby denying the charges leveled against him and stating that he had not committed any act as alleged and desired to be heard in enquiry.

8. It is then the case of the second party workman that during suspension, he was deprived of the subsistence allowance and at the same time was departmentally proceeded against him, by appointing an advocate Mr. A.M. Nathani as Presenting Officer and appointing retired judicial officer namely Mr. Arun Lad as Enquiry Officer, both being outsiders. As such during the suspension he was deprived of subsistence allowance. He therefore vide his letter dt. 30.10.12 informed that he was under medical treatment and requested the employer to release the subsistence allowance. However, surprisingly Mr. Amitabha De again issued another Memorandum dt. 2.11.12 against him with similar charges. He then submitted his written statement of defence dt. 9.11.12 thereby denying the charges leveled against him and stating that he has not committed any such act as alleged and desired to be heard in enquiry. He also pointed out that enquiry proceedings have been initiated by Mr. Amitabha De, Director incharge with vindictiveness and grudge against him and therefore he would not get justice in such biased proceedings. However, on 12.1.12 Mr. Amitabha De vide communication informed second party workman that written statement of defence dt. 28.9.12 and 9.11.12 were found by him to be unsatisfactory.

9. According to the concerned workman, vide letters dt. 14.11.12, 10.12.12 & 17.12.12 he requested the Director incharge to adjourn the enquiry proceedings so as to enable him to appoint his defending officer and also pointed out that he was under medical treatment. However, the first party did not show even courtesy of responding fair request of the second party workman to release the subsistence allowance so as to enable him to appoint defending officer of his choice but proceeded ex-parte against the second party workman, without affording fair & reasonable opportunity of defence to the second party workman. The enquiry proceedings commenced on 16.11.12 that to ex-parte against him. The first party institute examined as many as witnesses including Mr. Amitabha De the Director incharge of NITIE who have framed the charges against him and issued the charge sheet and then enquiry proceedings concluded on 26.12.12.

10. It is then the case of the concerned workman that he was deprived of his subsistence allowance thereby literally denying him his right to defence himself. He has been punished in total violation of principles of natural justice. He was not afforded the opportunity of defending himself by taking assistance of legal practitioner under rule 10 (8) (A) of NITIE [CCA] Rules, 1988 and thus having finished the enquiry proceedings against the second party, E.O. submitted his report. On 25.2.13 the second party submitted his comments / written submission disagreeing with the report of E.O. dt. 11.1.13. However, vide impugned order dt. 17.5.13 second party came to be removed from service of NITIE.

11. According to the second party workman, he then preferred departmental appeal to the employer against the order dt. 17.5.13 as he was under belief that the order was appealable. He thereafter approached the Hon'ble H.C. vide civil WP No. 2555 of 2013 u/s. 226 of Constitution of India. Hon'ble High Court was pleased to pass the order dt. 29.1.14 thereby observing that the petition will have to be heard finally at the admission stage and posted the petition for final hearing on 12.3.14. In the mean time he received the order dt. 18.2.14 issued by the Chairman of NITIE rejecting his appeal and confirming the order of removal dt. 17.5.13. After receiving the said order dt. 18.2.14 he had to amend the WP No. 2555 of 2013 incorporating the challenge to the appellate order dt. 18.2.14. Hon'ble H.C. dismissed the said writ petition vide order dt. 22.8.14 holding that the disputed facts would need evidence and as such the petition was dismissed with liberty to the second party to approach the tribunal or the Labour court under I.D. Act by keeping all the points open. The second party filed SLP seeking special leave of the Hon'ble S.C. to appeal against the order of Hon'ble H.C. dt. 22.8.14 in WP No. 2555 of 2013 but the Hon'ble Apex Court dismissed the SLP in limine.

12. It is thus the case of the concerned workman that he then filed an application dt. 20.11.14 before the ALC [C], Mumbai raising industrial dispute. The ALC [C], Mumbai after failure of conciliation sent report dt. 13.5.15 to the Govt. of India, Labour & Employment to the effect that second party falls in the category of Group – A or Clause – I officer and his salary exceeds Rs.19000/- p.m. and that NITIE was also not an industry. Thereafter Govt. of India accordingly issued a letter dt. 27.5.15 refusing to make the reference on the ground that NITIE was not an industry and second party was not workman. Thereafter second party again approached the Hon'ble Bombay H.C. vide WP No. 897 of 2015 seeking to quash & set aside the removal order dt. 17.5.13. However, vide order dt. 21.7.15 the Hon'ble H.C. has been pleased to declare that the report dt. 13.5.15 and order dt. 27.5.15 of the Govt. of India are bad in law and further directed to make a fresh reference to this tribunal. Pursuant to which, Govt. of India vide its order dt. 1.9.15 made a reference to this tribunal.

13. It is thus case of the concerned workman that the departmental proceedings vide memorandum dt. 24.9.12 and 2.11.12 against him for imposing penalty of removal from service of institute and the order dt. 18.12.14 passed by the Chairman of NITIE the employer rejecting the appeal of the second party against the major penalty of removal from service are illegal. He is therefore asking to quash & set aside the impugned order dt. 17.5.13 and to direct the first party to reinstate him into service with all consequential benefits w.e.f. 24.9.12.

14. The first party resisted claim by filing written statement Ex.9 contending therein that the second party workman was re-designated from the post of Programmer to the post of Sr. Programmer w.e.f. 2.3.2000 which cannot be termed as

a promotion. It is then contention that the second party served as a Sr. Programmer in computer section. He never had any managerial, administrative or supervisory power. The nature of duties performed by him prior to the termination at the most can be considered as technical or operational as defined u/s. 2 (s) of the act.

15. It is then contented by the first party that second party was in grade pay of Rs.6600/- prior to his termination and not in the grade pay of Rs.7600/- as has been claimed under reference. It is contended that the first party employer is an autonomous body under the Dept. of Higher Education, Ministry of HRD, Govt. of India and is having its Memorandum of Association and the rules. The first party is also having its rules regulations which deals with service conditions and its regulations known as NITIE [CCA] Rules 1988 and NITIE Rules 1988. In addition to that the first party is also having NITIE Service Rules. Over and above, the aforesaid rules and the regulations, there is no rule provided to deal with any contingencies, Govt. of India Rules are being followed as has been stated u/R 34. As such there is no need to borrow the provisions of Industrial Employment Standing Orders Act, 1946 and rules framed thereunder. As such the first party is an industry u/s. 2 (j).

16. It is also a case of the first party that the allegations / apprehensions made by the second party were examined by the management of first party but there was no substance in the allegations. There are no financial irregularities in computer centre headed by Anand Naidu as Manager, Computer Centre. In this respect, first party employer has provided all the details and documents to the concerned workman sought by him under RTI Act in respect of institute incurring an expenditure of Rs.599935/- for purchase of software in 2006. The enquiry was made by the Director incharge and the letter dt. 24.2.12 was issued to the second party but due to personal rift with his immediate superior Anand Naidu, the second party made allegations against him. As such there was no question of Dr. Amitabha De shielding any irregularities and there is no substance in the complaint of second party.

17. It is thus denied by the first party that acting Director had purchased the relevant equipments to the tune of Rs.6.68 crores. It is also denied by the first party that the equipments purchased to the tune of Rs.6.68 crores are kept in scraps.

18. It is then case of the first party that the decision to suspend the second party pending enquiry was taken by the competent authority and then on instructions, acting Director Prof. Amitabha De just signed the order of suspension dt. 24.9.12. Prof. Amitabha De himself has not participated in the decision making process. Decision to frame the charges as set out in the Memorandums as well as decision to place the second party under suspension was taken by the competent authority. The principles of natural justice, equity & fair play were duly followed by the first party. However, the second party for the unknown reason did not participate in the enquiry even though the enquiry proceedings were adjourned from time to time.

19. It is also a case of the first party that the second party workman was communicated by the first party vide its order of suspension dt. 24.9.12 that the second party would be eligible to draw subsistence allowance as per the rules, if during the period of suspension second party does not take any remunerative job or get himself gainfully employed elsewhere with or without any remuneration. The second party was also directed to furnish month to month certificate to the A/cs. section to the effect that he has not taken any job during the said month. The second party failed and neglected to submit the non- employment certificate required to be submitted as per the rules applicable to the government employees.

20. According to the first party, the second party workman was also informed vide letter dt. 12.11.12 that the second party should attend the enquiry along with his defendant. However, the second party never attended the enquiry proceedings inspite of fact that the enquiry was adjourned on various occasions. Pursuant to the second party letter dt. 14.11.12 the E.O. adjourned the enquiry on 16.11.12 to 3.12.12. Thereafter the intimation letters were sent to the second party by hand delivery as well as by speed post / RPAD. But then the same intimation letters remained unclaimed as were refused by the second party / his family members. Some of the intimation letters were issued by the second party either directly or through his close relatives residing with him in NITIE's service quarter.

21. It is then case of the first party that the second party workman produced medical certificates to delay the hearing of the enquiry proceedings when infact, the first party arranged for extensive medical check-up by the team of doctors at the entire expenses of first party but the second party did not attend the IIT Medical Board where the arrangement was made for the detailed medical examination of the second party.

22. According to the first party, at no place it was pleaded by the second party during the pendency of enquiry proceedings that he required the subsistence allowance to appoint defending officer or advocate of his choice. He never submitted any communication to the effect that he is unable to participate in the enquiry for want of subsistence allowance. During the enquiry the second party never informed by his communication that he wanted to avail the facility of getting defended by the legal practitioner. The first party at no point of time had denied the opportunity to the second party. On the contrary it is contention of the first party that second party pressurized the management of first party through the office of National Commission of S.C. who told the first party that if subsistence allowance is not remitted the first will be prosecuted. In view of said pressure, the first party has to pay the entire subsistence allowance to the second party even though he did not comply with the requirement of order of suspension dt. 24.9.12.

23. According to the first party, after the enquiry was concluded the findings of the E.O. was forwarded to the second party for his comments. The matter was referred to the Personnel Committee which was required to submit the recommendations to the Board of Governors regarding proposed action to be taken. Accordingly, the Personnel Committee submitted the recommendations in its meeting held on 1.9.13. The said recommendations of the Personnel Committee along with relevant documents were considered by the Board of Governors and approved the recommendations of Personnel Committee and directed the second party to be removed from the services as per NITIE [CCA] Rules, 1988 – IV (7) (VIII) with immediate effect. The Board of Governors vide their order dt. 17.5.13 decided to remove the services of the second party. The second party approached the appellate authority. However, the decision taken by NITIE Society was communicated to the second party by the Chairman. The Chairman also concurred the decision of NITIE Society in its meeting held on 25.9.13 and accordingly the NITIE Society through its Chairman conveyed their decision as contained in the letter dt. 18.2.14.

24. It is also a case of the first party that the nature of duties assigned to the second party prior to his removal from service falls within the definition of the ‘workman’ u/s. 2(s) of the act. It is therefore contention of the first party that the enquiry was conducted in accordance with its rules and regulations and principles of natural justice, equity & fair play were followed. Even the penalty imposed upon the second party under para IV Rule 7 (VIII) of NITIE [CCA] Rules, 1988 is just and proper and equitable and the same cannot be construed as disproportionate to the misconduct committed. The first party is therefore asking for rejection of reference.

25. Following issues are framed at Ex.14. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether National Institute of Industrial Engineering is ‘industry’ within the meaning of Sec 2(j) of the Industrial Disputes Act ?	Yes
2.	Whether the second party workman namely Shri Bhagwan Jagannath Nitnaware is workman within the meaning of Sec 2 (s) of the Act ?	Yes
3.	Whether the termination of second party Shri Bhagwan Jagannath Nitnaware from service is lawful and justified ?	Yes
4.	Whether the domestic enquiry held against the second party is vitiated due to non-remittance of subsistence allowance ?	No
5.	Whether the departmental or disciplinary enquiry held against second party is vitiated due to non-compliance of the principles of natural justice ?	No
6.	Whether the removal of services of second party workman from the employment from the first party employer vide office order dated 27 May 2013 is in breach of provisions of law ?	No
7.	What relief the second party workman is entitled to ?	As per final order
8.	What order ?	As per final order

REASONS

Issue No. 1

26. So far this issue is concerned, the concerned workman in para 3 of the pleadings [statement of claim] contended that the institute is not an industry within the meaning of section 2(j) of the I.D. Act as NITIE has no Model Standing Orders. As such if employer NITIE had been an industrial employer, it would have had the Model Standing Orders.

27. In the context, the evidence of the concerned workman is to the effect that as per the Societies Registration Act the Scientific and Research Institute imparting higher education is not coming under section 2(j) of the act. The concerned workman in his evidence has admitted that the institute carries out its activities with the assistance of its employees including faculty. Section 2(j) of the act defines ‘Industry’ as under:

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workman.

28. There are 3 tests to consider whether the establishment or undertaking is an industry or not ? they are namely,

- (i) Existence of systematic activity
- (ii) cooperation between workmen and employer
- (iii) produces goods and services for the benefits of society

In this respect hand can be led on the decision in case of Bangalore Water Supply & Sewerage Board V/s. Rajappa & Ors – 1978 LAB – IC – 267.

29. It can be said that the amendment carried out by an act No. 46 / 92 is not in force. The proposed amendment to section 2 (j) was not carried out in the notification dt. 21.8.84. As per the proposed amendment to section 2 (j), Educational, Scientific, Research and Training Institutes are excluded from the definition of industry. However, the amended definition is not yet brought into force by the Central Govt.

30. Learned Counsel for the management submitted that the industrial dispute amendment bill in 1982 under clause 2 (c) was proposed to be incorporated for the amendment of definition u/s. 2(j) but in the notification issued dt. 21.8.84 the said proposed amendment of section 2 (c) covering section 2(j) was not brought into force. Submission is to the effect that the Hon'ble Apex Court in the decision in case of State of U.P. V/s. Jaibirsingh – 2005 (3) CTC 741 has clarified that the amendment to section 2 (j) is not brought into force and therefore the Hon'ble S.C. of India in the said judgment felt necessity to place the cases before the Hon'ble Chief Justice of India for constituting a suitable larger bench for reconsideration of the judgment passed in Bangalore Water Supply & Sewerage Board V/s. Rajappa & Ors. In this view the submission is that looking into to the definition of section 2(j) of the act and the ratio laid down by the Hon'ble Apex Court in Bangalore Water Supply & Sewerage Board V/s. Rajappa & Ors, the institute is an industry.

31. It is thus held in the decision in case of Bangalore Water Supply & Sewerage Board V/s. Rajappa & Ors cited supra that industry u/s. 2 (j) of the act has wide import. An industry is one where there is systematic activity organized by the cooperation between the employer and employee for production and distribution of the goods and services calculated to satisfy human wants and wishes. Absence of notice or gainful employment is irrelevant. True focus is final and decisive test, is nature of activity with special emphasis on employer employee relationship. It is held that the Organisation does not cease to be trade & business merely because it is engaged in philanthropic activities. Welfare activities of economic nature undertaken by the Government come within the meaning of industry. Even departments discharging sovereign functions if there are units which are industries and they are substantially severable then they can be considered to come within section 2 (j).

32. In view of this legal position it can be said that the institute carry out its activities with the assistance of employees including faculty. There exists co-operation between the employer and workman and therefore the institute is an industry as defined u/s. 2 (j) of the act.

33. Here it is necessary to point out that the concerned workman has challenged his termination of services from the institute vide WP No. 2555 of 2013 and his writ petition came to be dismissed by the order dt. 22.8.14 inter-alia on the ground that the alternate remedy is available to him. In this writ petition the issues were raised, whether the petitioner is workman as contemplated u/s. 2 (s) of the act and whether the respondent which is an education institution having its own rules & regulations is an industry as defined in section 2 (j) of the act or not ? However, writ petition came to be dismissed with the term 'workman' and 'industry' are required to be considered by the tribunal and as such alternative remedy is available to the concerned workman.

34. The concerned workman relying on the order passed by the Ministry of Labour dt. 27.5.15 has again filed writ petition before Hon'ble H.C. bearing No. 897 of 2015 and that writ petition also came to be dismissed and the workman was directed to exhaust the remedy before the tribunal. The Hon'ble H.C. in the said writ petition was pleased to observe that the communication / finding of the ALC / Conciliation officer to the effect that the dispute of the workman is not fit for adjudication to CGIT, was bad in law. It can be said that the conclusion arrived by the conciliation officer-cum-Labour Commissioner about the institute not falling under the definition of industry u/s. 2 (j) of the act is set aside by the Hon'ble H.C. of Judicature of Bombay in the said WP No. 897 of 2015.

35. In view of this, I find that the activities carried out by the institute with the assistance of its employees including faculty fall within the definition of section 2 (j) of the I.D. Act. As such the institute is an industry as defined u/s. 2 (j) of the act. This issue is therefore answered accordingly in affirmative.

Issue No. 2

36. It is the main contention of the concerned workman that he is very much categorized as Group-A officer classified in the academic cadre and pay scales of Rs.15600 – 39100 in pay band – 3 with Grade pay of Rs.6600/- as per rule IV

part-II of NITIE [CCA] Rules 1988 and NITIE Service Rules 1988 Schedule – I and therefore he is not a workman within the meaning of section 2 (s) of the act.

37. Learned Counsel for the second party workman submitted that all the 4 management witnesses during their evidence have admitted this fact as regards the grade pay and pay scale of the concerned workman and that the employees drawing the pay scales of Rs.15600 – 39100 are classified as Group-A officers of NITIE. Admittedly, therefore the concerned workman who was working as Sr. Programmer is classified into academic staff of NITIE as per the rules. With this the submission of the Learned Counsel for the concerned workman is that the concerned workman is not a workman within the meaning of section 2 (s) of the act.

38. For it is explicit, that there is no word like ‘workman’ used in NITIE Service Rules and NITIE [CCA] Rules 1988 and NITIE Conduct Rules 1988. But then the word ‘employee’ is used in the aforesaid rules of the institute. So far definition of ‘workman’ is concerned, it is given u/s.2 (s) of the act, definition of the workman given u/s. 2 (s) of the act is reproduced below:

“Section 2 (s) – “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the 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, but does not include any such person –

- (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) Who is employed mainly in a managerial or administrative capacity; or
- (iii) Who, being employed in a supervisory capacity, draws wages exceeding 3 [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]”

The MRTU & PULP Act, 1971 defines the word ‘Employee’ and not ‘Workman’. As per Section 3 (5) of the said Act, the word ‘Employee’ is defined as under:-

“Section 3(5) – “employee” in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act, and in any other case, means a workman as defined in clause (s) of Section 2 of the Central Act, and a sale promotion employee as defined in clause (d) of Section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976”.

Thus, the meaning of ‘Workman’ U/s 2 (s) of the Act is the same as that of an ‘Employee’ under the provisions of MRTU & PULP Act.

39. So far duties of the concerned workman are concerned, duties are shown in Ex.34 i.e. Sr. No. 6 of the list of documents at Ex.27, Page No. 969 which are as given below:

1. To understand the exact requirement of various users departments for the computerization work.
2. Develop computerized application systems & procedure such as Electricity Billing Information Systems, Monthly Pay-Roll systems, Academic Information Systems, Library Information Systems, Management Information System and Executive Program Information Systems for the Institute.
3. To extend support in conducting demonstration and hands on session during training / academic programs in systems area such as Work Study, Statistical Analysis, Quality Control programs and Management games for the participants/students/various users.
4. Successfully completed the consultancy assignment to carry out feasibility study, preparation of SOR & FS for Air Port Services Department of AIR INDIA under taken by the Institute in the area of systems.
5. Any other duty that may be assigned to him from time to time by the competent authority.

40. From the duties and responsibilities of the concerned workman, it can be seen that he never had managerial, administrative or supervisory powers. From the evidence on record also it is clear that the concerned workman as a Programmer or Sr. Programmer worked under Mr. Anand Naidu in Computer Centre. Manager Computer Centre, Library and Information Officer, System Designer, Sr. Programmer & Programmer are non-teaching cadres and their pay scales are different. As such the concerned workman who was working as a Sr. Programmer belongs to academic non-teaching cadre. Even in his evidence the concerned workman has admitted that he or any Sr. Programmer in the Computer centre has not discharged the work as faculty and then also he admitted that he was neither given any managerial or administrative duties while working as a Sr. Programmer. It is thus admitted position that he was never given any managerial or administrative responsibility.

41. Evidence of Mr. Anand Naidu Ex.113 is also relevant in respect of nature of duties of the concerned workman. According to him, the concerned workman was never given any managerial, administrative or supervisory powers / duties. Dr. Amitabha De has also stated that the concerned workman never discharged any managerial, administrative or supervisory duties. Even it appears that the concerned workman did not file any document to show that at any point of time he prepared any programme of academic activities of the institute and therefore in view of duties performed by the concerned workman, it cannot be said that he had any managerial, administrative or supervisory duties.

42. So far legal position is concerned, the designation of the concerned workman is immaterial. It is not a designation or the post who decide as to whether a particular person is a workman or not ? It is nature of duties i.e. relevant for deciding factor as to whether the concerned person is a workman or not u/s. 2 (s) of the act. The concerned workman though he was in academic cadre, he discharged the work as per the directions of his superiors as Programmer or a Sr. Programmer. He was working in computer centre and as per own admission of the concerned workman in his reply to second Memorandum dt. 2.11.12 (Ex. N) to the statement of claim on page 112, Mr. Anand Naidu used to take all the purchasing decision himself without involving even senior officers of the computer centre. In view of that the concerned workman cannot be considered to have been performing the duties as managerial, administrative or supervisory. As per his duties and responsibilities, he was required to work on computer to develop programmes. He was directed to assist the program section in generating reports with the use of existing data base as per requirement and develop new user friendly software package which includes various application requirements of program section.

43. In the context, Learned Counsel for the management has placed reliance on the decision in case of K. Ramesha V/s. Nitin Pande & Ors. – reported in MANU/OT/0004/2016 wherein it was considered that a Sr. Service Programmer is a workman u/s. 2 (s) of the Act.

44. The Learned Counsel for the management also seeks to rely on the decision in case of S. Mahipal Reddy V/s. Secretary Labour Dept., Govt. of A.P. Hyderabad & Ors. – 2000 (1) ALD 266, to submit that there cannot be any distinction between term ‘employee’ and ‘workman’ as has been emphasized and the work ‘employee’ includes workman. In this view the submission is that though there is no word ‘workman’ used in NITTI [CCA] Rules, 1988 & Service Rules and the word ‘employee’ is used that cannot make any distinction. But then the nature of duties are to be seen to consider whether the concerned workman is a workman or not and if prominent nature of the duties are not supervisory the person concerned is workman u/s. 2 (s) of the act. In the context, reliance is placed on the decision in case of Anand Bazar Patrika [Pvt. Ltd.] V/s. the Workman – 1969(18) – FLR – 186.

45. In view of the above, I find that the concerned workman though designated as Sr. Programmer w.e.f. 2.3.2000 had no managerial, administrative or supervisory powers. The nature of duties as discharged by him can at the most be considered as technical or operational. His designation is immaterial.

46. Even then the Learned Counsel for the second party workman submitted that the second party workman is categorized as Gr.-A officer classified in academic cadre and pay scale of Rs.15600 – 39100 in pay band – 3 with Grade pay of Rs.6600/- which is exceeding Rs.10,000/- p.m. and therefore the concerned workman cannot treated as workman. In the context he seeks to rely on the decision in case of Secretary, Indian Tea V/S. Ajeet Kumar Bharat & Ors. – 2000 (1) SCR – 787. In this case referred to above, the respondent was employed as a Joint Secretary of Indian Tea Association. On his dismissal for disobeying the order of transfer, he filed complaint to the Labour Commissioner and submitted that he is not a workman. Hon’ble H.C. directed the Government to make reference as to whether the respondent was a workman. In the facts, it is held by the Hon’ble Apex Court that appropriate Government would be justifying in making the reference u/s. 10 of the act if it is satisfied on the facts & circumstances brought to its notice that industrial dispute exists or is apprehended and industrial dispute as per clause – (k) of the section 2 of the act means inter-alia a dispute or difference between the employers and employees and between the employers and workman. Clause - (s) section 2 of the act defines workman. It is observed in para 9 of the judgment that before making a reference u/s. 10 of the act the appropriate Government has to form an opinion whether the employee is a workman and thereafter has to consider as to whether the industrial dispute exists or is apprehended. In that case it was finding of the fact that the Government rightly approached the question whether the respondent No.1 was a workman. While deciding the question, State Govt. took into consideration salary and allowances of respondent No.1 drawn at the relevant time and also the nature of work. It was thus finding of the fact that the administrative order passed by the State Govt. was passed after taking into consideration the material available on record and it could not be faulted. For the reasons it was held that both the appellate court and Hon’ble H.C. erred in law in issuing mandamus directing the State Govt. to make the appropriate reference and the judgment of the appellate court and Hon’ble H.C. are set aside.

47. The Learned Counsel for the second party workman seeks to rely on the decision in case of Prabhakar V/s. Joint Director, Sericulture Dept. and Anr. – JT 2015 (9) SC – 83 to submit that the order of reference passed by the Govt. cannot be examined by the Hon’ble H.C. in its jurisdiction under article 226 of the Constitution to see if the Government had material before it and to submit the conclusion that the dispute existed or was apprehended. The satisfaction of the existence of industrial dispute or the satisfaction of industrial dispute is apprehended is condition precedent to the order of reference. Thus where the industrial dispute exists or is apprehended but the appropriate govt. refuses to make the reference, such refusal can be challenged in the court of law. In that case it was finding of the fact that the Hon’ble H.C.

correctly decided the issue holding that the reference at such a belated stage that is after 14 years of the termination without any justifiable explanation for delay, the appropriate govt. had no jurisdiction or power to make reference of non existing disputes.

48. Here in the present case, the facts are quite different and distinguishable. In WP No. 897 of 2015 filed by the concerned workman in the Hon'ble H.C., the concerned workman challenged his dismissal of services from the institute on the ground that during the conciliation proceeding dt. 24.2.15, the workman stated that he is not a workman and pleaded that the conciliation officer / ALC [C-I] is not appropriate authority and sought permission to approach the appropriate authority. On statement of the workman, the conciliation proceedings were terminated. The Ministry of Labour by its letter dt. 27.7.15 informed the institute that the dispute of the workman is not fit for adjudication to CGIT. Even though the dismissal of services of the concerned workman was challenged on this ground that the Ministry of Labour found that the dispute of the workman is not fit for adjudication to CGIT, the Hon'ble H.C. vide order dt. 21.7.15 was pleased to dismiss the writ petition and the concerned workman was directed to exhaust the remedy before the tribunal. In this judgment, the Hon'ble H.C. of Judicature of Bombay was pleased to observe that the communication / finding of the Ministry of Labour dt. 27.5.15 was bad in law. The workmen filed review petition No. 46 of 2015 in WP No. 897 of 2015 for review of the said order dt. 21.7.15. However, the Hon'ble H.C. vide order dt. 7.10.15 was pleased to dismiss the revision filed by the workman. It is in view of the order of the Hon'ble H.C. in WP No. 897 of 2015 the Ministry of Labour by its reference order dt. 1.9.15 referred the dispute between the workman and the institute before CGIT i.e. the present reference. It is in that circumstances the concerned workman cannot claim that there exists no industrial dispute. As such the issue whether the person is a workman u/s. 2 (s) of the act or not has to be determined after examination of the facts including oral evidence.

49. The Learned Counsel for the management / institute in the context has relied upon the ratio in the decision in case of Sharad Kumar V/S. Govt. of NCT of Delhi & Ors. – AIR – 2002 – SC 1724. In that case the appeal was filed by the employee against the order of the Hon'ble High Court declining to interfere with the order of Govt. of National Capital Territory of Delhi refusing to refer the dispute raised by the appellant to the Industrial Tribunal on the ground that he is not a workman within the meaning of section 2 (s) of the act. Hon'ble Apex Court held that such a matter should be decided by the Industrial Tribunal or Labour Court and the Hon'ble H.C. erred in confirming the order of rejection of reference passed by the State Govt. merely taking note of the designation of the post held by the respondent. Determination of these questions depends upon the types of duties assigned to or discharged by the employee and not merely on the designation of the post held by him.

50. On the facts of the present case I find that considering the duties of the concerned workman it can be said that he falls within the definition of section 2 (s) of the act. As such this issue is answered accordingly in affirmative.

Issue Nos. 5 & 6

51. It is the case of the concerned workman that he was whistle blower and pointed out the financial irregularities in the computer centre. But then acting Director ignored the complaints of the workman, as such the acting Director was biased against him as the workman enquired into various aspects and therefore the Director in-charge developed bias against the workman.

52. So far this aspect is concerned, it is matter of record that the concerned workman filed complaint against the then Director incharge of the Institute Mr. Amitabha De and the other officials under the provisions of SC & ST Prevention of Atrocity Act on the basis of which Powai Police station lodged FIR No. 6/2013 against the then Director. The director of the Institute filed WP No. 1399 / 2013 for quashing the FIR. By an order dt. 18.4.13 the Hon'ble H.C. of Judicature of Bombay initially restrained the police from filing any report without the leave of court and thereafter by order dt. 10.10.13 came to the conclusion that no offence was disclosed and the petition was pending. As a matter of fact, it appears that the workman filed WP No. 1370/2015 converted into WP No. 2868/2015 inter-alia against the Institute, G.O.I. and CVC and advocate of the Institute. The concerned workman has also filed disciplinary case against the advocate of the Institute before Bar Counsel of Maharashtra & Goa alleging professional misconduct by the advocate of the Institute and Bar Counsel of Maharashtra & Goa was pleased to dismiss the complaint filed by the complainant. The concerned workman has also filed WP No. 1813/2017 for recalling the order passed in the WP No. 897/2015 and seeking reliefs similar to those claimed in WP No. 2555/2013 & WP No. 897/2015 but then the said writ petition was withdrawn. PIL filed by the concerned workman was also dismissed by the Hon'ble H.C. of Bombay vide order dt. 4.12.17 and as per observations of Hon'ble H.C. in para – 13 of the said PIL, it is clear the petitioner i.e. the concerned workman has filed several prosecutions as well as civil cases not only against NITIE but also against its officials and the PIL came to be dismissed on the findings that such issues raised in PIL hardly fall within the realm of PIL since proceedings are pending. From the records, it appears that the concerned workman has filed complaint against the in-charge Director, then filed writ petition before the Hon'ble H.C. against the Director and its officials and advocate concerned but then the proceedings came to be dismissed by the Hon'ble H.C. on the ground that it does not fall within the realm of PIL.

53. In this back ground, it is to be seen whether the disciplinary proceeding was initiated against the concerned workman with pre-decided mind to harm and ultimately terminate the concerned workman from the services of first

party. So far the charges leveled against the concerned workman are concerned, it is alleged that he indulged in grave and serious acts of misconduct. The article of charges leveled against the concerned workman are in respect of written communications made by him whereby he threatened the employees of the institute and made allegations against Director in-charge, Registrar incharge, faculty members with a view to defame them in the eyes of others and attempted to prevent them from discharging their duties. He then made false allegations against Dr. T. Pratap, Associate Professor of financial irregularities. He unduly interfere with the working of the institute. He made false allegations against the Dean Prof. Amitabha De. He attempted to bring undue pressure on the NITIE management. He attempted to tarnish the image of institute. He made false allegations by letter dt. 21.12.12 and that he made undue interference in the administration of the institute without any reason. He has created fear psychosis against the senior most responsible officers. He forwarded communications directly to the Director incharge of the institute bypassing well settled procedure.

54. The concerned workman was charge-sheeted vide charge sheet dt. 2.11.12 stating that he threatened his superior officers orally as well as in writing to implicate them falsely without any justification under the provisions of SC & ST Prevention of Atrocity Act. He in a process of his misdemeanor unauthorisedly and unofficially got hold of official communications by improper, unjust and illegal means. He exhibited actions amounting to lack of integrity, insubordination, lack of devotion to duty and attempted to malign the image of officers and institute. He files false complaint before the Sr. Inspector police, Powai Police Station with a view to unduly put pressure on the management. As a part of game plan, he had led morcha at the institute campus consisting of several outsiders, outside vehicles and shouted slogans. He submitted PGDPIM of NIPM approved by CICTE for the position of Registrar. However, the said diploma was distant education and as such he had hidden fact that the said programme is not approved by the Distant Education Counsel.

55. In respect of these allegations and the charges leveled against the concerned workman, enquiry was conducted. The workman never appeared and participated either before the E.O. or before the competent authority. The enquiry was conducted in accordance with the NITIE [CCA] Rules / Service Rules and the rules application to the employees of Central Govt.

56. At the first place, the concerned workman has come out a case that the disciplinary enquiry held against him is vitiated due to non-compliance of principles of natural justice since E.O. has not issued notice to him. As per the admission of E.O. Shri Lad, it is clear that he did not issue notice personally to the concerned workman in the capacity as E.O. In this view the submission is that the concerned workman was not intimated about the date, place and time for holding enquiry and as such admittedly the enquiry was ex-parte.

57. In respect of this submission, it can be seen from the enquiry proceedings that on 16.11.12 the concerned workman was informed about the date, place and time of the enquiry vide institute's letter dt. 12.11.12. The letter was attempted to be served by the staff of the institute on 12.11.12 but the employee's wife refused to accept the letter and therefore it was sent to the concerned workman by RPAD as well as by Speed post. Thereafter the concerned employee's son approached and received copy of said letter on 14.11.12 at 3.45 p.m. but even thereafter knowing fully well about the date, time and place of the enquiry, the concerned workman did not attend the enquiry on 16.11.12. It appears that the concerned workman / employee by his letter dt. 14.11.12 made the written request and on his written request the enquiry was adjourned to 3.12.12 at 10.00 a.m. so that he could participate in the enquiry along with his defendant. Even thereafter the enquiry was adjourned to 13.12.12 at 10.30 a.m. On 13.12.12 he was intimated about the date, time & place but he did not remain present for the enquiry. 4 persons were sent at his official service quarter but they were not allowed to meet the concerned workman and as such he refused to accept any of the official communications of the institute. Obviously, it shows that by way of communications and through the staff of the institute the concerned workman was informed about the date, time & place of the enquiry and at times the enquiry was adjourned on his request. But then thereafter he did not participate in the enquiry. E.O. is not personally expected to communicate and serve the notice to the concerned workman / employee. The fact remains that the concerned workman / employee was intimated with the date, time & place of the enquiry vide letters and by the staff of the institute and therefore it cannot be said that the enquiry is vitiated on account that concerned workman was not served the notice informing date, time & place of the enquiry. Not only that, but it can be seen from the documents on record that the institute issued the Memorandums dt. 24.9.12 and 2.11.12 and called for written explanation of the workman. Intimations were given to the workman from time to time but the concerned workman refused to accept the official communications in this respect forwarded to him by Speed post / RPAD or by courier and after examining all the aspects the E.O. proceeded with the enquiry ex-parte.

58. It is then contention of the second party workman that the management witness Mr. Amitabha De having participated into the decision making process and the charge sheet issued by the management witness Mr. Amitabha De not having approved by the competent authority namely Board of Governors, the enquiry is liable to be vitiated.

59. In this respect, on going through the enquiry proceedings along with its exhibits, at Ex.129 [collectively], it can be seen from the documents on record that the institute issued the Memorandums dt. 24.9.12 & 2.11.12 and called upon the concerned workman for the written explanation. When the written explanations were not found satisfactory, disciplinary

enquiry was held. After the E.O. submitted the findings to the management of the institute, the workman submitted his comments on the findings of the E.O. He also filed the appeal to the appellate authority. As such it can be seen that institute authority followed the procedure and had taken due care in respect of action taken while complying with the principles of natural justice. After taking the approval of the Board of Governors, Mr. Amitabha De signed the charge sheet as Director incharge. That does not mean that he himself took the decision of issuing the charge sheet or otherwise participated into decision making process.

60. It is also a case of the concerned workman that the E.O. having been cited as management witness, he was partial since he was paid in advance the fees to conduct the enquiry. Submission is to the effect that the E.O. admitted that he got the fees paid by the first party in advance of Rs.50,000/- and that itself shows that the management appointed him as a E.O. with some ulterior motive. This allegation is based on the list of E.Os. available for enquiry work at Ex. J, page 61 of statement of claim. If the said document is perused, it would show that CVO of NITIE mentioned the list of the persons approved and then thereafter appointment letter was issued to the E.O. on 12.11.12. The said appointment letter was issued and signed by the then Director incharge. That does not show in any way that the appointment of the E.O. was out of way for any ulterior motive. Even the concerned workman cannot say from the papers and proceedings of enquiry that the enquiry officer was biased against him. It cannot be said that only because the E.O. was cited as a witness in this reference, it shows that he had bias.

61. The Learned Counsel for the concerned workman seeks to rely on the decision in case of Ramesh Chandra V/S. University of Delhi – 2015 (5) SCC – 549. In that case the E.O. was a retired Judge of the H.C. and the Presenting Officer was a person who had sufficient experience. In view of that it has been held that the application of the delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed and the denial of assistance of legal practitioner to the charged employee would be unfair. In the instant case no such application was made by the concerned employee mentioning that he wanted to be represented by the legal practitioner. On the contrary he preferred to remain absent inspite of notice served on him. As such the facts in the present case are quite distinct & distinguishable.

62. In the same breath, it can be said that only because the advocate acted as a P.O. and gave his advise as legal advisor will not be ground to vitiate the proceedings. Only it is to be seen whether the principles of natural justice are followed or not and as seen earlier, the enquiry process has been followed as stipulated in NITIE [CCA] Rules 1988 and NITIE Rules 1988 while complying the principles of natural justice.

63. It is not possible therefore to accept the contention of the concerned workman that he was not afforded an opportunity of defending himself by taking the assistance of legal practitioner u/R 10 (8) (A) of NITIE Rules. As a matter of fact, the concerned workman never informed in any of its communications during the pendency of the enquiry that he wanted to avail the facility of getting defended by the legal practitioner. He never pleaded in any of its communications that he wanted to be represented by the legal practitioner. Infact, it appears that the workman has only written a letter dt. 14.11.12 Ex.P at page 123 of the statement of claim whereby he sought time to appoint assistant / next friend to defend him in the enquiry. But then thereafter he wanted the enquiry proceedings to be adjourned on one or the other grounds and particularly on medical ground. In that circumstances the burden is on the concerned workman to prove that he was enable to attend the enquiry proceedings on medical grounds but then he failed to discharge the said burden.

64. Considering all these facts, I find that enquiry held against the second party workman is not vitiated due to non-compliance of the principles of natural justice or in breach of principles of law. The above issues are therefore answered accordingly as indicated against each of them.

Issue No. 4

65. It is contention of the concerned workman that the enquiry is vitiated due to non-remittance of subsistence allowance. On going through suspension order issued by the institute dt. 24.9.12, it is clear that in order to pay the subsistence allowance to the workman, he was required to furnish monthly certificate to the A/cs. section to the effect that he has not taken up any job during the month in question for money or otherwise and this certificate should be sent to A/cs. section through Manager Computer Section every month.

66. In this respect the concerned workman in his cross examination has admitted that he did not submit any such certificates during the enquiry. The enquiry proceedings commenced on and from 6.11.12 and completed on 26.12.12. When admittedly no such certificates were produced by the concerned workman, the institute was unable to remit the subsistence allowance. When it was mandatory on the part of the workman to submit month to month non-employment certificate, it appears that he did not produce such certificates and therefore he has no ground to say that due to non-remittance of subsistence allowance enquiry is vitiated.

67. Even then the Learned Counsel for the concerned workman submitted that admittedly during the enquiry the subsistence allowance was not paid and therefore disciplinary proceedings are vitiated. In the context, he seeks to rely on the decision in case of Ghanshyamdas Srivastava V/S. State of M.P. – 1973 (1) SCC – 656. In that case letter was submitted wherein the petitioner had categorically refused to face proceedings as he had no capacity to do so because of

acute shortage of funds and in the said letter sent to E.O., he mentioned that unless he was paid subsistence allowance, he would not be able to face the enquiry proceedings. It was finding of fact that there was nothing to show that he has any other source of income except pay. He did not receive the subsistence allowance after part of the evidence has already recorded. In the circumstances, it was considered that the part of the enquiry proceedings during those days for which he did not receive the subsistence allowance are vitiated.

68. The facts in the present case are different because for getting the subsistence allowance it was mandatory on the part of workman to submit non-employment certificate and non-submission of non-employment certificate would result into non-payment of subsistence allowance. In this respect the reliance is placed on the decision in case of *Surrendranath Khuntia V/S. P.O. Industrial Tribunal & Ors. – MANU/OR/0567/2003 (Orissa H.C.)* wherein it is held that furnishing of certificate being the condition precedent to the grant of subsistence allowance and the same having been not done, the grievance on that score cannot be made.

69. As a matter of fact, it appears that thereafter institute had to pay subsistence allowance to the workman till 17.5.13 but then the fact remains that since the workman did not produce non-employment certificate, the subsistence allowance was not paid and therefore the domestic enquiry held against him is not vitiated due to non-remittance of subsistence allowance. This issue is therefore answered accordingly in the negative.

Issue No. 3

70. At the cost of repetition, it can be stated that the workman was given fair & reasonable opportunity to defend himself. I say so because at times though the workman has submitted sick note by obtaining medical certificate for seeking adjournment of the enquiry proceedings, he has not adduced any cogent evidence that during that period he was hospitalized. Medical certificate to which the concerned workman referred to of Dr. V.J. Moon dt. 3.10.12 is not proved by adducing evidence. On the contrary it has been brought on record that during the period for which he was advised bed rest as per the certificate of Dr. Moon, he went to Powai police station for lodging complaint during that period. It cannot be accepted that no opportunity was afforded to him to take the assistance of legal practitioner and as a matter of fact he even never informed by any communication during the pendency of the enquiry that he wanted to get defended by legal practitioner.

71. Considering all these facts, it can be said that the enquiry held against the concerned workman was fair & proper and findings are not perverse.

72. Now so far as, removal of the service of the second party workman from the employment of the first party employer by way of punishment is concerned the legal position is amply clear.

73. So far the legal position is concerned, the court would not interfere with the administrative decision unless it was illegal or suffered from procedural impropriety or irrational in the sense it was outrageous, defiance of logic or moral standards. It is held in the decision in case of **DomohPannaSagar Rural Rational Bank &Ors V/S. Munnalal Jain CA No. 8258 of 2004 [SC]** that

“Unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.”

74. In this respect hand can be laid on the decision in case of *LIC of India &Ors. V/s. S. Vasanti*, Civil Appeal No. 7717 of 2014 wherein Hon’ble Apex Court with reference to decision in case of **LucknowKshetriyaGramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) &Anr. V/S. Rajendra Singh (2013) 12 SCC 372** has held;

- “a) when charge(s) of misconduct is proved in an enquiry, the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*
- b) The courts cannot assume the function of disciplinary / departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.*
- c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.*
- d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.”*

75. In view of the above legal position, considering the gravity of charges and the scope of interference with the punishment imposed by the disciplinary authority, I find that his termination from service is lawful and justified. This answers issue No.3

Issue No. 7 & 8

76. In view of my findings to the above issues, the workman is not entitled to any relief. The reference is liable to be rejected. Hence order.

ORDER

The reference is rejected with no order as to costs.

Date: 30.05.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 21 जून, 2018

का.आ. 1001.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केएमसी कंस्ट्रक्शन लिमिटेड और अन्य का प्रबंधन एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या केस नं. 03 ऑफ 2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2018 को प्राप्त हुआ था।

[सं. एल-42012/152/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st June, 2018

S.O. 1001.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. 03 of 2015) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of KMC Constructions Ltd. & Others and their workmen, which was received by the Central Government on 22.06.2018.

[No. L-42012/152/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM**

Present : Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B.
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 03 of 2015**In the matter of an Industrial Dispute between :-**

The Management of KMC Constructions Limited,
Hyderabad and 01 other

...Management/O.P.

-Vrs-

Sri Bhupen Das & 22 others, Nalbari, Assam

...Workmen/Claimants.

APPEARANCES :

For the Management : Mr. H.K. Baruah, Learned Advocate.
Ms. S. Baruah, Learned Advocate.
Mr. J.H. Khan, Learned Advocate.
For the Workmen : Mr. J.K. Kar, Learned Advocate
Mr. H. Dey, Learned Advocate.

Date of Award : 12.06.2018.**AWARD**

1. This industrial dispute between Shri Bhupen Das and 22 other workmen and the Managing Director, K.M.C Constructions Limited, Plot No.85, Road No.72, Prashasan Nagar, Jubilee Hills, Hyderabad-500033 was referred to this Tribunal by the Central Government with the following schedule.

SCHEDULE

“Whether the action of the management of KMC Constructions Ltd Plot No.85, Road No.72, Prashasan Nagar, Jubilee Hills Hyderabad 500033 a contractor of National Highway Authority of India Ltd., Guwahati and the Project Director, AS-07, PIU Office NHAI, H No.1, 1st Floor, Dilip Hazuriapath, Near Bagheswari Temple,

Surmatoria, Guwahati-781005 are justified in not paying their due wages and other benefits such as overtime, bonus etc. as demanded by their workmen? If not, what relief the workmen entitled to and for what period? Does the law permit such lumps sum payment in lieu of payment/benefit the management is liable to pay to the workmen under different labour laws? If so, what is the quantum and mode of disbursement of such lump sum payment ?”

2. On receipt of the reference from the appropriate Government, this reference case was registered and notices were issued to the parties. On receipt of the notices both the parties appeared and submitted their written statements.

3. The claim of the workmen was that they were employed by the Company M/S KMC Constructions Limited for the works of National Highways Authority of India in widening and strengthening of the existing 2 lane National Highway to 4 lane from Nalbari to Bijni Section of EW corridor of Assam. Some of the workmen were skilled, some were semi-skilled and others used to discharge clerical works. The duration of their engagement ranged from 5 to 10 years. But the management of M/S KMC deliberately deprived them of their bonafide wages and other benefits. The management used to pay a lump sum amount of money on monthly basis to the workmen by depositing the same to the respective Bank accounts of the workmen at the end of each month. But no individual wage slips were issued to the workmen. It is also stated that the workmen were denied the mandatory minimum bonus at the rate of 8.33% each year under the Payment of Bonus Act, 1965. It was also stated that the management even did not deposit the statutory P.F. in the name of the individual workman. It is also stated that the workmen were made to work beyond scheduled time but no extra wages were paid for such overtime works. The workers who rendered continuous service for a period of more than 5 years were entitled to payment of Gratuity but the management did not pay the Gratuity after they were disengaged from their services. It was also stated that the workmen were not extended the benefits of ESI Act, 1948. It was also stated that after the matter was referred to the Assistant Labour Commissioner(C), Guwahati efforts were made for conciliation but on failure of conciliation, a “failure report” was sent by the Assistant Labour Commissioner (C), Guwahati to the appropriate Government which referred this dispute to this Tribunal. The workmen demanded payment of full amount of statutory dues in respect of Bonus, Gratuity, P.F. and extra wages for Overtime along with interest of 12% per annum accrued from the date amount became due till full realization of the amount.

4. The management side denied the claims made by the workmen and stated that wages due to the respective employees were paid through their respective Bank accounts regularly which were acknowledged by the workmen. It was also claimed by the management that all the dues of the workmen including P.F, Bonus, Gratuity etc were duly paid to them in their respective bank accounts. It was mentioned by the management that a letter dated 29.03.2014 was issued by the management to the opposite party stating the payment list from 2006 to 2013 which according to the management was acknowledged by the claimant and the same was annexed as Annexure-1,2, & 3 respectively. The management also stated that payment of EPF had already been made to the concerned workmen and the allegation lodged by the workmen are false. The management also stated that the workmen were not made to work beyond their regular working hours and hence, the question of payment of overtime did not arise. On the aforesaid ground the management prayed for dismissing the claim of the workmen.

5. Only one witness Sri Bhupen Das was examined on behalf of the workmen. He also stated that he has been authorized by other workmen to depose before this Tribunal. He exhibited his identity card and stated that similar cards were issued to all the workers. In one part of his examination-in-chief he stated that the management Contractor used to pay the workmen lump sum amount through their Bank Accounts against the work performed by the workmen instead of bonafide wages and other benefits provided under the law. He further stated that all the workmen were entitled to payment of Bonus as per the required provisions of the Payment of Bonus Act, 1965 but such bonus was not paid to them. It was also stated that though the employees were covered under the Statutory Provision of EPF Act, such deposit of P.F. were not made by the Contractor. It was also stated that benefits of the ESI Act were also not extended for which they also incurred their own medical expenses. It was also stated that the management intentionally issued a no “dues certificate” (Exhibit-5) before releasing the workmen from the work and such “no dues certificate” was completely intentional and false. He further stated that all the concerned workmen worked with the Company for more than 5 years and as such they were entitled for payment of Gratuity as per Gratuity Act but such Gratuity was not paid to them. During cross-examination of the only workman witness it transpired that the claim had been made by the witness on behalf of all the 21 other workmen who were engaged by the Company in the construction work of National Highway. The witness also stated during cross that in the claim they demanded the wages due to them on account of overtime, bonus and EPF. He, however, admitted that in case of 19 workers EPF Accounts were opened but in respect of 3 workers such accounts were not opened. He also stated that the facility to subscribe to ESI hospital was also not extended to them. He denied the suggestion of the management that the workers got their EPF and Gratuity. At this stage of cross-examination the witness was shown zerox copy of certain documents which appeared to be acknowledgement of receipt of payment of bonus, EPF and Gratuity but the workman stated that these are false documents and none of them ever put their signatures on such document. It would be worthwhile to mention here that the remaining workmen did not appear in this matter to fortify that they did not acknowledge receipt of payments made by the management. That apart, the payments were admittedly made through bank accounts of respective workmen. At another stage of cross-examination the witness stated as under:- “ *It is a fact that by depositing into our account of SBI the Company along with*

the wages towards March, 2014 also paid Overtime wages for working on Sunday". The above statement of the workman witness would clearly show that the financial dues of the workmen were paid to them.

6. After examining only one witness the workmen side closed their evidence and the matter was fixed for evidence of the management side but despite several chances being given to the management they did not adduce any evidence. During argument the workmen side, apart from oral argument, also submitted a memorandum of written argument. The management side also submitted a written argument. On perusal of order 16.3.2018 it appeared that during proceeding the workmen submitted a petition stating that after close of workmen evidence certain development had taken place in respect of matter related to PF, Gratuity and the learned counsel for the workmen verbally submitted that certain payment has been made on aforesaid 2 counts.

7. The main issue in this reference is whether the management of the M/S KMC duly paid wages and other benefits to the concerned workmen. Since the only material before this Tribunal was the testimony of the workman Bhupen Das and documents exhibited therewith, let us closely scrutinize the evidence including the documents. During cross examination the witness was confronted with copies of certain documents which on the face of it appeared to be acknowledgement of receipts of payment including overtime, bonus, EPF and Gratuity. There was also no evidence by or on behalf of the concerned workmen (except one who was examined as witness) that their legally receivable dues were not paid to them by the management. During cross-examination the witness also stated as under:- "*It is a fact that by depositing into our accounts in SBI the company along with the wages towards March, 2014 also paid overtime wages for working on Sunday.*" This is virtually an admission of receipt of payment of overtime for working on Sunday. There was no material on record to show that apart from Sunday, the concerned workmen were made to work overtime on other week days. Ext-4 was a certificate indicating that the workman Bhupen Das (witness) was engaged by the contractor from 1.1.2006 to 10.3.2014. In his cross-examination the witness admitted that the wages were paid upto March, 2014. "No-dues" certificate issued by the management also indicated that at the time of his disengagement the concerned workman Bhupen Das had no further dues payable to him. In respect of the remaining 21 workmen no plausible document was proved by the workmen side to substantiate their claim. It also appeared from the materials on record that wages and other entitlements, at the relevant time, were paid to the workmen through their bank accounts.

8. In view of the above, it appeared that the management paid due wages and other benefits to the workmen. No material was found during the proceeding to show that the management did not pay the concerned workmen their wages and other benefits as were receivable by them. It therefore, appeared that the action of the management was neither unjustified nor illegal and no further dues were payable to the workmen. The reference is, accordingly, answered with a no relief Award.

Given under the hand and seal of this Tribunal on this 12th day of June, 2018 at Guwahati.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 21 जून, 2018

का.आ. 1002.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी डायरेक्टर, नवोदय विद्यालय समिति, लखनऊ एवं उनके कर्मचारी के प्रबंधन के संबंध निर्योजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 03/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.05.2017 को प्राप्त हुआ था।

[सं. एल-42012/77/2006-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st June, 2018

S.O. 1002.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 03/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the employers in relation to the Deputy Director, Navodaya Vidyalaya Samiti, Lucknow and their workmen, which was received by the Central Government on 23.05.2017.

[No. L-42012/77/2006-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 03/2007

Ref.No. L-42012/77/2006-IR(DU) dated 12.01.2007

BETWEEN :

Sri Vineet Kumar
S/o Late Sri Chheda Lal,
R/o Sahlehpur Purwa, Post-Ugoo
Unnao (U.P)

AND

1. The Dy. Director
Navodaya Vidyalaya Samiti,
Regional Office, B-10, Sector C,
Aliganj
Lucknow

AWARD

1 By order No. L-42012/772006-IR(DU) dated 12.01.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Vineet Kumar S/o Late Sri Chheda Lal, Unnao and the Dy. Director, Navodaya Vidyalaya Samiti, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NAVODAYA VIDYALAYA SAMITI, LUCKNOW/PRINCIPAL, NAVODAYA VIDYALAYA, UNNAO, IN TERMINATING THE SERVICES OF THEIR WORKMAN SRI VINEET KUMAR W.E.F. 15.05.2002 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?”

3. The workman has stated in brief in the claim statement W-2 that he was initially appointed as Chowkidar in opposite party school on 01.12.1997 against the clear vacancy with the monthly wages @ 525/- per month. The opposite party is registered under the Societies Registration Act., 1860 and was administratively under the control of Dy. Director, Navodaya Vidyalaya, Lucknow. The petitioner has asserted that his work and conduct has always been satisfactory and upto the satisfaction of his superiors. His appointment was extended from time to time and it lasted for 4 and half years but suddenly his services were orally terminated on 15.05.2002 by the Principal of the School without assigning any reason and at the time of termination of service he was paid wages Rs.1000/- per month. The workman demanded the copy of the termination notice or order from the Principal of the School, but he was informed that no written order has been issued.

4. The petitioner has further alleged that no notice or wages in lieu of notice period or retrenchment compensation was paid. The impugned order is illegal and violative of the provisions contained in Section 25-F of the I.D. Act. He has also moved representation on 11.02.2003 but no attention was paid to it. With the aforesaid pleadings the petitioner has prayed for his reinstatement in service with full back wages. An affidavit has been filed in support of the claim statement and certain documents as per list W-3 have also been filed.

5. The management has filed written statement M-9 wherein allegations leveled in the claim statement have been denied. The opposite party has submitted that provisions of CAT Act. 1985 applies in the present case and the opposite party is not an industry and the provisions of the I.D. Act. do not apply. The opposite party has further stressed that the petitioner has not come with clean hands, he had earlier filed OA No. 127/2003 Vineet Kumar Vs. Union of India & others before the CAT, Lucknow which was dismissed in default on 01.04.2003, restoration application moved by him was also dismissed; workman again filed an application on 17.03.2004 which was dismissed for want of prosecution. Again the workman moved recall application and the Hon'ble CAT observed that “Application need not be recalled” and opportunity was given on the request of the counsel for the workman to raise the grievance at the appropriate forum. Thereafter the workman moved before RLC (C), Lucknow and erroneous procedure was adopted which is bad in law.

6. The opposite party has emphasized that for the purpose of good quality modern education including a strong component of culture, values, environment awareness and physical education etc. Navodaya Vidyalaya Samiti had established Vidyalayas in the name and style “Jawahar Navodaya Vidyalaya” and for effective management besides teaching staff, class –III & IV employees are also required as per necessity and work as per rules. The opposite party has admitted that due to exigency of work the petitioner was engaged as daily wages in the Mess of JNV, Unnao for specific period, as mess helper he was paid till completion of the said work, he was further engaged as daily wage Mess Helper as per requirement but at no stretch of occasions he had worked continuously for 240 days and as per directions of Hon'ble Supreme Court Section 25F of the I.D. Act. are not attracted even if the workman has completed 240 days or more.

7. The management has stressed that there being no requirement of work in Mess, his time bound engagement automatically came to an end and accordingly he was paid off and there was no violation of any provision of I.D. Act.

Documents filed by the petitioner are concocted and manufactured and have been denied by the opposite party. With the aforesaid pleadings the opposite party has stated that the reference dated 12.01.2007 is bad in law. Several documents have been annexed alongwith written statement. An affidavit of Incharge Principal has been filed as A-10.

8. With the strong denial of the facts mentioned in the written statement the workman reiterated the pleas taken in the claim statement, rejoinder W-12 has been filed by the petitioner alongwith affidavit.

9. Application for summoning documents has been moved as W-23 with its objection M-27. Summoning documents application has been disposed off on 28.09.2012..

10. The petitioner workman has been cross examined on behalf of the opposite party. Other witness namely Sri Bhupender Kumar, Smt. Nisha have also been adduced in evidence by the petitioner, and have been cross examined.

11. The management has filed affidavit M-37 of Sri Rajendra Kasal, he has been cross examined on behalf of the workman.

12. Arguments of both the parties have been heard. Record has been scanned thoroughly.

13. Heard learned authorized representatives of the parties at length and perused the records available on file.

14. The workman has come up with a case that he had initially been appointed as Chowkidar in Jawahar Navodaya Vidyalaya, Rajeevapuram, Unnao w.e.f. 01.12.1997 and was paid monthly @ Rs. 525/- per month and he worked as such, continuously, without any break, till 15.05.2002 when his services had been terminated orally by the Principal of the school without assigning any reason thereof or without giving any notice or notice pay in lieu thereof, in utter violation of provisions of Section 25 F of the Industrial Disputes Act, 1947. Further, the workman has submitted that he is a 'workman' as provided in the Section 2 's' of the Act and further that the Navodaya Vidhyalaya Samiti is an industry, under Section 2 'j' of the Act, as it is not performing any sovereign function and further more that the present industrial dispute is an 'industrial dispute' as provided in Section 2 'k' of the Industrial Disputes Act, 1947.

15. Per contra, the case of the management is that the workman, had been engaged as daily wage labourer, due to exigency of work as per necessity, for a specified period, without following the norms of the Recruitment Rules etc. The management has also submitted that the workman never completed 240 days of working; and accordingly, the provisions of Section 25 F of the Industrial Disputes Act, 1947 does not attract in the present case. Apart from this the management has also raised preliminary objection towards the maintainability of the present case on the grounds that the Navodaya Vidhyalaya Samiti is not an industry and secondly that the present case does not constitute an industrial dispute.

16. Having been given my thoughtful consideration to the rival contentions of the learned authorized representatives of the parties and perusal of entire documentary as well as oral evidence relied upon by the parties, it would be proper and just to dispose of the preliminary objection taken by the opposite party over the admissibility of the present case.

17. Firstly, the management has submitted that the Navodaya Vidhyalaya Samiti is not an 'industry' within the definition of 'industry' under Section 2 'j' of the Act. In this regard, On contrary, the authorized representative of the workman has contended that 'no profit and no loss' basis cannot exclude the Navodaya Vidhyalaya Samiti from the purview of 'industry' and the same is not performing any sovereign function. He has relied on *Union of India vs Rajendra Kumar & others 2004 (103) FLR 307* and *Bangalore Water Supply* case.

Hon'ble Apex Court in Bangalore Water Supply case has observed that:

"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."

Hon'ble Apex Court has further observed that

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."

In the instant case the opposite party management has come with specific pleading that that the opposite party, Navodaya Vidhyalaya Samiti is a creation of Statutory Organization owned and controlled by the Ministry of Human Recourse, Government of India and the activities of the Navodaya Vidhyalaya Samiti is not relating to any trade, business or manufacturing process instead are of the Government relatable to sovereign functions of the Government.

It is well known that the Jawahar Navodaya Vidhyalaya is indulged in imparting education to the meritorious students who belong to economically weaker sections of the society and cannot afford to have good education. No doubt that it is not a business or profit making activity; but a welfare measure of the Government of India, being India a Welfare State. The activity in which the Navodaya Vidhyalaya Samiti is indulge is very much the same as preformed by other schools across the country and hence cannot be termed as sovereign function only for the fact that it is controlled

by the one of the Ministry of the Government of India. Here this is a social measure for upliftment of the society at large and is controlled by the Ministry of Human Resource. Also, it is noteworthy to indicate that the nature of work carried out by Navodaya Vidhyalay Samiti qualifies the triple test, formulated by Hon'ble Apex Court in Bangalore Water Supply case.

Thus, in view of facts and circumstances of the case and above legal prepositions, I am of the opinion that Navodaya Vidhyalay Samiti is at par with the other schools in country, which are covered under Industrial Dispute; and accordingly, come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947 so far as running/administration of welfare activities is concerned through Navodaya Vidhyalay Samiti.

18. Secondly, the opposite party has come up with case that there exists no 'industrial dispute' in the present case; whereas the workman has vehemently opposed the same.

In this regard, the Section 2 A of the Industrial Disputes Act, 1947 reads as under:

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. – (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

In the instant case, the services of the workman had, allegedly, been terminated by the management and a bare perusal of the above quoted provision it becomes crystal clear that the present case is an industrial dispute.

19. Admittedly no appointment letter was issued to the workman and he was engaged by the management as a daily wager. The workman in his pleadings and evidence has come up with the case that he worked continuously from 01.12.1997 to 15.05.2002 and his services have been terminated w.e.f. 15.05.2002 and in order to substantiate his pleadings he has filed photocopy of attendance sheet for August, 99 and certain office orders, entrusting duty upon the workman.

In order to sustain his pleadings of continuous working w.e.f. 01.12.1997 to 15.05.2002 the workman has moved an application, W-24 for summoning documents from the management, duly supported with an affidavit; wherein the workman sought directions from this Tribunal for the management to produce the original records relating to him, including the Duty Registers of Group 'D' employees, Monthly Pay Voucher Sheets of the daily wages employee and Gate Entry Registers of the school for the period from 01.12.1997 to 15.05.2002. In rebuttal, the management filed its objection, M-27, duly supported with an affidavit of Rajendera Ram Chandra Kasar, Principal of Jawahar Navodaya Vidhyalay (who was later produced by the management as management witness); wherein Para 6 of the objection, it had been denied that the workman never worked for 240 days in a year and the documents summoned by the workman like Duty Register, Gate Entry Register of School and Monthly Pay Vouchers Sheets from 01.12.1997 to 15.05.2002 by efflux of time having been rendered redundant are not traceable and cannot be produced.

This Tribunal after hearing the learned authorized representatives of the parties, passed a detailed order dated 25.09.2012, which is quoted hereunder:

"Heard parties and perused application for summoning the documents and objections thereof.

The workman by the way of his application for summoning documents has tried to summon certain documents, which are in power and possession of the opposite party, to corroborate his claim that he worked with the opposite party w.e.f. 01.12.1997 to 15.05.2002. He has relied on Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda 2010 AIR SCW 542; wherein Hon'ble Gujrat High Court has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster roll etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Further, the submission of the management that the documents summoned by h workman, by efflux of time have been rendered redundant are not traceable and cannot be produced seems to be irresponsible in the light of the fact that the workman had been terminated on 15.05.2002 and the matter was referred for adjudication in year 2007, therefore, the management was supposed to keep intact the documents pertaining to the workman to pursue their case.

However, in view of non-submission of the documents summoned, appropriate inference shall be drawn at appropriate stage."

20. Apart from giving his own evidence, the workman produced two other witnesses, who were former students of Jawahar Navodaya Vidhyalay, Unnao, viz. Sri Bhupendra Kumar and Ms.Nisha Devi. Sri Bhupendra Kumar in his

statement, given on oath, has stated that he studied in the school from standard VI to XII. He was in class VI in the year 1999 and he saw the workman, Vineet Kumar, working in the school. He further stated that he saw the workman working in the school upto 2002. He also stated in his cross-examination that the workman used to do night duty. He never saw workman working in day. He stated that the workman used to look after the school premises at night and there was no other than the workman to take care of the school at night. The other witness, viz. Ms. Nisha Devi, stated in her cross-examination that she studied from Class VI to VIII, in year 1999 to 2002. She stated that when she used to come back from tutorial classes at 9-10 PM, she used to see the workman doing watch and ward service in the school campus. She also stated that she used to go for tutorial every day and used to see the workman each day. She also stated that apart from workman some other persons viz. Sri Amar Nath, Radhey Lal, Amit, Phoolmati, Sarvesh, Jogendera etc. also used to work in the school.

In rebuttal, the management examined, Sri Rajendra Kasar, Principal of Jawahar Navodaya Vidhyalay, Unnao who stated that the workman had been engaged as daily wage, intermittently and never completed 240 days in a year, hence the provisions of Section 25 F of the Act do not attract in his case. The management witness in Para 11 of his affidavit has given details of working of the workman, which is as under:

“The claimant has been engaged on daily wages basis intermittently due to exigencies of work during the year 1997 (December only) 1998 (January to April, August and December only), 1999 (January to March and October to December only), 2000 (January, March, April, August, September and November, December), 2001 (January, March, April, August, September and December only) and 2002 (January to 15th May, 2002)”

During cross-examination, when the management witness was questioned about the source of details of working days given by him in Para 11 of his affidavit, he stated that the details of working given by him is based upon the documents. He further stated that the statement made in Para 10 and 11 of his affidavit is based on the vouchers and payment record. However, he stated that the documents on the basis of which the statement in Para 10 and 11 of his affidavit are made, are filed with this Tribunal or not, he does not know.

21. Having regard to the statements made by the Sri Rajendra Kasar, Principal, Jawahar Navodaya Vidhyalay, Unnao, given by him in objection to the summoning application by the workman, M-27; wherein Para 6 of the same he stated that the documents summoned by the workman like Duty Register, Gate Entry Register of School and Monthly Pay Vouchers Sheets from 01.12.1997 to 15.05.2002 by efflux of time having been rendered redundant are not traceable and cannot be produced; but on the contrary in his statement given in his affidavit, filed in support of pleadings, M-37, he has very specifically given details of workings of the workman in Para 11 of the affidavit and during his cross-examination he stated that the details of working given by him is based on the documents i.e. vouchers and payment record.

This goes to show that the management of the Jawahar Navodaya Vidhyalay did not come with clean hand before this Tribunal and tried to conceal the documents and fact just in order to deprive the workman of his legitimate rights or make him unsuccessful in proving his pleading of 240 days of working. Furthermore, the management has also taken plea that the Class III & IV employees are employed as per Recruitment Rules; but failed to file any such Rules before this Tribunal. Hence, in view of facts and circumstances of the case and discussions made herein above as well as in order dated 25.09.2012, there is sufficient ground to draw an adverse inference against the management for non-production of the documents, summoned by the workman, and rely on the pleadings, documents filed and evidence adduced by the workman, particularly evidence of two former students of Jawahar Navodaya Vidhyalay, Unnao, in support of his claim.

22. Hon’ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda* 2010 AIR SCW 542; has observed that for proving 240 days’ continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. The management has failed to discharge the burden of proof; and there is sufficient evidence to show that the workman worked continuously from 01.12.1997 to 15.05.2002 and worked 240 days in preceding twelve months from the date of his termination; and his services have been terminated, illegally, by the management in utter violation of the provisions of Section 25 F of the Industrial Disputes Act, 1947.

23. Hon’ble Allahabad High Court in *State of U.P. vs. Mahendra Pal Singh & another* 2012 (2) ALJ 325 while scrutinizing the validity of the award of the Labour Court found that the findings of the Labour Court were not perverse; wherein the Labour Court drawn out a finding that the workman had continuously worked for more than 240 days in calendar months prior to termination of his services; and the termination of services was without any notice and without payment of retrenchment compensation; and accordingly, Hon’ble High Court held that the relief of reinstatement with 60% of back wages, awarded by the Labour Court was justified. Hon’ble High Court in para 47-50 of its judgment, has referred decision of Hon’ble Apex Court in *Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)* (2010) 3 SCC 637: (AIR 2010 SC (Supp) 787 as under:

“47. the appellant worked as a daily wager under the respondent from 1.6.1988. His services were terminated in December, 1993. He served a notice of demand dated 30.12.1997 on the respondent contended that his services were terminated orally without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that he may be reinstated in service with full back wages from the date of illegal termination and he may be regularized according to the Government policy. The respondent did not respond to the demand made by the appellant and by order dated 23.7.1999, the State Government referred the dispute under Section 10 of the Act to the Labour Court. Thereupon the Labour Court passed the award dated 18.7.2006 holding that the appellant had admittedly completed 267 days from 1.6.1988 to 30th April, 1989 and his services were terminated without any notice or notice pay and without payment of retrenchment compensation and the termination was, therefore, in violation of Section 25-F of the Act and the appellant was entitled to be reinstated in his previous post with continuity of service and 50% back wages from the date of demand notice i.e. 30.12.1997.

48. The respondent challenged the award of the Labour Court before the High Court of Punjab and Haryana, in writ petition and by order dated 9.12.2008, High Court allowed the said writ petition and set aside the award dated 18.7.2006 of the Labour Court and directed the respondent instead to pay compensation of Rs. 50,000/- to the appellant. Aggrieved by order dated 9.12.2008 of the High Court, the appellant filed appeal before the Apex Court. By placing reliance upon earlier decision rendered by the Apex Court in the case of Harjinder Singh (supra), I allowed the appeal and set aside the impugned order dated 9.12.2008 passed by the High Court and directed that the appellant will be reinstated as a daily wager with 50% back wages forthwith.

49. While dealing with the question of discretionary powers of the Labour Court, in para 17 of the decision, Hon’ble Apex Court has observed as under:

“17. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to the discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct reinstatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well settled principles laid down by this Court for a writ of certiorari against an order passed by a court or a tribunal.”

50. In the said case while drawing distinction between the cases of this nature and State of Karnataka vs. Umadevi (2006) 4 SCC 1: (AIR 2006 SC 1806 SC 1806) in para 22 of the said decision Hon’ble Apex Court held as under:

22. The decision of this Court in State of Karnataka v. Umadevi (3) cited by the counsel for the respondent relates to regularization in public employment and has no relevance to an award for reinstatement of a discharged workman passed by the Labour Court under Section 11-A of the Act without any direction for regularization of his services.”

24. Thus, in view of the facts and circumstances of the case, discussions made hereinabove and law relied on, it is established that the workman, Vineet Kumar, who was engaged as daily wager by the management of Jawahar Navodaya Vidyalaya, Unnao had worked for more than 240 days in a year preceding the date of his termination and his services have been illegally terminated on 15.05.2002 by the management of the Jawahar Navodaya Vidyalaya, Unnao without following the mandatory provisions of the Section 25 F of the Industrial Disputes Act, 1947. Therefore, I am of the considered opinion that the workman, Vineet Kumar is entitled for reinstatement with continuity in service along with 60% of back wages within ten weeks of publication of the award, failing which; the back wages shall carry simple interest @ 6% per annum.

25. The reference is answered accordingly.

LUCKNOW

08th May, 2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 21 जून, 2018

का.आ. 1003.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ब्रह्मपुत्र बोर्ड, गुवाहाटी, असम का प्रबंधन एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या केस नं. 02 ऑफ 2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.04.2018 को प्राप्त हुआ था।

[सं. एल-42011/69/2015-आईआर (डीयू.)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st June, 2018

S.O. 1003.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. 02 of 2015) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Brahmaputra Board, Guwahati, Assam and their workmen, which was received by the Central Government on 02.04.2018.

[No. L-42011/69/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM**

Present : Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B.
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 02 of 2015**In the matter of an Industrial Dispute between :-**

The Management of Brahmaputra Board, Guwahati, Assam

...Management/O.P.

-Vrs-

Md. Dhanur Ali (Rumia Begum & 24 others, Kamrup, Guwahati

...Workmen/Claimants.

APPEARANCES

For the Management : Mr. S.C.Koyal, Learned Advocate.
Ms. K.Hazarika, Learned Advocate.
Mr. K.Thakuria, learned Advocate.

For the Workmen : Mr. A.Dasgupta, learned Sr. Advocate.
Ms B.Das, learned Advocate.

Date of Award: 20.03.2018.**AWARD**

1. The appropriate Government had sent the present Reference case with the schedule mentioned hereunder :

SCHEDULE

“(1) whether petitioners are in the employment of the Respondent-Board and, if so, from which date and with what status (temporary or any other one)? (2) In case, if it is held that the petitioners were/are in the employment of the Respondent-Board, may be in any capacity, then what relief(s) petitioners are entitled to claim from the Respondent?”

2. On receipt of the reference, notices were sent to both the sides and they appeared and submitted their respective written statements.

3. **Summary of the Facts stated in the Claim Statement submitted by the workmen.:-** The concerned workmen by filing O.A.No.83/11 approached the Central Administrative Tribunal, Guwahati claiming conferment of temporary status on them. Vide order dated 03.05.2011 learned Central Administrative Tribunal, Guwahati disposed of the matter with a direction to the Chairman, Brahmaputra Board to dispose of the petition of the workmen after hearing them. Ultimately, on 29.04.2013 Secretary of Brahmaputra Board passed an order directing the Superintending Engineer, Nalbari Circle to disengage the workmen. The workmen again approached the learned Central Administrative Tribunal, Guwahati by filing O.A. No.143/2013. Initially the order of disengagement was stayed by the learned Tribunal and application filed by the Brahmaputra Board for modification of the interim order by contending that the workmen were contract labourers was also rejected. However, ultimately the aforesaid O.A. was finally dismissed vide order dated 06.02.2014 on the ground that the workmen were contract labourers and not entitled for temporary status. The learned Tribunal also declined to interfere with the order of disengagement of the workmen. Pursuant to the order of the learned Tribunal workmen were disengaged on 19.02.2014. Challenging the order of learned Tribunal two Writ Petitions being No. W.P (C) No.1958/2014 and W.P.(C) 1490/2014 were filed before the Hon'ble Gauhati High Court. Vide order dated 05.05.2014 Hon'ble Gauhati High Court quashed the order dated 06.02.2014 passed by the learned CAT, Guwahati with a direction to the appropriate Government to notify the reference u/s 10A of the Industrial Dispute Act, 1947 for adjudication by the Central Government Industrial Tribunal, Guwahati on the following issues:

(i) Whether the petitioners are in the employment of the Respondent-Board and if so, from which date and with what status (temporary or any other one)?

(ii) In case, if it is held that the petitioners were/are in the employment of the Respondent-Board, may be in any capacity, then what relief(s) petitioners are entitled to claim from the Respondent?

It was in the aforesaid factual background this reference was made by the appropriate Government. The workmen went on to narrate their case in their claim statement. According to them the workmen were employed as casual workers to perform manual works in the Pagladiya Dam Division-II, Nalbari under the Brahmaputra Board. Names of the 25 workmen (casual workers) who filed the aforesaid Writ Petitions were mentioned in the claim statement along with their respective dates of engagement. The workmen at one point of time approached the authorities of Brahmaputra Board to grant temporary status and to regularize their services extending the benefit of O.M. 10.09.1993 issued by the Government of India wherein it was laid down that temporary status will be conferred to all the casual workers who were in the employment on the date of issue of OM and who have rendered continuous service for at least one year. The Brahmaputra Board, in order to settle the issue of conferment of temporary status, constituted a Committee consisting of 4 Officers of the Board vide Notification dated 14.06.2010. The aforesaid Committee held its meeting on 21.06.2010, 24.06.2010, 27.07.2010, 29.07.2010 and on 02.08.2010 and submitted its report on 04.08.2010. In the aforesaid report the Committee opined that Brahmaputra Board may consider conferment of temporary status to the workers who had rendered their service to the Board. The Committee also prepared a list of workers division-wise for conferment of temporary status. The Committee in its report mentioned that during the course of survey and investigation work taken up by the Board, since its inception in 1982, casual workers from the local area were engaged because survey and investigation were done in remote areas and in such a situation engagement of local persons were very helpful in regard to proper communication with the local people as well as the accommodation. In its meeting held on 29.07.2010 the following facts emerged:

1. Though presently no any casual worker is working directly under Board however they are doing the same job through labour contractors after discontinuation of engagement of casual workers.
 2. The Board had introduced labour contract starting from the year 2005 and engaged all the casual workers who were working till then in Brahmaputra Board as contract labourers.
4. All the casual workers had rendered their continuous service for more than 1 year because they had been engaged for a period of at least 240 days in a year prior to their disengagement as casual workers under Brahmaputra Board. According to the workmen it clearly transpired from the report of the aforesaid Committee that the concerned workers were initially engaged as casual workers but subsequently they were shown to have been engaged as contract labourers. The Division wise list prepared in the meeting held on 02.08.2010 contained the names of the concerned workmen as workers working in Pagladiya Dam Division-II, as under:

Sl. No.	Name of the existing labours	Period of engagement as muster roll	Period of engagement as contract labours.
43	Md. Dehnur Ali	April, 2001 to July, 2005.	August, 2005 onwards.
46	Mono Ram Das	April, 2001 to July, 2005.	August, 2005 onwards.
47	Md. Ainul Haque	April, 2001 to July, 2005.	August, 2005 onwards.
49	Sir Sunil Bujar Baruah	December, 2000 to July, 2005	August, 2005 onwards.
50	Sri Subodh Sarma	January, 2001 to July, 2005	August, 2005 onwards.
51	Sri Ganesh Dutta	April, 2001 to July, 2005.	August, 2005 onwards.
52	Sri Bhola Ram Boro	August, 2001 to July, 2005.	August, 2005 onwards.
53	Sri Samin Ch. Das	August, 2001 to July, 2005.	August, 2001 to July, 2005
55	Sri Bali Ram Barman	October, 2002 to July, 2005	August, 2001 to July, 2005
55	Sri Bali Ram Barman	October, 2002 to July, 2005	August, 2001 to July, 2005
56	Sri Dharani Chandra Kalita	October, 2002 to July, 2005	August, 2005 onwards
57	Sri Subodh Baishya	October, 2002 to July, 2005	August, 2005 onwards
58	Sri Chabin Kalita	March 2001	August, 2005 onwards
59	Sri Nagen Rajbongshi	October, 2002 to July, 2005	August, 2005 onwards

60	Md. Nurul Haque	August, 2001 to July, 2005.	August, 2005 onwards.
61	Sri Bhogirath Medhi	November 2002 to July, 2005	August, 2005 onwards.
62	Md. Ajmat Ali	February, 2002 to July, 2005	August, 2005 onwards.
63	Mrs. Sewali Haloi Baruah	October, 2002 to July, 2005	August, 2005 onwards.
64	Sri Monoj Kr. Saloi	February, 2001 to July, 2005	August, 2005 onwards.
65	Sri Pradip Kr. Das.	February, 2001 to July, 2005	August, 2005 onwards.
67	Mrs. Guneswari Deka Kalita	March, 2001 to July, 2005	August, 2005 onwards.
68	Sri Somnath Boro	February, 2001 to July, 2005	August, 2005 onwards.
69	Sri Hemanta Saloi	February, 2001 to July, 2005	August, 2005 onwards.
70	Sri Gajendra Nath	August, 2001 to July, 2005.	August, 2005 onwards.
71	Sri Pradip Rajbangshi	July, 1997 to May, 2000	September, 2008 onwards.
72	Sri Pankaj Goswami	April, 2001 to July, 2005	August, 2005 onwards.

According to the workmen it was therefore evident from the report of the Committee that the concerned workmen were under the employment of the Brahmaputra Board. A meeting of the high Officials of the Board was held on 31.08.2010 to discuss the proposal for conferment of temporary status as opined by the Committee. In that meeting it was decided that conferment of temporary status to the casual workers as per eligibility from the list submitted by the Committee would be considered subject to ratification by the next Board meeting. A copy of the minutes of the aforesaid meeting was annexed along with the claim application as Annexure-3. The recommendation of the Committee in regard to grant of temporary status to the casual workers along with the decision of the meeting held on 31.8.2010 was placed before the 52nd meeting of the Brahmaputra Board held on 22.11.2010 but nothing was done to confer temporary status to the workmen. Ultimately the concerned workmen were not conferred with temporary status despite the recommendation of the Committee. While the workmen were expecting conferment of temporary status, the Secretary of Brahmaputra Board passed an order on 29.04.2013 whereby the Superintending Engineer, Nalbari Circle, Brahmaputra Board, Nalbari was directed to disengage the workmen along with the present workmen. This was challenged before the CAT, Guwahati but no relief could be obtained by the workmen. Writ petitions as mentioned earlier were submitted before the Hon'ble High Court and pursuant to the direction passed in the aforesaid Writ Petitions this reference was made by the appropriate Government. It was specifically stated by the workmen in their claim statement that the facts of this case would show that they were initially appointed as casual workers but subsequently they were shown as contract labourers. According to them subsequent engagement as contract labourers was nothing but a paper arrangement and hence all the workmen involved in this case are to be considered as employee of the Brahmaputra Board. The workmen prayed for an Award holding them directly under the employment of Brahmaputra Board and that they are entitled to pay scale as that of regular employees.

5. Summary of the facts mentioned in the written statement filed by the management side:- The management in its written statement averred that the work for which the workmen were engaged by the Brahmaputra Board was of temporary nature and all the applicants were contract labourers engaged through qualified labour contractors. According to the management concerned contractors were thus absolute employer of such contract labourers and Brahmaputra Board used to pay the bills raised by the concerned contractors for the wages of the contract labourers. It was further stated that the very purpose of engagement of this labourers ceased exist from 1st June, 2013 and therefore Brahmaputra Board could not continue their engagement through the contractor as no work was there. It was also stated that engagement of casual/muster roll workers ceased to exist with effect from 07.06.1988 in all establishments of the Central Government though Brahmaputra Board started to follow this Policy from June, 2005 and accordingly from July, 2005 all the Divisional Offices of the Brahmaputra Board started to engage contract labourers for Unskilled, Skilled and Semi-skilled works. The management has also submitted a list of 25 workmen showing their period of engagement as muster roll as well as the period of engagement as contract labourers. It was also stated that the concerned workers do not fulfill the eligibility criteria required as per DOPT O.M dated 10.09.1993. It was also stated that the Board examined the matter of conferment of temporary status to these muster roll contractual labourer and after examining the whole matter offered temporary status to 8 numbers of erstwhile casual labourers who fulfill the criteria mentioned in O.M. dated 10.09.1993. It was also stated that as per decision in the 56th Board Meeting dated 22.3.2013 land acquired by the Brahmaputra Board for construction of Pagladia Dam Project was handed over to the Government of Assam through Water Resource Department vide letter dated 15.05.2013 due to failure of the Project. It was further stated that engagement of the concerned workmen were basically made for watch and ward duty of this 956 hectares of land as stated in the engagement order. Hence, the very purpose of their engagement ceased to exist from 01.06.2013 and therefore, Brahmaputra Board

could not continue with their engagement through the contractors as there was no work. The management side prayed for answering the reference in negative.

6. 24 number of witnesses were examined by the workmen side. Workmen witness No.1 Monoj Kumar Saloi stated that initially in the year year 2001 he was appointed as casual employee under Brahmaputra Board and from August, 2005 onwards through some paper arrangement he along with others were shown as contract labourers. He exhibited certain documents namely Exhibit-1 to 11. He also stated that Brahmaputra Board vide order dated 3.2.2012 temporarily closed the Pagladiya Sub-Division No.I, Rangiya and brought him and other workers under Nalbari Sub-Division and subsequently vide Office order 29.04.2013 all 26 of them were disengaged. During cross-examination he admitted that it is mentioned in Exhibit-3 & 4 that he has been working as Master Roll, Contractual Labourer under Pagladiya Mechanical Sub-Division, Bhramaputra Board since 01.02.2001. He denied the suggestion of the management side that he has no right for regular appointment under Brahmaputra Board.

7. Workmen Witness No.2, Hemanta Saloi also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1 and also exhibited two documents namely Exhibit-12 and 13 which are 2 certificates issued in the year 2007& 2009 by an authority in the Board in regard to the fact that he had been working in Brahmaputra Board. He denied the suggestion of the management side that because of his appointment through labour contractor he had no right to regularization in service of the Board.

8. Workmen Witness No.3, Sri Somnath Boro also stated that since 2001 he was working as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1 and also exhibited two documents namely Exhibit-15 and 16 which are 2 certificates issued to him by the Assistant Executive Engineer Pagladiya Sub Division No.1, Brahmaputra Board. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

9. Workmen Witness No.4, Sri Bhola Ram Boro also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1 and also exhibited one document namely Exhibit-18 which is certificate issued in the year 2013 wherein Assistant Executive Engineer Pagladiya Sub Division No.1, Brahmaputra Board certified that he has been engaged as contract labour since 5 years. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

10. Workmen Witness No.5, Sri Samin Ch.Das also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. However the witness did not prove any document in support of his claim. In Exhibit-13 it was mentioned that he has been working in Brahmaputra Board since 01.02.2001 till the date of his certificate i.e. 01.10.2009. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

11. Workmen Witness No.6, Smti Guneswari Deka Kalita also stated that since 2001 she was appointed as casual employee of Brahmaputra Board and from August,2005 she was shown as contract labourer through some paper arrangement. She also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1 and also exhibited one document namely Exhibit-21 which is a certificate issued in the year 1998 respectively wherein Assistant Executive Engineer Pagladiya Sub Division No.1, Brahmaputra Board certifying that he has been engaged as contract labour since 5 years. She denied the suggestion of the management side that because of her appointment through labour contractor she has no right to regularization in service.

12. Workmen Witness No.7, Sri Ganesh Dutta also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

13. Workmen Witness No.8, Sri Gajendra Nath Saloi also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

14. Workmen Witness No.9, Sri Nagen Rajbangshi also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He

also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

15. Workmen Witness No.10, Sri Pradip Kr. Das also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

16. Workmen Witness No.11, Mrs. Sewali Haloi Baruah also stated that since 2001 she was appointed as casual employee of Brahmaputra Board and from August,2005 she was shown as contract labourer through some paper arrangement. She also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

17. Workmen Witness No.12, Sri Pankaj Goswami also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

18. Workmen Witness No.13, Sri Sunil Buzar Baruah also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

19. Workmen Witness No.14, Sri Subodh Sarmah also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August, 2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

20. Workmen Witness No.15, Sri Baliram Barman also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

21. Workmen Witness No.16, Sri Dharani Ch. Kalita also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

22. Workmen Witness No.17, Sri Subodh Baishya also stated that since 2001 he was appointed as casual employee of Brahmaputra Board and from August,2005 he was shown as contract labourer through some paper arrangement. He also exhibited the documents (Exhibit-1 to 11) which were earlier exhibited by W.W.1. He denied the suggestion of the management side that because of his appointment through labour contractor he has no right to regularization in service.

23. The remaining 7 workmen witnesses also similarly deposed and stated that initially they were engaged by Brahmaputra Board as casual employees and subsequently from August,2005 they were shown as contract labourers through some mere paper arrangement. All of them denied the defence suggestion that since they were engaged as labourers through contractors they were not entitled to claim regularization in service.

24. If we sum up the entire evidence of the workmen side it would transpire that their initial appointments were as casual employee directly under the principal employer and subsequently they were converted as contract labourer from August, 2005. The aforesaid fact was not denied by the management. The management also admitted that though engagement of casual employees directly by any central Government Organisation was discontinued far long back, the Brahmaputra Board started to discontinue direct employment of casual employees from August,2005.

25. Management side examined one witness namely Sri Atul Sarma, who was, at the time of deposing before this Tribunal, was working as Executive Engineer, Nalbari Division, Brahmaputra Board. He was duly authorized by the Brahmaputra Board to submit the examination-in-chief in-Affidavit and to render himself for cross-examination by the workmen side. In his statement there is clear admission that all the concerned workmen were initially engaged as casual employees directly by the Brahmaputra Board but from 2005 they were engaged through contractors. From his evidence also it clearly transpired that upto August,2005 the workmen were casual workers/master Roll workers directly under the Brahmaputra Board and subsequently they were engaged in Brahmaputra Board as contract labourers. He however, clearly stated that the work for which the workmen were engaged in Brahmaputra Board was of temporary nature and since the particular work ceased to exist from 1st June, 2013 the management could not continue with their engagement

through contractors. Most of the subsequent facts including setting up of a Committee to consider granting of temporary status to the workmen were admitted by him. During cross-examination he admitted constitution of a Committee by the Board for considering giving of temporary status to the workmen. He also admitted that the Committee submitted the report on 04.08.2010 and the recommendation contained a list of casual workers under Brahmaputra Board and recommended for conferring temporary status. He further stated that list contained names of 118 workers which included the names of the workers concerned in the present reference. He clearly admitted that there were recommendation of the Committee for conferring temporary status upon the concerned workers. He also stated that ultimately the Board did not confer the temporary status on them. He however admitted that 8 persons, who were not part of the workmen involved in this reference, were however, given temporary status by the Board. To a question put by the learned Sr. Counsel for the workmen he replied that he could not show whether those 8 persons were engaged through contractors or not.

26. During argument the learned Sr. Counsel appearing for the workmen submitted that the so called engagement of the workmen since August, 2005 as contract labourers was a mere paper arrangement and hence, the contract itself was sham. He further submitted that the contract through which the labourers were engaged by the principal employer was clearly a sham contract or mere paper arrangement and hence the concerned workmen are to be considered workmen directly under the principal employer. He also stated that since the concerned workmen were appointed directly under the principal employer their discontinuation of service would have to be considered and decided as per the Provision contained in Section 25G & 25H of the I.D. Act, 1947. He also pointed out that though the management had taken a plea that the concerned Pagladia Dam Project was closed and hence there was no scope for continuing with the employment of the concerned workmen, the facts of the record would show that on the day of the closure of Pagladia Dam Division i.e. 1st June, 2013 none of the concerned workmen were working in that project. In fact all of them were already transferred under Nalbari Sub-division in the year 2012 itself and hence closure of Pagladia Dam Project could not be a ground to do away with the services of the workmen. He prayed for an Award declaring that the disengagement of the workmen were ab initio void and that they are entitled to reinstatement with back wages.

27. Learned Counsel appearing for the management side submitted that the work for which the concerned workmen were initially engaged as casual/master roll was purely of temporary nature and when the work itself ceased to exist there could not be a way to continue with their engagement. Management side has prayed for answering the reference in the negative.

28. From the evidence adduced in this matter it is clear that the workmen were originally engaged as casual workers directly by the management and subsequently from August, 2005 they were engaged through labour contractors. It is also clear that even as contract labourers the same set of workmen continued to work. This very fact categorically indicates that the engagement of the workmen subsequently through labour contractors was merely a paper arrangement. The natural consequence of this would be that the workmen are to be held as casual workers directly under the employment of the principal employer, that is, Brahmaputra Board. It is therefore, held that at the time of their disengagement the workmen were casual workers under the Board. The management side could not even prima-facie prove that the work done by the concerned workmen was not of perennial nature. The workmen were, admittedly, working for Brahmaputra Board continuously for more than 12 years till they were disengaged. Admittedly, the concerned workmen were discontinued from their engagement by Brahmaputra Board vide order dated 29.4.2013. Till that date the concerned workmen were working for Brahmaputra Board as casual/master roll workers. Work Man Witness No.1, during his evidence stated that Brahmaputra Board vide order dated 3.2.2012 temporarily closed the Pagladiya Sub-Division No.I, Rangiya and brought him and other workers under Nalbari Sub-Division and subsequently vide Office order 29.04.2013 all of them were disengaged. This fact remained un-rebutted. It was, therefore, clear that plea of the management that closure of Pagladiya Dam Sub-division was the reason of the concerned workmen's disengagement is not acceptable in as much as during their disengagement the workmen were not working in Pagladiya Dam Sub-division. It is further clear from the evidence that the concerned workmen were in the employment of Brahmaputra Board for last more than 12 years from the date of their respective engagement till disengagement. They worked for the Board for more than 240 days in each calendar year. At the time of disengagement the workmen were under Nalbari Sub-division. The management of the Board appeared to have disengaged the concerned workmen involved in this reference without following due procedure. The concerned workmen are therefore entitled to be re-instated as casual workers under Brahmaputra Board. However, instead of back-wages the workmen should be granted a lump-sum compensation.

29. In view of the above, this reference is disposed of with the following award. The management of Brahmaputra Board is directed to re-instate the workmen involved in this reference in the capacity of casual workers on same wages was applicable to them at the time of their disengagement. Such re-instatement shall be done by the management within 60 days from the date of receipt of the copy of this Award. The management of Brahmaputra Board is further directed to pay lump-sum compensation of Rs.50000/- (Rupees Fifty thousand only) each to all the workmen involved in this reference within 90 days from the receipt of the copy of the award in-lieu of back-wages. Accordingly, the reference is disposed of with the aforesaid Award.

Given under the hand and seal of this Tribunal on this 20th day of March, 2018 at Guwahati.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 25 जून, 2018

का.आ. 1004.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार श्रेयस ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 92/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. एल-12011/33/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 25th June, 2018

S.O. 1004.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 92/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Shreyas Gramin Bank and their workmen, received by the Central Government on 25.06.2018.

[No. L-12011/33/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE SHRI SHUBHENDRA KUMAR, HJS PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR**

ID No. 92 of 2012

The State Executive Committee Member,
U.P. Bank Workers' Organization
3/13, Mathura Nagar.
ALIGARH (U.P)

VS

The Chairman,
Shreyas Gramin Bank,
Head Office, Diggi Road,
ALIGARH (U.P)-202001

AWARD

1. Central Govt. Mol, New Delhi, vide notification No. L-12011/33/2012-IR (B-1) dated 15.10.12, has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management in applying Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules 1998 instead of Regional Rural Bank's (Appointment & Promotion of Officers and Employees) Rules 2010 for the promotion for which notification was issued on 10.02.11 is legal and justified? To what relief the Union is entitled?
3. In short the case set up by the union is that the management in supersession of earlier rules regarding Appointment and Promotion of officers and employees, Rules, 1998, has framed (Appointment and Promotion of officers and employees) Rules, 2000 which was duly notified by the Government of India in its official gazette dated 13.07.2010. The Board of Directors of the Bank in its meeting dated 29.09.2010 has adopted these rules. It is also alleged that the Chairman, Shreyas Gramin Bank in its circular dated 25.09.2010 has clearly mentioned that these rules have come into force from the date of their publication and it is therefore, clarified that any further recruitment and promotion shall be conducted as per these rules. That in the existence of Rules 2010, Rules framed in the year 1998 has lost its significance. The Chairman of the bank to fulfill his personal interest by invoking the rules framed in the year 1998 which is said to be not in existence in an illegal manner, has taken an illegal decision and issued a circular dated 10.02.11 which has adversely affected the interest of employees and officers of Shreyas Gramin Bank. Union has also cited certain provision of Appointment and Promotion of Officers and Employees Rules, 1998 and 2010. It is also stated that the management before Hon'ble High Court has filed an affidavit wherein it is stated as to how recruitment and promotions of the officers and employees is to be done on the basis of post assessed by the management which smacks with biasness and mala fide intention of the management. Management has appointed and promoted the officers and employees in the bank on whimsical grounds according to Rules 1998, which is illegal and non-est in the eye of law, therefore, on the basis of above it

has been prayed that the officers and employees those have been prevented from their appointment and promotions should also be given justice.

4. Management has filed their reply in which it is alleged that Shreyas Gramin Bank is sponsored bank of Bank of India and Canara Bank and now is known as Gramin Bank Aryavart. Central Government is the appropriate authority to frame the rules regarding appointment and promotion in Regional Gramin Banks in consultation with the sponsor bank and NABARD and according the Government of India in exercise of powers under section 29 of RRB Act, framed appointment and promotion rules 2010 by superseding earlier rules framed in the year 1998 and the same were published by the Government in the Gazette of India dated 13.07.10. The management has categorically denied the averments made by the union in paragraph no.1 to 7. As per guide line issued by the Government, bank made manpower assessment for creation of vacancies as on 31.03.10 and submitting the same for vetting by the sponsor bank which was approved by the sponsor bank vide letter dated 08.12.2010. On the basis of communication issued by the Government of India, it was clarified that the vacancies which existed prior to the publication of new rules would be filled as per rules which existed at the relevant time, the sponsor bank advised to fill up the vacancies as per promotion rules 1998 and the matter was put up before he Board which permitted to fill up the vacancies as pr Promotion Rules 1998, as the vacancies existed on 31.03.2010. It is also stated that the Board ma in consultation with its sponsor bank determine the number of vacancies in each category of posts to be filled up. After clearance by Board, the management started appointment and promotions of officers and employees category wise to fill up the vacant post and after holding written test and interview for promotion to Officer Grade I list of successful candidates were communicated by circular No.39/11. The selection of candidates was made strictly as pr provisions of appointment and promotion rules 1998.
5. Lastly it is alleged that the action of the management is in accordance with the provisions of appointment and promotions of officers and employees rules 1998, and no illegality has been committed by the management, therefore, it is prayed that the claim of the union being devoid of merit is liable to be rejected.
6. Union has also filed rejoinder but nothing new has been narrated therein except reiteration of the facts already pleaded in the claim petition.
7. Management has filed photocopies of 9 documents per list dated 20.02.18, whereas no document has been filed by the union in support of its case.
8. None appeared on behalf of worker, I heard AR for the management and perused the record
9. It is pertinent to mention that by a bare perusal of the entire record it is evident that as no evidence in support of the claim petition has been adduced by the union, management also preferred not to lead any evidence as it is the claimant union who is highly burdened to prove its case by adducing material and relevant evidence as is required under law and since the union has completely failed to discharge their obligation to prove their claim, the reference is bound to be answered against the Union holding that the union is not entitled for any relief for want of evidence and proof.
10. Accordingly, the reference is answered in the above terms against the Union and it is held that the union is not entitled for any relief.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1005.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 12/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2018 को प्राप्त हुआ था।

[सं. एल-22012/132/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th June, 2018

S.O. 1005.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 14.06.2018.

[No. L-22012/132/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/12/2017-18

Date: 17.05.2018

Party No.1 : The Sub-Area Manager,
Naigaon O/c Mines of WCL,
Post : Belora, Tehsil : Wani,
Distt. Yavatmal (M.S.).

Versus

Party No.2 : Shri S.W. Waghmare, Area Secretary,
All India SC/ST/OBC Employees
Coordination Council, Wani Area,
Qrt. No. B-51, Ramnagar Colony,
PO: Ghugus, Distt.Chandrapur (M.S.)

AWARD

(Dated: 17th May, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/OBC Employees Coordination Council, for adjudication, as per letter **No.L-22012/132/2016-IR(CM-II) dated 11/19.07.2017**, with the following schedule:-

"Whether the demand by Area Secretary of All India SC/ST/OBC Employees Co-ordination Council Wani Area, At-Ghugus, Distt. Chandrapur over the issue of anomaly in pay fixation or pay disparity i.r.o. Shri R.M. Ramteke, Sr.Mechanic (M), Naigaon O/c Mines, Post: Belora, Tehsil: Wani, Distt. Yavatmal is just, fair and legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 08.09.2017, Shri A.P. Pantawane, advocate for the petitioner filed vakalatnama but no statement of claim was filed. After filing of vakalatnama, nobody appeared on behalf of the petitioner as well as management. On 15.05.2018, petitioner as well as the management was also absent, so no progress was taken place. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1006.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 14/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2018 को प्राप्त हुआ था।

[सं. एल-22012/131/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th June, 2018

S.O. 1006.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2017) of the Central Government Industrial Tribunal-cum-Labour

Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 14.06.2018.

[No. L-22012/131/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/14/2017-18

Date: 17.05.2018

Party No.1 : The Sub-Area Manager,
Naigaon O/c Mines of WCL,
Post : Belora, Tehsil : Wani,
Distt. Yavatmal (M.S.).

Versus

Party No.2 : Shri S.W. Waghmare, Area Secretary,
All India SC/ST/OBC Employees
Coordination Council, Wani Area,
Qrt. No. B-51, Ramnagar Colony,
PO: Ghugus, Distt.Chandrapur (M.S.)

AWARD

(Dated: 17th May, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/OBC Employees Coordination Council, for adjudication, as per letter **No.L-22012/131/2016-IR(CM-II) dated 11/19.07.2017**, with the following schedule:-

"Whether the demand by Area Secretary of All India SC/ST/OBC Employees Co-ordination Council Wani Area, At-Ghugus, Distt. Chandrapur over the issue of anomaly in pay fixation or pay disparity i.r.o. Shri S.H. Karekar, Sr.Mechanic (M), Naigaon O/c Mines, Post: Belora, Tehsil: Wani, Distt. Yavatmal is just, fair and legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 30.11.2017, Shri R.N. Sen, advocate for the petitioner filed vakalatnama but no statement of claim was filed. After filing of vakalatnama, statement of claim has not been filed even giving of repeated times for filing the same. Even on 15.05.2018, petitioner as well as the management was also absent, so no progress was taken place. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1007.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 19/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2018 को प्राप्त हुआ था।

[सं. एल-22012/117/2011-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th June, 2018

S.O. 1007.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 14.06.2018.

[No. L-22012/117/2011-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/19/2011**

Date: 16.05.2018

Party No.1 : The Suptd. of Mines/Manager
Western Coalfields Ltd., Saoner Mine
No.3, At PO & Tq. Saoner, Nagpur.

Versus

Party No.2 : Shri Pratap Y. Fulper
R/o. New Bidipeth, Plot no. 18, NMC
School, PO-Ayodhya Nagar, Nagpur-24

AWARD(Dated: 16th May, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Ltd. and their workman, Shri Pratap Y. Fulper, for adjudication, as per letter **No.L-22012/117/2011-IR (CM-II) dated 01.09.2011**, with the following schedule:-

"Whether the action of the management of the Western Coalfields Ltd., through its Suptd. of Mines/Manager, Western Coalfields Ltd., Saoner Mine no.3, At/PO/Tq. Saoner Distt. Nagpur in dismissing the service of Shri Pratap Y. Fulper, Clerk Grade-I Soaner Mine no.3 Distt. Nagpur w.e.f. 04.03.2010 is legal and justified? To what relief is the workman concerned is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Pratap Fulper, ("the workman" in short) through his Advocate, filed the statement of claim and the management of Western Coalfields Limited ("party no.1" in short) filed the written statement.

3. On behalf of the workman Shri Pratap filed a statement of claim in this Tribunal by asserting that he came to be appointed as a General Mazdoor on 25.11.1992, then he was promoted to Timber Mazdoor category on 01.01.1994, then he was also promoted as roof stitching and bolting category no.4 on 01.07.1994, then promoted as clerk grade III and clerk grade-II, Clerk grade-I on 18.04.1996, 01.01.1998 and 14.11.2002 respectively.

4. According to workman the entire service career was excellent except false charge sheet given on him by the party no.1 illegally. He was also suspended from 19/21.09.2006 with retrospective effect on 13.05.2006 which is not permitted in the eyes of law. He also asserted that he denied all allegations mentioned against him in the charge sheet. He also asserted that the departmental enquiry did not conduct in accordance with law. He also asserted that management filed complaint against him in police station. He also filed an application to stay the enquiry till the decision of the criminal case but his prayer was refused by the management.

5. According to the workman, departmental enquiry is illegal, improper, unfair and contrary to the principles of natural justice on the following grounds:-

- i) When the criminal case is pending on the same set of fact, the departmental enquiry ought to be stayed because according to the workman two identical proceedings cannot continue together.
- ii) Party no. 1 compels to disclose his defence prior completion of the enquiry.
- iii) Relevant documents were not supplied to him.
- iv) Management also denied him in the departmental enquiry to defend through an advocate.
- v) Enquiry officer also did not allow several relevant questions to the management witness in the enquiry and examination-in-chief of management witnesses was not recorded before him. Enquiry officer completed departmental proceeding without deciding objections raised by the workman and his defence

representative. During the enquiry original documents were not filed by the management i.e whole departmental enquiry was completed on zerox copies.

- vi) Statement of Management witnesses were in English language which was not well known to the workman and his representative.
- vii) Management had not paid salary or subsistence allowance pending the departmental enquiry and during the period of suspension. Management also compels him to mark his presence daily at office.
- viii) The principles of natural justice were not followed by the management in the departmental proceeding.

On the above ground workman/party no.2 prayed that principles of natural justice was not followed and proper hearing was not given. On this basis the argument of the workman/party no.2 was that the finding of the departmental enquiry is illegal, arbitrary and malafide. So he pray that his order of dismissal dated 2/04.03.2010 is to quashed.

6. On behalf of the management, written statement was filed denying claim petition. According to the management, they followed all principles of natural justice and all proceedings were according to law. It was denied that workman's service tenure was clean and unblemished. According to them major misconduct of an employee requires major punishment.

7. According to the management, V.D. Bhide was appointed as an Enquiry Officer and later on he was replaced by Smt. R.P. Barla. It is also admitted that criminal complaint was pending against the Party No. 2, during the enquiry proceedings. They also asserted that Party No. 2 prayed for stay the enquiry proceedings, which was rejected by the management i.e. departmental enquiry proceedings did not stayed.

8. On behalf of the management, it was denied that criminal complaint filed against the Party No. 2 in the police station on the same set of fact, which was under consideration of the departmental enquiry. It was also denied that they compelled to disclose his defence because he already filed detail reply to the charge sheet. It is denied that they did not supply the document to the Party No. 2. But according to the management they supplied each and every document to the Party No. 2.

9. It is not denied that the Party No. 2 was not allowed to be represented through the advocate because their rule did not permit them. Party No. 2 could have been represented through co-worker of his choice. It is also denied that Enquiry Officer was biased in any manner and Party No. 2 was not allowed to put the question to the management witnesses. It is further denied on behalf of the management that Enquiry Officer allowed management's representative to adduce evidence by reading statement. It is also denied by the management that examination-in-chief of the said witnesses was not recorded properly.

10. According to the management, Party No. 2 did not raise any objection at any type during enquiry proceeding and had cross-examined the said witnesses at length. They also denied that statements of management witnesses were recorded in English only. According to the management, the competent authority after considering all relevant aspect including the reply to the charge sheet, evidence in the enquiry proceedings, reply to the second show cause notice, and past service record, then they passed the termination order without prejudice and following the principles of natural justice.

11. The Party No. 2 also filed rejoinder, in which they denied the facts denied in the written statement. According to the Party No. 2, without considering the factual position and the law, Party No. 1 rejected his representation. Party No. 2 also asserted that after suspension, Party No. 1 was allowed to join his duty on 26.06.2007 but after the acquittal from the criminal case, Party No. 1 did not withdraw the suspension order and reinstate him in the service at the relevant time.

12. According to the Party No. 2, charge sheet was issued without authority because they were biased. According to the Party No. 2, he is not a law graduate even his co-worker (who acted as defence representative in the enquiry) is also not law graduate. According to him the enquiry was conducted contrary to the principles of natural justice. So, he wanted to pray to set aside the departmental enquiry and Party No. 1 is also directed to reinstate in service with full back wages.

13. **Point of determination**

- i. Whether termination of workman by management is legal and proper.
- ii. Whether workman was in gainful employment.
- iii. Whether workman entitled for any relief.

Reasons for determination.

After giving full opportunity to lead evidence, Party No. 2 examined himself only but management did not produce any oral evidence. After hearing both the parties this Tribunal passed an order on 21.11.2017 on the point of validity of departmental enquiry and hold that the departmental enquiry held against the workman is legal, proper and in accordance with the principles of natural justice.

14. Now we see the legal position:- State Bank of Bikaner and Jaipur Vs Nemichand, Civil Appeal No. 5861 of 2007, SC dated 01.03.2011, Regional Manager, U.P.S.R.T.C. Vs Hotilal, Civil Appeal No. 5984 of 2000 dated 11.02.2003, State Bank of India Vs Ramesh Dinkar, Civil Appeal No. 2055 of 2003 dated 11.08.2006, Devendra Kumar Vs State of Uttaranchal, Civil Appeal No. 1155 of 2006 dated 29.07.2013 and Bharat Forge Company Ltd. Vs A.B. Zodge, A.I.R. 1996 SC 1556, in which following legal principles are laid down:-

- i. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record.
- ii. Therefore, courts will not interfere with findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations.
- iii. Legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.
- iv. The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority.
- v. A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

15. Now we discuss the evidence with reference to argument as well as case laws put on behalf of the workman. It is argued that, no charge has been proved against the Party No. 2 because; a complaint was also launch with police against him. He filed an application for stay the enquiry till decision of criminal case, but management not considered his application and they compelled to him to open his defence in the enquiry. But this fact was denied by the management. Workman in his court statement admitted that he did not challenge the decision of the management not to stay the departmental enquiry in any competent court of law.

16. On behalf of workman it was argued that witness produced in criminal case and in the enquiry are the same. Management had file zerox copy of the document which was produced in above criminal case. On the contrary management denied this fact. Workman in his court statement admitted that neither he nor his co-worker raised any objection regarding procedure adopted by the enquiry officer. He also admitted that in the enquiry management supply copies of the document to him in Hindi translation and he did not demand the Hindi translation of document which was filed by the management with regard to criminal case. He also admitted that witnesses examined by the management were cross-examined by his co-worker. He also admitted that witnesses were examined in his presence and the proceedings of the enquiry were recorded on the same day. He and his co-worker were signed on the proceeding.

17. On behalf workman it was argued that he received the loan amount from complainant because there was a marriage of Sarita but marriage could not be perform. But that fact was not proved any other reliable evidence. On behalf of the workman it was argued that in his charge sheet one charge was proved but other charges was not proved. But there is no evidence on record to prove any charge. He also argued that order of dismissal passed by management is illegal arbitrary and malafide and not by proper authority. But that fact was denied by the management. Workman in his court statement admitted that he did not have any personal enmity with enquiry officer or management representative. He also admitted that he had not dispute with them at any point of time. He also admitted that nowhere he mentioned that who is the competent authority to submit charge sheet and pass dismissal order. He also admitted that he and his co-worker did not raise any objection regarding the procedure adopted by the enquiry officer. In the course of departmental enquiry he also not mentioned as to what questions was disallowed by the enquiry officer and which were to be asked to the management's witnesses.

18. On behalf of the workman it was argued that party no.1 issued show cause notice and he filed reply/explanation on 07.02.2010. But management in passing dismissal order was not considering his previous service record and charged levelled against him with document. This fact was denied by the management. Workman in his court statement admitted that he received the copy of the enquiry report and second show cause notice was given to him. He also filed reply to said notice. He also admitted that Mr. Bhide retired from the service and Mrs. Barla was appointed as enquiry officer. He also admitted that he did not raise any objection regarding appointment of Mrs. Barla as enquiry officer and P.S. Deshpande as a management representative. He also admitted that Mr. Anjani Kumar Singh was his co-worker in the departmental enquiry.

19. On behalf of the management they relied on case law Baljinder Pal Kaur Vs. State of Punjab and others 2016 I SCC 671, Divisional Controller KSRTC vs. M.G. Vittal Rao 2012 I SCC 442, Dy. Inspector General of Police Vs. S.

Samuthiram 2013 I SCC 598 and Depot Manager APSRTC Vs. B. Swamy 2007 12 SCC 40 in which the following principles are laid down:-

- 1) Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management.
- 2) If he is dishonest in the performance of his duties.....and the gravity of misconduct cannot be minimizing by the fact that he was not earlier caught indulging in such dishonest conduct. There is no guarantee that he had not acted dishonestly in the past as well, which went undetected.

20. On behalf of workman it is also argued that workman was never caught red handed of receiving bribe and he never demanded illegal gratification. He also argued that workman was unemployed and facing starvation. He has no other source of income to maintain himself and his family. On the contrary this fact was denied by the management. In his court statement (evidence on affidavit) this fact mentioned in para 21, but not cross examined on this point. After perusal of criminal judgment and proceedings of the departmental enquiry, it appears to be true that, workman was never caught red handed on receiving bribe and he has no gainful employment.

21. On behalf of workman, advocate argued that, departmental enquiry and criminal case were based on same facts and identical. So, workman must be reinstated, because in criminal case, he was acquitted by the CBI Court. He also argued that, evidence is not properly appreciated. The workman was terminated illegally, at that time, his 13 years services were remained. He also argued that, in departmental enquiry, Enquiry Officer also mentioned that, there is variation in the statement of Shri Chitradhan Singh. He relied on case laws:-G.M. Tank Vs. State of Gujarat AIR 2006 SC 2129 and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another 1999 SCC 679.

22. On the contrary, management denied this argument on relying above case laws, in which, Hon'ble Lordship held that, in criminal case standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied. It is also held that, some time acquittal order of criminal court based on technical ground of prosecution witnesses turned hostile and appeared to have been won over.

23. In case law--- Delhi Transport Corp. vs. Ombir Singh 2017 LLR 252, Hon'ble Lordship held that "Where principles of natural justice are not being complied with, then in such cases, compensation ought to be granted even if termination of service is found to be valid". On the basis of principle laid down in Engineering Laghu Udhog Employees Union vs Judge, Labour Court and Industrial Tribunal & others – (2003) 12 SCC 1 in which it was held that:- "no difference whether the matter comes before the tribunal for approval under S.33 or on a reference under S.10 of the Industrial Dispute Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper." "A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."

It will be open to the Tribunal to pay compensation even in a case where ultimate charges are proved, despite holding that the order of termination is valid for the reason that principles of natural justice have not complied with.

24. Judging the present case in hand with the touch stone of the principles as mentioned above, it appears that, there is contradiction and variation in statement of complainant in departmental enquiry and criminal case. On the basis of this contradiction, criminal court acquitted the workman but it does not mean that, standard of proof of both types of cases is same. So, in my opinion, that is defect in the departmental enquiry. It is found that law is well settled that, where principles of natural justice were not complied with or there is defect in the departmental enquiry, then in such cases compensation ought to be granted because termination of the services in my opinion is valid. In view of the discussion made above and the materials on record, it is found that there is no scope to interfere with the order of the punishment of dismissal from services passed against the workman. Hence, it is ordered:-

ORDER

The action of the management of Western coalfields limited in dismissing the service of the applicant w.e.f. 01.04.2007 is legal and justified but due to defect in departmental enquiry, the workman is entitled for lumpsum compensation of Rs. 70,000/- (Rupees seventy thousand only) from Party No.1 in lieu of reinstatement, which is payable within one month from the publication of this award in official gazette, failing which, the amount due to the workman will carry interest of 6% per annum from the date of due to the workman to the date of actual payment of the amount to the workman. The workman is not entitled for any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1008.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 23/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2018 को प्राप्त हुआ था।

[सं. एल-22012/51/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th June, 2018

S.O. 1008.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 14.06.2018.

[No. L-22012/51/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/23/2016-17

Date: 09.05.2018

Party No.1(a) : The Sub Area Manager,
Kolarpimpri-Pimpalgaon of WCL,
Pragati Nagar, Post: Ukni,
Tehsil: Wani, Distt. Yavatmal

Party No.1(b) : The General Manager,
Western Coalfields Limited,
Wani North Area, Post: Bhalar,
Tehsil: Wani, Distt. Yavatmal

Versus

Party No.2 : The Vice President,
All India SC/ST/OBC Employees
Coordination Council,
Shri Yogendra S. Jambhukar, D-64
Link Road, Sadar, Nagpur

AWARD

(Dated: 09th May, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/OBC Employees Coordination Council, for adjudication, as per letter **No.L-22012/51/2016- (IR(CM-II) dated 12/15.09.2016**, with the following schedule:-

"Whether the demand raised by Shri Vasant Sukhdeo Nagrale, Applicant employed at Kolarpimpri-Pimpalgaon Sub Area of WCL, Distt. Yavatmal for correction in date of birth on the basis of School Leaving Certificate or sending his case to Medical Board for determination of his age and demands supported by the Vice President, SC/ST/OBC Employees Co-ordination Council is just, fair & legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 30.01.2017, Shri Chaiyanya Samudra, advocate filed vakalatnama on behalf of the management. Nobody appeared on behalf of the petitioner. Fresh notice was issued on 14.11.2017, but petitioner or his advocate did not appear and statement of claim was also not filed. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1009.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 23/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2018 को प्राप्त हुआ था।

[सं. एल-22012/57/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th June, 2018

S.O. 1009.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 14.06.2018.

[No. L-22012/57/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/23/2017-18

Date: 17.05.2018

Party No.1 : The Sub Area Manager,
Naigaon O/c Mines of WCL,
Post : Belora, Tehsil : Wani,
Distt. Yavatmal (M.S.).

Versus

Party No.2 : Shri S.W. Waghmare, Area Secretary,
All India SC/ST/OBC Employees
Coordination Council, Wani Area,
Qrt. No. B-51, Ramnagar Colony,
PO: Ghugus, Distt.Chandrapur (M.S.)

AWARD

(Dated: 17th May, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/OBC Employees Coordination Council, for adjudication, as per letter **No.L-22012/57/2017- (IR(CM-II) dated 16.10.2017**, with the following schedule:-

"Whether the demand by Area Secretary of All India SC/ST/OBC Employees Co-ordination Council Wani Area, At-Ghugus, Distt. Chandrapur over the issue of anomaly in pay fixation or pay disparity i.r.o. Shri S.H. Karekar, Sr.Mechanic (M), Naigaon O/c Mines, Post: Belora, Tehsil: Wani, Distt. Yavatmal is just, fair and legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 28.11.2017, Smt. Ujjwala Arun Patil, advocate filed vakalatnama on behalf of the management but nobody appeared on behalf of the petitioner. Today i.e. on 15.05.2018, advocate for the management is present, but petitioner or his advocate did not appear and statement of claim was also not filed. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1010.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 25/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2018 को प्राप्त हुआ था।

[सं. एल-22012/84/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th June, 2018

S.O. 1010.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 14.06.2018.

[No. L-22012/84/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/25/2016-17**

Date: 09.05.2018

Party No.1(a) : The General Manager,
Western Coalfields Limited,
Wani North Area, Post: Bhalar,
Tehsil: Wani, Distt. Yavatmal (MS)-445304

Party No.1(b) : The Sub Area Manager,
Kumbharkhani U/G Mines of Wani North
Area of WCL, Post: Rasa,
Tehsil: Wani, Distt. Yavatmal (MS): 445304

Versus

Party No.2 : The Vice President,
All India SC/ST/OBC Employees
Co-ordination Council,
Shri Yogendra S. Jambhukar, D-64
Link Road, Sadar, Nagpur

AWARD

(Dated: 09th May, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/OBC Employees Coordination Council, for adjudication, as per letter **No.L-22012/84/2016- (IR(CM-II) dated 03.11.2016**, with the following schedule:-

“Whether the demand raised by Shri Sudhakar Gajanan Dubey, Applicant for correction in date of birth on the basis of School Leaving Certificate or sending his case to Medical Board for determination of his age and demands supported by the Vice President, SC/ST/OBC Employees Co-ordination Council is just, fair & legal? If yes, to what relief the concerned workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 11.05.2017, Shri Chaitanya Samudra, advocate filed vakalatnama on behalf of the management. Nobody appeared on behalf of the petitioner. Fresh notice was issued on 14.11.2017, but petitioner or his advocate did not appear and statement of claim was also not filed. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1011.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 264/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2018 को प्राप्त हुआ था।

[सं. एल-22012/449/1999-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th June, 2018

S.O. 1011.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 264/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 14.06.2018.

[No. L-22012/449/1999-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/264/2000

Date: 14.05.2018

Party No.1 : The Sub Area Manager,
Saoner Sub Area of WCL, PO: Saoner,
Distt. Nagpur (MS).

Versus

Party No. 2 : The Secretary,
Samyukta Khadan Mazdoor Sangh (SKMS)
44, Kingsway, Perwana Bhawan,
Civil Lines, Nagpur.

AWARD

(Dated: 14th May, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Sanjay Birsan, Prakash Lalman Tohariya and Sham Kumar Baswar for adjudication, as per letter **No.L-22012/449/99-IR (C-II) dated 29.08.2000**, with the following schedule:-

"Whether the action of the management of the Sub Area Manager, Saoner Sub Area of Western Coalfields Ltd., Saoner, Distt. Nagpur in dismissing the services of Shri Sanjay Birsan, Prakash Lalman Tohariya and Sham Kumar Baswar w.e.f. 14.07.1993 is legal and justified? If not, to what relief the workmen are entitled and from what date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sanjay Birsan, Prakash Lalman Tohariya and Sham Kumar Baswar ('the workmen' in short), filed the statement of claim and the management of WCL ("Party No. 1" in short) filed their written statement.

The case of the workmen, namely, Shri Sham Kumar Baswar, Shri Sanjay Birsan and Shri Prakash Lalmohan Tohariya as presented in the statement of claim by the union is that the workmen were working as general mazdoors in Saoner Mine No. 2/3 of Saoner Sub Area of party No.1 from 15.05.1991, 12.03.1991 and 19.10.1990 respectively till

14.07.1993 and they were served with the charge sheet dated 30.11.1991 on the allegation of assaulting the under Manager, Shri Parimal Mavawala and all the three workmen on 03.12.1991 submitted their respective reply to the charge sheet, denying the charges levelled against them and a false report was also lodged by the said officer at Saoner police station against the workmen, on the basis of which, a criminal case was instituted by the police in the court of the Judicial Magistrate First Class, Saoner and on 14.07.1993, the date on which, the workmen were dismissed from service, the said criminal case was still subjudiced in the court of the Judicial Magistrate First Class, Saoner and the story of assault was quite different in the charge sheets of the departmental inquiry and that of the criminal case and the real story was that the concerned officer was driving a jeep nearby the Mine No.2/3 unauthorisedly without holding a proper driving license and in an abnormal condition and dashed the jeep against the cycles of the workmen and the workmen were acquitted in the criminal case instituted against them by the JMFC, Saoner on 05.01.1996, due to failure of the prosecution to produce the witnesses including the complainant and the doctor.

The further case of the workmen as presented by the union is that the workmen were active workers of the union and were eyesore in the eyes of the management due to their union activities and after conclusion of the departmental enquiry, the copy of the enquiry report was not given to the workmen and the order of dismissal was also not served on them and party No.1 fabricated clause no.17(1) (w) of the Model Standing Orders with its own wordings in the charge sheet dated 30.11.1991 and the charges were not established against the workmen in the departmental inquiry and the order of dismissal was not passed basing on the principles of natural justice and the trade union activities of the workmen were the real cause behind their dismissal and principles of Law and that of natural justice were not followed by the Enquiry Officer and therefore, the conclusions and findings of the Enquiry Officer are bad in law and not tenable and the dismissal of the workmen from services was unwarranted.

Prayer has been made by the union for the reinstatement of the workmen with full back wages.

3. The party No.1 in the written statement after denying all the adverse allegations made in the statement of claim, has pleaded inter alia that the workmen were working as general mazdoors at Saoner Mine No.2/3 till 14.07.1993 and they were given charge sheet dated 30.01.1991 on the allegation of assaulting the under Manager and the workmen filed their reply to the charge sheet and on the basis of the report lodged at Saoner Police Station, a criminal case was instituted against the workmen and the said criminal case was pending in the court of the JMFC, Saoner, on the date of the dismissal of the workmen from service on 14.07.1993 and the Officer and the doctor were never summoned by the Court and hence, the question of their remaining absent does not arise.

The further case of party No.1 is that the departmental enquiry was conducted against the workmen by observing the principles of natural justice and as there was no procedure at the relevant point of time to supply the copy of the inquiry report to the workmen, the copy of the inquiry report were not supplied to them and by circular dated 12.05.1994, for the first time it was directed that in view of the judgments of the Hon'ble Apex Court, the copy of the enquiry report should be supplied to the workmen and the management thereafter stated to supplying of the copy of the enquiry report to the workmen and the charges in the criminal case were framed under the Indian Penal Code and its Standing Orders were certified on 19.02.1993 and the same was made effective from 27.02.1993 and the charge sheet was issued against the workmen on 30.11.1991, on the basis of the Model Standing orders applicable to it and the workman had filed IESO case no. 4/1992 before the First Labour Court, Nagpur challenging the order of the enquiry officer refusing to allow Shri Ramanuj Sharma to act as the coworker as he was not from the same project and the First Labour Court directed to maintain status quo as regard to the enquiry proceedings, so the proceedings were stayed and by order dated 21.02.1992, the status quo order was vacated by the First Labour Court, so the enquiry proceedings were proceeded further and the workman were instrumental in protracting the enquiry proceedings and there was no delay in the enquiry proceedings and there was no violation of the provisions of Model Standing Order and in the circumstances mentioned above, no notice was served upon the workmen and the order of dismissal was passed on the basis of the charges proved in the proceedings against the workmen and there was no violation of the principles of natural justice in conducting the departmental enquiry by the enquiry officer and the charges framed against the workmen were not vague, false and unspecific and in the statement of claim it has not been pleaded as to what prejudice was caused to the workmen for non-supply of the report of the enquiry and second show cause notice and the said issues were not raised in the conciliation proceedings and all the documents were made available to the workmen during the conciliation proceedings and they were in possession of the same before the reference was made to this Tribunal.

The further case of the party no.1 is that as it did not have the certified standing order at the relevant point of time, it adopted the Model Standing Order and followed the same right from the issuing of the charge sheet till culmination of the enquiry proceedings and the enquiry officer followed the principles of natural justice in conducting the enquiry and after the stay was vacated by the First Labour Court, the workmen duly participated in the enquiry proceedings by appointing another co-worker and did not raise any objection thereafter and no objection was also ever raised by the workmen to appointment of the enquiry officer and management representative who were appointed in accordance with law and the enquiry officer was not biased in any manner and it was agreed before the commencement of the enquiry the first the witnesses would give his evidence and thereafter he would be examined by the management representative and then he would be cross-examined and accordingly, the enquiry officer followed the said procedure one

having accepted the said procedure are precluded from raising any objection in that regard and strict rules of Evidence Act are not applicable in the enquiry proceedings and the enquiry officer did not ask any leading questions to the witnesses, but the clarify the confusion had asked some questions to them and the workmen during the working hours committed grave misconduct and as such, the charge sheet was submitted against them in accordance with the Model Standing Orders and the workmen submitted their one line reply denying the charges and the reply not being satisfactory, the enquiry was ordered against them and the enquiry officer gave full opportunity to the workmen to defend themselves in the enquiry and out of the four charges levelled against the workmen, two charges had been found to be fully proved and one charge to be partially proved and after taking into consideration the findings recorded by the enquiry officer, the dismissal order was passed against them and as the workmen had committed grave misconduct, the dismissal order had been rightly passed by the management and the reference is devoid of any substance and is liable to be answered against the workmen.

4. In the rejoinder, it is pleaded by the union on behalf of the workmen that report of the enquiry officer, second show cause notice, papers proceeded for awarding punishment, copy of written argument filed by management representative during enquiry proceedings and order of punishment passed by the authority were not given to the workmen in contravention of law, precedent and principles of natural justice and the party no.1 is a state under Article 12 of the Constitution of India and the action of party no.1 is discriminatory, one sided and unfair labour practice and there was gross violation of the principles of natural justice and the allegations made in the charge sheet issued against the workmen were false, fabricated, vague and not specific and the charge sheet suffered from several serious infirmities and the enquiry was conducted in gross violation of the principles of natural justice and the workmen were victimized and the enquiry officer in violation of the principles of natural justice and the provisions of the Standing Orders did not allow the workmen to engage Shri Ramanuj Sharma to represent them as their coworker in the departmental enquiry and the enquiry officer was biased and the enquiry officer first recorded the statement of witnesses and then allowed the management representative to examine them and also took cognizance of documents without proof as per law and the report of the enquiry officer if any is perverse and the enquiry officer failed to evaluate the evidence properly and in the departmental enquiry it was proved by the workmen that the under officer, Shri Parimal Mawala was driving the jeep MZV-2286 in a drunken state and without having any valid driving licence on public road at 1 A.M. and he dashed the jeep against the cycles of the workmen and concocted the story of assault only to save himself and the charge sheet was submitted against the workmen under the Certified Standing Orders of National Coal Development Corporation and not Model Standing Orders, which was illegal and unfair and alleged accident took place on the public road at 1 AM, when neither the workmen nor the under manager were on duty and the under manager dashed the jeep against the cycles of the workmen kept on the side of the road near the cultivable land of one of the workmen and the said facts were intimated to the management by the workmen vide their letter dated 28.11.1991 before issuance of the charge sheet and the enquiry officer was the rank of Addl. Chief Mining Engineer and he was 3-4 grade above the charge sheeting authority and the enquiry officer recommended punishment to be imposed and it was obvious that the management was bent upon to punish the workmen in any way and the enquiry officer allowed the management representative to put leading questions to the witnesses and the workmen were acquitted in the criminal case and the action of the party no.1 is liable to be quashed and the punishment is too harsh and disproportionate and the workmen are entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

5. As this is a case of dismissal of the workman from service after conducting of a departmental enquiry, the fairness or other of the departmental enquiry has been taken up as a preliminary issue for consideration.

6. Both the parties have relied on documentary evidence in support of their respective stands. Besides the documentary evidence, the union has adduced the oral evidence of the workmen, Prakash Toriya and Sanjay Birsan to prove its stand. No oral evidence has been adduced by party no.1 in support of its stands at that time. My predecessor on 15.09.2014 hold that the departmental enquiry held against the workman is illegal, unjustified and in not accordance with principles of natural justice and gave a chance to management to adduce the evidence to prove the charge against the workman.

7. Point of determination:-

- i) Whether workmen threatening and assault to their officers.
- ii) Whether their act come in purview of misconduct.
- iii) Whether the action of management in dismissing the services of workmen is legal and justified?
- iv) Whether the workmen are in gainful employment?
- v) Whether the workmen are entitled to any relief.

Reasons of determination

On behalf of the workmen, on the basis of following case laws, it was argued that charge sheet was issued in English, workmen do not know English, without giving enquiry report and second show cause notice, and workmen were

dismissed from service. It was also argued that they also filed a complaint to the Police against Shri Parimal but no action was taken by the Police. It was also argued that there were 4 charges were levelled against the workmen but there is nexus with employment. They also argued that management had no extra territorial jurisdiction. -----Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidhyalay (D.ED) and others (2013) 10 SCC 324, M/s. Glazo Laboratories (I) Ltd., Vs. Presiding Officer, Meerut 1983 LAB.I.C- 1909, Tapash Kumar Paul Vs. BSNL (2014) 15 SCC 313, K Raju Vs. P.O. Labour Court, Trichy & ANR. 2017 II CLR 484, Jasmer Singh Vs. State of Haryana & Anr Civil Appeal No. 346/2015 order dated 13/01/2013 and Zarin Nozer Desai Vs. M.S. Rawat 2008.I.LLJ 957 (Bom).

8. On behalf of the management on the basis of case laws M.P. Electricity Board Vs. Jagdish Chandra Sharma (2005) 3 SCC 401 it was argued that workmen assaulted to the officer. He got injury. He was also humiliated. He also treated by the doctor. On the basis of these facts he argued that punishment of dismissal to workmen is proper, just and proportionate to their misconduct. He also argued that they gave full opportunity to the workmen by following the principles of natural justice.

9. State Bank of Bikaner and Jaipur Vs Nemichand, Civil Appeal No. 5861 of 2007, SC dated 01.03.2011, Regional Manager, U.P.S.R.T.C. Vs Hotilal, Civil Appeal No. 5984 of 2000 dated 11.02.2003, State Bank of India Vs Ramesh Dinkar, Civil Appeal No. 2055 of 2003 dated 11.08.2006, Devendra Kumar Vs State of Uttaranchal, Civil Appeal No. 1155 of 2006 dated 29.07.2013 and Bharat Forge Company Ltd. Vs A.B. Zodge, A.I.R. 1996 SC 1556, in which following legal principles are laid down:-

- i. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record.
- ii. Therefore, courts will not interfere with findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations.
- iii. The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority.

10. In case law--- Delhi Transport Corp. vs. Ombir Singh 2017 LLR 252, Hon'ble Lordship held that "Where principles of natural justice are not being complied with, then in such cases, compensation ought to be granted even if termination of service is found to be valid". On the basis of principle laid down in Engineering Laghu Udhog Employees Union vs Judge, Labour Court and Industrial Tribunal & others – (2003) 12 SCC 1 in which it was held that:- "no difference whether the matter comes before the tribunal for approval under S.33 or on a reference under S.10 of the Industrial Dispute Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper." "A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper." These principles are also laid down by Hon'ble Supreme Court in case laws- Punjab Urban Planning & Development authority Vs. Mandip Singh (2016) 7 SCC-571, UPSRTC Vs. Gopal Shukla (2015) SCC 603, Sanjay Singh Vs. National Seed Corporation (2017) 13 SCC 269, V.D. Vegad Vs. State of Gujarat (2017) 2 SCC 508 and Angikr Oriental (Arbic) Higher Secondary School Vs. A. Harnoon (2017) 2 SCC 510.

11. Now we discuss evidence with reference to argument as well as principles laid down in the above case laws. On behalf of management Mr. Parimal, Dr. Saha and Hiralal was examined to prove the charges of misconduct against the workman. On the contrary in rebuttal workmen examine Mr. Prakash, Sanjay Birsan and Sham Kumar Chandrashekhar Baiswar to support their defence as well as statement of claim. Firstly, we will see the principles laid down by the Hon'ble Apex court in case law M/s. Glazo Laboratories Vs. Presidng Officer Meerut - "held that Misconduct must have casual connection with place of work and with duty hours – Employer has no extra-territorial jurisdiction under Standing Orders to punish for misconduct.----- each one of them have correlation to the time or place where it is committed".

12. All three workmen in para 15 and 23 of their court statement admitted that after doing midnight duty left for home at 12.30 am. They also admitted that mine area started from main road and bridge is located between main road and mine office. After the reading the enquiry report it also appeared that workmen wants to threatened Mr. Parimal who was at that time Sub Area Manager/Mines Manager. Workmen also admitted that they are general mazdoor and they use to perform their duty assigned by Overman. An Overman works under the Mines Manager/Sub Area Manager. They also admitted that they have no enmity with MR. Primal and Hiralal.

13. It shows that they have some grievance about work allotted to them so they want to threaten the management. In my opinion there was casual connection with the place of work and duty hours which correlate with their work allotted in their duties. So argument of workmen's advocate is not sustainable in my opinion.
14. Workmen in his rebuttal evidence took a defence that Parimal saheb's jeep came from behind at a great speed and lost his control. He dashed two cycles, which got badly damaged. They asked Mr. Parimal to pay compensation to repair of their cycles, Parimal also agreed to pay damages but he told them not to tell about this incident to anybody, but on next day he lodged a complaint to the Police for beating and kidnapping. Workmen also filed counter complaint against Mr. Parimal but the police took no action against Mr. Parimal. In his cross-examination workmen admitted that all four workmen were friends. There was moon light at the spot. They also admitted that Dr. Saha had given treatment to Parimal who is Sub Area Manager. They also admitted that all four persons were standing near the bridge.
15. Workmen also admitted in their court statement that, they also not asked to Police to take blood sample of Mr. Parimal whether he had consumed liquor or not. They took contradictory stand that they are going on respective home after completion of duty and other way they also asserted that they are standing near the bridge so evidence of these 3 workers not appeared to be reliable in respect to their defence with regard to the counter complaint. It also appears that it shows the presence of the workers on the spot at Midnight. It also proves that there is no dispute of identification of workmen as there was moon light. In this respect defence taken by the workmen not appear to be reasonable and probable.
16. On behalf of the workman in his court statement it was admitted that complaint lodged by Mr. Parimal was registered by the Police. They face a prosecution before Judicial Magistrate First Class Saoner. They were acquitted by the court because prosecution fails to present any witness despite numerous chance.
17. Hon'ble Lordship held that, in criminal case standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied. It is also held that, some time acquittal order of criminal court based on technical ground of prosecution witnesses turned hostile and appeared to have been won over.
18. On behalf of the workman, it was also argued that party no.2 entitled to reinstate in service with continuity and payment of full back wages because party no.1 with an intention to harass him. So according to the workmen finding recorded in departmental enquiry was totally perverse and unsustainable in the eyes of law. Even in absence of these pieces of evidence the enquiry officer had proved the charges, so findings are perverse. He also argued that his past service record was not considered before imposing harsh punishment of dismissal from services.
19. On the contrary, this argument was denied by the management by stating that in criminal trial complainant turn hostile and to have been winning over, so judgment in criminal court is of no use. It is also argued that it is settled principle of law that once employer loses confidence in the employee, it was not desirable to continue such employee in employment. They also argued that punishment of dismissal imposed upon the workman could not be termed as disproportionate.
20. It is also laid down in above case law that, Disciplinary authority and Appellate Authority being the fact finding authority, this Tribunal is not Appellate Authority. It is also held that, Tribunal will only play secondary role, while the primary judgment as to reasonableness will remain with the executive of administrative authority.
21. The management also argued that, workman did not prejudice in real. It was also argued that, in following case laws, it was held that, "The delinquent employee has to establish real prejudice caused by non-furnishing of enquiry report" Union of India and others Vs Bishamber Das Dogra (2009) 13 SCC 102, Haryana Financial Corporation and another Vs Kailash Chandra Aahuja (2008) 9 SCC 31 and Union of India and others Vs Alok Kumar (2010) 5 SCC 349.
22. The advocate for the workmen raised the point that, there is a defect in the departmental enquiry, because Enquiry Officer was prejudice, so, in his enquiry report, he mentioned that, "Delinquent are required to be dealt seriously in view of the past antecedent of criminal nature so as to avoid habitual indiscipline among the workmen and to give proper protection to loyal and dutiful executive". He also argued that, this court declared the departmental enquiry illegal and unjustified. I agree with the argument of learned advocate for the workmen, because management failed to prove that, the defect in departmental enquiry was cure in some way, so in my opinion, that is the defect in the departmental enquiry, which caused prejudice to the workmen.
23. On behalf of the workmen, it was argued that, after dismissal from the services, all workmen are out of employment. They tried their best to secure alternative jobs for survival, but failed to get one, but workmen in para no. 27 of his court statement, admitted that, they are earning approximately Rs. 1000/- per month by performing some work after the termination. It shows that, they are in some employment, but argument appears to be genuine that, they are not in gainful employment.

24. Judging the present case in hand with the touch stone of the principles as mentioned above, it is found that law is well settled that where principles of natural justice were not complied with, then in such cases compensation ought to be granted because termination of the services in my opinion is valid. In view of the discussion made above and the materials on record, it is found that there is no scope to interfere with the order of the punishment of dismissal from services passed against the workman in light of observation made by the Hon'ble Supreme Court in M.P. Electricity Board Vs Jagdish Chandra Sharma (2005) 3 SCC 401. Hence, it is ordered:-

ORDER

The action of the management of the Sub Area Manager, Saoner Sub Area of Western Coalfields Ltd., Saoner, Distt. Nagpur in dismissing the services of Shri Sanjay Birsan, Prakash Lalman Tohariya and Sham Kumar Baswar w.e.f. 14.07.1993 is legal and justified, but due to lack of procedure in the departmental enquiry, each workman is entitled for Lumpsum compensation of Rs. 1,00,000/- (Rupees one lac only) from Party No. 1 in lieu of reinstatement, which is payable within one month from the publication of this award in official gazette, failing which, amount due to workmen will carry interest of 6% per annum from the date of due to the workmen to the date of actual payment of the amount to the workmen. The workmen are not entitled for any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1012.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय पुरातत्व सर्वेक्षण के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 59/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.06.2018 को प्राप्त हुआ था।

[सं. एल-42012/206/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th June, 2018

S.O. 1012.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India and their workmen, received by the Central Government on 21.06.2018.

[No. L-42012/206/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE SHRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR**

ID. No. 59/2006

Shri Ashok Kumar Singh, Vice President,
Rashtriya Mazdoor Congress(INTUC),
80, Lauries Complex,
Namner Chauraha,
AGRA(U.P.)

Vs

The Dy. Superintending Horticulturist,
Archeological Survey of India,
East Gate, Taj Mahal,
AGRA (U.P.)-

AWARD

1. Central Government, MOL & Emp., New Delhi, vide notification no.L-42012/206/2005-IR (CM-II) dated 08/08/2006 has referred the following dispute to this Tribunal for adjudication.
2. "Whether the action of the management of Archaeological Survey of India in refusing to employ and regularize to Shri Devendra and 5 others w.e.f their respective date of termination as per the list enclosed, is legal and justified? If not, to what relief the concerned workmen are entitled?"

List of Workmen

<u>S.No.</u>	NAME OF THE WORKMAN	DATE OF TERMINATION
1.	SHRI DEVENDRA	01.04.2001
2.	SHRI SIRAJUDDIN	20.08.2004
3.	SHRI NARESH KUMAR	20.03.2003
4.	SHRI SURESH KUMAR	20.03.2003
5.	SHRI PRAVENDRA KUMAR	20.03.2003
6.	SHRI SURESH CHANDRA	29.07.2004
3.	The case of union as setup on behalf of above named workers is that all the above workers were engaged in the month of June 1998, January 1999, April 1999, February 2000 and January 2001 as casual labor at monument at Fetehpur Sikri to maintain the gardens where they continuously worked for more than 240 days in each year and thus they have attained a right to be regularized in the service of the management. The worker named in the list of employees as above were terminated from the dates given against their names but at the time of their termination provisions of section 25F of the act were not followed . Management has also breached provisions of 25H and 25G. It is also alleged that hundreds of employees junior to the workman where appointed by the management who are still in the service at different gardens of the management but their workers involved in the present dispute have been deprived from their work. It is further pleaded that from the year 1996 till date about 200 gardeners and chowkidars were given appointments through direct recruitment but workers have not been offered employment by the management. All the workers along with their family members are facing difficulty on account of their being jobless.	
4.	On the basis of above it is prayed by union that the concerned workers are entitled for their reinstatement in the service of the management as well as they are also entitled to be regularize in the service in the manner their colleagues were regularize in the service. It is also prayed that workers may also be granted wages for the period they remained out of employment.	
5.	Management has filed a very lengthy w/s but only such pleading will be detailed as are necessary for deciding present dispute.	
6.	By way of preliminary objection it is pleaded by the management that the case of workers is neither entertain able being beyond the jurisdiction of the Tribunal; that the claim of the worker is beyond the scope of reference order; that the office of the ASI , Horticulture division no. 1 Taj Mahal , Agra are responsible for maintenance and development of gardens around the National Protected Monument for improvement of Environment; that the present dispute is not Industrial dispute and suffer from the mis joinder of the parties as well as non-joinder of the parties; that as the workers are not a workmen under the provision of section 2(s); that the present case is not a case of retrenchment hence provision of section 25F are not applicable.	
7.	On merit the management has pleaded that the person's name in the annexure of reference order had never been employed by the management as casual labor and they have never work on permanent and regular post of daily paid agricultural mazdoors. Daily paid mazdoors are engaged as per requirement in casual and seasonal work and the nature of work alleged to be performed by these workers are occasional and intermittent. It is admitted by management that daily paid casual mazdoors when required are engaged through open market for shorter period and their engagement comes to an end automatically on completion of work. That the claim of the workers are totally vague, concocted and without any basis. Management has also denied the continuous working of 240 days in any calendar year. On the basis of above the management has stated that the claim of the union with regard to the alleged worker is liable to be rejected being devoid of merit.	
8.	Union has not filed any rejoinder.	
9.	Worker Devendra has examined as WW1 and in his support WW2 Sirajudin has been examined. On behalf of management Shri Radhey Shyam Gupta has been examined as MW1.	
10.	Worker has filed several documents along with claim petition which are order of CAT passed in OA No. 425 of 2004,2/4-9 and regarding other documents he has filed copy of judgment of Hon'ble High Court and CAT in other cases. He has also filed list of candidates who have been appointed from 1986 till date, paper no. 2/23-27 and copies of advertisement issued by the management for different post.	
11.	Management has not filed any documentary evidence.	
12.	I have heard the parties and perused the record.	

13. On the perusal of record it is found that the worker has moved an application for summoning original muster rolls from 1998 to August 2004 and has also summoned original payment vouchers for the same period which was allowed by my predecessor, but management failed to file summoned documents.
14. Authorized Representative of worker has contended that two witnesses were examined on behalf of worker and list of workers who were appointed w.e.f 1986 has also been filed where in at serial no. 120 it is mentioned that Shri Shiv Ram s/o Gajendra Singh has been appointed directly on 16.07.2004. It is also alleged that the witness examined by the management is of no use who in his cross examination has not replied the questions but he has simply stated that he has no knowledge of most of the facts of the case on which cross examination is made. Secondly muster roll and payment vouchers are not filed despite summoning from this Tribunal and for this the management witness has also stated that he has no knowledge why records are not filed. Under these circumstances the Tribunal is bound to take adverse inference against the management that had these documents being filed by the management it would prove the case of the worker therefore testimony of this witness cannot be believed as these witness has not answered questions put before him in his cross examination and he was totally ignorant about the facts of the case as also he has no knowledge about the facts of this case.
15. Now it is to be seen whether worker have proved their case; whether management have employed junior to these workers after respective date of termination and whether management has given any opportunity of re employment to these workers and lastly whether the management has followed the provisions of section 25F of the Act.
16. It is the specific case of the union that the workers named in the annexure to the reference order have been engaged by the management during the period 1998, 1999, 2000 and 2001 and almost all of them have completed 240 days in each calendar months preceding the date of their respective termination of service, their services have been terminated without any notice, notice pay and retrenchment compensation and also that hundreds of workers have been engaged by the management and these workers have not been given any opportunity of their reemployment in the service of the management. On the contrary management have stated that these workers have never been engaged by the management; there exists no dispute with regard to their engagement or disengagement; that these workers have never been paid any wages by the management etc. etc. and lastly when the management had never disengaged the workers from the service in such circumstances question of complying with the provisions of Industrial Disputes Act, does not arise at all.
17. W.W.2 Sri Devender in his examination in chief has categorically stated that all the workers were engaged by the management during the period 01.06.98 to 19.08.04 as casual laborers at Fatehpur Sikri, Agra, and they were engaged by Sri Radhey Shyam Foreman and that they have been disengaged by said Sri Radhey Shyam. Witness has also stated the nature of work performed by them. All of them were paid their wages month wise and their attendance was recorded on the muster rolls and at the time of their disengagement no notice, notice pay or retrenchment compensation was paid by the management. In his cross examination the witness has denied the suggestion of the management that they have not worked with the management and it is also wrong to suggest that all of them have not worked against regular and permanent post under the management. Witness has also stated that the works on which all of them have been engaged remains in existence for whole year.
18. W.W.1 Sirazuddin has also supported the version of w.w.2 and has specifically stated in his examination in chief that after his disengagement, management engaged by name Sonu and Ashok but this witness has not been cross examined on this point by the authorized representative for the management.
19. As the management witness has expressed his ignorance about the facts of this case in his evidence, therefore, his evidence has got no evidentiary value and as such cannot be believed.
20. The evidence adduced by the worker remains uncontroverted on the point that the management has not given any notice, notice pay and retrenchment compensation at the time of their disengagement which was necessary as the worker witness has proved the fact that they have been in continuous employment of the management, it has also been proved that the management after their disengagement have engaged new faces as is very much clear from paper no. 2/23-27, which is a list of candidate who were appointed by the management from 1986 till 06.04.05 and at serial no. 120 one Sri Shiv Ram son of Gajendra is mentioned who has been appointed by the management on 16.07.04 by way of direct recruitment.
21. The union therefore, has successfully established their case that these workers have been engaged by the management as casual labor, that they have not been given any notice, notice pay or retrenchment compensation at the time of their respective disengagement, that fresh hands were appointed by the management without providing any opportunity to re-employee these workers and that juniors to these workers have been made regular and permanent by the management at the posts from where they have been disengaged.
22. Therefore, the tribunal is of the view that the disengagements of the worker by the management is in breach of provisions of Section 25F, 25G and 25H of Industrial Disputes Act, 1947 and all of them are held entitled for

their reinstatement in the service of the management from the date of their respective disengagement with continuity of service and with consequential benefits attached with the post.

23. So far back wages is concerned although the worker in their evidence has stated that they are facing serious financial crisis but has not stated even a single word that they are not gainfully employed anywhere else, hence considering this aspect of the matter the tribunal is not inclined to award any back wages to the workers.
24. Lastly question of regularization of the concerned workers in the service of the management is concerned, no doubt it has come in evidence of the worker that several persons have been made permanent and regularized in service who are alleged to have been engaged after the termination of their services, but the tribunal after giving its anxious consideration on this point is of the view that the tribunal should refrain in granting regularization of service of a worker as it is the sole responsibility of the management who after considering the medical fitness, suitability etc., takes decision as to whether he is fit to be regularized in the service or not. No doubt several new hands have been appointed by the worker and they were regularized by the management in the service, therefore, management is directed to consider the regularization of these workers within six months from the date of the publication of this award subject to fulfillment of the conditions required under rules.
25. Reference is answered accordingly in favor of the Union and against the management in the above terms.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1013.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स पटाबेदा आयरन एण्ड मैगनीज माइन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 65/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. जेड-16025/4/2018-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1013.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2016) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Patabeda Iron and Manganese Mines and their workman, which was received by the Central Government on 25.06.2018.

[No. Z-16025/4/2018-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

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

INDUSTRIAL DISPUTE CASE NO. 65/2016

Date of Passing Award – 28th May, 2018

Between:

The Agent,
M/s. Patabeda Iron & Manganese Mines,
M/s. M.G. Mohanty,
At./Po. Barbil, Dist. Keonjhar.
Pin – 758 035

...1st Party-Management

(And)

Shri Jadumani Patra,
At./Po. Denuain, Dist. Mayurbhanj,
Pin – 757 035, Odisha

...2nd Party-Disputant

Appearances:

Shri Amit Kr. Mishra. ... For the 1st Party-Management.
Shri Jadumani Patra. ... For Himself the 2nd Party-Disputant.

ORDER

The applicant-workman and the authorized representative of the Management are present. Heard the parties on the issue of maintainability of the case raised by the 1st Party-Management in view of the application under section 2-A(2) & (3) of the I.D. Act, 1947 having been preferred three years after the alleged refusal of employment to the applicant. It is the contention of the 1st Party-Management that as per the statement of claim filed by the disputant workman the alleged date of retrenchment is January, 2012 whereas the application under section 2-A(2) is preferred in this Tribunal on 21.9.2016 and as such keeping in view the limitation period prescribed under sub-clause (3) of Section 2-A of the Act the case is barred by limitation. Opposing the contention the disputant workman has submitted that he was denied work in the month of January, 2012 on a plea of withholding of permission for mining activities and he was intimated by the Management on 8.7.2016 that his service is not required no more. The application under section 2-A(2) and (3) having been preferred within three years from the date of oral intimation of retrenchment is maintainable in the eye of law.

2. Perused the statement of claim filed by the applicant-workman and written statement filed on behalf of the 1st Party-Management. In his application the disputant workman has categorically mentioned that in January, 2012 the 1st Party-Management suspended the mining operation on the ground of expiry of lease term of the mining and he was not allowed to enter into the mines to perform his work. According to him he was running to the Management regularly for his engagement till 25.3.2016 when he was orally informed that his service is terminated. There is nothing specific in his statement of claim that he was receiving wages till 25.3.2016 when he was informed about his termination. On the other-hand the statement of claim reveals that he was not permitted to work with effect from January, 2012 and that being the position in his statement of claim it can safely be inferred that the alleged date of refusal of employment, which amounts to retrenchment was January, 2012.

3. As per the requirement of Section 2-A(2) & (3) the application for such dismissal/retrenchment/discharge **shall** be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge/dismissal/retrenchment or otherwise termination of service. Admittedly, the application is filed more than four years after the date of alleged retrenchment/termination of service. The Act having a provision of limitation period within which the application under section 2-A(2) are to be filed, the provisions of Section 5 of Limitation Act to condone the delay is not applicable. When the application is not filed within a limitation period prescribed in the special Act itself inspite of the mandate of the provision that such application **shall** be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge/dismissal/retrenchment and there is no provision in the Act itself authorizing the Labour Court or Tribunal can condone such delay, the Tribunal has no alternative than dismissing/rejecting the application for barred by limitation. However, the disputant is not barred to raise a dispute before the Labour machinery for his alleged illegal termination of service as no limitation is prescribed in this regard in the Act. A free copy of the order may be furnished to the disputant workman if applied for.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1014.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स पटाबेदा आयरन एण्ड मैगनीज माइन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 66/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. जेड-16025/4/2018-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1014.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2016) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the

management of M/s. Patabeda Iron and Manganese Mines and their workman, which was received by the Central Government on 25.06.2018.

[No. Z-16025/4/2018-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

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

INDUSTRIAL DISPUTE CASE NO. 66/2016

Date of Passing Award – 28th May, 2018

Between:

The Agent,
M/s. Patabeda Iron & Manganese Mines,
M/s. M.G. Mohanty,
At./Po. Barbil, Dist. Keonjhar.
Pin – 758 035

...1st Party-Management

(And)

Shri Shyam Sunder Bodra,
At./Po. Belaipada, Dist. Keonjhar
Pin – 758 038, Odisha

...2nd Party-Disputant

Appearances:

Shri Amit Kr. Mishra ... For the 1st Party-Management.

Shri S.S. Bodra ... For Himself the 2nd Party-Disputant.

ORDER

The applicant-workman and the authorized representative of the Management are present. Heard the parties on the issue of maintainability of the case raised by the 1st Party-Management in view of the application under section 2-A(2) & (3) of the I.D. Act, 1947 having been preferred three years after the alleged refusal of employment to the applicant. It is the contention of the 1st Party-Management that as per the statement of claim filed by the disputant workman the alleged date of retrenchment is January, 2012 whereas the application under section 2-A(2) is preferred in this Tribunal on 21.9.2016 and as such keeping in view the limitation period prescribed under sub-clause (3) of Section 2-A of the Act the case is barred by limitation. Opposing the contention the disputant workman has submitted that he was denied work in the month of January, 2012 on a plea of withholding of permission for mining activities and he was intimidated by the Management on 8.7.2016 that his service is not required no more. The application under section 2-A(2) and (3) having been preferred within three years from the date of oral intimation of retrenchment is maintainable in the eye of law.

2. Perused the statement of claim filed by the applicant-workman and written statement filed on behalf of the 1st Party-Management. In his application the disputant workman has categorically mentioned that in January, 2012 the 1st Party-Management suspended the mining operation on the ground of expiry of lease term of the mining and he was not allowed to enter into the mines to perform his work. According to him he was running to the Management regularly for his engagement till 25.3.2016 when he was orally informed that his service is terminated. There is nothing specific in his statement of claim that he was receiving wages till 25.3.2016 when he was informed about his termination. On the other-hand the statement of claim reveals that he was not permitted to work with effect from January, 2012 and that being the position in his statement of claim it can safely be inferred that the alleged date of refusal of employment, which amounts to retrenchment was January, 2012.

3. As per the requirement of Section 2-A(2) & (3) the application for such dismissal/retrenchment/discharge **shall** be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge/dismissal/retrenchment or otherwise termination of service. Admittedly, the application is filed more than four years after the date of alleged retrenchment/termination of service. The Act having a provision of limitation period within which the application under section 2-A(2) are to be filed, the provisions of Section 5 of Limitation Act to condone the delay is not applicable. When the application is not filed within a limitation period prescribed in the special Act itself inspite of the mandate of the

provision that such application **shall** be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge/dismissal/retrenchment and there is no provision in the Act itself authorizing the Labour Court or Tribunal can condone such delay, the Tribunal has no alternative than dismissing/rejecting the application for barred by limitation. However, the disputant is not barred to raise a dispute before the Labour machinery for his alleged illegal termination of service as no limitation is prescribed in this regard in the Act. A free copy of the order may be furnished to the disputant workman if applied for.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1015.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्टार यूनियन दाई-ईची लाइफ इंश्योरेंस कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 53/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. एल-17012/29/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1015.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2014) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Star Union Dai-ichi Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 25.06.2018.

[No. L-17012/29/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.2, DWARKA COURTS COMPLEX : NEW DELHI.

ID No. 53/2014

Shri Rajiv Bagri,
s/o. Shri Ram Ratan Singh Bagri,
r/o. 96, Ram Vihar,
Ballapur Road,
Dehradun

...Workman/Claimant

Versus

- 1) The Chairman,
Star Union Dai-ichi Life Insurance Co.Ltd.
11th Floor, IT Park, Sector 30 a, Vashi
Navi Mumbai.
- 2) The Regional Head
Star Union Dai-ichi Life Insurance Co.Ltd.
1st Floor, Sector 830, Mac Manimajara,
Chandigarh

...Management/Respondent

AWARD

In the present case, matter was referred to Central Government Industrial Tribunal cum Labour Court No.2, New Delhi vide letter No.L-17012/29/2014-IR(M) dated 09.07.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the disputant Shri Rajiv Bagri was workman as defined under Section 2 of the I.D. Act, 1947, while working as Asstt.Manager with the management of Star Union Dai-ichi Life Insurance Co. Ltd. ? If yes, whether

the termination of the disputant from 15.05.2013 by the said management is just and fair ? If not, to what relief disputant is entitled to and from which date ?

2. Both parties were put to notice and the claimant., Shri Rajiv Bagri filed his statement of claim, with the averments that the workman joined the Management company on 8/3/2009 vide appointment letter dated 4/3/2009 at Dehradun and served the Management company for more than 4 years. The claimant gave best result to the company by performing his duties since 2009 to 2011. The Senior Supervisor Mr. Pankaj Pandey knowingly and willingly transferred the petitioner from city branches to rural area and ultimately terminated his services on 15/5/2013 without issuing any charge sheet or holding inquiry. Even neither any prior notice, nor retrenchment compensation was given to him. The claimant was never given any power of Manager, nor he enjoyed the same during the entire tenure of his service. Action of the Management in terminating his services is illegal. He has prayed for reinstatement to the post of Asstt. Manager, with all benefits.

3. Management resisted the claim of the Workman, by filing written statement and made preliminary submissions that the claimant is not a workman as defined under Section 2(s) of the Act, inasmuch as he was appointed as Asstt. Manager, drawing salary of Rs15000/- per month and was in charge of cluster of Union Bank of India/Bank of India branches in the State of Uttarakhand. It is alleged that the claimant was found indulging in dereliction of duty and of attending the duty in unprofessional manner having very casual approach towards his job and creating frivolous excuses to shield his underperformance which ultimately started affecting the reputation and business of the management company. Because of his non performance, the company had issued a number of letters/emails dated 7.8.12, 12.10.12, 6.11.12, 7.12.12, 8.1.13 and 7.2.2013 thereby giving him opportunity to streamline and improve his performance but to no avail. In view of his poor performance, the Company took a lenient view and offered him the post of Insurance Sales Officer but he chose not to join as such and in the circumstances, the management issued a termination letter dated 15/5/2013 to the claimant and asked him to complete the formalities for full and final settlement claim and a sum of Rs.34785/- was transferred in the account of the claimant towards full and final settlement of his claims. Prayer has been made for dismissal of the claim petition.

4. On the pleadings of the parties, following issues were framed on 8/6/2015 :-

- 1) Whether Shri Rajiv Bagri was workman as defined under Section 2(s) of ID Act, 1947, while working as Asstt. Manager, with the management of Star Union Dai-ichi Life Insurance Co. Ltd. ? If so, its effect ?
- 2) If yes, whether the termination of Shri Rajiv Bagri from 15/5/2013 by the said management is just and fair? If so, its effect ?
- 3) To what relief Shri Rajiv Bagri is entitled to & from which date ?

5. Number of opportunities were granted to the Claimant to lead evidence in support of his claim but he failed to adduce any evidence. He even did not enter the witness box either to substantiate the averments made in the claim petition or to rebut the case of the Management that the claimant being employed to the managerial post, does not come within the ambit of definition of Workman. Ultimately this Tribunal vide order dated 16/4/2018 was constrained to reserve the matter for passing the award, as it seemed that the claimant was not at all interested in the progress of his claim petition, on merits.

6. In view of the fact that the claimant has not led any evidence in support of his claim, this Tribunal has no option but to pass No Dispute Award in the matter. Since the matter has not been decided on merits, there will be no bar for the claimant to file afresh claim petition in accordance with law for adjudication of the controversy in issue or to seek any other relief to which he is otherwise entitled to. Award is passed accordingly.

Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dated 14.05.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1016.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आर. के. मार्बल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ संख्या 05/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. जेड-16025/4/2018-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1016.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2015) of the Central Government Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. R.K. Marble and their workman, which was received by the Central Government on 25.06.2018.

[No. Z-16025/4/2018-IR (M)]

D. K. HIMANSHU, Under Secy.

अनुबंध**औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर****प्रकरण संख्या 05 सन् 2015 I.T.R.**

श्री हरफूल मीणा बनाम श्री महाप्रबन्धक RK Marble

22.04.2018

प्रार्थी हरफूल मीणा ने मय अधिवक्ता श्री नरेन्द्र चितौडा के उपस्थित होकर एक प्रार्थना पत्र पेश कर निवेदन किया कि दोनों पक्षकारों के मध्य लोक अदालत की भावना से राजीनामा हुआ, जिसमें प्रार्थी की नियुक्ति दिनांक से प्रार्थी की सेवा मुक्ति दिनांक तक का प्रतिवर्ष की सेवा अवधि के आधार पर 30 दिन का तत्समय मिलने वाले भुगतान का एक्सग्रेसिया के रूप में विपक्षी द्वारा किया जावेगा। वेतन में मूल वेतन तथा एच.आर.ए. व कन्वेन्स शामिल होगा या नोटिस पीरियड में दिये गये वेतन दर से भुगतान किया जावेगा। ग्रेज्यूटी का भुगतान मूल वेतन के आधार पर नियमानुसार किया जावेगा। उक्त राशि विपक्षी प्रार्थी को एक माह के अन्दर भुगतान कर देगा, अन्यथा उक्त राशि पर 6 प्रतिशत वार्षिक दर से आज दिनांक से ब्याज देय होगा।

विपक्षी की ओर से श्री अचलसिंह प्रबन्धक "एच.आर." मय अधिवक्ता श्री मोहम्मद शरीफ छीपा के उपस्थित।

राजीनामा दोनों पक्षों को पढ़ कर सुनाया व समझाया गया तो दोनों पक्षों ने राजीनामा सही होना स्वीकार किया। प्रार्थी को उसके अभिभाषक श्री नरेन्द्र चितौडा ने तथा विपक्षी को श्री मोहम्मद शरीफ छीपा अभिभाषक ने पहचाना। राजीनामा अलग से तस्दीक किया गया।

राजीनामा संलग्न पत्रावली रहे। राजीनामा के आधार पर दोनों पक्ष पाबन्द रहेंगे। राजीनामा के बाद अब पत्रावली में कोई कार्यवाही शेष नहीं रहती है।

समझौता अधिकारी एवं क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर द्वारा जारी पत्र क्रमांक : AJ - 5(76) / 2014 - RLC दिनांक 13.02.2015 एवं उसके साथ संलग्न प्रमाण पत्र आधार पर यह प्रकरण प्रार्थी द्वारा धारा 2 (A) ID Act के तहत पेश किया गया था।

अतः पंचाट प्राकाशनार्थ समुचित सरकार को भेजा जावे।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो।

अरुण गुप्ता, न्यायाधीश

नई दिल्ली, 26 जून, 2018

का.आ. 1017.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आर. के. मार्बल के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ संख्या 06/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. जेड-16025/4/2018-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1017.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2015) of the Central Government Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. R.K. Marble and their workman, which was received by the Central Government on 25.06.2018.

[No. Z-16025/4/2018-IR (M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 06 सन् 2015 I.T.R

श्री विक्रमसिंह भाटी बनाम श्री महाप्रबन्धक RK Marble

22.04.2018

प्रार्थी विक्रमसिंह भाटी ने मय अधिवक्ता श्री नरेन्द्र चितौड़ा के उपस्थित होकर एक प्रार्थना पत्र पेश कर निवेदन किया कि दोनों पक्षकारों के मध्य लोक अदालत की भावना से राजीनामा हुआ, जिसमें प्रार्थी की नियुक्ति दिनांक से प्रार्थी की सेवा मुक्ति दिनांक तक का प्रतिवर्ष की सेवा अवधि के आधार पर 30 दिन का तत्समय मिलने वाले भुगतान का एक्सग्रेसिया के रूप में विपक्षी द्वारा किया जावेगा। वेतन में मूल वेतन तथा एच.आर.ए. व कन्वेन्स शामिल होगा या नोटिस पीरियड में दिये गये वेतन दर से भुगतान किया जावेगा। ग्रेज्यूटी का भुगतान मूल वेतन के आधार पर नियमानुसार किया जावेगा। उक्त राशि विपक्षी प्रार्थी को एक माह के अन्दर भुगतान कर देगा, अन्यथा उक्त राशि पर 6 प्रतिशत वार्षिक दर से आज दिनांक से ब्याज देय होगा।

विपक्षी की ओर से श्री अचलसिंह प्रबन्धक "एच.आर." मय अधिवक्ता श्री मोहम्मद शरीफ छीपा के उपस्थित।

राजीनामा दोनों पक्षों को पढ़ कर सुनाया व समझाया गया तो दोनों पक्षों ने राजीनामा सही होना स्वीकार किया। प्रार्थी को उसके अभिभाषक श्री नरेन्द्र चितौड़ा ने तथा विपक्षी को श्री मोहम्मद शरीफ छीपा अभिभाषक ने पहचाना। राजीनामा अलग से तस्दीक किया गया।

राजीनामा संलग्न पत्रावली रहे। राजीनामा के आधार पर दोनों पक्ष पाबन्द रहेंगे। राजीनामा के बाद अब पत्रावली में कोई कार्यवाही शेष नहीं रहती है।

समझौता अधिकारी एवं क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर द्वारा जारी पत्र क्रमांक : AJ - 5(74) / 2014 - RLC दिनांक 16 सितम्बर, 2014 एवं उसके साथ संलग्न प्रमाण पत्र आधार पर यह प्रकरण प्रार्थी द्वारा धारा 2 (A) ID Act के तहत पेश किया गया था।

अतः पंचाट प्राकाशनार्थ समुचित सरकार को भेजा जावे।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो।

अरुण गुप्ता, न्यायाधीश

नई दिल्ली, 26 जून, 2018

का.आ. 1018.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आर. के. मार्बल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ संख्या 09/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. जेड-16025/4/2018-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1018.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2015) of the Central Government Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. R.K. Marble and their workman, which was received by the Central Government on 25.06.2018.

[No. Z-16025/4/2018-IR (M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 09 सन् 2015 I.T.R.

श्री हरीराम चौधरी बनाम श्री महाप्रबन्धक RK Marble

22.04.2018

प्रार्थी हरिराम चौधरी ने मय अधिवक्ता श्री नरेन्द्र चितौड़ा के उपस्थित होकर एक प्रार्थना पत्र पेश कर निवेदन किया कि दोनों पक्षकारों के मध्य लोक अदालत की भावना से राजीनामा हुआ, जिसमें प्रार्थी की नियुक्ति दिनांक से प्रार्थी की सेवा मुक्ति दिनांक तक का प्रतिवर्ष की सेवा अवधि के आधार पर 30 दिन का तत्समय मिलने वाले भुगतान का एक्सग्रेसिया के रूप में विपक्षी द्वारा किया जावेगा। वेतन में मूल वेतन तथा एच.आर.ए. व कन्वेन्स शामिल होगा या नोटिस पीरियड में दिये गये वेतन दर से भुगतान किया जावेगा। ग्रेज्यूटी का भुगतान मूल वेतन के आधार पर नियमानुसार किया जावेगा। उक्त राशि विपक्षी प्रार्थी को एक माह के अन्दर भुगतान कर देगा, अन्यथा उक्त राशि पर 6 प्रतिशत वार्षिक दर से आज दिनांक से ब्याज देय होगा।

विपक्षी की ओर से श्री अचलसिंह प्रबन्धक "एच.आर." मय अधिवक्ता श्री मोहम्मद शरीफ छीपा के उपस्थित।

राजीनामा दोनों पक्षों को पढ़ कर सुनाया व समझाया गया तो दोनों पक्षों ने राजीनामा सही होना स्वीकार किया। प्रार्थी को उसके अभिभाषक श्री नरेन्द्र चितौड़ा ने तथा विपक्षी को श्री मोहम्मद शरीफ छीपा अभिभाषक ने पहचाना। राजीनामा अलग से तस्दीक किया गया।

राजीनामा संलग्न पत्रावली रहे। राजीनामा के आधार पर दोनों पक्ष पाबन्द रहेंगे। राजीनामा के बाद अब पत्रावली में कोई कार्यवाही शेष नहीं रहती है।

समझौता अधिकारी एवं क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर द्वारा जारी पत्र क्रमांक : AJ - 5(78) / 2014 – RLC दिनांक 09 जुलाई, 2014 एवं उसके साथ संलग्न प्रमाण पत्र आधार पर यह प्रकरण प्रार्थी द्वारा धारा 2 (A) ID Act के तहत पेश किया गया था।

अतः पंचाट प्राकाशनार्थ समुचित सरकार को भेजा जावे।

पत्रावली फौसल शुमार होकर दाखिल दफ्तर हो।

अरुण गुप्ता, न्यायाधीश

नई दिल्ली, 26 जून, 2018

का.आ. 1019.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आर. के. मार्बल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ संख्या 10/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. जेड-16025/4/2018-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1019.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2015) of the Central Government Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. R.K. Marble and their workman, which was received by the Central Government on 25.06.2018.

[No. Z-16025/4/2018-IR (M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 05 सन् 2015 I.T.R

श्री सुजाराम चौधरी बनाम श्री महाप्रबन्धक RK Marble

22.04.2018

प्रार्थी सुजाराम चौधरी ने मय अधिवक्ता श्री नरेन्द्र चितौड़ा के उपस्थित होकर एक प्रार्थना पत्र पेश कर निवेदन किया कि दोनों पक्षकारों के मध्य लोक अदालत की भावना से राजीनामा हुआ, जिसमें प्रार्थी की नियुक्ति दिनांक से प्रार्थी की सेवा मुक्ति दिनांक तक का प्रतिवर्ष की सेवा अवधि के आधार पर 30 दिन का तत्समय मिलने वाले भुगतान का एक्सग्रेसिया के रूप में विपक्षी द्वारा किया जावेगा। वेतन में मूल वेतन तथा एच.आर.ए. व कन्वेन्स शामिल होगा या नोटिस पीरियड में दिये गये वेतन दर से भुगतान किया जावेगा। ग्रेज्यूटी का भुगतान मूल वेतन के आधार पर नियमानुसार किया जावेगा। उक्त राशि विपक्षी प्रार्थी को एक माह के अन्दर भुगतान कर देगा, अन्यथा उक्त राशि पर 6 प्रतिशत वार्षिक दर से आज दिनांक से ब्याज देय होगा।

विपक्षी की ओर से श्री अचलसिंह प्रबन्धक "एच.आर." मय अधिवक्ता श्री मोहम्मद शरीफ छीपा के उपस्थित।

राजीनामा दोनों पक्षों को पढ़ कर सुनाया व समझाया गया तो दोनों पक्षों ने राजीनामा सही होना स्वीकार किया। प्रार्थी को उसके अभिभाषक श्री नरेन्द्र चितौड़ा ने तथा विपक्षी को श्री मोहम्मद शरीफ छीपा अभिभाषक ने पहचाना। राजीनामा अलग से तस्दीक किया गया।

राजीनामा संलग्न पत्रावली रहे। राजीनामा के आधार पर दोनों पक्ष पाबन्द रहेंगे। राजीनामा के बाद अब पत्रावली में कोई कार्यवाही शेष नहीं रहती है।

समझौता अधिकारी एवं क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर द्वारा जारी पत्र क्रमांक : AJ - 5(77) / 2014 – RLC दिनांक 09 जुलाई, 2014 एवं उसके साथ संलग्न प्रमाण पत्र आधार पर यह प्रकरण प्रार्थी द्वारा धारा 2 (A) ID Act के तहत पेश किया गया था।

अतः पंचाट प्राकाशनार्थ समुचित सरकार को भेजा जावे।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो।

अरुण गुप्ता, न्यायाधीश

नई दिल्ली, 26 जून, 2018

का.आ. 1020.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 50/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. एल-17012/30/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1020.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2015) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 25.06.2018.

[No. L-17012/30/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S.S GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/50/2015

Date: 02.05.2018

Party No.1 : The Sr. Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, Railway Station Road,
Near Kasturchand Park, Nagpur- 440 001

The Chariman,
Life Insurance Corporation of India,
Yogashem Building, Near Mantralaya,
Mumbai- 400 058

V/s.

Party No. 2 : Smt. Sunita W/o. Bharat Parkhi,
288, Canal Road, Shankar Nagar,
Nagpur - 440010

ORDER

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute for adjudication between the management of Life Insurance Corporation of India and Smt. Sunita Bharat Parkhi vide letter **No.L-17012/30/2015-IR(M) dated 22.01.2015**, on the following schedule:-

"Whether the termination of service of Smt. Sunita Bharat Parkhi by the management of Life Insurance Corporation of India on 04.01.2012 is fair, legal and as per law? If not, then what relief the concerned workman is entitled to?"

2. On receipt of the reference notices issued to both the parties to file statement of claim and written statement. Accordingly, petitioner filed statement of claim and management file written statement. On 16.04.2018 case fixed for consideration of application for filing documents on behalf of the management.

Petitioner filed an application to withdraw the reference on 16.04.2018 which is marked as I.A. No. 3. Heard both parties on this application. Management filed no objection. Workman was identified by his advocate. Management representative also present with his advocate. He has no objection to accept this application. So it is accepted. Permission to withdraw the reference is allowed. Hence it is ordered:

ORDER

The application for withdrawal of the case is allowed. The case is treated as withdrawn. The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1021.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अम्बुजा सीमेंट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 68/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. एल-29012/29/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1021.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2014) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Ambuja Cement and their workman, which was received by the Central Government on 25.06.2018.

[No. L-29012/29/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S.S GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/68/2014-15

Date: 22.05.2018

Party No.1 : The Executive President,
M/s. Ambuja Cement
Maratha Cement Works,
Post : Upparwahi, Tehsil : Korpana,
Distt. Chandrapur (M.S.)-442908

Versus

Party No. 2 : Ku. Sukrita Dayanand Punekar,
Ward No. 1, Near Chandu Baba Math,
Durgapur, Post : Urjanagar,
Distt. Chandrapur (M.S.)-442404

AWARD

(Dated : 22nd May, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute for adjudication between the the employers, in relation to the management of M/s. Ambuja Cement and their workman, Ku. Sukrita Dayanand Punekar for adjudication, as per letter **No. L-29012/29/2014-IR(M) dated 19.02.2015**, with the following schedule:-

"Whether the applicant Kumari Sukrita Dayanand is a workman? If so, whether the action of the management of M/s. Ambuja Cement, Maratha Cement Foundation for termination the services of Kumari Sukrita Dayanand Punekar orally w.e.f. 01.04.2006 is legal and justified ? If not, to what relief the workman concerned is entitled?"

2. On receipt of the reference, the parties were noticed to appear on 10.07.2015 to file their respective statement of claim and written statement, by registered post with acknowledgment due. From that day, nobody had been appearing. On 07.11.2017, order was passed to issue fresh notice fixing the date on 08.12.2017. On 08.12.2017, nobody was present from either side. On 15.01.2018, Shri R.B. Puraanik and M.R. Puranik, advocates filed vakalatnama on behalf of the management but nobody was present on behalf of the petitioner. On 18.05.2018, petitioner was also absent. Neither he filed any statement of claim nor any pray for adjournment. It shows that, the petitioner is not interested to continue the reference. So, case was closed for award. Hence it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 26 जून, 2018

का.आ. 1022.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन. जी.सी. लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 1/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2018 को प्राप्त हुआ था।

[सं. एल-30012/21/2008-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th June, 2018

S.O. 1022.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2009) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 25.06.2018.

[No. L-30012/21/2008-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/1 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

O. N. G. C.

The Group General Manager – HR/ER,
O.N.G.C.,

NSE Building, Kurla-Bandra Complex,
Bandra (East), Mumbai – 400 051.

AND

THEIR WORKMEN

The General Secretary,
General Employees Association,
Tel Rasayan Bhavan, Tilak Road,
Dadar, Mumbai – 400 014.

APPEARANCES:

FOR THE EMPLOYER : Mr. G.D. Talreja &
Mr. Vinod G. Talreja
Advocates

FOR THE WORKMEN : Mr. R.D. Bhat,
Advocate

Mumbai, dated the 15th May, 2018

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-30012/21/2008 – IR (M) dated 23.12.2008. The terms of reference given in the schedule are as follows :

“Whether the contract arrangement between the contractor and the management of ONGC is sham and bogus and whether the same is a camouflage to deprive regularization of service to the workman Shri Santosh Mhaskar ? If so, what wages, privileges and consequential benefits is the workman entitled for ?”

2. After the receipt of the reference, both the parties were served with the notices.

3. In view of the order on Ex.25, it appears that the concerned workman has voluntarily accepted the package in view of MOS dt. 19.9.16 and therefore his name is deleted from the present reference.

4. In view of deletion of his name from the present reference, no industrial dispute is exists and hence the reference is disposed off.

ORDER

Reference is disposed off.

Date: 15.05.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 27 जून, 2018

का.आ. 1023.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोटक महिंद्रा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 69/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.06.2018 को प्राप्त हुआ था।

[सं. एल-12012/121/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 27th June, 2018

S.O. 1023.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the management of Kotak Mahindra Bank and their workmen, received by the Central Government on 27.06.2018.

[No. L-12012/121/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.2, DWARKA
COURTS COMPLEX : NEW DELHI.****ID No. 69/2013**

Jai Kumar Sharma,
S/o. Shri S.K. Sharma,
43, Viklaslok Lane No.2, Shahtradhara Road,
Dehradun

...Workman/Claimant

Versus

Kotak Mahindra Bank,
Through its Managing Director,
Kotak Infinity Building No.21, Zone 4,
Second Floor, Infinity Park,
Western Express Highway,
Gen.K.A.Vaidya Marg,
Malad, East Mumbai

...Management/Respondent

AWARD

In the present case, matter was referred to Central Government Industrial Tribunal cum Labour Court No.2, New Delhi vide letter No.L-12012/121/2012-IR(B-1) dated 16.05.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the action of the management of Kotak Mahindra Bank by transferring of workman from Meerut to Tamilnadu (Namakkal) under the guise of following management policy amounts to an unfair labour practice and is unjustified ? If so, to what relief he is entitled to ?

2. Both parties were put to notice and the claimant., Shri Jay Kumar Sharma filed his statement of claim, with the averments that he was employed with the Management as Manager in grade M-3 w.e.f. 28./2/2011 vide appointment letter dated 18/2/2011 and during the course of his duties, he never performed any work of a Supervisory nature. Several violation of mandatory RBI circulars were highlighted by the workman and instead of paying attention thereto, the Management developed inimical feelings towards the workman and ultimately vide order dated 2/4/2012 the workman was transferred from Meerut to Namakkal, Tamilnadu (a distance of more than 3000 km.) as a punitive measure. The workman has joined the services at Namakkal w.e.f. 16/4/2012 under protest. It is alleged that the impugned order dated 2/4/2012 is a malafide and colorable exercise of power by the management under the guise of following management policy, amounting to unfair labor practice. The workman has prayed for quashing/setting aside of the order dated 2/4/2012 and for his relocation at Meerut.

3. Management resisted the claim of the Workman, by filing written statement and took preliminary objections that the claim is devoid of any justification inasmuch as the services of the claimant were transferred from Meerut to Namakkal considering the business exigencies and as per Management transfer policy, without affecting any change in other terms ad conditions of appointment letter dated 18/2/2011 issued to the claimant. It has been denied that the transfer of the claimant vide order dated 2/4/2012 is a malafide, colourable exercise of power by the Management or it amounts to unfair labour practice. It has been stated that the claimant is not a workman within the definition of Section 2(s) of the Act because he was appointed as a Manager in the Bank on handsome monthly salary of Rs.44693/- in addition to other perks like PF, gratuity etc. which are given to a person who is employed in managerial and administrative capacity. Prayer has been made for dismissal of the claim petition.

4. On the pleadings of the parties, following issues were framed on 28/11/2014 :-

- 1) Whether the action of the management of Kotak Mahindra Bank by transferring of workman from Meerut to Tamilnadu (Namakkal) under the guise of following management policy amounts to an unfair labour practice and is unjustified ? If so, its effect ?
- 2) Whether workman comes within the ambit of definition of workman as defined in I.D. Act ? If so, its effect ?
- 3) What relief the workman is entitled to ?

5. Number of opportunities were granted to the Claimant to lead evidence in support of his claim but he failed to adduce any evidence. He even did not enter the witness box either to substantiate the averments made in the claim petition or to rebut the case of the Management that the claimant does not come within the ambit of definition of

Workman. Perusal of the record shows that the claimant did not appear before the Tribunal from 12/1/2017 despite the fact that matter was adjourned time and again and ultimately this Tribunal was constrained to reserve the matter for passing the award.

6. In view of the fact that the claimant has not led any evidence in support of his case, this Tribunal is constrained to pass No Dispute Award in the matter. Since the matter has not been decided on merits, there will be no bar for the claimant to file afresh claim petition in accordance with law for adjudication of the controversy in issue or to seek any other relief to which he is otherwise entitled to. Award is passed accordingly.

Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dated:-15.05.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 28 जून, 2018

का.आ. 1024.—राष्ट्रपति, श्री प्रमोद कुमार चतुर्वेदी पीठासीन अधिकारी, केन्द्र सरकार औद्योगिक अधिकरण -सह-श्रम न्यायालय, अहमदाबाद को दिनांक 01.07.2018 से छः माह की आगे की अवधि तक अथवा नियमित पदस्थ अधिकारी नियुक्ति तक अथवा अगले आदेशों तक, जो भी पहले हो, पीठासीन अधिकारी, केन्द्र सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जयपुर के पद का अतिरिक्त प्रभार सौंपते हैं।

[सं. ए-11016/03/2009-सीएलएस-II]

अजय मलिक, अवर सचिव

New Delhi, the 28th June, 2018

S.O. 1024.—The President is pleased to extend the period of additional charge of the post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur entrusted to Shri Pramod Kumar Chaturvedi, Presiding Officer, Central Government Industrial Tribunal-cum-Labour, Ahmedabad for a further period of 06 months with effect from 01.07.2018, or till the appointment of a regular incumbent, or until further orders, whichever is the earliest.

[No. A-11016/03/2009-CLS-II]

AJAY MALIK, Under Secy.