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No. 2]

NEW DELHI, JANUARY 6—JANUARY 12, 2019, SATURDAY/ PAUSA 16— PAUSA 22, 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, 7 जनवरी, 2019

का.आ. 53.— बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 3 की उप-धारा (2क) के दूसरे परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय रिजर्व बैंक के परामर्श से युनाइटेड बैंक आफ इंडिया की प्राधिकृत पूंजी को पांच हजार करोड़ रुपए से बढ़ाकर आठ हजार पांच सौ करोड़ रुपए करती है।

[फा. सं. 11/4/2009—बीओए]

ए. के. घोष, अवर सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 7th January, 2019

S.O. 53.—In exercise of the powers conferred by the second proviso to sub-section (2A) of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Central Government, after consultation with the Reserve Bank of India, hereby increases the authorised capital of the United Bank of India from five thousand crore Rupees to eight thousand five hundred crore Rupees.

[F.No.11/4/2009-BOA]

A. K. GHOSH, Under Secy.

इस्पात मंत्रालय

नई दिल्ली, 3 जनवरी, 2019

का.आ. 54.—केंद्र सरकार, सार्वजनिक परिसर (अनाधिकृत रूप से रहने वालों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के इस्पात मंत्रालय की अधिसूचना संख्यांक का.आ. 1104 दिनांक 20 अप्रैल 2010 जो भारत के राजपत्र में, भाग-II, धारा 3, उपधारा (ii), दिनांक 01 मई, 2010 को प्रकाशित है, अधिक्रमित करते हुए, उन बातों के सिवाय जिन्हें ऐसे अधिक्रमण से पहले किया गया है, या करने का लोप किया गया है, नीचे दी गई सारणी के स्तम्भ (1) में वर्णित अधिकारी, जो भारत सरकार के राजपत्रित अधिकारी के समतुल्य श्रेणी के अधिकारी हैं, को उक्त अधिनियम के प्रयोजनों के लिए सम्पदा अधिकारी नियुक्त करती है, जो सारणी के स्तम्भ (2) में विनिर्दिष्ट सरकारी स्थानों के सम्बंध में अपने अधिकार क्षेत्र की स्थानीय सीमाओं के भीतर उक्त अधिनियम द्वारा या उसके द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्तव्यों का पालन करें।

सारणी

क्रमांक	अधिकारी का पदनाम और पता	सरकारी स्थानों की श्रेणियां और अधिकार क्षेत्र की सीमाएं
	(1)	(2)
1.	उपमहाप्रबंधक (कार्मिक), मॉयल लिमिटेड, मॉयल भवन, 1-ए काटोल रोड, नागपुर - 440013	नागपुर, महाराष्ट्र, में मॉयल लिमिटेड के या उनके द्वारा पट्टे पर लिये गये सभी परिसर।
2.	प्रबंधक (कार्मिक), तिरोडी खान, मॉयल लिमिटेड, जिला-बालाघाट, मध्य प्रदेश	मध्य प्रदेश के जिला बालाघाट में तिरोडी और सीतापटोर खान स्थित मॉयल लिमिटेड के या उनके द्वारा पट्टे पर लिये गये सभी परिसर।
3.	प्रबंधक (कार्मिक), बालाघाट खान, मॉयल लिमिटेड, जिला-बालाघाट, मध्य प्रदेश	मध्य प्रदेश के जिला बालाघाट में बालाघाट खान स्थित मॉयल लिमिटेड, के या उनके द्वारा पट्टे पर लिये गये सभी परिसर।
4.	प्रबंधक (कार्मिक), उकवा खान, मॉयल लिमिटेड, जिला-बालाघाट, मध्य प्रदेश	मध्य प्रदेश के जिला बालाघाट में उकवा खान स्थित मॉयल लिमिटेड, के या उनके द्वारा पट्टे पर लिये गये सभी परिसर।
5.	प्रबंधक (कार्मिक), गुमगांव खान, मॉयल लिमिटेड जिला नागपुर, महाराष्ट्र	गुमगांव खान, मॉयल लिमिटेड, जिला नागपुर महाराष्ट्र के या उनके द्वारा पट्टे पर लिये गये परिसर।
6.	प्रबंधक (कार्मिक) मन्सर खान, मॉयल लिमिटेड जिला नागपुर, महाराष्ट्र	मन्सर खान, मॉयल लिमिटेड, जिला नागपुर, महाराष्ट्र के या उनके द्वारा पट्टे पर लिये गये परिसर।

7.	बंधक (कार्मिक) कान्द्री खान, मॉयल लिमिटेड जिला नागपुर, महाराष्ट्र	कान्द्री खान, मॉयल लिमिटेड, जिला नागपूर, महाराष्ट्र के या उनके द्वारा पट्टे पर लिये गये परिसर।
8.	प्रबंधक (कार्मिक) बेलडोंगरी खान, मॉयल लिमिटेड जिला नागपुर, महाराष्ट्र	बेलडोंगरी खान, मॉयल लिमिटेड, जिला नागपुर, महाराष्ट्र के या उनके द्वारा पट्टे पर लिये गये परिसर।
9.	प्रबंधक (कार्मिक) डोंगरी बुर्जुग खान, मॉयल लिमिटेड जिला भण्डारा, महाराष्ट्र	डोंगरी बुर्जुग खान, मॉयल लिमिटेड, जिला भण्डारा, महाराष्ट्र के या उनके द्वारा पट्टे पर लिये गये परिसर।
10.	प्रबंधक (कार्मिक) चिखला खान मॉयल लिमिटेड जिला भण्डारा, महाराष्ट्र	चिखला खान, मॉयल लिमिटेड, जिला भण्डारा, महाराष्ट्र के या उनके द्वारा पट्टे पर लिये गये परिसर।

[फा. सं. 1(7)/2009-आरएम-II]

के. मुरली, अवर सचिव

MINISTRY OF STEELNew Delhi, the 3rd January, 2019

S.O. 54.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (40 of 1971) and in supersession of the notification of the Government of India, Ministry of Steel number S.O 1104, dated the 20th April 2010, published in the Gazette of India, Part II, Section 3, sub-section (ii), dated the 1st May, 2010, except as respect things done or omitted to be done before such supersession, the Central Government hereby appoints the officer mentioned in column (1) of the Table below, being an officer equivalent to the rank of gazetted officer of Government of India, to be estate officer for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on Estate Officer by or under the said Act, within the local limits of his jurisdiction in respect of the public premises specified in column (2) of the said Table -

TABLE

Sl. No.	Address and designation of the Officer	Categories of the public premises and local limits of jurisdiction
	(1)	(2)
1.	Deputy General Manager (Personnel), MOIL Limited, MOIL Bhawan, 1A, Katol Road, Nagpur – 440013	All premises belonging to or taken on lease by MOIL Limited at Nagpur, Maharashtra.
2.	Manager (Personnel), Tirodi Mines, MOIL Limited, District-Balaghat, Madhya Pradesh	All premises belonging to or taken on lease by MOIL Limited at Tirodi and Sitapatore mines in Balaghat district of Madhya Pradesh.
3.	Manager (Personnel), Balaghat Mines, MOIL Limited, District – Balaghat, Madhya Pradesh	All premises belonging to or taken on lease by MOIL Limited at Balaghat mines in Balaghat district of Madhya Pradesh.
4.	Manager (Personnel), Ukwa Mines, MOIL Limited, District – Balaghat, Madhya Pradesh	All premises belonging to or taken on lease by MOIL Limited at Ukwa mines in Balaghat district of Madhya Pradesh.
5.	Manager (Personnel), Gumgaon Mines, MOIL Limited, District – Nagpur, Maharashtra	All premises belonging to or taken on lease by MOIL Limited at Gumgaon mines in Nagpur district of Maharashtra.
6.	Manager (Personnel), Munsar Mines, MOIL Limited, District – Nagpur, Maharashtra	All premises belonging to or taken on lease by MOIL Limited at Munsar mines in Nagpur district of Maharashtra.
7.	Manager (Personnel), Kandri Mines, MOIL Limited, District – Nagpur, Maharashtra	All premises belonging to or taken on lease by MOIL Limited at Kandri mines in Nagpur district of Maharashtra.
8.	Manager (Personnel), Beldongri Mines, MOIL Limited, District – Nagpur, Maharashtra	All premises belonging to or taken on lease by MOIL Limited at Beldongri mines in Nagpur district of Maharashtra.

9.	Manager (Personnel), Dongri-Buzurg Mines, MOIL Limited, District – Bhandara, Maharashtra	All premises belonging to or taken on lease by MOIL Limited at Dongri Buzurg mines in Bhandara district of Maharashtra.
10.	Manager (Personnel), Chikla Mines, MOIL Limited, District – Bhandara, Maharashtra	All premises belonging to or taken on lease by MOIL Limited at Chikla mines in Bhandara district of Maharashtra.

[F. No. 1(7)/2009-RM-II]

K. MURALI, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 2 जनवरी, 2019

का. आ. 55.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रमों के निम्नलिखित कार्यालयों को, जिनके 80 या अधिक प्रतिशत कर्मचारी वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :-

1. भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड,
भोपाल एएफएस, राजा भोज हवाई अड्डा,
भोपाल,
मध्य प्रदेश – 462030

[सं. 11011/1/2017 (हिन्दी)]

ऊषा बिन्जोला, संयुक्त निदेशक (राजभाषा)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 2nd January, 2019

S.O. 55.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Unoin) Rules, 1976, the central Government hereby notifies the following offices of the Public Sector Undertakings under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more per cent of the staff have acquired working Knowledge of Hindi :-

1. Bharat Petroleum Corporation Ltd.,
Bhopal AFS, Raja Bhoj Airport,
Bhopal,
Madhya Pradesh – 462030

[No. 11011/1/2017 (Hindi)]

USHA BINJOLA, Jt. Director (OL)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 18 दिसम्बर, 2018

का.आ. 56.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महानिदेशक, सीपीडब्ल्यूडी कार्यालय नई दिल्ली और अन्य 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-1, नई दिल्ली के पंचाट (संदर्भ संख्या 112/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.12.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENTNew Delhi, the 18th December, 2018

S.O. 56.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 112/2017) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Director General, CPWD Office New Delhi, and others and their workmen, which was received by the Central Government on 17.12.2018.

[No. L-42025/03/2018– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

DID No.112/2017

Shri Mehtab Ali S/o Shri Mohd. Sahid,
C/o All India Central PWD (MRM) Karamchari Sangathan (Regd.),
House No.4823, Gali No.13,
Balbir Nagar Extension,
Shahdara, Delhi – 110 032

...Workman

Versus

(i) The Director General,
CPWD, Nirman Bhawan,
New Delhi

(ii) The Executive Engineer,
ACD – 4, CPWD,
Vidyut Bhawan,
New Delhi

(iii) M/s. Virender Kumar,
C/o Executive Engineer Ghaziabad Central Division,
C.P.W.D.,
Hindon Airfield, Ghaziabad,
Uttar Pradesh

...Management

AWARD

Present dispute has been raised by Shri Mehtab Ali (in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of her service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. Shri Mehtab Ali, Carpenter, had filed an industrial dispute before the Conciliation Officer on 29.08.2016 for regularization of his services. During the course of conciliation proceedings, the management retrenched the services of Shri Mehtab Ali on 17.12.2017 without obtaining prior permission of the Conciliation Officer. The work /duty being performed by the workman is of perennial nature and management has retained junior to the workmen through contractor against this work. The said case is in respect of prohibited categories on which contract system is prohibited by the management of CPWD itself but on the other hand the field unit are regularly violating the orders of Ministry of Labour and the management is awarding work on these prohibited categories. The workman was retrenched without serving any notice, notice pay or payment of retrenchment compensation, which is in violation of the provisions of the Act. The contractors in the case was and agent and was used just for disbursement of salary to the workmen. The case has also been sent for making reference by the appropriate authority.

3. Written statement was filed on behalf of the management taking various preliminary objections, inter alia, no relationship of employer & employee, there being no cause of action, absence of legal & valid espousal etc. On merits, the management has denied the various material averments contained in the statement of claim.

4. From the pleadings of the parties, following issues were framed:

- (i) Whether the termination of service of the claimant is illegal and against the provisions of the ID Act?
- (ii) Whether the claimant is entitled for reinstatement with full back wages?
- (iii) Whether the claim is not maintainable in view of the preliminary objections?

5. Thereafter the case was listed for evidence of the claimant. Various opportunities were granted to the claimant for filing his affidavit in evidence. However, it was stated at the bar by Shri Satish Kumar Sharma that the claimant has since expired and his legal heirs are not interested in pursuing the case on merits. Under such circumstances, this court has no other option but to pass a 'no claim' award. However, it is made clear that there is no adjudication of the case on merits, as such, the legal heirs of the claimant are still at liberty to agitate his cause in accordance with law. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : 12.12.2018

A.C. DOGRA, Presiding Officer

नई दिल्ली, 2 जनवरी, 2019

का.आ. 57.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय ईरनाकुलम के पंचाट (संदर्भ संख्या 221/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2.1.2019 को प्राप्त हुआ था।

[सं. एल-12012/34/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 2nd January, 2019

S.O. 57.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 221/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 2.1.2019.

[No. L-12012/34/2006- IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer

(Monday the 10th day of December, 2018 / 19th Agrahayana, 1940)

ID 221/2006

Workman	:	Shri.M.M.Mathew, Mamoottil, 29/179, Janatha Raod, Vyttila P.O., Ernakulam
Management	:	By Adv. Paulson C. Varghese. Assistant General Manager, UCO Bank, Regional Office, Thiruvananthapuram. By Adv. Deepak Joy. K.

This case coming up for final hearing on 15.11.2018 and this Tribunal-cum-Labour Court on 10.12.2018 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of subsection (I) of S.10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government vide Order No.L-12012/34/2006-IR(B-II) dated 20.07.2006 referred this Industrial dispute for adjudication.
2. The dispute referred for adjudication is:
“Whether the action of UCO Bank, Trivandrum in removing Shri. M.M. Mathew, Daftry from the Service of the Bank is fair and just? If not to what relief the concerned workman is entitled to?”
3. The Workman involved in the Industrial dispute in the above reference was employed with the Management. The Management initiated disciplinary action against the Workman for unauthorized absence and his services were terminated. The Workman challenged the termination in this Industrial dispute and this Tribunal passed an Award dated 04.05.2009 upholding the legality of the termination order issued by the Management
4. The Workman challenged this Award before the Hon’ble High Court of Kerala in Writ Petition No.WP(C) 22321/2010(M). The Hon’ble High Court vide Order dated 26.09.2016 set aside the Award and remanded the matter back to the Tribunal for fresh adjudication in the light of the observation made in the said judgment.
5. While the matter was being adjudicated, the Workman filed a memo dated 22.09.2017 stated there in that he is withdrawing all the contentions made against the Management/Bank. He further stated that he is admitting the dismissal from the post of “Daftari” and he will not make any claim against the Management/Bank. He further stated that he will not raise any objection against the Order of dismissal in future against the Management and Disciplinary Authority. Further he prayed that reference may be closed in accordance with this withdrawal statement.
6. On 15.11.2018 when the matter was taken up the Workman was present in person. He pleaded that he may be permitted withdraw his claim against the Management as indicated in his Memo dated 22.09.2017.
7. The possibility of arriving at a mutually agreeable settlement with the Management in the Lok- Adalat was explained to the Workman. The Workman expressed his unwillingness to pursue the matter any further.
8. In the result an Award is passed allowing the request of the Workman to withdraw his contentions against the Management and close the reference.
9. The withdrawal memo filed by the Workman will form part of the Award. The Award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by him, corrected and passed by me on this the 10th day of December, 2018.

V.VIJAYA KUMAR, Presiding Officer

APPENDIX

1. Memo dated 22.09.2017 filed by the workman.

नई दिल्ली, 2 जनवरी, 2019

का. आ. 58.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियण्टल बैंक ऑफ कामर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ सं. 35/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.01.2019 को प्राप्त हुआ था।

[सं. एल-12012/113/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 2nd January, 2019

S.O. 58.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2007) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad* as shown in the Annexure, in the industrial dispute between the management of *Oriental Bank of Commerce* and their workmen, received by the Central Government on 02.01.2019.

[No. L-12012/113/2006 - IR(B-II)]

RAVI KUMAR, Section Officer

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

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 26th day of October, 2018

INDUSTRIAL DISPUTE No. 35/2007

Between:

Sri A. Rathnakar Reddy,
H.No.3-53, Pandu Basthi,
Sai Baba nagar,
IDA, Jeedimetla,
Ranga Reddy District – 500 855.

... Petitioner

AND

The General Manager (HRD),
Oriental Bank of Commerce,
S.B.U., Ashoka My Home Chambers,
1-8-303, Sardar Patel Road,
Secunderabad – 500 003.

... Respondent

Appearances:

For the Petitioner : Sri William Burra, Advocate

For the Respondent : Mrs. Kalpana Ekbote, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 12012/113/2006-IR(B.II) dated 6.7.2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri A. Rathnakar Reddy, Ex-Electrician cum runner is legal and justified? If not, what relief the workman is entitled to?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 35/2007 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The averments made in the claim statement in brief are as follows:

The Petitioner was working as an Electrician cum Runner from 1.3.1997 to 28.9.2005 in erstwhile Global Trust Bank and later in the Oriental Bank of Commerce, Secunderabad (the Respondent). It is stated that initially the workman worked as an Electrician Cum Runner through M/s. ESSR Engineering in Maintenance Works from 1.3.1997 to 28.2.2001, thereafter through Global Corporate Services from 1.3.2001 to 14.8.2004 and thereafter worked through the same agency from 14.8.2004 onwards for Oriental Bank of Commerce, Secunderabad till 28.9.2005. It is further submitted that other workmen who worked with the Petitioner in similar capacity in the erstwhile Global Trust Bank are absorbed in the Oriental Bank of Commerce, but the workman's case was not considered for absorption for the reasons best known to the Respondent. It is also submitted that the Petitioner's service total period was more than 8 years and his services were utilized for jobs/duties such as Electrician, runner, attender etc.. The Petitioner further submits that he studied upto B.A., and also having sound knowledge and experience of electrical works. His work was appreciated by the Respondents and he continued in the said bank as well as erstwhile Global Trust Bank for 8 years continuously without blemish and in each year he worked for more than 300 days. It is further submitted that the Respondent management has entered into an agreement with the representatives of Federation, New Delhi on 30.9.2005, according to which the erstwhile runners working through agencies shall be absorbed as Peons/Clerks in subordinate cadre, depending on the educational qualifications. Accordingly, the Petitioner submitted an application on 10.11.2005 for the post of clerk to the Respondent bank. But the Petitioner's case was not considered for absorption even though he fulfilled all the conditions laid down for absorption in the clerical cadre. The Petitioner also submitted that if there is any difficulty to absorb him as clerk, he is prepared to accept the post of electrician/peon. The Petitioner also submitted that he worked for more than one year continuously i.e., more than 240 days, but the Respondent without considering his case, terminated him from service. Thus, the termination of the Petitioner from service without complying with the provisions of Sec.25F of the Industrial Disputes Act, 1947 is illegal, arbitrary, unjust, and against the provisions of Law and also against the principles of natural justice. The Petitioner further submitted that his employment through the agency is ruse and camouflage as the Petitioner's services were utilized by the Respondent bank but only to deprive him the benefits of regular workman it is done. Hence, the service rendered by the Petitioner with the agencies is deemed to

have been rendered to the Respondent bank which attracts Sec. 25F of the Industrial Disputes Act, 1947 as the contract is the sham contract. It is submitted that without complying the mandatory provisions of Sec. 25F of the Industrial Disputes Act, 1947, he has been terminated and the Respondent should have complied with the same before his termination. It is also submitted that no notice was given and notice pay in lieu of one month notice, was also not given to him. he was also not paid retrenchment compensation as laid down under Sec. 25F of the Industrial Disputes Act, 1947 which will make the retrenchment ab-initio void. Therefore, the Petitioner workman submitted to absorb him in service with all consequential benefits. The Petitioner further submitted that the matter was referred to the labour authorities for conciliation, but lastly conciliation was failed, for which it was referred to the Ministry of Labour and Employment and thereafter it has been referred to this Tribunal for adjudication.

3. Respondents filed their counter with the averments in brief as follows:

In the written statement the Respondent while denying some of the averments made in the claim statement, has stated that the Respondent bank i.e., Oriental Bank of Commerce in short O.B.C. is a Government of India undertaking. The Reserve Bank of India has kept the erstwhile Global Trust Bank (G.T.B.) a private bank under an order of Moratorium on 24th July 2004, which was effective upto 23rd Oct 2004 or an earlier date if alternative arrangements are in place. During the period of Moratorium the RBI had to decide the future set up of Global Trust Bank which had been given time to arrange for infusion of capital as also to explore the options of raising required capital or voluntary merger with any domestic work. Global Trust Bank had to declare its inability to raise the required capital from domestic investors as also voluntary merger with any domestic work. Since no other options were available, the RBI had taken a recourse under Section 45 of the Banking Regulation Act, 1949 for its compulsory merger. The Respondent bank had shown interest in such a merger. Keeping in view the financial parameters, the retail network and the synergies as well as strategic advantages of the Petitioner's bank, RBI had prepared a draft scheme of amalgamation of GTB with the Petitioner's bank i.e., OBC. A draft notification was published and it was finalized and ultimately the Global Trust Bank was merged with the Petitioner's bank w.e.f. 14.8.2004, under the scheme called as Global Trust Bank Limited (Amalgamation with Oriental Bank of Commerce) Scheme, 2004, for short called as scheme. Chapter V of the scheme deals with Rights and obligations of the Employees of Transferor Bank. As per the scheme all the erstwhile employees of GTB, who were willing to opt for the scheme had been absorbed. The above said scheme does not cover with any other personnel except the employees of GTB. All other outsourcing agencies of the erstwhile GTB and their respective employees were not covered by the above said scheme. The OBC is not obligated to take any of these employees of the outsourcing agencies of Global Trust Bank. In fact the agreement entered by these outsourcing agencies with GTB had come to an end by 21.8.2002 itself. Neither the GTB nor OBC renewed any of these agreements beyond this date. One such outsourcing agency is by name M/s Global Corporate Services Pvt. Ltd., situated at 23 Paigah Colony, S.P. Road, Secunderabad-500 003. It appears that this private Company employed a number of persons who are outsourced to GTB upto 21.8.2002. They were never the employees of GTB and hence OBC has got no obligation to take them into their services. The OBC has terminated engaging the un-renowned services of the outsourcing Agency i.e., M/s Global Corporate Services vide its letter dated 30.11.2005. These categories are Runner-Staff/Office Boys with requisite qualification, and Data Entry Operator/ Telephone Operator with the requisite qualifications. A circular was displayed accordingly inviting applications. In terms of this circular, persons who were discharging the above duties, with the outsourcing agencies have applied giving educational and other particulars. The OBC has absorbed some of these employees who have met the requisite work experience of Runner Staff/Office Boys and Data entry Operators/Telephone Operators and having qualifications as per the circular dated 28.10.2005. The claimants have also applied in terms of the above circular. Both these Respondents in their application have stated that they are working as drivers in M/s Global Corporate Services Pvt. Ltd.. In view of the fact that the Oriental Bank of Commerce does not contemplate regularization of drivers their candidature were rejected. Aggrieved by such order the workmen raised an industrial dispute with Regional Labour Commissioner (Central), Hyderabad who vide his letter dated 11.10.2006 reported the failure of conciliation to the Government of India. The Government of India by impugned order has referred the matter to this Tribunal. It is stated that the above reference of the Government of India has been challenged before the Apex Court and in a catena of Supreme Court decisions which has been decided amongst other grounds. The ID Act does not contemplate any reference with regard to regularization. The question of regularization/absorption has been considered by the Hon'ble Supreme Court of India in a catena of decisions which has held that, regularization/absorption is not a method or mode of appointment and no State of instrumentalities of State can regularise persons as that would be contrary to Article 14 of the Constitution of India. The Hon'ble Court has decided that any mode of regularization is illegal then the Labour Court cannot give a contrary order and therefore, the entire exercise is a futility. It is further stated that the workman is from an outsourcing organization. There is no employer and employee relationship between the workman and the Respondent bank. Further it is not a case of termination or discharge. Therefore, claim of the workman is not tenable in the eye of Law. The OBC circular is an exception and an one time measure only. That by itself it will not give any right whatsoever to claimants to claim a regularization as a matter of right. It is further submitted that since the case is of not termination or discharge and in the absence of the same the order of the no case is maintainable and hence the case deserves to be dismissed. It is further submitted that the entire reference made by the Government of India is illegal and this court can not entertain any such references.

4. As per the averments made in the pleadings of both the parties the following points are to be determined:

- I. Whether there is employer and employee relationship between the Respondent Oriental Bank of Commerce and the Petitioner workman namely Sri A. Ratnakar Reddy?

- II. Whether the action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri A. Ratnakar Reddy, Ex-Electrician cum runner is legal and justified?

III. If not, what relief the workman is entitled?"

5. During the course of hearing the workman has examined himself as WW1 and marked 7 documents, like Exs.W1 to W7 whereas the Respondent bank has examined one of his Senior Manager, namely Smt. C. Sowjanya, as MW1, and also marked five documents Exs.M1 to M5. Besides, both the parties have also relied on some judgements which have been considered during the course of arguments.

6. I have already heard the Learned Counsels of both the sides in the matter. Perused the evidence adduced so far by the parties.

7. **Point No. I:** The Learned Counsel for the workman contended that the workman was working as an Electrician cum Runner from 1.3.1997 to 28.9.2005 in erstwhile Global Trust Bank and later in the Oriental Bank of Commerce, Secunderabad (the Respondent). It is stated that initially the workman worked as an Electrician Cum Runner through M/s. ESSR Engineering in Maintenance Works from 1.3.1997 to 28.2.2001 and through Global Corporate Services from 1.3.2001 to 14.8.2004 and thereafter worked through the same agency from 14.8.2004 onwards for Oriental Bank of Commerce, Secunderabad till 28.9.2005. On the other hand, the Learned Counsel for the Respondent submitted that the workman was not employed by the erstwhile M/s. Global Trust Bank and according to him the work was done by a private agency namely, M/s. Global Corporate Services and he has not been employed directly under the Global Trust Bank. He submitted that the workman was a contract labour engaged through M/s. Global Corporate services. There is no employer and employee relationship between the workman and the erstwhile Global Trust Bank as well as the present Respondent.

8. The case of the workman is that he was appointed as an Electrician in the Global Trust Bank and was paid monthly salary from 1.3.1997 to 14.8.2004. Thereafter, he worked directly with the Respondent bank from 14.8.2004 to 28.9.2005. The Learned Counsel for the workman contended that the workman has not only served for the Global Trust Bank but also after amalgamation with the Respondent, Oriental Bank of Commerce. The workman was an Electrician but he has never worked for the entire day. But his service was taken as and when required for the Global Trust Bank. The Learned Counsel for the Petitioner also submitted that the agreement of labour contract with the workmen and Global Corporate Services is false, bogus and mere camouflage, as the Petitioner's services were utilized by the Respondent bank through out the year against the regular vacancy, even after merger of the Global Trust Bank with the Respondent bank. On the other hand, the Learned Counsel for the workman contended that the workman has served more than a year continuously he is eligible to be absorbed as a Peon/Office Boy. But his case was not considered. The Learned Counsel for the workman further contended that only to deprive the Petitioner workman from his legitimate right, the Respondent has taken a stand that they have not utilized the services of the workman and the workman was working under a contractor with whom Global Trust Bank had made the agreement. He also contended that such type of labour exploitation should be prohibited. In support of this contention he relied on a decision of the Apex Court reported in (2011)15 decided in the case of Bhilwara Dugdh Utpadak Sahakari Samiti Limited Vs. Vinod Kumar Sharma, dead by LRs and others in Civil Appeal No.2585 of 2006 209 (S.C.) wherein their Lordships held that "Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the workmen concerned are not their employees but are the employees/workmen of a contractor, or that they are merely daily-wage or short-term or casual employees when in fact they are doing the work of regular employees. This court cannot countenance such practices any more. Globalization/liberalization in the name of growth cannot be at the human cost of exploitation of workers." In view of the decision cited above, in the case at hand it is observed that, the workman had been engaged by the erstwhile Global Trust Bank as an Electrician in the office maintenance work and also as an office boy, but the Respondent has shown the workman as an employee of a contractor. In fact, the workman was working for the Global Trust Bank not for the Global Corporate Services and with the knowledge of this Global Trust Bank, the workman has worked for a long period from 1.3.1997 to 14.8.2004 and even after merger of Global Trust Bank with the Respondent bank the workman has continued his work for the Respondent bank. The workman has worked for more than 240 days in a year and his work is of perennial in nature. He was working continuously for the Global Trust Bank and has also worked for one year continuously for the Global Trust Bank and has also worked for one year continuously for the Respondent the Oriental Bank of Commerce who have played tricky in order to deprive the workman to get the benefit of permanent job and have shown him as a contract worker under a contractor. The so called contract between the Global Corporate Services and the Global Trust Bank is in fact a paper transaction. In the circumstances in the light of the judgement quoted above, it is seen that the workman was serving his duties as an Electrician of the Global Trust Bank for a long period and there after for the Respondent for a period of one year with their knowledge. Thus, it is the workman who was the employee of the Global Trust Bank and after its amalgamation with the Respondent the Oriental Bank of Commerce and he was not the employee of any contractor. Thus, it can safely be stated that there is employer and employee relationship between the Respondent and the workman and as such Point No.I is answered in favour of the workman.

9. **Point No. II:** In Point No.I it has already been held that the workman was the employee of the erstwhile Global Trust Bank from 1.3.1997 to 14.8.2004 and thereafter the employee of the present Respondent till 28.9.2005. The Learned Counsel for the workman contended that as per the amalgamation scheme of the workers working with the

Global Trust Bank were taken over by Oriental Bank of Commerce. MW1 in his cross examination admitted that the workman in his application has claimed to have worked as an office boy. He has also applied for the post of a Peon in the Respondent bank. Since the workman could not fulfil the requisites for the post of a Peon as per the Head Office circular dated 28.10.2005 and he has not worked from 14.8.2004 his application was rejected by the Respondent bank. MW1 further admitted that on 14.8.2004, his application was rejected by the Respondent bank. MW1 also admitted that on 14.8.2004, the Petitioner was working under the Global Trust Bank. The admission of MW1 clearly shows that the Petitioner has applied for the post of Peon but his case was not considered. It is admitted that some similarly placed workman working through some other agencies were taken over by the Oriental Bank of Commerce. Even though the workman has worked as on 14.8.2004 and has applied for the post of Peon having a qualification of B.A., his case was not considered. The Respondent has nowhere specifically denied about the service of the workman from 1.3.1997 to 14.8.2004 under the Global Trust Bank and also not under the Respondent till 28.9.2005. Only they have challenged that the workman was working through Global Corporate Services not directly under Global Trust Bank or the Oriental Bank of Commerce. When the Respondent has not denied the service of the workman either under the Global Trust Bank or under the Oriental Bank of Commerce, it is a clear admission that they are fully aware of the service of the workman and knowing fully well that they have utilized the service of the workman for a long period. They have not considered the application of the workman to absorb him as a Peon. Admittedly without taking into consideration the application of the workman the Respondent has regularised the service of other workers. Even though the workman has got all the eligible criteria, his case has not been considered and also without following the provisions of Section 25F of the Industrial Disputes Act, 1947, the workman has been terminated, even though the workman has worked for more than 240 days in a year and his services were perennial in nature, thus the workman is entitled to get the protection under Section 25F of the Industrial Disputes Act, 1947. Admittedly the Management has not followed the procedure at the time of termination of the workman and as such the Respondent Management has violated the provisions of Section 25F of the Industrial Disputes Act, 1947. As the Management has taken over some other similarly placed workman from Global Trust Bank and the workman has been deprived for either getting the retrenchment benefit, as provided under Section 25F of the Industrial Disputes Act, 1947 or has not been given any job after amalgamation of the Global Trust Bank with Oriental Bank of Commerce, the termination of the workman is illegal and not justified.

Thus, Point No.II is answered accordingly.

10. **Point No. III:** The Learned Counsel for the workman contended that the Management has illegally terminated the workman from the services of the Respondent, even though the workman has applied for a job soon after amalgamation of Global Trust Bank with the Oriental Bank of Commerce but his case was not considered. Now he is jobless. His case should be considered. On the other hand the Learned Counsel for the Respondent submitted that, the workman has not been appointed against any clear vacancy. He was served under the Global Corporate Services, a service provider/contractor. Neither Global Trust Bank nor the Respondent had given any appointment order to the workman. Therefore, the workman is not entitled to be regularised in service. In support of his contention he relied on the decision of Bombay High Court decided in the case of Chief Executive Officer Zilla Parishad Vs. Shaheezad Bee Sheikh Jamal 2001 EQ (Bom) 812 wherein the Hon'ble Court held that, "unless employee proves that he worked against the permanent post, he cannot be allowed back door entry in the service. In this respect, from the facts and circumstances on record it is revealed that the Bank had utilized the service of the workman as an Electrician as well as a Peon rendered and the workman has worked against the regular vacancy. Nowhere the Respondent has denied the service rendered by the workman. The only stand taken by the Respondent is that the workman was not working either under Global Trust Bank or under the Respondent and he was working through Global Corporate Services. It is seen that when the workman has rendered his service for Global Trust Bank and the Respondent from 1.3.1997 till 28.9.2005 it can not be stated that there was no vacancy either in the Global Trust Bank or under the Respondent bank. Therefore, the judgement cited by the Learned Counsel for the Respondent is not applicable to the present facts and circumstances of the case. The Learned Counsel for the Respondent also submitted that as the workman was not recruited by following the recruitment process he is not entitled to be regularised in service. In support of his contention, the decision of the Apex Court reported in 2006 II CLR (261) (S.C.) decided in the case of Secretary, State of Karnataka and ors, Vs. Umadevi and others wherein their Lordships held that, "It has also to be clarified that merely because a temporary employee or casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules." In Point No.II it has already been held that the Respondent Management has violated the provisions of Sec.25F of the Industrial Disputes Act, 1947 while terminating the services of the Petitioner. Therefore, the workman is entitled to be regularised in service. Furthermore, admittedly the Management has regularised the services of some other similarly placed employees like the workman and has violated the provisions of Sec.25G of the Industrial Disputes Act, 1947. Therefore, the workman is entitled to be regularised in the service of the Respondent bank. The facts of the present case is quite different with that of the facts of the judgement cited above. Therefore, the ratio laid down in the judgement cited above is not applicable to the facts of the present case. It is noticed that when the Respondent bank has not considered the grievance of the workman while considering the service of the similarly placed workman and absorbed them into service the Respondent has violated the provisions under Sec.25 G of the Act. Admittedly the workman has filed an application to get a job in the Respondent's office and even if he is a skilled labour and has got requisite qualification to be an Electrician and is also a graduate, his case was not considered to be a Peon even in the office. Rather he was informed that his case is not considered as per the circular dated 28.10.2005. In fact, the workman had served under the Global Trust Bank from 1.3.1997 to 14.8.2004 and after amalgamation he has also served under the Respondent till 28.9.2005. He is an electrician and a graduate. It can not be stated that the workman was not having such qualification to be a Peon and as such he is not fit to be a Peon when similarly placed workers have been considered as Peon in the

office of the Respondent. In this context, the Hon'ble Court while distinguished in the judgement of Secretary, State of Karnataka Vs. Umadevi & Others, by holding that, "even though the same had no relevance to the prayer made by the Petitioner. The simple question raised by the Petitioner was with reference to the decision of the Bank in absorbing Shri Devaraju as a permanent employee. The claim of the Petitioner was founded under Article 14 and 16 of the Constitution of India. Unfortunately the aforesaid issue was not considered even in the second round of litigation". Thus, the issue laid down in the (Umadevi) (Supra) is not applicable to the facts and circumstances of the present case, as in the case on hand, some other similarly placed workman were regularised in the service of the Respondent bank and the same opportunity was denied to the workman under reference, so the workman should be given the same opportunity. Therefore, the action of the Respondent not absorbing the workman in service is arbitrary and discriminative, and also the Respondent has violated all the principles of Sec.25G of the Industrial Disputes Act, 1947. Therefore, it is held that the workman is entitled to be reinstated in service. The Learned Counsel for the workman submitted that the workman being an Electrician and a graduate has been illegally terminated from service, and after termination he has suffered a great financial loss and he is now unemployed. Therefore, he is entitled to get full back wages. On the other hand, the Learned Counsel for the Respondent submitted that the workman has not lead any evidence to show that he has not been employed anywhere and he is jobless. He also contended that the workman has not rendered any service to the Respondent bank and is not entitled for any wages for the period he has not done any work. Furthermore, admittedly, the workman is an electrician whose service is very essential, admittedly an electrician cannot sit idly without any job. As he has not rendered any service to the Global Trust Bank or the Respondent bank after his termination he is not entitled to any back wages. Thus, the workman is only entitled to be reinstated in service either as an Electrician or as a Peon in the Respondent's bank.

Thus, Point No.III is answered accordingly.

Result:

The reference is allowed partly. The action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri A. Ratnakar Reddy, Ex-Electrician cum runner is declared illegal and not justified and the Respondent is directed to reinstate and regularise the service of the workman as an Electrician or a Peon. Under the circumstances there is no order as to costs.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 26th day of October, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

WW1: Sri A. Ratnakar Reddy

MW1: Smt. C. Sowjanya

Documents marked for the Petitioner

- Ex.W1: Photostat copy of appointment letter dt.25.2.2001 from Global Corporate Services (P.) Ltd to the Petitioner.
- Ex.W2: Photostat copy of Secondary School Certificate of WW1.
- Ex.W3: Photostat copy of Application for absorption dt.16.12.2005 of A.Rathnakar Reddy.
- Ex.W4: Photostat copy of application from WW1 to RLC(C), dt.23.5.2006.
- Ex.W5: Photostat copy of notification dt. 13.8.2004 of amalgamation of Global Trust Bank with Oriental Bank of Commerce.
- Ex.W6: Photostat copy of absorption circular dt.28.10.2005 of outsourcing agencies in the Respondent bank.
- Ex.W7: Photostat copy of application for regular employment as clerks/peon in Oriental Bank of Commerce, Secunderabad.

Documents marked for the Respondent

- Ex.M1: Photostat copy of draft scheme of Global Trust Bank – Oriental Bank of Commerce amalgamation dt.26.7.2004 issued by Reserve Bank of India.
- Ex.M2: Photostat copy of circular to all branch offices, dt.28.10.2005, by Respondent bank.
- Ex.M3: Photostat copy of check list for absorption of office boys/runners as peons-enrolment.
- Ex.M4: Photostat copy of the application form of the Petitioner.
- Ex.M5: Photostat copy of lr. dt.30.11.2005.

नई दिल्ली, 2 जनवरी, 2019

का. आ. 59.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियण्टल बैंक ऑफ कामर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ सं. 36/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.01.2019 को प्राप्त हुआ था।

[सं. एल-12012/114/2006—आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 2nd January, 2019

S.O. 59.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2007) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad* as shown in the Annexure, in the industrial dispute between the management of *Oriental Bank of Commerce* and their workmen, received by the Central Government on 02.01.2019.

[No. L-12012/114/2006 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 26th day of October, 2018**INDUSTRIAL DISPUTE No. 36/2007****Between:**

1. Sri J. Jayathirtha,
1-20-16, Venkatapuram,
Thrumalagherry Post,
Secunderabad – 500 015.

2. Sri M. Karunanidhi,
H.No.19-25/B, Kotha Basthi VenkataraoPET,
Venkatapuram,
Secunderabad – 500015.

... Petitioners

AND

The General Manager (HRD),
Oriental Bank of Commerce,
S.B.U., Ashoka My Home Chambers,
1-8-303, Sardar Patel Road,
Secunderabad – 500 003.

... Respondent

Appearances:

For the Petitioner : Sri William Burra, Advocate

For the Respondent : Mrs. Kalpana Ekbote, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 12012/114/2006-IR(B.II) dated 6.7.2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri J. Jayathirtha, Ex-Jr. Assistant-Support Services and Shri M. Karunanidhi, Ex-Jr. Assistant-Support Services is legal and justified? If not, what relief the workman is entitled to?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 36/2007 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows:**

The Petitioners were working as Drivers since they were holding driving licenses. Though they were designated as Jr. Assistants-support services, but working as personal drivers to the officers, when the officers reach the bank, the Petitioners' services were utilized as office boys. The Petitioners later worked through Global Corporate Services from 1.6.2004 to 6.5.2005 for Global Trust Bank as well as Oriental Bank of Commerce, Secunderabad. It is further submitted that other workmen who worked with the Petitioners in similar capacity in the erstwhile Global Trust Bank are absorbed in the Oriental Bank of Commerce, but the workmens' case was not considered for absorption for the reasons best known to the Respondent. It is also submitted that the Petitioners' service total period was more than 11 years and their services were utilized for jobs/duties such as Drivers, Office Boys, attendars etc.. The Petitioners further submit that they studied upto 10th class and also can read, write, English, Telugu and Hindi languages by virtue of their experience and qualifications. The Petitioners' work was appreciated by the Respondents and they continued in the said bank as well as the erstwhile Global Trust Bank for 11 years continuously without blemish and in each year they worked for more than 300 days. It is further submitted that the Respondent management has entered into an agreement with the representatives of Federation, New Delhi on 30.9.2005, according to which the erstwhile workmen working through agencies shall be absorbed as Peons/Clerks in subordinate cadre, depending on the educational qualifications. Accordingly, the Petitioners submitted an application on 11/2005 for the post of Peon/clerk to the Respondent bank. But the Petitioners' cases were not considered for absorption even though they have fulfilled all the conditions laid down for absorption in the clerical cadre. The Petitioners also submitted that if there is any difficulty to absorb them as clerk, they are prepared to accept the post of electrician/peon. The Petitioners also submitted that they worked for more than one year continuously i.e., more than 240 days, but the Respondent without considering their case, terminated them from service. Thus, the termination of the Petitioners from service without complying with the provisions of Sec.25F of the Industrial Disputes Act, 1947 is illegal, arbitrary, unjust, and against the provisions of Law and also against the principles of natural justice. The Petitioners further submitted that their employment through the agency is ruse and camouflage as the Petitioners' services were utilized by the Respondent bank, but only to deprive them the benefits of regular workman it is done. Hence, the service rendered by the Petitioners with the agencies is deemed to have been rendered to the Respondent bank which attracts Sec. 25F of the Industrial Disputes Act, 1947 as the contract is the sham contract. It is submitted that without complying the mandatory provisions of Sec.25F of the Industrial Disputes Act, 1947, they have been terminated, and the Respondent should have complied with the same before their termination. It is also submitted that no notice was given and notice pay in lieu of one month notice, was also not given to them. The Petitioners were also not paid retrenchment compensation as laid down under Sec.25F of the Industrial Disputes Act, 1947 which will make the retrenchment ab-initio void. Therefore, the Petitioner workmen submitted to absorb them in service with all consequential benefits. The Petitioners further submitted that the matter was referred to the labour authorities for conciliation, but lastly conciliation was failed, for which it was referred to the Ministry of Labour and Employment and thereafter it has been referred to this Tribunal for adjudication.

3. **Respondent filed counter with the averments in brief as follows:**

In the written statement the Respondent while denying some of the averments made in the claim statement, has stated that the Respondent bank i.e., Oriental Bank of Commerce in short O.B.C. is a Government of India undertaking. The Reserve Bank of India has kept the erstwhile Global Trust Bank (G.T.B.) a private bank under an order of Moratorium on 24th July 2004, which was effective upto 23rd Oct 2004 or an earlier date if alternative arrangements are in place. During the period of Moratorium the RBI had to decide the future set up of Global Trust Bank which had been given time to arrange for infusion of capital as also to explore the options of raising required capital or voluntary merger with any domestic work. Global Trust Bank had to declare its inability to raise the required capital from domestic investors as also voluntary merger with any domestic work. Since no other options were available, the RBI had taken a recourse under Section 45 of the Banking Regulation Act, 1949 for its compulsory merger. The Respondent bank had shown interest in such a merger. Keeping in view the financial parameters, the retail network and the synergies as well as strategic advantages of the Petitioner's bank, RBI had prepared a draft scheme of amalgamation of GTB with the Petitioner's bank i.e., OBC. A draft notification was published and it was finalized and ultimately the Global Trust Bank was merged with the Petitioner's bank w.e.f. 14.8.2004, under the scheme called as Global Trust Bank Limited (Amalgamation with Oriental Bank of Commerce) Scheme, 2004, for short called as scheme. Chapter V of the scheme deals with Rights and obligations of the Employees of Transferor Bank. As per the scheme all the erstwhile employees of GTB, who were willing to opt for the scheme had been absorbed. The above said scheme does not cover with any other personnel except the employees of GTB. All other outsourcing agencies of the erstwhile GTB and their respective employees were not covered by the above said scheme. The OBC is not obligated to take any of these employees of the outsourcing agencies of Global Trust Bank. In fact the agreement entered by these outsourcing agencies with GTB had come to an end by 21.8.2002 itself. Neither the GTB nor OBC renewed any of these agreements beyond this date. One such outsourcing agency is by name M/s Global Corporate Services Pvt. Ltd., situated at 23 Paigah Colony, S.P. Road, Secunderabad-500 003. It appears that this private Company employed a number of persons who are outsourced to GTB upto 21.8.2002. They were never the employees of GTB and hence OBC has got no obligation to take them into their services. The OBC has terminated engaging the un-renowned services of the outsourcing Agency i.e., M/s Global Corporate Services vide its letter dated 30.11.2005. These categories are Runner-Staff/Office Boys with requisite qualification, and Data Entry Operator/ Telephone Operator with the requisite qualifications. A circular was displayed accordingly inviting applications. In terms of this circular, persons who were discharging the above duties, with the outsourcing agencies have applied giving educational and other particulars. The OBC has absorbed some of these employees who have met the requisite work experience of Runner Staff/Office Boys and Data entry Operators/Telephone Operators and having qualifications as per the circular dated 28.10.2005. The claimants have also applied in terms of

the above circular. Both the Petitioners in their application have stated that they are working as drivers in M/s. Global Corporate Services Pvt. Ltd.. In view of the fact that the Oriental Bank of Commerce does not contemplate regularization of drivers their candidature were rejected. Aggrieved by such order the workmen raised an industrial dispute with the Regional Labour Commissioner(Central), Hyderabad who vide his letter dated 11.10.2006 reported the failure of conciliation to the Government of India. The Government of India by impugned order has referred the matter to this Tribunal. It is stated that the above reference of the Government of India has been challenged before the Apex Court and in a catena of Supreme Court decisions which has been decided amongst other grounds. The ID Act does not contemplate any reference with regard to regularization. The question of regularization/absorption has been considered by the Hon'ble Supreme Court of India in a catena of decisions which has held that, regularization/absorption is not a method or mode of appointment and no State of instrumentalities of State can regularise persons as that would be contrary to Article 14 of the Constitution of India. The Hon'ble Court has decided that any mode of regularization is illegal then the Labour Court cannot give a contrary order and therefore, the entire exercise is a futility. It is further stated that the workmen are from an outsourcing organization. There is no employer and employee relationship between the workmen and the Respondent bank. Further it is not a case of termination or discharge. Therefore, claim of the workmen is not tenable in the eye of Law. The OBC circular is an exception and is an one time measure only. That by itself it will not give any right whatsoever to the claimants to claim a regularization as a matter of right. It is further submitted that since the case is of not termination or discharge and in absence of the same the order of no case is maintainable and hence the case deserves to be dismissed. It is further submitted that the entire reference made by the Government of India is illegal and this court can not entertain any such references.

4. As per the averments made in the pleadings of both the parties the following points are to be determined:

- I. Whether there is employer and employee relationship between the Respondent Oriental Bank of Commerce and the Petitioner workmen namely Shri J. Jayathirtha and Sri M. Karunanidhi?
- II. Whether the action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri J. Jayathirtha, Ex-Jr. Asst. Support services and Sri M. Karunanidhi, Ex-Jr. Asst. Support services is legal and justified?
- III. If not, what relief the workmen are entitled to?"

5. During the course of hearing the workmen have examined themselves as WW1 and WW2 and marked 9 documents, like Exs.W1 to W9 whereas the Respondent bank has examined one of it's Senior Manager, namely Smt. C. Sowjanya, as MW1, and also marked five documents like Exs.M1 to M5. Besides, this both the parties have also relied on some judgements which have been considered during the course of arguments.

6. I have already heard the Learned Counsels of both the sides in the matter. Perused the evidence adduced so far by the parties.

7. **Point No. I:** The Learned Counsel for the workmen contended that the workmen were working as Drivers from 1994 to 2005 in the erstwhile Global Trust Bank and later in the Oriental Bank of Commerce, Secunderabad (the Respondent). It is stated that initially the workmen worked as Drivers from 1994 to 2005 and through Global Corporate Services from 1.6.2004 to 6.5.2005 for Oriental Bank of Commerce, Secunderabad. On the other hand, the Learned Counsel for the Respondent submitted that the workmen were not employed by the erstwhile M/s. Global Trust Bank and according to them the work was done by a private agency namely, M/s. Global Corporate Services and they have not been employed directly under the Global Trust Bank. He submitted that the workmen were contract labour engaged through M/s. Global Corporate services. There is no employer and employee relationship between the workmen and the erstwhile Global Trust Bank as well as the present Respondent.

8. The case of the workmen is that they were appointed as Drivers in the Global Trust Bank and were paid monthly salary. Thereafter, they worked directly with the Respondent bank. The Learned Counsel for the workmen contended that the workmen have not only served for the Global Trust Bank but also after amalgamation with the Respondent, Oriental Bank of Commerce. The workmen were Drivers but they have never worked for the entire day. But their service were taken as and when required for the Global Trust Bank. The Learned Counsel for the Petitioner also submitted that the agreement of labour contract with the workmen and Global Corporate Services is false, bogus and mere camouflage, as the Petitioners' services were utilized by the Respondent bank through out the year against the regular vacancy, even after merger of the Global Trust Bank with the Respondent bank. On the other hand, the Learned Counsel for the workmen contended that the workmen have served more than a year continuously for which they are eligible to be absorbed as a Peon/Office Boy. But their case was not considered. The Learned Counsel for the workmen further contended that only to deprive the Petitioner workmen from their legitimate right, the Respondent has taken a stand that they have not utilized the services of the workmen and the workmen were working under a contractor with whom Global Trust Bank had made the agreement. He also contended that such type of labour exploitation should be prohibited. In support of this contention he relied on a decision of the Apex Court reported in (2011)15 decided in the case of Bhilwara Dugdh Utpadak Sahakari Samiti Limited Vs. Vinod Kumar Sharma, dead by LRs and others in Civil Appeal No.2585 of 2006 209 (S.C.) wherein their Lordships held that "Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the workmen concerned are not their employees but are the employees/workmen

of a contractor, or that they are merely daily-wage or short-term or casual employees when in fact they are doing the work of regular employees. This court cannot countenance such practices any more. Globalization/liberalization in the name of growth cannot be at the human cost of exploitation of workers.” In view of the decision cited above, in the case at hand it is observed that, the workmen had been engaged by the erstwhile Global Trust Bank as Drivers in the office maintenance work and also as office boys, but the Respondent has shown the workmen as employees of a contractor. In fact, the workmen were working for the Global Trust Bank not for the Global Corporate Services and with the knowledge of this Global Trust Bank, the workmen have worked for a long period from 1994 to 2005 and even after merger of Global Trust Bank with the Respondent bank, the workmen have continued their work for the Respondent bank. The workmen have worked for more than 240 days in a year and their work is of perennial in nature. The Petitioners were working continuously for the Global Trust Bank and have also worked for one year continuously for the Global Trust Bank and have also worked for one year continuously for the Respondent the Oriental Bank of Commerce who have played tricky in order to deprive the workmen to get the benefit of permanent job and have shown them as contract workers under a contractor. The so called contract between the Global Corporate Services and the Global Trust Bank is in fact a paper transaction. In the circumstances in the light of the judgement quoted above, it is seen that the workmen were serving their duties as Drivers of the Global Trust Bank for a long period and there after for the Respondent for a period of one year with their knowledge. Thus, it is the workmen who were the employees of the Global Trust Bank and after its amalgamation with the Respondent, the Oriental Bank of Commerce and they were not employees of any contractor. Thus, it can safely be stated that there is employer and employee relationship between the Respondent and the workmen and as such Point No.I is answered in favour of the workmen.

9. **Point No.II:** In Point No.I it has already been held that the workmen were the employee of the erstwhile Global Trust Bank from 1994 to 2005 and thereafter the employees of the present Respondent. The Learned Counsel for the workmen contended that as per the amalgamation scheme of the workers working with the Global Trust Bank were taken over by the Oriental Bank of Commerce. MW1 in his cross examination admitted that the workmen in their applications have claimed to have worked as Drivers. He has also applied for the post of a Peon in the Respondent bank. Since the workman could not fulfil the requisites for the post of a Peon as per the Head Office circular dated 28.10.2005 and he has not worked from 14.8.2004 their applications were rejected by the Respondent bank. MW1 further admitted that on 14.8.2004, the Petitioners’ applications were rejected by the Respondent bank. MW1 also admitted that on 14.8.2004, the Petitioners were working under the Global Trust Bank. The admission of MW1 clearly shows that the Petitioners have applied for the post of Peon but their case was not considered. It is admitted that some similarly placed workmen working through some other agencies were taken over by the Oriental Bank of Commerce. Even though the workmen have worked as on 14.8.2004 and have applied for the post of Peon having a qualification of X class, their case was not considered. The Respondent has nowhere specifically denied about the service of the workmen from 1994 to 14.8.2004 under the Global Trust Bank and also not under the Respondent till 6.5.2005. Only they have challenged that the workmen were working through Global Corporate Services not directly under Global Trust Bank or the Oriental Bank of Commerce. When the Respondent has not denied the service of the workmen either under the Global Trust Bank or under the Oriental Bank of Commerce, it is a clear admission that they are fully aware of the service of the workmen and knowing fully well that they have utilized the service of the workmen for a long period, they have not considered the application of the workmen to absorb them as a Peon. Admittedly, without taking into consideration the application of the workmen the Respondent has regularised the service of other workers. Even though the workmen have got all the eligible criteria, their case has not been considered and also without following the provisions of Section 25F of the Industrial Disputes Act, 1947, the workmen have been terminated, even though the workmen have worked for more than 240 days in a year and their services were perennial in nature, thus the workmen are entitled to get the protection under Section 25F of the Industrial Disputes Act, 1947. Admittedly, the Management has not followed the procedure at the time of termination of the workmen and as such the Respondent Management has violated the provisions of Section 25F of the Industrial Disputes Act, 1947. As the Management has taken over some other similarly placed workmen from Global Trust Bank and the workmen have been deprived of either getting the retrenchment benefit, as provided under Section 25F of the Industrial Disputes Act, 1947 or have not been given any job after amalgamation of the Global Trust Bank with Oriental Bank of Commerce, the termination of the workmen is illegal and not justified.

Thus, Point No.II is answered accordingly.

10. **Point No.III:** The Learned Counsel for the workmen contended that the Management has illegally terminated the workmen from the services of the Respondent, even though the workmen have applied for a job soon after amalgamation of Global Trust Bank with the Oriental Bank of Commerce but their case was not considered. Now they are jobless. Their case should be considered. On the other hand the Learned Counsel for the Respondent submitted that, the workmen have not been appointed against any clear vacancy. They served under the Global Corporate Services, a service provider/contractor. Neither Global Trust Bank nor the Respondent had given any appointment order to the workmen. Therefore, the workmen are not entitled to be regularised in service. In support of his contention he relied on the decision of Bombay High Court decided in the case of Chief Executive Officer Zilla Parishad Vs. Shaheezad Bee Sheikh Jamal 2001 EQ (Bom) 812 wherein the Hon’ble Court held that, “unless employee proves that he worked against the permanent post, he cannot be allowed back door entry in the service”. In this respect, from the facts and circumstances on record it is revealed that the Bank had utilized the service of the workmen as Drivers as well as Peons and the workmen have worked against the regular vacancy. Nowhere the Respondent has denied the service rendered by the workmen. The only stand taken by the Respondent is that the workmen were not working either under Global Trust Bank or under the Respondent and they were working through Global Corporate Services. It is seen that when the workmen have rendered their services for Global Trust Bank and the Respondent Bank from 1994 till

6.5.2005 it can not be stated that there was no vacancy either in the Global Trust Bank or under the Respondent bank. Therefore, the judgement cited by the Learned Counsel for the Respondent is not at all applicable to the present facts and circumstances of the case. The Learned Counsel for the Respondent also submitted that as the workmen were not recruited by following the recruitment process they are not entitled to be regularised in service. In support of his contention, he relied on the decision of the Apex Court reported in 2006 II CLR (261) (S.C.) decided in the case of Secretary, State of Karnataka and ors, Vs. Umadevi and others wherein their Lordships held that, "It has also to be clarified that merely because a temporary employee or casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules." In Point No.II it has already been held that the Respondent Management has violated the provisions of Sec.25F of the Industrial Disputes Act, 1947 while terminating the services of the Petitioners. Therefore, the workmen are entitled to be regularised in service. Furthermore, admittedly the Management has regularised the services of some other similarly placed employees like the workmen and has violated the provisions of Sec.25G of the Industrial Disputes Act, 1947. Therefore, the workmen are entitled to be regularised in service of the Respondent bank. The facts of the present case are quite different with that of the facts of the judgement cited above. Therefore, the ratio laid down in the judgement cited above is not applicable to the facts of the present case. It is noticed that when the Respondent bank has not considered the grievance of the workmen while considering the service of the similarly placed workmen and absorbed them into service the Respondent has violated the provisions under Sec.25 G of the Act. Admittedly the workmen have filed an application to get a job in the Respondent's office and even if they are skilled labour and have got requisite qualification to be a Driver/Peon and also studied upto X class, their case was not considered to be a Peon even in the office. Rather they were informed that their case is not considered as per the circular dated 28.10.2005. In fact, the workmen had served under the Global Trust Bank from 1994 to 2005 and after amalgamation they have also served under the Respondent till 28.9.2005. They are Drivers and literates. It can not be stated that the workmen were not having such qualification to be a Peon and they are not fit to be Peons when similarly placed workers have been considered as Peons in the office of the Respondent. In this context, the Hon'ble Court while distinguished the issue in the judgement of Secretary, State of Karnataka Vs. Umadevi & Others, by holding that, "even though the same had no relevance to the prayer made by the Petitioner. The simple question raised by the Petitioners was with reference to the decision of the Bank in absorbing Shri Devaraju as a permanent employee. The claim of the Petitioners were founded under Article 14 and 16 of the Constitution of India. Unfortunately, the aforesaid issue was not considered even in the second round of litigation". Thus, the issue laid down in the (Umadevi) (Supra) is not applicable to the facts and circumstances of the present case, as in the case on hand, some other similarly placed workmen were regularised in the service of the Respondent bank and the same opportunity was denied to the workmen under reference, so the workmen should be given the same opportunity. Therefore, the action of the Respondent Bank not absorbing the workmen in service is arbitrary and discriminative, and also the Respondent has violated all the principles of Sec.25G of the Industrial Disputes Act, 1947. Therefore, it is held that the workmen are entitled to be reinstated in service. The Learned Counsel for the workmen submitted that the workmen being Drivers and studied upto X class, have been illegally terminated from service, and after termination they have suffered a great financial loss and they are now unemployed. Therefore, they are entitled to get full back wages. On the other hand, the Learned Counsel for the Respondent submitted that the workmen have not lead any evidence to show that they have not been employed anywhere and they are jobless. He also contended that the workmen have not rendered any service to the Respondent bank and are not entitled to get any wages for the period they have not done any work. Admittedly, the workmen were Drivers/Peons whose service is very essential, admittedly, and now a days they cannot sit idly without any job. As they have not rendered any service either to the Global Trust Bank or to the Respondent bank after their termination they are not entitled to get any back wages. Thus, the workmen are only entitled to be reinstated in service either as Drivers or as Peons in the Respondent's bank.

Thus, Point No.III is answered accordingly.

Result:

The reference is allowed partly. The action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of the erstwhile Global Trust Bank and not regularising the services of Shri J. Jayathirtha, Ex-Jr. Assistant-Support Services and Shri M. Karunanidhi, Ex-Jr. Assistant-Support Services is declared illegal and not justified and the Respondent is directed to reinstate and regularize the services of the workmen as Drivers or Peons. Under the circumstances there is no order as to costs.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 26th day of October, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

WW1: Sri J. Jaya Thirtha

MW1: Smt. C. Sowjanya

Documents marked for the Petitioner

- Ex.W1: Photostat copy of Service certificate dt.11.11.2005 from Global Corporate Services P Ltd., to M. Karunanidhi
- Ex.W2: Photostat copy of Transfer Certificate of M. Karunanidhi
- Ex.W3: Photostat copy of Application for absorption dt.28.10.2005 of M. Karunanidhi
- Ex.W4: Photostat copy of application from Petitioners to RLC(C)
- Ex.W5: Photostat copy of notification dt. 13.8.2004 of amalgamation of Global Trust Bank with Oriental Bank of Commerce
- Ex.W6: Photostat copy of absorption circular dt.28.10.2005 of outsourcing agencies in the Respondent bank.
- Ex.W7: Photostat copy of four working charges of the Petitioners
- Ex.W8: Photostat copy of leave statements (3 sheets) prepared by the O.B.C. of the Petitioners.

Documents marked for the Respondent

- Ex.M1: Photostat copy of draft scheme of Global Trust Bank – Oriental Bank of Commerce amalgamation dt.26.7.2004 issued by Reserve Bank of India
- Ex.M2: Photostat copy of circular to all branch offices, dt.28.10.2005, by Respondent bank.
- Ex.M3: Photostat copy of check list for absorption of office boys/workmen as peons-enrolment.
- Ex.M4: Photostat copy of the application form of the Petitioner.
- Ex.M5: Photostat copy of lr. dt.30.11.2005.

नई दिल्ली, 2 जनवरी, 2019

का. आ. 60.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियण्टल बैंक ऑफ कामर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ सं. 37/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.01.2019 को प्राप्त हुआ था।

[सं. एल-120122/116/2006—आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 2nd January, 2019

S.O. 60.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2007) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad* as shown in the Annexure, in the industrial dispute between the management of *Oriental Bank of Commerce* and their workmen, received by the Central Government on 02.01.2019.

[No. L-12012/116/2006 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 26th day of November, 2018**INDUSTRIAL DISPUTE No. 37/2007****Between:**

Sri R. Mangtha,
H.No.8-2-310/18, Nandi Nagar,
Banjara Hills, Road No.14,
Hyderabad.

... Petitioner

AND

The General Manager (HRD),
Oriental Bank of Commerce,
S.B.U., Ashoka My Home Chambers,
1-8-303, Sardar Patel Road,
Secunderabad – 500 003.

... Respondent

Appearances:

For the Petitioner : Sri William Burra, Advocate

For the Respondent : Mrs. Kalpana Ekbote, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 12012/116/2006-IR(B.II) dated 6.7.2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri R. Mangtha, Ex- runner is legal and justified? If not, what relief the workman is entitled to?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 37/2007 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The averments made in the claim statement in brief are as follows:

The Petitioner was working as a Runner/Office Boy from 13.3.1997 to 14.8.2004 in the erstwhile Global Trust Bank and later in the Oriental Bank of Commerce, Secunderabad (the Respondent). The Petitioner joined in duty at Corporate Office on 13.3.2003 on the rolls of the erstwhile Global Trust Bank and worked upto 14.8.2004. One of the conditions for eligibility for absorption was that the persons who worked on 14.8.2004 were eligible for absorption. It is submitted that the Petitioner attended to the duties on 14.8.2004 and signed in the attendance register. The supervisors who bore grudge on the Petitioner applied whitener on his signature and marked “L” which indicates ‘leave’. Mr. Rajaiah and Anand, who were supervisors to the Petitioner bore grudge on him and hatched a trap by fabricating the attendance register. On 14.8.2004, the Petitioner was not allowed to report for duty in order to deprive the Petitioner from getting absorbed in the Respondent bank. It is further submitted that other workmen who worked with the Petitioner in similar capacity in the erstwhile Global Trust Bank are absorbed in the Oriental Bank of Commerce, but the workman’s case was not considered for absorption for the reasons best known to the Respondent. It is also submitted that the Petitioner’s service total period was more than 2 years and his services were utilized by the Respondent and in each year he worked for more than 240 days. It is further submitted that the Respondent management has entered into an agreement with the representatives of the Federation, New Delhi on 30.9.2005, according to which the erstwhile runners working through agencies shall be absorbed as Peons/Clerks in subordinate cadre, depending on the educational qualifications. Accordingly, the Petitioner submitted an application on 10.11.2005 for the post of clerk to the Respondent bank. But the Petitioner’s case was not considered for absorption even though he fulfilled all the conditions laid down for absorption in the subordinate cadre. The Petitioner also submitted that he worked for more than one year continuously i.e., more than 240 days, but the Respondent without considering his case, terminated him from service. Thus, the termination of the Petitioner from service without complying with the provisions of Sec.25F of the Industrial Disputes Act, 1947 is illegal, arbitrary, unjust, and against the provisions of Law and also against the principles of natural justice. The Petitioner further submitted that his employment through the agency is ruse and camouflage as the Petitioner’s services were utilized by the Respondent bank but only to deprive him the benefits of regular workman it is done. Hence, the service rendered by the Petitioner with the agencies is deemed to have been rendered to the Respondent bank which attracts Sec. 25F of the Industrial Disputes Act, 1947 as the contract is the sham contract. It is submitted that without complying the mandatory provisions of Sec.25F of the Industrial Disputes Act, 1947, he has been

terminated from service and the Respondent should have complied with the same before his termination. It is also submitted that no notice was given and notice pay in lieu of one month notice, was also not given to him. He was also not paid retrenchment compensation as laid down under Sec.25F of the Industrial Disputes Act, 1947 which will make the retrenchment ab-initio void. Therefore, the Petitioner workman submitted to absorb him in service with all consequential benefits. The Petitioner further submitted that the matter was referred to the labour authorities for conciliation, but lastly conciliation was failed, for which it was referred to the Ministry of Labour and Employment and thereafter it has been referred to this Tribunal for adjudication.

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

In the counter the Respondent while denying some of the averments made in the claim statement, has stated that the Respondent bank i.e., Oriental Bank of Commerce in short O.B.C. is a Government of India undertaking. The Reserve Bank of India has kept the erstwhile Global Trust Bank (G.T.B.) a private bank under an order of Moratorium on 24th July 2004, which was effective upto 23rd Oct 2004 or an earlier date if alternative arrangements are in place. During the period of Moratorium the RBI had to decide the future set up of Global Trust Bank which had been given time to arrange for infusion of capital as also to explore the options of raising required capital or voluntary merger with any domestic work. Global Trust Bank had to declare its inability to raise the required capital from domestic investors as also voluntary merger with any domestic work. Since no other options were available, the RBI had taken a recourse under Section 45 of the Banking Regulation Act, 1949 for its compulsory merger. The Respondent bank had shown interest in such a merger. Keeping in view the financial parameters, the retail network and the synergies as well as strategic advantages of the Petitioner's bank, RBI had prepared a draft scheme of amalgamation of GTB with the Petitioner's bank i.e., OBC. A draft notification was published and it was finalized and ultimately the Global Trust Bank was merged with the Petitioner's bank w.e.f. 14.8.2004, under the scheme called as Global Trust Bank Limited (Amalgamation with Oriental Bank of Commerce) Scheme, 2004, for short called as scheme. Chapter V of the scheme deals with Rights and obligations of the Employees of Transferor Bank. As per the scheme all the erstwhile employees of GTB, who were willing to opt for the scheme had been absorbed. The above said scheme does not cover with any other personnel except the employees of GTB. All other outsourcing agencies of the erstwhile GTB and their respective employees were not covered by the above said scheme. The OBC is not obligated to take any of these employees of the outsourcing agencies of Global Trust Bank. In fact the agreement entered by these outsourcing agencies with GTB had come to an end by 21.8.2002 itself. Neither the GTB nor OBC renewed any of these agreements beyond this date. One such outsourcing agency is by name M/s Global Corporate Services Pvt. Ltd., situated at 23 Paigah Colony, S.P. Road, Secunderabad-500 003. It appears that this private Company employed a number of persons who are outsourced to GTB upto 21.8.2002. They were never the employees of GTB and hence OBC has got no obligation to take them into their services. The OBC has terminated engaging the un-renowned services of the outsourcing Agency i.e., M/s Global Corporate Services vide its letter dated 30.11.2005. These categories are Runner-Staff/Office Boys with requisite qualification, and Data Entry Operator/ Telephone Operator with the requisite qualifications. A circular was displayed accordingly inviting applications. In terms of this circular, persons who were discharging the above duties, with the outsourcing agencies have applied giving their educational and other particulars. The OBC has absorbed some of these employees who have met the requisite work experience of Runner Staff/Office Boys and Data entry Operators/Telephone Operators and having qualifications as per the circular dated 28.10.2005. The claimants have also applied in terms of the above circular. Both these Respondents in their application have stated that they are working as drivers in M/s Global Corporate Services Pvt. Ltd.. In view of the fact that the Oriental Bank of Commerce does not contemplate regularization of drivers their candidature were rejected. Aggrieved by such order the workmen raised an industrial dispute with Regional Labour Commissioner(Central), Hyderabad who vide his letter dated 11.10.2006 reported the failure of conciliation to the Government of India. The Government of India by impugned order has referred the matter to this Tribunal. It is stated that the above reference of the Government of India has been challenged before the Apex Court and in a catena of Supreme Court decisions which has been decided amongst other grounds. The ID Act does not contemplate any reference with regard to regularization. The question of regularization/absorption has been considered by the Hon'ble Supreme Court of India in a catena of decisions which has held that, regularization/absorption is not a method or mode of appointment and no State of instrumentalities of State can regularise persons as that would be contrary to Article 14 of the Constitution of India. The Hon'ble Court has decided that any mode of regularization is illegal, then the Labour Court cannot give a contrary order and therefore, the entire exercise is a futility. It is further stated that the workman is from an outsourcing organization. There is no employer and employee relationship between the workman and the Respondent bank. Further it is not a case of termination or discharge. Therefore, the claim of the workman is not tenable in the eye of Law. The OBC circular is an exception and an one time measure only. That by itself it will not give any right whatsoever to the claimant to claim a regularization as a matter of right. It is further submitted that since the case is of not termination or discharge and in the absence of the same the order of the no case is maintainable and hence the case deserves to be dismissed. It is further submitted that the entire reference made by the Government of India is illegal and this court can not entertain any such references.

4. As per the averments made in the pleadings of both the parties the following points are to be determined:

- I. Whether there is employer and employee relationship between the Respondent Oriental Bank of Commerce and the Petitioner workman namely Sri R. Mangtha?
- II. Whether the action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of the erstwhile Global Trust Bank and not regularising the services of Shri R. Mangtha, Ex- runner is legal and justified?

III. If not, what relief the workman is entitled?"

5. During the course of hearing the workman has been examined himself as WW1 and marked 9 documents, like Exs.W1 to W9 whereas the Respondent bank has examined one of his Senior Manager, namely Smt. C. Sowjanya, as MW1, and also marked five documents like, Exs.M1 to M5. Besides, both the parties have also relied on some judgements of the appellate courts which have been considered during the course of arguments.

6. I have already heard the Learned Counsels of both the sides in the matter. Perused the evidence adduced so far by the parties.

7. **Point No. I:** The Learned Counsel appearing for the workman contended that the workman was working as a Runner from 13.3.2003 to 13.8.2004 in the erstwhile Global Trust Bank. It is stated that initially the workman worked as a Runner from 13.3.2003 to 13.8.2004. On the other hand, the Learned Counsel for the Respondent submitted that the workman was not employed by the erstwhile M/s. Global Trust Bank and according to him the work was done by a private agency namely, M/s. Global Corporate Services and he has not been employed directly under the Global Trust Bank. There is no employer and employee relationship between the workman and the erstwhile Global Trust Bank as well as the present Respondent.

8. The case of the workman is that he was appointed as a Runner in the Global Trust Bank and was paid monthly salary from 13.3.2003 13.8.2004. One of the conditions for eligibility for absorption was that the persons who worked on 14.8.2004 were eligible for absorption. It is contended that the Petitioner attended to the duties on 14.8.2004 and signed in the attendance register. The supervisors who had bore grudge on the Petitioner applied whitener on his signature and marked "L" which indicates 'leave'. Mr. Rajaiah and Anand, who were supervisors to the Petitioner had bore grudge on him and hatched a trap by fabricating the attendance register. On 14.8.2004, he was not allowed to report for duty in order to deprive the Petitioner from getting absorbed in the Respondent bank. But his service was taken as and when required for the Global Trust Bank. The Learned Counsel for the Petitioner also submitted that the agreement of labour contract with the workmen and Global Corporate Services is false, bogus and mere camouflage, as the Petitioner's services were utilized by the Respondent bank through out the year against the regular vacancy. On the other hand, the Learned Counsel for the workman contended that the workman has served more than a year continuously, so he is eligible to be absorbed as a Peon/Office Boy. But his case was not considered. The Learned Counsel for the workman further contended that only to deprive the Petitioner workman from his legitimate right, the Respondent has taken a stand that they have not utilized the services of the workman and the workman was working under a contractor with whom Global Trust Bank had made the agreement. He also contended that such type of labour exploitation should be prohibited. In support of this contention he relied on a decision of the Apex Court reported in (2011)15 decided in the case of Bhilwara Dugdh Utpadak Sahakari Samiti Limited Vs. Vinod Kumar Sharma, dead by LRs and others in Civil Appeal No.2585 of 2006 209 (S.C.) wherein their Lordships held that "Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the workmen concerned are not their employees but are the employees/workmen of a contractor, or that they are merely daily-wage or short-term or casual employees when in fact they are doing the work of regular employees. This court cannot countenance such practices any more. Globalization/liberalization in the name of growth cannot be at the human cost of exploitation of workers." In view of the decision cited above, in the case at hand it is observed that, the workman had been engaged by the erstwhile Global Trust Bank as a Runner in the office maintenance work and also as an office boy, but the Respondent has shown the workman as an employee of a contractor. In fact, the workman was working for the Global Trust Bank not for the Global Corporate Services and with the knowledge of this Global Trust Bank, the workman has worked for a long period from 13.3. 2003 to 13.8.2004 and even after merger of Global Trust Bank. The workman has worked for more than 240 days in a year and his work is of perennial in nature. He was working continuously for the Global Trust Bank, who has played tricky in order to deprive the workman to get the benefit of permanent job and has shown him as a contract worker under a contractor. The so called contract between the Global Corporate Services and the Global Trust Bank is in fact a paper transaction. In the circumstances in the light of the judgement cited above, it is seen that the workman was serving his duties as a Runner of the Global Trust Bank for a long period with their knowledge. Thus, it is the workman who was the employee of the Global Trust Bank and he was not the employee of any contractor. Thus, it can safely be stated that there is employer and employee relationship between the Respondent and the workman and as such Point No.I is answered in favour of the workman.

9. **Point No.II:** In Point No.I it has already been held that the workman was the employee of the erstwhile Global Trust Bank from 13.3. 2003 to 13.8.2004 and thereafter he was terminated and deprived of the employment. The Learned Counsel for the workman contended that as per the amalgamation scheme of the workers working with the Global Trust Bank were taken over by Oriental Bank of Commerce. He has also applied for the post of a Peon in the Respondent bank. Since the workman could not fulfil the requisites for the post of a Peon as per the Head Office circular dated 28.10.2005 and he has not worked from 14.8.2004 his application was rejected by the Respondent bank. MW1 in his cross examination admitted that on 14.8.2004, his application was rejected by the Respondent bank. MW1 also admitted that on 14.8.2004, the Petitioner was not on the rolls of the Global Trust Bank. The admission of MW1 clearly shows that the Petitioner has applied for the post of Peon but his case was not considered. It is admitted that some similarly placed workman working through some other agencies were taken over by the Oriental Bank of Commerce. Even though the workman has worked as on 13.8.2004 and has not been allowed to work on 14.8.2004 and has applied for the post of Peon having a qualification of B.A., his case was not considered. The Respondent has no where

specifically denied about the service of the workman from 1.3.1997 to 14.8.2004 under the Global Trust Bank and also not under the Respondent after its amalgamation. Only they have challenged that the workman was working through Global Corporate Services not directly under the Global Trust Bank or the Oriental Bank of Commerce. When the Respondent has not denied the service of the workman either under the Global Trust Bank or under the Oriental Bank of Commerce, it is a clear admission that they are fully aware of the service of the workman and knowing fully well that they have utilized the service of the workman for a long period, they have not considered the application of the workman to absorb him as a Peon. Admittedly, without taking into consideration the application of the workman the Respondent has regularised the service of other workers. Even though the workman has got all the eligible criteria, his case has not been considered and also without following the provisions of Section 25F of the Industrial Disputes Act, 1947, the workman has been terminated from service, even though the workman has worked for more than 240 days in a year and his services were perennial in nature, thus the workman is entitled to get the protection under Section 25F of the Industrial Disputes Act, 1947. Admittedly, the Management has not followed the procedure at the time of termination of the workman and as such the Respondent Management has violated the provisions of Section 25F of the Industrial Disputes Act, 1947. As the Management has taken over some other similarly placed workman from Global Trust Bank and the workman has been deprived of either getting the retrenchment benefit, as provided under Section 25F of the Industrial Disputes Act, 1947 or has not been given any job after amalgamation of the Global Trust Bank with Oriental Bank of Commerce, the termination of the workman is illegal and not justified.

Thus, Point No.II is answered accordingly.

10. **Point No.III:** The Learned Counsel for the workman contended that the Management has illegally terminated the workman from the services of the Respondent, even though the workman has applied for a job soon after amalgamation of Global Trust Bank with the Oriental Bank of Commerce but his case was not considered. Now he is jobless. His case should be considered. On the other hand the Learned Counsel for the Respondent submitted that, the workman has not been appointed against any clear vacancy. He was served under the Global Corporate Services, a service provider/contractor. Neither Global Trust Bank nor the Respondent Bank had given any appointment order to the workman. Therefore, the workman is not entitled to be regularised in service. In support of his contention he relied on the decision of Bombay High Court decided in the case of Chief Executive Officer Zilla Parishad Vs. Shaheezad Bee Sheikh Jamal 2001 EQ (Bom) 812 wherein the Hon'ble Court held that, "unless employee proves that he worked against the permanent post, he cannot be allowed back door entry in the service. In this respect, from the facts and circumstances on record it is revealed that the Bank had utilized the service of the workman as a Runner as well as a Peon and the workman has worked against the regular vacancy. No where the Respondent has denied the service rendered by the workman. The only stand taken by the Respondent is that the workman was not working either under the Global Trust Bank or under the Respondent and he was working through the Global Corporate Services. It is seen that when the workman has rendered his service for Global Trust Bank and the Respondent from 1.3.1997 till 28.9.2005 it can not be stated that there was no vacancy either in the Global Trust Bank or under the Respondent bank. Therefore, the judgement cited by the Learned Counsel for the Respondent is not applicable to the present facts and circumstances of the case. The Learned Counsel for the Respondent also submitted that as the workman was not recruited by following the recruitment process he is not entitled to be regularised in service. In support of his contention, the decision of the Apex Court reported in 2006 II CLR (261) (S.C.) decided in the case of Secretary, State of Karnataka and ors, Vs. Umadevi and others wherein their Lordships held that, "It has also to be clarified that merely because a temporary employee or casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." In Point No.II it has already been held that the Respondent Management has violated the provisions of Sec.25F of the Industrial Disputes Act, 1947 while terminating the services of the Petitioner. Therefore, the workman is entitled to be regularised in service. Furthermore, admittedly the Management has regularised the services of some other similarly placed employees like the workman and has violated the provisions of Sec.25G of the Industrial Disputes Act, 1947. Therefore, the workman is entitled to be regularised in the service of the Respondent bank. The facts of the present case is quite different to that of the facts of the judgement cited above. Therefore, the ratio laid down in the judgement cited above is not applicable to the facts of the present case. It is noticed that when the Respondent bank has not considered the grievance of the workman while considering the service of the similarly placed workman and absorbed them into service the Respondent has violated the provisions of Sec.25 G of the I.D. Act. Admittedly the workman has filed an application to get a job in the Respondent's office and even if he is a skilled labour and has got requisite qualification to be a Peon and is also a graduate, his case was not considered to be a Peon even in the office. Rather he was informed that his case is not considered as per the circular dated 28.10.2005. In fact, the workman had served under the Global Trust Bank from 1.3.1997 to 13.8.2004 and he was denied to work on 14.8.2004, even if signed in the attendance register, his absence was recorded as leave and after amalgamation he has also served under the Respondent till 28.9.2005. He is an educated person and a graduate and has worked as a Runner. It can not be stated that the workman was not having such qualification to be a Peon and as such he is not fit to be a Peon when similarly placed workers have been considered as Peon in the office of the Respondent. In this context, the Hon'ble Court while distinguished in the judgement of Secretary, State of Karnataka Vs. Umadevi & Others, by holding that, "even though the same had no relevance to the prayer made by the Petitioner. The simple question raised by the Petitioner was with reference to the decision of the Bank in absorbing Shri Devaraju as a permanent employee. The claim of the Petitioner was founded under Article 14 and 16 of the Constitution of India. Unfortunately the aforesaid issue was not considered even in the second round of litigation". Thus, the issue laid down in the (Umadevi) (Supra) is not applicable to the facts and circumstances of the present case, as in the case on hand, some other similarly placed workman were regularised in the service of the Respondent bank and the same opportunity was denied to the workman under reference, so the workman

should be given the same opportunity. Therefore, the action of the Respondent not absorbing the workman in service is arbitrary and discriminative, and also the Respondent has violated all the principles of Sec.25G of the Industrial Disputes Act, 1947. Therefore, it is held that the workman is entitled to be reinstated in service. The Learned Counsel for the workman submitted that the workman being a Runner and a graduate has been illegally terminated from service, and after termination he has suffered a great financial loss and he is now unemployed. Therefore, he is entitled to get full back wages. On the other hand, the Learned Counsel for the Respondent submitted that the workman has not lead any evidence to show that he has not been employed anywhere and he is jobless. He also contended that the workman has not rendered any service to the Respondent bank and is not entitled for any wages for the period he has not done any work. Furthermore, admittedly, the workman though worked as a Runner he is an Electrician, whose service is very essential, admittedly an electrician cannot sit idly without any job. As he has not rendered any service to the Global Trust Bank or the Respondent bank after his termination he is not entitled to any back wages. Thus, the workman is only entitled to be reinstated in service either as an Electrician or as a Peon in the Respondent's bank.

Thus, Point No.III is answered accordingly.

Result:

The reference is allowed partly. The action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri R. Mangtha, Ex- Runner is declared illegal and not justified and the Respondent is directed to reinstate and regularise the service of the workman as a Peon. Under the circumstances there is no order as to costs.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, and corrected by me on this the 26th day of November, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

WW1: Sri R. Mangtha

MW1: Smt. C. Sowjanya

Documents marked for the Petitioner

- Ex.W1: Photostat copy of Clearance certificate dt.24.11.2005 from O.B.C.
- Ex.W2: Photostat copy of Secondary School Certificate of WW1
- Ex.W3: Photostat copy of Application for absorption dt.28.10.2005 of WW1
- Ex.W4: Photostat copy of application from WW1 to RLC(C), Hyderabad
- Ex.W5: Photostat copy of notification dt. 13.8.2004 of amalgamation of Global Trust Bank with Oriental Bank of Commerce
- Ex.W6: Photostat copy of attendance sheet of WW1 from 13th to 15th August, 2004
- Ex.W7: Photostat copy of absorption circular dt.28.10.2005 of outsourcing agencies in the Respondent bank.
- Ex.W8: Photostat copy of four working charts of employees
- Ex.W9: Photostat copy of leave statements (3 sheets) prepared by the O.B.C. of the Petitioners

Documents marked for the Respondent

- Ex.M1: Photostat copy of draft scheme of Global Trust Bank – Oriental Bank of Commerce amalgamation dt.26.7.2004 issued by Reserve Bank of India
- Ex.M2: Photostat copy of circular to all branch offices, dt.28.10.2005, by Respondent bank.
- Ex.M3: Photostat copy of check list for absorption of office boys/runners as peons-enrolment.
- Ex.M4: Photostat copy of the application form of the Petitioner.
- Ex.M5: Photostat copy of Ir. dt.30.11.2005.

नई दिल्ली, 2 जनवरी, 2019

का. आ. 61.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियण्टल बैंक ऑफ कामर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ सं. 38/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 2.1.2019 को प्राप्त हुआ था।

[सं. एल-12012/112/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 2nd January, 2019

S.O. 61.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2007) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad* as shown in the Annexure, in the industrial dispute between the management of *Oriental Bank of Commerce* and their workmen, received by the Central Government on 2.1.2019.

[No. L-12012/112/2006 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

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

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 26th day of November, 2018

INDUSTRIAL DISPUTE No. 38/2007

Between:

Shri S. Ravinder and 21 others,
H.No.8-5-26, Plot No.A-70,
Hasmatpet, Old Bowenpally,
Secunderabad – 500015.

... Petitioners

AND

The General Manager (HRD),
Oriental Bank of Commerce,
S.B.U., Ashoka My Home Chambers,
1-8-303, Sardar Patel Road,
Secunderabad – 500 003.

... Respondent

Appearances:

For the Petitioner : Sri William Burra, Advocate

For the Respondent : Mrs. Kalpana Ekbote, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/112/2006-IR(B.II) dated 6.7.2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri S. Ravinder and 21 others, Ex-Jr. Assistant-Support Services is legal and justified? If not, what relief the workmen are entitled to?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 38/2007 and issued notices to both the workmen and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The averments made in the claim statement in brief are as follows:

The Claim statement is filed by S. Ravinder on his behalf and on behalf of 20 others, as one N.B. Vijaya Kumar, who had been referred as Petitioner No.19 filed a memo, dated 17.3.2009 stating that he is no more interested to prosecute the case for personal reasons. Hence, the present claim statement is filed by Sri S. Ravinder on his behalf and on behalf of 20 others and not 21 others. The Petitioners were working as Drivers since they were holding driving licenses. Though they were designated as Jr. Assistants-support services but they used to work as personal drivers to the officers, and

when the officers reach the bank, the Petitioners' services were utilized as office boys. The Petitioners later worked through Global Corporate Services for Global Trust Bank as well as Oriental Bank of Commerce, Secunderabad. It is further submitted that other workmen who worked with the Petitioners in similar capacity in the erstwhile Global Trust Bank are absorbed in the Oriental Bank of Commerce, but the workmen's case was not considered for absorption for the reasons best known to the Respondent. It is also submitted that the Petitioners' service total period was more than 11 years and their services were utilized for jobs/duties such as Drivers, Office Boys, attendars etc.. The Petitioners further submit that they studied upto 10th class and also can read, write, English, Telugu and Hindi languages by virtue of their experience and qualifications. The Petitioners' work was appreciated by the Respondent and they continued in the said bank as well as erstwhile Global Trust Bank for 11 years continuously without blemish and in each year they worked for more than 300 days. It is further submitted that the Respondent management has entered into an agreement with the representatives of the Federation, New Delhi on 30.9.2005, according to which the erstwhile workmen working through agencies shall be absorbed as Peons/Clerks in subordinate cadre, depending on their educational qualifications. Accordingly, the Petitioners submitted applications in 11/2005 for the post of Peon/clerk to the Respondent bank. But the Petitioners' cases were not considered for absorption even though they fulfilled all the conditions laid down for absorption in the clerical cadre. The Petitioners also submitted that they worked for more than one year continuously i.e., more than 240 days, but the Respondent without considering their case, terminated them from service. Thus, the termination of the Petitioners from service without complying with the provisions of Sec.25F of the Industrial Disputes Act, 1947 is illegal, arbitrary, unjust, and against the provisions of Law and also against the principles of natural justice. The Petitioners further submitted that their employment through the agency is ruse and camouflage as the Petitioners' services were utilized by the Respondent bank but only to deprive them the benefits of regular workman it is done. Hence, the service rendered by the Petitioners with the agencies is deemed to have been rendered to the Respondent bank which attracts Sec. 25F of the Industrial Disputes Act, 1947 as the contract is the sham contract. It is submitted that without complying the mandatory provisions of Sec.25F of the Industrial Disputes Act, 1947, they have been terminated and the Respondent should have complied with the same before their termination. It is also submitted that no notice was given and notice pay in lieu of one month notice, was also not given to them. The Petitioners were also not paid retrenchment compensation as laid down under Sec.25F of the Industrial Disputes Act, 1947 which will make the retrenchment ab-initio void. Therefore, the Petitioner workmen submitted to absorb them in service with all consequential benefits. The Petitioners further submitted that the matter was referred to the labour authorities for conciliation, but lastly conciliation was failed, for which it was referred to the Ministry of Labour and Employment and thereafter it has been referred to this Tribunal for adjudication.

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

In the counter the Respondent while denying some of the averments made in the claim statement, has stated that the Respondent bank i.e., Oriental Bank of Commerce in short O.B.C. is a Government of India undertaking. The Reserve Bank of India has kept the erstwhile Global Trust Bank (G.T.B.) a private bank under an order of Moratorium on 24th July 2004, which was effective upto 23rd Oct 2004 or an earlier date if alternative arrangements are in place. During the period of Moratorium the RBI had to decide the future set up of Global Trust Bank which had been given time to arrange for infusion of capital as also to explore the options of raising required capital or voluntary merger with any domestic work. Global Trust Bank had to declare its inability to raise the required capital from domestic investors as also voluntary merger with any domestic work. Since no other options were available, the RBI had taken a recourse under Section 45 of the Banking Regulation Act, 1949 for its compulsory merger. The Respondent bank had shown interest in such a merger. Keeping in view the financial parameters, the retail network and the synergies as well as strategic advantages of the Petitioner's bank, i.e., Oriental Bank of Commerce, RBI had prepared a draft scheme of amalgamation of GTB with the Petitioner's bank i.e., OBC. A draft notification was published and it was finalized and ultimately the Global Trust Bank was merged with the Petitioner's bank w.e.f. 14.8.2004, under the scheme called as Global Trust Bank Limited (Amalgamation with Oriental Bank of Commerce) Scheme, 2004, for short called as scheme. Chapter V of the scheme deals with Rights and obligations of the Employees of Transferor Bank. As per the scheme all the erstwhile employees of GTB, who were willing to opt for the scheme had been absorbed. The above said scheme does not cover with any other personnel except the employees of GTB. All other outsourcing agencies of the erstwhile GTB and their respective employees were not covered by the above said scheme. The OBC is not obligated to take any of these employees of the outsourcing agencies of Global Trust Bank. In fact the agreement entered by these outsourcing agencies with GTB had come to an end by 21.8.2002 itself. Neither the GTB nor OBC renewed any of these agreements beyond this date. One such outsourcing agency is by name M/s Global Corporate Services Pvt. Ltd., situated at 23 Paigah Colony, S.P. Road, Secunderabad-500 003. It appears that this private Company employed a number of persons who are outsourced to GTB upto 21.8.2002. They were never the employees of GTB and hence OBC has got no obligation to take them into their services. The OBC has terminated engaging the un-renowned services of the outsourcing Agency i.e., M/s Global Corporate Services vide its letter dated 30.11.2005. These categories are Runner-Staff/Office Boys with requisite qualification, and Data Entry Operator/ Telephone Operator with the requisite qualifications. A circular was displayed accordingly inviting applications. In terms of this circular, persons who were discharging the above duties, with the outsourcing agencies have applied giving their educational and other particulars. The OBC has absorbed some of these employees who have met the requisite work experience of Runner Staff/Office Boys and Data entry Operators/Telephone Operators and having qualifications as per the circular dated 28.10.2005. The claimants have also applied in terms of the above circular and in their application they have stated that they are working as drivers in M/s Global Corporate Services Pvt. Ltd.. In view of the fact that the Oriental Bank of Commerce does not contemplate regularization of drivers their candidature were rejected. Aggrieved by such order the workmen raised an industrial dispute with Regional Labour Commissioner(Central), Hyderabad who vide his letter dated 11.10.2006 reported the failure of conciliation to the Government of India. The Government of India by impugned order has

referred the matter to this Tribunal. It is stated that the above reference of the Government of India has been challenged before the Apex Court and in a catena of Supreme Court decisions which has been decided amongst other grounds. The ID Act does not contemplate any reference with regard to regularization. The question of regularization/absorption has been considered by the Hon'ble Supreme Court of India in a catena of decisions which has held that, regularization/absorption is not a method or mode of appointment and no State of instrumentalities of State can regularise persons as that would be contrary to Article 14 of the Constitution of India. The Hon'ble Court has decided that any mode of regularization is illegal then the Labour Court cannot give a contrary order and therefore, the entire exercise is a futility. It is further stated that the workmen are from an outsourcing organization. There is no employer and employee relationship between the workmen and the Respondent bank. Further it is not a case of termination or discharge. Therefore, the claim of the workmen is not tenable in the eye of Law. The OBC circular is an exception and an one time measure only. That by itself it will not give any right whatsoever to the claimants to claim regularization as a matter of right. It is further submitted that since the case is of not termination or discharge and in the absence of the same the order of the no case is maintainable and hence the case deserves to be dismissed. It is further submitted that the entire reference made by the Government of India is illegal and this court can not entertain any such references.

4. As per the averments made in the pleadings of both the parties the following points are to be determined:

- I. Whether there is employer and employee relationship between the Respondent Oriental Bank of Commerce and the Petitioners/ workmen namely Shri S. Ravinder and 20 (21) others?
- II. Whether the action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri S. Ravinder and 20(21) others, Ex-Jr. Asst. Support services is legal and justified?
- III. If not, what relief the workmen are entitled to?"

5. During the course of hearing the workmen have examined Sri P. Narsimhulu, as WW1 and marked 9 documents, like Exs.W1 to W9 whereas the Respondent bank has examined one of his Senior Manager, namely Smt. C. Sowjanya, as MW1, and also marked five documents Exs.M1 to M5. Besides, both the parties have also relied on some judgements of the appellate courts which have been considered during the course of arguments.

6. I have already heard the Learned Counsels of both the sides in the matter. Perused the evidence adduced so far by the parties.

7. **Point No. I:** The Learned Counsel for the workmen contended that the workmen were working as Drivers directly with the Respondent bank from 14.8.2004 to 30.11.2005. On the other hand, the Learned Counsel for the Respondent submitted that the workmen were not employed by the erstwhile M/s. Global Trust Bank, and according to them the work was done by a private agency namely, M/s. Global Corporate Services and they have not been employed directly under the Global Trust Bank. He submitted that the workmen were contract labour engaged through M/s. Global Corporate services. There is no employer and employee relationship between the workmen and the erstwhile Global Trust Bank as well as the present Respondent.

8. The case of the workmen is that they were appointed as Drivers in the Global Trust Bank and were paid monthly salary. Thereafter, they worked directly with the Respondent bank. The Learned Counsel for the workmen contended that the workmen have not only served for the Global Trust Bank but also after amalgamation with the Respondent, Oriental Bank of Commerce. The workmen were Drivers but they have never worked for the entire day. But their services were taken as and when required for the Global Trust Bank. The Learned Counsel for the Petitioners also submitted that the agreement of labour contract with the workmen and Global Corporate Services is false, bogus and mere camouflage, as the Petitioners' services were utilized by the Respondent bank through out the year against the regular vacancy, even after merger of the Global Trust Bank with the Respondent bank. On the other hand, the Learned Counsel for the workmen contended that the workmen have served more than a year continuously and they are eligible to be absorbed as Peons/Office Boys. But their case was not considered. The Learned Counsel for the workmen further contended that only to deprive the Petitioner workmen from their legitimate right, the Respondent has taken a stand that they have not utilized the services of the workmen and the workmen were working under a contractor with whom Global Trust Bank had made the agreement. He also contended that such type of labour exploitation should be prohibited. In support of his contention he relied on a decision of the Apex Court reported in (2011)15 decided in the case of Bhilwara Dugdh Utpadak Sahakari Samiti Limited Vs. Vinod Kumar Sharma, (dead) represented by LR and others in Civil Appeal No.2585 of 2006 209 (S.C.) wherein their Lordships held that "Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the workmen concerned are not their employees but are the employees/workmen of a contractor, or that they are merely daily-wage or short-term or casual employees when in fact they are doing the work of regular employees. This court cannot countenance such practices any more. Globalization/liberalization in the name of growth cannot be at the human cost of exploitation of workers." In view of the decision cited above, in the case at hand it is observed that, the workmen had been engaged by the erstwhile Global Trust Bank as Drivers in the office maintenance work and also as office boys, but the Respondent has shown the workmen as employees of a contractor. In fact, the workmen were working for the Global Trust Bank not for the Global Corporate Services and with the knowledge of this Global Trust Bank, the workmen have worked for a long

period and even after merger of Global Trust Bank with the Respondent bank the workmen have continued their work for the Respondent bank. The workmen have worked for more than 240 days in a year and their work is of perennial in nature. The Petitioners were working continuously for the Global Trust Bank and have also worked for one year continuously for the Global Trust Bank and have also worked for one year continuously for the Respondent, the Oriental Bank of Commerce who have played tricky in order to deprive the workmen to get the benefit of permanent job and have shown them as contract workers under a contractor. The so called contract between the Global Corporate Services and the Global Trust Bank is in fact a paper transaction. In the circumstances in the light of the judgement cited above, it is seen that the workmen were serving their duties as Drivers of the Global Trust Bank for a long period and there after for the Respondent Bank for a period of one year with their knowledge. Thus, it is the workmen who were the employees of the Global Trust Bank and after its amalgamation with the Respondent, the Oriental Bank of Commerce and they were not employees of any contractor. Thus, it can safely be stated that there is employer and employee relationship between the Respondent and the workmen and as such Point No.I is answered in favour of the workmen.

9. **Point No.II:** In Point No.I it has already been held that the workmen were the employees of the erstwhile Global Trust Bank and thereafter the employees of the present Respondent. The Learned Counsel for the workmen contended that as per the amalgamation scheme of the workers working with the Global Trust Bank were taken over by Oriental Bank of Commerce. MW1 in his cross examination admitted that the workmen in their applications have claimed to have worked as Drivers. They have also applied for the post of a Peon in the Respondent bank. Since the workmen could not fulfil the requisites for the post of a Peon as per the Head Office circular dated 28.10.2005 and they have not worked from 14.8.2004 their applications were rejected by the Respondent bank. MW1 further admitted that on 14.8.2004, The Petitioners' applications were rejected by the Respondent bank. MW1 also admitted that on 14.8.2004, the Petitioners were working under the Global Trust Bank. The admission of MW1 clearly shows that the Petitioners have applied for the post of Peon but their case was not considered. It is admitted that some similarly placed workmen working through some other agencies were taken over by the Oriental Bank of Commerce. Even though the workmen have worked as on 14.8.2004 and have applied for the post of Peon having qualification of X class, their case was not considered. The Respondent has nowhere specifically denied about the service of the workmen upto 14.8.2004 under the Global Trust Bank and also not under the Respondent till 30.11.2005. Only they have challenged that the workmen were working through Global Corporate Services not directly under Global Trust Bank or the Oriental Bank of Commerce. When the Respondent has not denied the service of the workmen either under the Global Trust Bank or under the Oriental Bank of Commerce, it is a clear admission that they are fully aware of the service of the workmen and knowing fully well that they have utilized the service of the workmen for a long period, they have not considered the application of the workmen to absorb them as Peon. Admittedly, without taking into consideration the application of the workmen the Respondent has regularised the service of other workers. Even though the workmen have got all the eligible criteria, their case has not been considered and also without following the provisions of Section 25F of the Industrial Disputes Act, 1947, the workmen have been terminated, even though the workmen have worked for more than 240 days in a year and their services were perennial in nature, thus the workmen are entitled to get the protection under Section 25F of the Industrial Disputes Act, 1947. Admittedly, the Management has not followed the procedure at the time of termination of the workmen and as such the Respondent Management has violated the provisions of Section 25F of the Industrial Disputes Act, 1947. As the Management has taken over some other similarly placed workmen from Global Trust Bank and the workmen have been deprived of either getting the retrenchment benefit, as provided under Section 25F of the Industrial Disputes Act, 1947 or have not been given any job after amalgamation of the Global Trust Bank with Oriental Bank of Commerce, the termination of the workmen is illegal and not justified.

Thus, Point No.II is answered accordingly.

10. **Point No.III:** The Learned Counsel for the workmen contended that the Management has illegally terminated the workmen from the services of the Respondent, even though the workmen have applied for a job soon after amalgamation of Global Trust Bank with the Oriental Bank of Commerce but their case was not considered. Now they are jobless. Their case should be considered sympathetically. On the other hand the Learned Counsel for the Respondent submitted that, the workmen have not been appointed against any clear vacancy. They served under the Global Corporate Services, a service provider/contractor. Neither Global Trust Bank nor the Respondent had given any appointment order to the workmen. Therefore, the workmen are not entitled to be regularised in service. In support of his contention he relied on the decision of Bombay High Court decided in the case of Chief Executive Officer Zilla Parishad Vs. Shahezaad Bee Sheikh Jamal 2001 EQ (Bom) 812 wherein the Hon'ble Court held that, "unless employee proves that he worked against the permanent post, he cannot be allowed back door entry in the service". In this respect, from the facts and circumstances on record it is revealed that the Bank had utilized the service of the workmen as Drivers as well as Peons rendered and the workmen have worked against the regular vacancy. Nowhere the Respondent has denied the service rendered by the workmen. The only stand taken by the Respondent is that the workmen were not working either under Global Trust Bank or under the Respondent and they were working through Global Corporate Services. It is seen that when the workmen have rendered their services for Global Trust Bank and the Respondent till 30.11.2005 it can not be stated that there was no vacancy either in the Global Trust Bank or under the Respondent bank. Therefore, the judgement cited by the Learned Counsel for the Respondent is not at all applicable to the present facts and circumstances of the case. The Learned Counsel for the Respondent also submitted that as the workmen were not recruited by following the recruitment process, they are not entitled to be regularised in service. In support of his contention, the decision of the Apex Court reported in 2006 II CLR (261) (S.C.) decided in the case of Secretary, State of Karnataka and ors, Vs. Umadevi and others wherein their Lordships held that, "It has also to be clarified that merely because a temporary employee or casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance,

if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.” In Point No.II it has already been held that the Respondent Management has violated the provisions of Sec.25F of the Industrial Disputes Act, 1947 while terminating the services of the Petitioners. Therefore, the workmen are entitled to be regularised in service. Furthermore, admittedly the Management has regularised the services of some other similarly placed employees like the workmen and has violated the provisions of Sec.25G of the Industrial Disputes Act, 1947. Therefore, the workmen are entitled to be regularised in the service of the Respondent bank. The facts of the present case are quite different to that of the facts of the judgement cited above. Therefore, the ratio laid down in the judgement cited above is not applicable to the facts of the present case. It is noticed that when the Respondent bank has not considered the grievance of the workmen while considering the service of the similarly placed workmen and absorbed them into service the Respondent has violated the provisions under Sec.25 G of the Act. Admittedly the workmen have filed an application to get a job in the Respondent’s office and even if they are skilled labour and have got requisite qualification to be a Driver/Peon and also studied upto X class, their case was not considered to be a Peon even in the office. Rather they were informed that their case is not considered as per the circular dated 28.10.2005. In fact, the workmen had served under the Global Trust Bank from 13.3.2003 to 13.8.2004 and after amalgamation they have also served under the Respondent till 28.9.2005. They are Drivers and literates. It can not be stated that the workmen were not having such qualification to be a Peon and as such they are not fit to be Peons when similarly placed workers have been considered as Peons in the office of the Respondent. In this context, the Hon’ble Court while distinguished in the judgement of Secretary, State of Karnataka Vs. Umadevi & Others, by holding that, “even though the same had no relevance to the prayer made by the Petitioner. The simple question raised by the Petitioners was with reference to the decision of the Bank in absorbing Shri Devaraju as a permanent employee. The claim of the Petitioners were founded under Article 14 and 16 of the Constitution of India. Unfortunately, the aforesaid issue was not considered even in the second round of litigation”. Thus, the issue laid down in the (Umadevi) (Supra) is not applicable to the facts and circumstances of the present case, as in the case on hand, some other similarly placed workmen were regularised in the service of the Respondent bank and the same opportunity was denied to the workmen under reference, so the workmen should be given the same opportunity. Therefore, the action of the Respondent not absorbing the workmen in service is arbitrary and discriminative, and also the Respondent has violated all the principles of Sec.25G of the Industrial Disputes Act, 1947. Therefore, it is held that the workmen are entitled to be reinstated in service. The Learned Counsel for the workmen submitted that the workmen being Drivers and studied upto X class, have been illegally terminated from service, and after termination they have suffered a great financial loss and they are now unemployed. Therefore, they are entitled to get full back wages. On the other hand, the Learned Counsel for the Respondent submitted that the workmen have not lead any evidence to show that they have not been employed anywhere and they are jobless. He also contended that the workmen have not rendered any service to the Respondent bank, so they are not entitled for any wages for the period they have not done any work. Furthermore, admittedly, the workmen were Drivers/Peons whose service is very essential, admittedly, they cannot sit idle without any job. As they have not rendered any service to the Global Trust Bank or the Respondent bank after their termination they are not entitled to get any back wages. Thus, the workmen are only entitled to be reinstated in service either as Drivers or as Peons in the Respondent’s bank.

Thus, Point No.III is answered accordingly.

Result:

The reference is allowed partly. The action of the management of Oriental Bank of Commerce by regularising the services of some of the workmen of erstwhile Global Trust Bank and not regularising the services of Shri JS. Ravinder and 21(20 as per claim statement) others Ex-Jr. Assistant-Support Services is declared illegal and not justified and the Respondent is directed to reinstate and regularize the services of the workmen as Drivers or Peons. Under the circumstances there is no order as to costs.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, and corrected by me on this the 26th day of November, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri P. Narsimhulu

Witnesses examined for the
Respondent

MW1: Smt. C. Sowjanya

Documents marked for the Petitioner

Ex.W1: Photostat copy of appointment letter dt.27.12.2000 from Global Corporate Services (P.) Ltd to WW1

Ex.W2: Photostat copy of service certificate dt. 11.11.2005 of WW1

Ex.W3: Photostat copy of Transfer Certificate of WW1

- Ex.W4: Photostat copy of Secondary School Certificate of WW1.
- Ex.W5: Photostat copy of details showing WW1 working with Global Trust Bank.
- Ex.W6: Photostat copy of notification dt. 13.8.2004 of amalgamation of Global Trust Bank with Oriental Bank of Commerce.
- Ex.W7: Photostat copy of absorption circular dt.28.10.2005 of outsourcing agencies in the Respondent bank.
- Ex.W8: Photostat copy of working charts issued by (4) the O.B.C. of Petitioners.
- Ex.W9: Photostat copy of leave statements (4 sheets) prepared by the O.B.C. of the Petitioners.

Documents marked for the Respondent

- Ex.M1: Photostat copy of draft scheme of Global Trust Bank – Oriental Bank of Commerce amalgamation dt.26.7.2004 issued by Reserve Bank of India.
- Ex.M2: Photostat copy of circular to all branch offices, dt.28.10.2005, by Respondent bank.
- Ex.M3: Photostat copy of Ir. dt.30.11.2005.
- Ex.M4: Photostat copy of check list for absorption of office boys/workmen as peons-enrolment P 155 and P 156.
- Ex.M5: Photostat copy of the application form of the Petitioner.

नई दिल्ली, 2 जनवरी, 2019

का. आ. 62.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आन्ध्रा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ सं. 13/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.01.2019 को प्राप्त हुआ था।

[सं. एल-39025/01/2019-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, 2nd January, 2019

S.O. 62.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Andhra Bank and their workmen, received by the Central Government on 02.01.2019.

[No. L-39025/01/2019-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

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

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 26th day of October, 2018

INDUSTRIAL DISPUTE L.C.No.13/2011

Between:

Sri L.V. Krishna Rao,
S/o L. Potharaju,
Plot No. 203, Neredmet Cross Road,
Secunderabad – 500 008.

... Petitioner

AND

1. The Asst. General Manager (P),
Andhra Bank, Head Office,
Saifabad, Hyderabad.

2. The Disciplinary Authority,
Andhra Bank, Zonal Office,
R.R. Pet, Eluru,
West Godavari District.

... Respondents

Appearances:

For the Petitioner : M/s. K.V.R. Chowdary & Bhaskara Dega, Advocates

For the Respondent : M/s. S. Vikramaditya Babu, S. Mujib Kumar & K. Narasimhulu, Advocates

AWARD

Sri L.V. Krishna Rao who worked as Clerk cum Cashier (who will be referred to as workman) has filed this petition against the Respondents, Andhra Bank seeking for declaring the order dated 21.6.2010 issued by the Respondents as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows:**

The case of the Petitioner workman is that he joined in the Respondents' Bank in the year 1980 as a clerk cum cashier and he used to perform his duties in various branches of the Respondents' bank to the full satisfaction of his superiors and during his service period he worked without any blemish. He was issued with silver jubilee award by the Respondents' bank in the year 2005 appreciating his 25 years of unblemished service with dedication to the bank. It is stated that the Respondents' bank is a Scheduled Commercial Bank continued in the public sector. It is stated that while working in a village branch of the Respondents' bank at Mukkamala, near Tanuku, West Godavari, the workman used to maintain good relation with the local people in the interest of the bank. The applicant used to give some hand loans to the villagers and also used to take hand loans from the villagers whenever there is some personal urgency, so as they have good relation with the bank officials. In one such occasion, for his personal need, the applicant obtained a hand loan of Rs.13,000/- from one Mr. Avidi Janakaiah, who sought to note the said personal transaction in his bank pass book as there was no day to day bank transactions in his bank account. The workman due to over sight, casually noted the date of giving the hand loan amount in his pass book. Later the said Mr. Avidi Janakaiah came to the applicant and obtained Rs.2000/- from the applicant out of the amount of Rs.13,000/- hand loan given to the applicant, and the same was also noted in the pass book. It is stated that the persons who want to caught hold of the applicant on wrong foot took Mr. Avidi Janakaiah to the Branch Manager, seeking the payment of Rs.11000/- though the bank has nothing to do with the said personal transaction of hand loan made between the Petitioner and Mr. Avidi Janakaiah which is purely between two private persons. But taking the said mistake in noting the transaction in the pass book of the bank due to over sight, the officials in a most vindictive manner suspended the applicant without any complaint of whatsoever nature and without any monetary loss to the bank in any manner and after completion of procedural formalities liquidated the applicant from the job and thereby imposed a capital punishment to the applicant for which a small mistake committed by him only due to over sight and without any ill motive of any nature against the bank. It is stated that the action of the Respondents in not considering the facts and imposing the capital punishment of dismissal from service by an order dated 21.6.2010 and also rejecting the appeal of the applicant in a most mechanical manner by an order dated 7.9.2010 is totally unsustainable, illegal and unjustified. Aggrieved of the same the present application is filed seeking justice from this Hon'ble Court by granting reinstatement to the applicant with all benefits including back wages. After dismissal from service the applicant is suffering both mentally and financially in these hard days and the entire family are dependent on him whose life has been drastically affected by the imposition of highly excessive punishment awarded by the Respondents. It is also stated that there is no misappropriation of bank's funds as alleged which has not been proved in any manner, it is only based on presumptions and assumptions, the bank authorities acted and get rid of the applicant by dismissing him. It is also submitted that the bank authorities conducted one enquiry without giving sufficient opportunity to the applicant and the enquiry conducted by the bank authorities is in gross violation of the principles of natural justice. It is also stated that without any fault of him the applicant has suffered a lot. Hence, the order passed by the Disciplinary Authority is liable to be set aside and he is entitled to be reinstated into service.

3. **Respondents filed counter jointly, challenging the claim of the Petitioner workman:**

In their counter both the Respondents while denying the facts averred in the application, have stated that the applicant is put to strict proof of all these allegations which are not specifically admitted by the Respondents. It is stated that while the workman was working in Mukkamala branch, he was alleged to have committed certain acts of gross misconduct by misappropriating the money of the customer and made unauthorized entries in his pass book. The irregularities have

come to light, when he was transferred to Mortha branch in West Godavari district. The applicant was served with a charge sheet bearing No.674/20/V/C-7726/798 dated 24.7.2006 and pending enquiry into the charges the workman was kept under suspension with effect from 10.7.2006. The following are the charges leveled against the applicant and the allegation of the charges were, a) the workman has acknowledged receipt of Rs.13000/- in cash, deposited by the account holder of the branch into ASB 968 on 27.1.2006 by entering relevant credit entry in the pass book of the account holder. However, he has not accounted for the same in the books of account of the bank on the said date and thus misappropriated bank's money and was in unauthorized possession of the same. b) The workman also made another entry on 17.2.2006 for Rs.2000/- (debit) in the pass book of the account holder of ASB 968 without accounting for the same in the books of the bank. Thus, the above acts committed by the workman are prejudicial to the interest of the bank and constitutes gross misconduct as per clause 5(j) of Memorandum of Settlement dated 10.4.2002 irrespective of whether his misconduct resulted in monetary loss to the bank or not. In view of the above charges the Disciplinary Authority has passed order for an enquiry. The Enquiry Officer Conducted the enquiry after giving ample opportunity to the Petitioner to participate in the enquiry. After enquiry, the charges were proved, the Petitioner workman appeared before the Disciplinary Authority at Andhra Bank, Zonal Office, Eluru for personal hearing and made his submissions on the proposed punishment of dismissal from the services of the bank. The Disciplinary Authority after consideration of the findings of the Enquiry Officer and the entire Disciplinary enquiry material brought on record and the submissions made by the workman on the findings of the Enquiry Officer taking into the gravity of the charges alleged and established against the workman in the enquiry, has imposed the penalty of "dismissal" from the service as per Clause 6(a) of the Memorandum of Settlement dated 10.4.2002 vide orders dated 21.6.2007. The workman preferred an appeal to the Appellate Authority who has confirmed the penalty of dismissal imposed on the workman by order dated 7.9.2007. The allegation of the workman that enquiry has not been conducted properly and the Disciplinary Authority as well as the Appellate Authority has not considered his case is totally false. The workman was given fair chance and opportunity to participate in the enquiry. He was accompanied by his defence representative and made his submissions. The findings of the Enquiry Officer were duly served on the workman and the workman also made submissions against the findings of the Enquiry Officer. The workman had been given opportunity to put forth his grievance, but in spite of that taking the gravity of the allegation made against the workman he was given capital punishment of dismissal from service. The claim of the workman that alleged transaction in question is only personal and private transaction and has nothing to do with the bank was not correct. The alleged transaction on 27.1.2006, whereas the letter was given by the depositor, Sri A. Janakaiah, was on 10.5.2006, which is an after thought exercise as it was an established fact that the depositor himself approached the Manager on 27.3.2006 for the money remitted by him. It is submitted that the workman made the entries in the passbook without recording the same in the books of the bank and temporarily misappropriated the amount of the customer and indulged in acts of gross misconduct and was also inclined in performing his duties. The misconduct and alterations in the passbook on the part of the employee should be dealt deterrently. It is submitted that the workman was rightly imposed with penalty of dismissal for his acts of misconduct and unauthorized entries in the passbook. Possible loss of image of the bank by the applicants dishonest conduct is much worse than the monetary loss to the bank. It is also submitted that the workman has kept silent for nearly 4 years and now has chosen to raise an LCID before this Tribunal. There was an abnormal delay of nearly 4 years and it is not properly explained by the workman. With the above averments the Respondent submitted for dismissal of the claim of the applicant with costs.

4. In view of the memo filed from the side of the workman in challenging the domestic enquiry conducted in this case is held as legal and valid vide order dated 13.4.2017.

5. I have already heard the Learned Counsels of both the parties in this matter.

6. **In view of the averments of both the sides points for determination are:**

I. Whether the action of the Respondents in dismissing the services of Sri L.V. Krishna Rao is legal and justified?

II. If not, to what relief the Petitioner is entitled for?

7. **Point No. I:** The Learned Counsel appearing on behalf of the Petitioner workman contended that the workman joined in the Respondents' Bank in the year 1980 as a clerk cum cashier and performed his duties in various branches of the Respondents' bank to the full satisfaction of his superiors, and during his service period he worked without any blemish. He was issued with silver jubilee award by the Respondents' bank in the year 2005 appreciating his 25 years of unblemished service with dedication to the bank. But unfortunately while working in a village branch of the Respondents' bank at Mukkamala, near Tanuku, West Godavari, the Petitioner workman used to maintain good relation with the local people in the interest of the bank. The applicant used to give some hand loans to the villagers and also used to take hand loans from the villagers whenever there is some personal urgency, so as they have good relation with the bank officials. In one such occasion, for his personal need, the applicant obtained a hand loan of Rs.13,000/- from one Mr. Avidi Janakaiah, who sought to note the said personal transaction in his bank pass book as there was no day to day bank transactions in his bank account. The workman due to over sight, casually noted the date of giving the hand loan amount in his pass book. Later the said Mr. Avidi Janakaiah came to the applicant and obtained Rs.2000/- from the applicant out of the amount of Rs.13,000/- hand loan given to the applicant, the same was also noted in the pass book. It is a private transaction, but some of the staffs of the bank has brought it to the notice of the Branch Manager against the applicant seeking the payment of Rs.11000/- though the bank has nothing to do with the said personal transaction of hand loan made between the Petitioner and Mr. Avidi Janakaiah which is purely in between two private persons. He contended that he took the hand loan in order to repay the same. There was no complaint from the side of any third

party. It is only based on presumptions and assumptions, for this small mistake a charge sheet was issued, an enquiry was conducted, in the enquiry the workman was found guilty and he was given capital punishment of dismissal from service by the Disciplinary Authority. Even though the workman wanted to convince the Appellate Authority but it was not taken into consideration. For the small mistake of the Petitioner/workman he has got severe punishment like dismissal from service. There was no financial loss to the bank. But inspite of that the Respondent bank has imposed such a capital punishment. He also contended that the charge has not been proved against the workman beyond reasonable doubt and it can not be said that it is a misconduct.

8. On the other hand Learned Counsel appearing on behalf of the Respondents contended that the Petitioner workman has clearly admitted at para 5 of his claim statement about taking of money from a customer and about the entry made by him in the bank passbook of the customer. The workman has not only committed such mistake which has not been done out of oversight and he being a senior employee of the Respondent's bank should not commit such type of mistake. Even though the Petitioner workman argued that there was no complaint from any other party and Sri Avidi Janakaiah submitted letter on 10.5.2006 to the effect that the transaction in question is only a personal and private transaction and nothing to do with the bank but the alleged transaction occurred on 27.1.2006 whereas the letter was given by the depositor Sri Avidi Janakaiah was on 10.5.2006. It is an after thought exercise as it was an established fact that the depositor himself approached the Manager on 27.1.2006 for the amount remitted by him. In the enquiry the workman appeared and defended his case by engaging Mr.B.V. V. Kondala Rao, the General Secretary, Andhra Bank Award Employees Union. The Enquiry Officer after analyzing the evidence brought on record held that the charges alleged against the workman (incharge temporary) established. After completion of the enquiry the copy of the report of the Enquiry Officer was duly supplied to the workman vide letter dated 30.4.2007 and an opportunity of personal hearing had been given to the workman vide letter dated 30.4.2007 and the said date was adjourned to 31.5.2007 at the request of the workman. On that date the workman appeared before the Disciplinary Authority personally and made his submissions on the proposed punishment of dismissal from service of the bank. But the Disciplinary Authority after considering the findings of the Enquiry Officer imposed the penalty of dismissal from service as per Clause 6(a) of the Memorandum of Settlement dated 10.4.2002 vide orders dated 21.6.2007. The Petitioner workman also preferred an appeal before the Appellate Authority who has also confirmed the penalty of dismissal of service imposed on the workman by his order dated 7.9.2007. It is also contended that since the Petitioner workman was involved on the allegation of misconduct, misappropriation of customers money, no lenient view is to be taken. In support of his contention he also relied on a decision of the Apex Court reported in 2006 LLR page 930 Supreme Court of India, decided in the case of N.E.K.R.T.C. vs. H. Amaresh wherein their Lordships held that loss of confidence was the primary factor and not the amount of money misappropriated, and there would be no place for generosity or misplaced sympathy. He contended that loss of amount is not a criteria. But the bank being a financial institution, the misconduct and alterations in the pass book on the part of the employee should be dealt with diligently. If lenient punishment would be given and a bank employee involved in misappropriation of money would be escaped, the litigants will not repose their confidence on public institution like banks, the confidence of the customers on the bank is the first criteria, than the loss of money to the bank is to be seen. He contended that the Respondents have rightly imposed the punishment and further contended that the domestic enquiry conducted by the Department is fair and justified and the Disciplinary Authority has rightly imposed the order of punishment. The court should not interfere on the punishment imposed by the Respondents. In support of his contention he also relied on the decision reported in 2006 LLR page 252 Supreme Court of India decided in the case of Karnataka Bank Ltd Vs. A.L. Mohan Rao, wherein their Lordships held that "It is for the Disciplinary Authority and not for the court to decide as to which punishment be imposed on a delinquent having admitted the misconduct hence the interference by the High Court was uncalled for." In this context, the Disciplinary Authority has rightly imposed the punishment. It needs no interference by the court. Lastly, he contended that in the instant case no evidence has been adduced from the side of the Petitioner to show that he is quite innocent and has not involved in misappropriation of customers' money and has not committed any misconduct. Only relying on the pleadings the court should not believe the submission of the Petitioner workman. It is the duty of the Petitioner to prove his innocence. In support of the above contention he also relied on another decision of the A.P.High Court decided in the case of General Manager, Area-I, R.G. Division, Singareni Collieries, Vs. Presiding Officer, Industrial Tribunal and another in WA No.1159/2003, wherein their Lordships held that, "But we hasten to add that if a *lis* between the workmen and the Management can be disposed of on the strength of the evidence let in by one of the parties, the Tribunal is entitled to dispose of the same on the basis of available evidence and in such an event the burden of proof may pale into insignificance. But, at any rate, the *lis* cannot be disposed of in the absence of any acceptable evidence on record." He contended that in the case at hand, there is no acceptable evidence to believe the claim of the workman. Therefore, the order of the Respondents' management needs no interference.

9. On consideration of the rival contentions of both the sides it is felt that the workman has been found guilty while handling with customers money, charge of misconduct has already been proved against him and the Disciplinary Authority has imposed the punishment of dismissal from service, no changed circumstances are available before this court to interfere in the findings of the Enquiry Officer and also on the orders passed by the Disciplinary Authority. Hence, it can safely be held that the action taken by the Respondents in this case is legal and justified.

Thus, Point No.I is answered negatively against the Petitioner workman.

10. **Point No. II:** In view of the findings given at Point No.I, the Petitioner is not entitled to get any relief.

Thus, Point No.II is answered accordingly.

ORDER

In the result, the petition is dismissed without costs.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 26th day of October, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 जनवरी, 2019

का.आ. 63.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स डाक अधीक्षक, विभाग डाकघर, गांधीग्राम, जूनागढ़. और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1153/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.12.2018 को प्राप्त हुआ था।

[सं. एल-40012/342/99-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 2nd January, 2019

S.O. 63.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1153/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Superintendent of Post Offices, Department Post Offices, Gandhigram, Junagadh and other and their workmen, received by the Central Government on 26.12.2018.

[No. L-40012/342/99- IR(DU)]

RAJENDRA JOSHI, Dy. Director

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 12th December, 2018

Reference (CGITA) No. 1153/2004

The Superintendent of Post Offices,
Department of Post, Divisional Post Office, Gandhigram,
Junagadh (Gujarat) – 362001

...First Party

V/s

Shri Maganlal D. Makwana,
Adarshnagar, Block No. 3, Behind Bus Stand,
Junagadh (Gujarat) – 362001

...Second Party

For the First Party : Shri P.M. Rami
 For the Second Party : Shri Chetan Vyas

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/342/99–IR(DU) dated 10.02.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Superintendent of Post Offices, Junagadh in terminating/discontinuing the services of Shri Maganlal D. Makwana, Extra Departmental Branch Post Master, Junagadh w.e.f. 15.3.1996 is legal and justified? If not, to what relief the workman is entitled and what directions are necessary in the matter?”

1. The reference dates back to 10.02.2000 and received on 24.02.2000 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. The second party workman Maganlal D. Makwana submitted the statement of claim stating that he had been working as Post Master in Extra Department Branch with the first party The Superintendent of Post Offices, Department of Post, Divisional Post Office, Gandhigram, Junagadh, hereinafter, referred to as first party, since 04.12.1978 rendering continuous service till his termination on 15.03.1996. His service record was clean and blotless. In the year 1993, he became seriously ill and proceeded on medical leave after making alternative arrangement. In the same year, his father also became seriously ill and passed away on 16.04.1993. He has to perform the ritual of his father at the time of his death making him absent from duty in the aforesaid period duly informing the first party. His absent was not unauthorised. He worked for more than 240 days in the last preceding 12 months i.e. from 15.03.1995 to 15.03.1996. The first party issued him a show cause notice in the year 1982 without mentioning any events in the notice. The first party also conducted an ex-parte departmental enquiry against him and ordered his termination on 15.03.1996. The said ex-parte enquiry was void ab initio. The first party did not pay him any retrenchment compensation at the time of his termination. He is ready to resume his duty in case he is reinstated. Therefore, he has prayed for reinstatement on his original post with continuity of service and full back wages along with service benefits.
3. The first party submitted the written statement Ex. 5 partly denying the averments made in the statement of claim stating that the workman had been working as Post Master at Dungari Branch of Post Office since 04.12.1978. He proceeded on leave without prior permission from 11.06.1991 to 15.05.1992 without submitting the leave applications. Therefore, the first party initiated departmental enquiry against him. The workman did not appear in the enquiry despite service of notice. Therefore, the enquiry was conducted ex-parte ordering his termination from service. It is wrong to say that he was not given opportunity of hearing in the departmental enquiry. He also remained absent from 11.06.1991 to 20.01.1992 and 04.02.1992 to 15.05.1992 without prior permission and applying for leave in breach of Rule 8 of E.D.A. Service and Implementation. He was terminated after proper enquiry. Thus the workman Maganlal D. Makwana deserves no relief.
4. On the basis of the pleadings, the following issues arise:
 - i. Whether the action of the Superintendent of Post Offices, Junagadh in terminating/discontinuing the services of Shri Maganlal D. Makwana, Extra Departmental Branch Post Master, Junagadh w.e.f. 15.3.1996 is legal and justified?
 - ii. To what relief, if any, the concerned workman is entitled?
5. **Issue No. i, and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who submitted the affidavit Ex.11 of the workman reiterating the averments made in the statement of claim. In his cross-examination he has stated that he joined on 07.08.1978 in the Post Office, Village Dungari, District Junagadh. He admitted that he remained absent from duty from 11.06.1991 to 20.01.1992 and thereafter from 04.02.1992 to 15.05.1992. He applied the leave for the aforesaid period which was duly sanctioned by the Superintendent of Post Office. He has also stated that he submitted the applications along with the medical certificates issued by Dr. A.B. Rathod, B.A.M.S. but now he does not have the copy of the said medical certificates. He has stated that he was terminated due to absence from duty but he has not submitted any documentary evidence regarding the application and medical certificates submitted to the first party while applying for the leave. He has also not submitted the death certificate of his father.
6. The first party submitted the affidavit Ex. 13 and 14 of Krunal Sharadkumar Shukla, Assistant Superintendent of Post Offices, stating that the enquiry report of the departmental proceedings initiated against the workman are not traceable in the record. It is true that he was engaged as stated by the workman but he was removed from service as per the rules of Postal Department and GDS (Conduct and Employment) Rules, 1964. He was given ample opportunity to defend himself in the department enquiry. He was terminated for the charge of unauthorised absence from 11.06.1991 to 20.01.1992 and from 04.02.1992 to 15.05.1992 as he did not inform the department for his absence and also not applied for leave. In his cross-examination, he has stated that he does not know the workman personally. He is giving the evidence on the basis of record.

7. I heard the arguments of both the parties and considered the evidence. This is a case where the workman has been removed from service for unauthorised absence of more than 9 months. He never moved the applications for production of documents relating to the disciplinary proceedings, therefore, it is not possible to see as to whether he was issued notice for appearing in the enquiry. But he has admitted that he remained absent for 9 months, therefore, for remaining absent for 9 months without prior permission or informing the department, the punishment of removal from service is adequate and needs no interference by this Tribunal.
8. Thus the Issue No. i is decided in affirmative and against the second party workman Maganlal D. Makwana in the light of the observations made in Para 7. With regards to Issue No. ii, no relief can be granted in the light of the findings of the Issue No. i.
9. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 2 जनवरी, 2019

का.आ. 64.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार जिला भारत संचार निगम लिमिटेड, मेहसाणा, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 22/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.12.2018 को प्राप्त हुआ था।

[सं. एल-40011/34/2007-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 2nd January, 2019

S.O. 64.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District Bharat Sanchar Nigam Limited, Mehsana and other and their workmen, received by the Central Government on 26.12.2018.

[No. L-40011/34/2007- IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 05th December, 2018

Reference: (CGITA) No. 22/2008

1. The General Manager,
Telecom Distt., Bharat Sanchar Nigam Limited,
Mehsana Telecom Distt., Padmavati Complex, Malgodown Road,
Mehsana (Gujarat) – 384002
2. The Sub-Divisional Officer (Phones),
Market Yard, Telecom Department, Visnagar, Mehsana (Gujarat)
3. The Divisional Engineer (Telecom),
Telecom Department, Visnagar,
Mehsana (Gujarat)

... First Parties

V/s

Shri Narayanbhai M. Chaudhari,
Khadkiwas, At and PO Khandosum, Taluka Visnagar,
Mehsana (Gujarat)

... Second Party

For the First Parties : Shri N.K. Trivedi
For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/34/2007–IR(DU) dated 24.10.2008 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of the Telecom Department (Bharat Sanchar Nigam Limited), Mehsana in terminating the services of the workman Shri Narayanbhai M. Chaudhari from 01.11.1994 is legal and justified? If not, what relief the workman is entitled?”

1. The reference dates back to 24.10.2008 and received on 11.11.2008 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. Both the parties were issued notices. In response to the notice, the second party workman Narayanbhai M. Chaudhari submitted the statement of claim Ex. 9 alleging that he had been engaged as a Casual Labour by the first party no. 2 and 3 in the month of May, 1989 where he worked continuously till the date 01.11.1994 when his services were terminated by the aforesaid first parties which was illegal and improper in the eyes of law, therefore, he raised this dispute before the Labour Commissioner. He has further alleged that while terminating his services, he was not served with any show-cause notice nor was he paid any compensation violating the principles of natural justice. He has further alleged that he was engaged performing the work of permanent nature. The wage and attendance registers were maintained by them. He has further alleged that while terminating his services, the workmen named Niranjn Vittaladas Parmar and Natubhai B. Patel who were junior to him, were retained. Thus the action of the first party was arbitrary, illegal and improper in the eye of law violating the provisions of Section 25 F, G and H of the Industrial Disputes Act. Thus he has prayed for reinstatement with back wages.
3. The first party The General Manager, Telecom Distt., Bharat Sanchar Nigam Limited, Mehsana Telecom Distt., Padmavati Complex, Malgodown Road, Mehsana, on behalf of all the first parties, submitted the written statement Ex. 10 stating that the claim made by the second party is unjust, illegal and without jurisdiction, therefore, liable to be dismissed. The averments made in the statement of claim are not true to the facts, therefore, are denied in totality. The second party workman has alleged that he was terminated on 01.11.1994 but the dispute has been raised after a long period of 14 years, therefore, not maintainable as per the decisions made in State of Maharashtra V/s Dattatraya Digamber Birajdar, 2007 LLR 1132 SC. It is wrong to say that the workman had been working continuously since May, 1989. The truth is that he worked as per detailed below:

S. No.	Month	Year	Working Days
1	May	1989	31
2	June	1989	30
3	July	1989	28

It has been further submitted that the workman left the work voluntarily without any information. The work was not of permanent nature as alleged by the workman, therefore, there was no violation of the provisions of Section 25 F, G and H of the Industrial Disputes Act as well as the principles of natural justice. It is also denied that no junior workmen were retained as alleged by the workman. Thus the reference is liable to be dismissed.

4. The workman moved an application Ex. 11 on 27.04.2011 for production of documents like copies of muster roll and wages and attendance registers by the first party to prove his case. The first party filed the reply Ex. 13 alleging that as per the circulars of department, the documents older than 5 years are always destroyed, therefore, in this case, the matter is 14 years old, such documents cannot be filed.
5. On the basis of the pleadings, the following issues arise:
 - i. Whether the action of the management of the Telecom Department (Bharat Sanchar Nigam Limited), Mehsana in terminating the services of the workman Shri Narayanbhai M. Chaudhari from 01.11.1994 is legal and justified?
 - ii. To what relief, if any, the concerned workman is entitled?
6. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who submitted his affidavit Ex. 14 on 29.04.2012 reiterating the averments made in the statement of claim and in his cross-examination, he has admitted that he does not know that the workmen Niranjn Vittaladas Parmar and Natubhai B. Patel who were junior to him, were still working or not. He reiterated that he worked for more than 240 days but no documentary proof has been filed by him and the first party denied having those documents.

7. On behalf of the first party, the first party submitted the affidavit Ex. 19 of Bharatkumar Natwarlal Patel, Assistant General Manager, BSNL, Mehsana. He with conversant of all the facts of this case has stated that, the workman was engaged as Casual Labour on daily wage basis for laying telephone cables and digging trench. A proper procedure was followed to engage him. He worked from May, 1989 to July 1989 with a detail of 31 days in May, 1989, 30 days in June, 1989 and 28 days in July, 1989. He never worked for more than 240 days in any calendar year. He is/was not entitled for the benefits which TS Niranjani Vittaladas Parmar and Natubhai B. Patel are entitled as they continued to work while this workman left the job at his own accord as stated above. It is further submitted that it is true that the dispute has been raised after more than 20 years and no explanation has been given regarding the said delay. In his cross-examination, he has stated that the details of the work, wages and attendance registers/ muster roll are not traceable as being destroyed as per the rules of the department.
8. I considered the written arguments Ex. 20 and 21 of both the parties and considered the evidence oral and documentary available on the record. The advocate for the second party workman argued that the workman worked for more than 240 days in every calendar year and was terminated on 01.11.1994 but he could not file the documents regarding the working days, attendance/ muster roll and wages as being with the first party and the first party falsely evaded to submit the documents on the basis of being destroyed as per the rules because no FIR was registered in the loss of those documents. This argument has no force because when the documents have been destroyed by the department itself as per the rules, the question of lodging FIR does not arise. Secondly, it is the fault of the second party workman that he came to raise the dispute after a lapse of 14 years without any document and shifting his burden on the first party regarding the production of documents when he himself knows that such documents would have been presumably destroyed and in such case, the workman still raised the dispute, then it is his sole duty to prove the case. Thirdly, the arguments that the junior workmen have been retained has also no force because when the workman himself has failed to prove that he did not left the job voluntarily, then he cannot claim the benefits of Section 25 H of the Industrial Disputes Act. Forth, there was no violation of Section F and G of the Industrial Disputes Act because he has failed to prove that he worked for more than 240 days.
9. Thus in the light of the aforesaid discussions, I am of the firm opinion that the workman has raised this dispute after a expiry of 14 years knowing the fact that the first party would not be able to submit the documents which were necessary to prove the workman's case that he worked for more than 240 days in any or every calendar year and he did not left the job voluntarily as the relevant documents to this effect might have been destroyed after a expiry of 5 years as per the department rules and it would have been the sole burden of the workman to prove his case in this regard. Thus he cannot take the advantage of his own fault regarding the delay in raising the dispute.
10. Thus in the light of the aforesaid discussions, this is a case of no evidence, hence, the Issue No. i is decided in affirmative and as against the second party workman. With regards to Issue No. ii, no relief can be granted as per the findings of the Issue No. i.
11. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 2 जनवरी, 2019

का.आ. 65.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स उप प्रभागीय अधिकारी (टेलीग्राफ), भारत संचार लिमिटेड, ओ/ओ जीएमटीडी, मेहसाणा दूरसंचार जिला, मेहसाणा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 588/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.12.2018 को प्राप्त हुआ था।

[सं. एल-40012/144/93-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 2nd January, 2019

S.O. 65.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 588/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Sub Divisional Officer (Telegraphs), Barat Sanchar Limited, O/o the GMTD, Mehsana Telecom District, Mehsana and other and their workmen, received by the Central Government on 26.12.2018.

[No. L-40012/144/93- IR(DU)]

RAJENDRA JOSHI, Dy. Director

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
 Ahmedabad,
 Dated 03rd December, 2018

Reference (CGITA) No. 588/2004

The Sub Divisional Officer (Telegraphs),
 Bharat Sanchar Nigam Limited,
 O/o the GMTD, Mehsana Telecom District,
 Mehsana (Gujarat)

... First Party

V/s

Shri Ramrajram S/o Shri Ramdhyamram,
 C/o M.R. Parmar, Vankar Vas,
 Near Umiya Mata Temple, Unjha,
 Mehsana (Gujarat)

...Second Party

For the First Parties : Shri N.K. Trivedi
 For the Second Party : Shri Raghuvir Mali

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/144/2003–IR(DU) dated 19.04.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Shri Ramrajram Ramdhyamram, Ex. Casual Labour for reinstatement in service with full back wages and consequential benefits by the management of General Manager, Telecom District, Mehsana Telecom District, Bharat Sanchar Nigam Limited (Telecom Department), Mehsana is proper and justified? If so, what relief the concern workman is entitled for and since when?”

1. The reference dates back to 19.04.2004 and received on 14.05.2004 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. The second party Ramrajram S/o Shri Ramdhyamram, C/o M.R. Parmar, Vankar Vas, Near Umiya Mata Temple, Unjha, Mehsana filed his statement of claim Ex. 3 on 02.04.2004 and the first party The Sub Divisional Officer (Telegraphs), Bharat Sanchar Nigam Limited, O/o the GMTD, Mehsana Telecom District, Mehsana submitted the written statement Ex. 6 on 31.01.2006.
3. The second party also moved an application Ex. 8 for production of documents on 15.10.2011 to which the first party submitted the reply Ex. 10 explaining the reason that the documents are not available with the first party. Since 15.10.2011, the second party has not been appearing and leading evidence despite giving last opportunity on 12.01.2016. Since 12.01.2016, the second party was given further dozens of opportunities to lead evidence but to no result.
4. Today on 03.12.2018, the advocate for the second party stated in writing that the workman has not been in his contact.
5. Thus it appears that the second party workman is not willing to prosecute the reference.
6. Therefore, the reference in the absence of the evidence of the second party, is disposed of with the observation as under: “the demand of Shri Ramrajram Ramdhyamram, Ex. Casual Labour for reinstatement in service with full back wages and consequential benefits by the management of General Manager, Telecom District, Mehsana Telecom District, Bharat Sanchar Nigam Limited (Telecom Department), Mehsana is not proper and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 2 जनवरी, 2019

का.आ. 66.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स जिला अभियंता टेलीफोन, भारतीय डाक और तार विभाग, जामनगर और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 602/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.12.2018 को प्राप्त हुआ था।

[सं. एल-40012/184/93-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 2nd January, 2019

S.O. 66.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 602/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the District Engineer Telephones, Indian Post and Telegraph Department, Jamnagar and other and their workmen, which were received by the Central Government on 26.12.2018.

[No. L-40012/184/93-IR(DU)]

RAJENDRA JOSHI, Dy. Director

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 12th December, 2018

Reference: (CGITA) No. 602/2004

1. The District Engineer Telephones,
Indian Post and Telegraph Department,
Jamnagar (Gujarat)
2. The Sub-Divisional Officer (Phones),
Indian Post and Telegraph Department,
Jamnagar (Gujarat)

... First Parties

V/s

The President,
Saurashtra Employees Union,
Baba Ama, 10/5, Jakran Plot,
Swami Lattiliparam Marg,
Rajkot (Gujarat) – 362001

...Second Party

For the First Parties : Shri H.R. Raval
For the Second Party : Shri Chintan Gohel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/184/93-IR(DU) dated 20.01.1995 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Sub-Divisional Officer (Phones), Jamnagar and Telecom District Engineer, Jamnagar in terminating the services of Shri M.D. Hussain is proper, legal and justified? If not, to what relief the concerned workman is entitled?”

1. The reference dates back to 20.01.1995 and received on 30.01.1995 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After serving the notice to the parties, the second party workman submitted the statement of claim Ex. 3 alleging that the workman M.D. Hussain was engaged as casual labour by the first party no. 2 The Sub-Divisional Officer (Phones), Indian Post and Telegraph Department, Jamnagar on 01.08.1985 and was allowed to work till 31.08.1989 with a detailed of his service as under:

S. No.	Worked from	To	MR No. and Book No.	Total Days worked	Worked under
1	01.08.1985	30.09.1985	1-19-8-9/5559	58	S.D.O.P (II), Jamnagar
2	01.10.1985	31.12.1985	3-4-7-8-12-13/7832	89	S.D.O.P (II), Jamnagar
3	05.02.1986	28.02.1986	24/7833	23	S.D.O.P (II), Jamnagar
4	01.03.1986	31.03.1986	13-32/51282	31	SDOT, Jamnagar
5	01.04.1986	30.06.1986	5-9/51284	90	SDOT, Jamnagar
6	01.07.1986	09.08.1986	3-74/51288	40	SDOT, Jamnagar
7	01.10.1986	30.11.1986	05-17/51290	61	SDOT, Jamnagar
8	01.12.1986	31.12.1986	25/51290	31	SDOT, Jamnagar
9	01.01.1987	31.01.1987	16/51323	31	SDOT, Jamnagar
10	01.02.1987	28.02.1987	19/51324	28	SDOT, Jamnagar
11	01.03.1987	31.03.1987	14-25/52326	31	SDOT, Jamnagar
12	01.04.1987	30.04.1987	20-21/51328	30	SDOT, Jamnagar
13	01.05.1987	31.07.1987	6-7-8-15-16-17-21-22- 26/51329	92	SDOT, Jamnagar
14	01.08.1987	30.09.1987	11-12-20-21/28398	61	SDOT, Jamnagar
15	01.10.1987	31.10.1987	5-6/7429	31	SDOT, Jamnagar
16	01.11.1987	30.11.1987	19-20/7425	30	SDOT, Jamnagar
17	01.12.1987	29.02.1988	03-11-22/7804	91	SDOT, Jamnagar
18	01.03.1988	30.04.1988	07-13/8404	61	SDOT, Jamnagar
19	01.05.1988	10.05.1988	39/17	10	SDOT, Jamnagar
20	01.07.1988	30.09.1988	10-16-21/67	92	SDOP, Jamnagar
21	01.10.1988	31.12.1988	09-17-23/64	92	SDOP, Jamnagar
22	01.01.1989	31.03.1989	03-13-23/7673	90	SDOP, Jamnagar
23	01.04.1989	30.06.1989	14-25/65	91	SDOP, Jamnagar
24	01.07.1989	31.08.1989	12-20/66	41	SDOP, Jamnagar
Total Days				1325 Days	

Zerox copies of certificates issued by the Sub-Division Officer (Phones), Jamnagar and Sub-Division Officer (Telecom), Jamnagar are enclosed herewith as marked 1. Aforesaid details reveal that the workman worked for more than 240 days in last preceding 12 months but the services were terminated orally on 31.08.1989 without any lawful reason and also without serving any notice or paying notice pay violating the provisions of Section 25 of the Industrial Disputes Act which is a precondition for terminating the service of any workman. He has also alleged that he made number of representation to the first party to consider his case for re-engagement and regularisation in the circumstances that numbers of junior and fresh workmen were inducted in the service by the first party. Having no recourse, the workman approached the Labour Enforcement Officer and Conciliation Officer, Rajkot submitting a complaint but the reconciliation failed. The Labour Enforcement Officer and Conciliation Officer forwarded the failure report to Ministry of Labour and Employment who made this reference to this Tribunal. He has further alleged that the some other workmen like him who are also junior to him, were allowed to work as casual labour on account of a judgement passed by Central Industrial Tribunal, Ahmedabad. Thus he has right to be reinstated with consequential benefits as an equity from the date on which

the junior persons were inducted. The details of the workmen who were allowed to work under the orders of Central Industrial Tribunal and Industrial Tribunal, Ahmedabad are as under:

Name	Date of appointment	Date of termination	OA No.	Decided on
G.R. Dabhi	01.10.1986	15.09.1987	674/93	17.01.1994
N.B. Baraiya	In the year 1986	15.09.1987	675/93	17.01.1994
A.B. Baraiya	In the year 1986	31.07.1987	676/93	17.01.1994
Mohmed Arif Hasanbhai Belim	01.09.1986	31.07.1987	203/91	05.05.1994

Name	Case No.	Decided on	Industrial Tribunal
Mohmed Arif Hasanbhai Belim	40/89	04.10.1990	Ahmedabad

He has further alleged that in the light of the aforesaid submissions, his termination was violative of Section 25 of the Industrial Disputes Act and also violative of Article 14 and 16 of the Constitution of India being the junior workmen re-inducted in service after his termination. Thus he has prayed for reinstatement with back wages along with cost.

3. The first parties jointly submitted the written statement Ex. 7 denying the averments made in the statement of claim Ex. 3 submitting that the second party workman has never been appointed in the service of Telecom Department, therefore, the question of termination does not arise. The employees of Department of Telecom are civil servants, therefore, cannot be called as workman defined under Section 2 (s) of the Industrial Disputes Act. Engagement of casual labour and their non-removal cannot be called as retrenchment under Section 2 (oo) of the Industrial Disputes Act. Therefore, there is no statutory obligation to serve with the notice and paying notice pay. The Telecom Department is not an 'Industry', therefore, the provisions of Industrial Disputes Act does not apply. The Telecom Department has reported a judgement JT 1996(2) SC 457 in Civil Appeal No. 3385-86/1996, the apex court held the Telecom Department as a Department of Central Government with sovereign functions. It is further submitted by the Telecom Department that for to carry out the work of casual nature, the casual labourers are engaged by the filled staff orally with a condition of 'no work no pay' basis without considering their age limits, educational qualifications etc. There is no post like Sub-Division Officers (Phones and Telegraphs) which may engage the daily casual labour. Thus the claims of the second party workman are not applicable and liable to be dismissed.
4. On the basis of the pleadings, the following issues arise:
 - i. Whether the action of the management of Sub-Divisional Officer (Phones), Jamnagar and Telecom District Engineer, Jamnagar in terminating the services of Shri M.D. Hussain is proper, legal and justified?
 - ii. To what relief, if any, the concerned workman is entitled?
5. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman M.D. Hussain who in his examination-in-chief has stated that he was engaged as daily wager since 01.08.1987 and was terminated on 31.08.1989. During this period, he worked for a period of more than 1315 days, working for more than 240 days in every calendar year. Another casual labour named R.S. Ravat who was junior to him, has been permitted to work at the time of his termination. At present, R.S. Ravat is working at Khambhalia. He has further stated that one Dabhi and other workmen were recruited after termination of his service but he was not called for reappointment. He, in his cross-examination, has stated that he was not a seasonable casual worker to be rotated from time to time. It is wrong to say that he left the job out of his own will and it is also wrong to say that the work was finished. He worked continuously from 1989 to 1992. After his termination, he tried to search the job but failed.
6. The first party submitted the affidavit of his witness Paresh R. Dave working at Assistant General Manager (Legal) at Jamnagar in the first party organisation. Shri Paresh R. Dave has stated that the second party workman was engaged as casual labour. He worked for some time. He never worked for 240 days continuously in any year or in the year proceeding to his termination. He used to work the installations of telephone cables and digging trenches which was a seasonable work. His engagement as casual labour was seized on completion of the work. He was paid wages on daily rate basis. The department has its own rules and regulations regarding the recruitment as per the guidelines of the Union Government. Therefore, he cannot be reappointed. Shri Paresh R. Dave, in his cross-examination, has stated that this workman worked as casual labour from 01.08.1985 to 31.08.1989. He worked for more than 240 days in the year 1986, 1987 and 1988 but he did not work for more

than 240 days in the year 1985 and 1989. He is not aware as to whether this workman was given any notice or notice pay. The work was of temporary nature; therefore, he was relieved as there was no work left for him. He has further stated that after the year 1989, no casual worker has been engaged for digging and laying the cables. Such work had been taken by way of outsourcing tenders from the contractors.

7. The second party workman has submitted number of documents vide list Ex. 8. The letter Ex. 8/1 reveals that the Department of Telecom issued a letter dated 22.09.1989 instructing all the divisions of Telecom Department to retrench all the casual labours in consultation with the Ministry of Labour and Employment observing the provisions of Section 25 of the Industrial Disputes Act. Another letter dated 17.12.1993 issued by the Ministry of Telecom reveals that the workmen who have worked from 31.03.1985 to 22.06.1988 for more than continuous 365 days shall be granted temporary status.
8. In the present case, the first party witness Paresh R. Dave admitted that this workman worked for more than 240 days in the year 1986, 1987 and 1988. No evidence has been adduced that this workman did not work for more than 365 days in the aforesaid period. Thus in the light of the aforesaid discussions, the workman deserves to be granted temporary status as per the letter no. 269-53/87 STN dated 22.09.1989 and letter no. 268-93 STN -II dated 17.12.1993. The second party workman has stated that he was orally terminated while the first party witness stated that he left out of his own will which has not been proved because as per the aforesaid letters, this workman was covered under the scheme given in the aforesaid letters, therefore, the first party organisation must have granted temporary status to the workman. But instead of granting automatically temporary status in the light of the aforesaid letters, the first party orally terminated him appears to be out of a malice or ill will.
9. Thus the issue no i is decided in negative against the first party organisation. As regards Issue No. ii, in the light of the findings of the Issue No. i, the workman M.D. Hussain be reinstated as an employee of temporary status as per the rules with Rs.50000/- (Rupees Fifty Thousand) as compensation.
10. The first party is directed to reinstate the second party workman M.D. Hussani as an employee of temporary status as per the letter No. 269-53/87 STN dated 22.09.1989 and letter no. 268-93 STN -II dated 17.12.1993 along with Rs. 50000/- (Rupees Fifty Thousand) as compensation within 60 days from the publication of this award.
11. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जनवरी, 2019

का.आ. 67.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स अनुविभागीय अधिकारी (फोन), टेलीफोन कार्यालय सुरेन्द्रनगर, और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1020/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.12.2018 को प्राप्त हुआ था।

[सं. एल-40011/3/95-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 3rd January, 2019

S.O. 67.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1020/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Sub Divisional Officer (Phones), Telephone Office Surendranagar and other and their workmen, received by the Central Government on 31.12.2018.

[No. L-40011/3/95- IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 20th December, 2018

Reference: (CGITA) No. 1020/2004

The Sub-Divisional Officer (Phones),
Telephone Office,
Surendranagar (Gujarat) – 363001

...First Party

V/s

1. The General Secretary,
Association of Railway and Post Employees,
4, Allap Flats, Opp. Anjali Cinema, Vasna Road,
Ahmedabad (Gujarat)
2. Shri Jayantilal Bhanjibhai Solanki,
Dr. Ambedkar Nagar, Opp. Kumbharpara,
Surendranagar (Gujarat) – 363001

...Second Parties

For the First Parties : Shri H.R. Raval
For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/3/95-IR(DU) dated 28.08.1996 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Sub-Divisional Officer/Phones, Surendranagar in terminating the services of Shri Jayantilal Bhanjibhai Solanki is legal and justified? If not, to what relief the workman is entitled?”

1. The reference dates back to 28.08.1996 and received on 09.09.1996 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. The second party workman Jayantilal Bhanjibhai Solanki, hereinafter referred to as “workman” submitted the statement of claim Ex. 2 alleging that he was engaged as casual labour by Sub-Divisional Officer (Telephones), Surendranagar on 01.01.1987 where he worked till 05.07.1988. During this period, he alleged to have done work for 240 days. The details of the working days have been enclosed with the statement of claim. He has further alleged that despite working for more than 240 days, he was removed from service by the aforesaid first party by way of oral order. He has further alleged that while retrenching him by the first party, he was not given any notice and was not paid any notice pay; therefore, retrenchment was made violating the provisions of Section 25 F & N of the Industrial Disputes Act as he has served for more than 1 year. He has further alleged that junior casual workers were retained while retrenching him, therefore, the action was also violation the provisions of Section 25 G of the Industrial Disputes Act. Thus he has prayed for reinstatement with back wages and all other benefits.
3. The first party The Sub-Divisional Officer (Phones), Telephone Office, Surendranagar, hereinafter referred to as “first party” submitted the written statement Ex. 6 denying the averments made in the statement of claim and submitted that the reference is barred by limitation and jurisdiction because the Telephone Department is not an ‘Industry’ as declared by Supreme Court in number of cases. It is further submitted that this workman worked from 19.02.1987 to 15.07.1988 and left the job out of his own accord. There is no breach of Section 25 of the Industrial Disputes Act because the casual workers junior to this workman were re-engaged under the orders of Central Administrative Tribunal, Ahmedabad. It is further submitted that this workman worked for 111 days in the year 1987 and 159 days in the year 1988, therefore, he never worked for 240 days in any preceding calendar year. He has raised the dispute after a period of 7 years. Thus this reference has no force and liable to be dismissed.
4. The workman vide list Ex. 7 submitted the documents as detailed below:

S. No.	Details of Documents	Xerox copy Annexure
1	Appendix to P&T FHB Vol. III showing periods of preservation of Accounts records	Annexure A
2	Judgement dated 02.02.1996 of Supreme Court of India in Civil Appeal No. 3385-86 of 1996, Sub Divisional Inspector of Post, Vaikam 7 Ors. Etc. V/s Theyyam Joseph etc.	Annexure B
3	CAT Earnakulam Bench judgement dated 01.05.19902 in O.A. 713 of 1991	Annexure C

4	CAT, Chandigarh Bench (Circuit at Shimla) Judgement dated 01.11.1996 in O.A. No. 1075/HP of 1996 filed by Smt. Neelam Chadha w/o Shri R.K. Chadha, Shimla-2 V/s U.O.I.	Annexure D
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5. On the basis of the pleadings, the following issues arise:

- i. Whether the action of the management of Sub-Divisional Officer/Phones, Surendranagar in terminating the services of Shri Jayantilal Bhanjibhai Solanki is legal and justified?
- ii. To what relief, if any, the concerned workman is entitled?

6. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who submitted his affidavit reiterating the averments made in the statement of claim. In his cross-examination, he has admitted that he worked from 01.01.1987 to 15.07.1988 for 270 days but he has not explained as to how many working days, he worked in the year 1987 and 1988 separately.

7. The first party examined one Mansukhbhai Kalyanbhai Parejiya by submitting his affidavit Ex. 29 wherein he has reiterated the averments made in the written statement. In his cross-examination, he has stated that he is giving evidence on the basis of record. He does not know the workman personally. This workman worked for 270 days from the year 1987 to 1988 and never worked 240 days in the preceding calendar year.

8. For the just disposal of this case, it is necessary to analyze the workman's case in the light of Section 25 F of the Industrial Disputes Act which is reproduced as under:

“Section 25 F: Conditions precedent to retrenchment of workmen: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:

- a. The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
 - b. The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
 - c. Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).”
9. In the present case, the burden of prove regarding working 240 days in preceding year was lying on the workman. He has simply stated that he worked for 270 days in the year 1987 and 1988 but he has not explained as to in which calendar year, he worked for 240 days. Therefore, he cannot claim that he cannot be retrenched. Secondly, workmen junior to him alleged to have been retained by the first party under the orders of Central Administrative Tribunal. The second party workman in such case was also under the liberty to approach the Central Administrative Tribunal. Therefore, he is not entitled for any relief. Both the issues are decided against the second party workman.
10. Thus the reference is disposed of with a direction to the second party workman Jayantilal Bhanjibhai Solanki to approach, if he deems fit, the Central Administrative Tribunal on the ground of equity.
11. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जनवरी, 2019

का.आ. 68.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स प्रभागीय अधिकारी (प्रवेश), भारत संचार निगम लिमिटेड, भरुच और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद-1 के पंचाट (संदर्भ संख्या 79/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.12.2018 को प्राप्त हुआ था।

[सं. एल-40012/27/2011-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 3rd January, 2019

S.O. 68.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Sub Divisional Officer (Admn.), Bharat Sanchar Nigam Limited, Bharuch and other and their workmen, received by the Central Government on 31.12.2018.

[No. L-40012/27/2011– IR(DU)]

RAJENDRA JOSHI, Dy. Director

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 18th December, 2018

Reference: (CGITA) No. 79/2011

1. The Sub-Divisional Officer (Admn.),
Bharat Sanchar Nigam Limited,
Jambusar Road, Bharuch (Gujarat)
2. The General Manager,
Bharat Sanchar Nigam Limited, Bharuch Telecom Division,
Opposite Bharati Talkies, Bharuch (Gujarat)
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Gujarat Circle, Telephone Bhawan, C.G. Road, Navrangpura,
Ahmedabad (Gujarat)

...First Party in Reference (CGITA) Numbers: 76/2011,
77/2011, 78/2011, 79/2011, 80/2011 & 81/2011

V/s

1. Shri Lakshmansingh D. Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat) ...Second Party in Reference (CGITA) No. 76/2011
2. Shri Bharathbhai Mathurbhai Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat) ...Second Party in Reference (CGITA) No. 77/2011
3. Shri Kantilal Udesingh Patel,
At Village Dabhai, Post Sampa, Village Shehera,
Panchmahal (Gujarat) ...Second Party in Reference (CGITA) No. 78/2011
4. Shri Amarsinh Sanabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat) ...Second Party in Reference (CGITA) No. 79/2011
5. Shri Gemabhai Abhaysinh Baria,
At Post Khojilwasham, Nr. High School,
Village Khojilwash, Tal. Shehera,
Panchmahal (Gujarat) ...Second Party in Reference (CGITA) No. 80/2011
6. Shri Bhamarsinh Dhirabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat) ...Second Party in Reference (CGITA) No. 81/2011

For the First Party in All References :

For the Second Party in All References :

AWARD**Reference (CGITA) No. 76/2011**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/24/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Lakshmansingh D. Patel Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 77/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/25/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bharatbhai Mathurbhai Patel, Temporary Regular Mazdoor in that Department w.e.f. 16.10.2008 is legal and justified? What relief the concerned workman Shri Bharatbhai Mathurbhai Patel is entitled to?”

Reference (CGITA) No. 78/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/26/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Kantilal Udesingh Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 79/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/27/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Amarsingh Sanabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 80/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/28/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Gemabhai Abhaysinh Baria, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 81/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/29/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bhamarsingh Dhirabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

1. The Reference (CGITA) No.76/2011 dates back to 12.10.2011, Reference (CGITA) Numbers 77/2011 dates back to 13.10.2011, Reference (CGITA) No.78/2011 dates back to 12.10.2011, Reference (CGITA) No.79/2011 dates back to 13.10.2011, Reference (CGITA) No.80/2011 dates back to 12.10.2011 and Reference (CGITA)

- No.81/2011 dates back to 13.10.2011. All the Reference (CGITA) Numbers 76/2011 to 81/2011 received on 03.11.2011 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. All these aforesaid references were consolidated on moving an application Ex. 17 by the first party Bharat Sanchar Nigam Limited, Bharuch, hereinafter, referred to as "first party" on 28.09.2017 praying that all the aforesaid references are of similar nature involving the same facts and party, grounds and reliefs and the second party workmen involving into the dispute have no objection, therefore, the application Ex. 17 was allowed on 28.09.2017 and the Reference (CGITA) No. 76/2011 was made leading case.
 3. The brief facts of the case are that the workmen Lakshmansingh D. Patel, Bharatbhai Mathurbhai Patel, Kantilal Udesingh Patel, Amarsinh Sanabhai Patel, Gemabhai Abhaysinh Baria and Bhamarsinh Dhirabhai Patel were engaged as casual labours in the year 1985 to 1987 by Sub-Divisional Officer and General Manger, Post and Telegraph Department, Bharuch. All these workmen after serving for 6 years in the department after screening their period of work, experience and muster roll, were granted temporary status on the post of temporary regular mazdoor in the year 1991. It was the policy of the Post and Telegraph Department that the temporary mazdoors who completes 3 years of service are normally regularised as regular mazdoors, therefore, all the employees who were temporary mazdoors in the year 1991, were made regular mazdoors in the year 1994. It has been further alleged that all the aforesaid workmen were appointed in the year 1985 to 1987. Some workmen named Vinod B. Patel, Roopsinh Javarbhai, Somabhai Heerabhai, Bhikhabhai Bhadarbhai, Tadvai Raisinhbhai and others who worked along with the second party workmen appointed during the year 1985 to 1987 worked under K.M. Baria and M.I. Patel, Officers of the first party, were made regular mazdoor by the aforesaid officers. However, the applicants/workmen involved in the aforesaid references were deprived of this benefit by the same officers and the first party for the reasons best known to them. It has been further alleged that in the year 2000, the Telecommunication Department was converted into a Public Limited Company named Bharat Sanchar Nigam Limited giving the option to all the officers and employees to be absorbed into Bharat Sanchar Nigam Limited or to continue with the Department of Telecommunication, Government of India.
 4. It has been further alleged that the second party workmen involving into the aforesaid references were made temporary regular mazdoors vide letter no. E-19/90-91 dated 22.03.1991 issued by Sub-Divisional Officer, Department of Telecommunication, GIDC, Ankleshwar. However, to the shock and surprise of all the workmen, after a delay of more than 10 years, notices dated 13.08.2001, 27.01.2004 and 13.04.2004 were issued to them by K.M. Baria and M.I. Patel stating that in the scrutiny, their certificates regarding their work, experience and appointment were found fake and false. All the workmen replied to the notices stating that the copies of the muster roll and certificates were issued to them by the aforesaid named authorities and such notices have thus no basis because no such enquiry was ordered into such allegations and they were not given any opportunity to defend such charges. It has been further alleged that they were also not asked to give options of absorption in Bharat Sanchar Nigam Limited or to continue with Department of Telecommunication. Thus all these notices were issued without any authority and they were deprived of the benefit of making them regular mazdoors.
 5. Aggrieved by the action of the aforesaid authorities, the workmen approached the Central Administrative Tribunal by filing O.A. No. 315/2006 praying for their regularisation in the service which was challenged by the first party on the ground of jurisdiction of the Central Administrative Tribunal. The Tribunal disposed of the petitions on the ground of having no jurisdiction into the matter. Again aggrieved by the order of the Central Administrative Tribunal, all the applicants/workmen approached the Hon'ble High Court of Gujarat by filing Special Civil Application No. 12965 of 2007, wherein the Hon'ble High Court set aside the order of Central Administrative Tribunal and remitted the matter back to Central Administrative Tribunal for adjudicating the validity of grant of temporary status and to decide the question of regularisation of all the petitioners/workmen.
 6. To the shock and surprise of the applicants/workmen on issuing notice dated 30.06.2006 to the first party, the first party issued a communication dated 16.06.2008 terminating the services of all the workmen despite granting protection by the Hon'ble High Court till the adjudication of the matter by the Central Administrative Tribunal. Thereafter, the workmen were constrained to prefer Misc. Civil Application No. 486 of 2008 before Central Administrative Tribunal for granting relief with a prayer to set aside the order dated 16.06.2008. The Central Administrative Tribunal without examining the issues on the basis of merit dismissed the O.A. No. 315 of 2006 and Misc. Civil Application No. 486 of 2008 on technical ground that Bharat Sanchar Nigam Limited has not been made as a necessary party, therefore, relief cannot be granted.
 7. In the aforesaid circumstances, the workmen again approached the High Court of Gujarat by Special Civil Application No. 7118 of 2010 challenging the order of Central Administrative Tribunal dated 16.10.2008 but the High Court of Gujarat pleased to permit the applicants/workmen to withdraw the petition with a liberty to withdraw and approach the appropriate forum under the Industrial Disputes Act. Therefore, they raised the dispute before the Assistant Labour Commissioner (Central), Baroda who referred the dispute to the Ministry of Labour and Employment, Government of India for referring the matter to this Tribunal for adjudication. The applicants/workmen narrating the aforesaid story submitted the statement of claim into the Tribunal praying that they be reinstated, regularised from the date of termination quashing and setting aside the notice and order 30.06.2006 and 16.06.2008 respectively with cost and any other relief as the Tribunal deems fit.

8. The first party Bharat Sanchar Nigam Limited submitted written statement Ex.9 partly admitting the facts of the case submitted that these workmen were never issued slips regarding work experience by the officers K. M. Baria and M. I. Patel at any relevant time and slips/certificates submitted by them are fake and false. Therefore, they are not entitled to be regularised.
9. On the basis of the pleadings, the following issues arise:
 - i. Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Amarsinh Sanabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified?
 - ii. To what relief, if any, the concerned workman is entitled?
10. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman Amarsinh Sanabhai Patel who submitted his affidavit Ex. 8 reiterating the averments made in the statement of claim and he has not said anything contrary in his cross-examination. He has also submitted the relevant orders and certificates of work and experience in the evidence. The first party did not prefer to examine any of his officers to rebut the evidence of the workman.
11. Both the parties submitted the written arguments. I considered the evidence oral and documentary of the workman as well as the documentary evidence of the first party.
12. It appears to be a admitted fact that the workman joined as a casual labour in the first party in the year 1985 who was made temporary regular mazdoor in the year 1991 and was deprived of the benefit of regular mazdoor as appears by the order dated 16.10.2008 issued by the officers of the first party but the first party has not led any oral evidence to rebut the aforesaid evidence.
13. Moreover, the first party has alleged that the work and experience certificates submitted by the workman were fake but the first party neither conducted the enquiry into the matter as the written statement is silent on this point and secondly, the first party appears to have not lodged any FIR into the Police Station for initiating the criminal action against this workman including all other workmen. Thus the first party has not come with the clean hands and that makes me to believe that the first party has been concealing the truth. Therefore, I come to the conclusion that the first party is concealing the truth and the second party workman deserves the relief sought by him partly because as stated, he joined as casual labour in the year 1985. Now he must have been more than 50 years old, therefore, it would be appropriate, instead of reinstating and regularising him, a lump-sum compensation of Rs.100000/- (Rupees One Lac) may be awarded to him.
14. Thus in the light of the aforesaid reasons, the reference is allowed with a direction to the first party to pay Rs.100000/- (Rupees One Lac) as lump-sum compensation to all the aforesaid workmen including this workman named Amarsinh Sanabhai Patel. Both the issues are decided accordingly.
15. The finding of issues and the award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जनवरी, 2019

का.आ. 69.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स उप प्रभागीय अधिकारी (प्रवेश), भारत संचार निगम लिमिटेड, भरुच 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, अहमदाबाद के पंचाट (संदर्भ संख्या 78/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.12.2018 को प्राप्त हुआ था।

[सं. एल-40012/26/2011-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 3rd January, 2019

S.O. 69.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 78/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Sub Divisional Officer (Admn.), Bharat Sanchar Nigam Limited, Bharuch and other and their workmen, received by the Central Government on 31.12.2018.

[No. L-40012/26/2011- IR(DU)]

RAJENDRA JOSHI, Dy. Director

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 18th December, 2018

Reference: (CGITA) No. 78/2011

1. The Sub-Divisional Officer (Admn.),
Bharat Sanchar Nigam Limited,
Jambusar Road, Bharuch (Gujarat)
2. The General Manager,
Bharat Sanchar Nigam Limited, Bharuch Telecom Division,
Opposite Bharati Talkies, Bharuch (Gujarat)
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Gujarat Circle, Telephone Bhawan, C.G. Road, Navrangpura,
Ahmedabad (Gujarat)

...First Party in Reference (CGITA) Numbers:
76/2011, 77/2011, 78/2011, 79/2011,
80/2011 & 81/2011

V/s

1. Shri Lakshmansingh D. Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
2. Shri Bharathbhai Mathurbhai Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
3. Shri Kantilal Udesingh Patel,
At Village Dabhai, Post Sampa, Village Shehera,
Panchmahal (Gujarat)
4. Shri Amarsinh Sanabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat)
5. Shri Gemabhai Abhaysinh Baria,
At Post Khojlwasham, Nr. High School,
Village Khojlwash, Tal. Shehera,
Panchmahal (Gujarat)
6. Shri Bhamarsinh Dhirabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat)

...Second Party in Reference (CGITA)
No. 76/2011

...Second Party in Reference (CGITA)
No. 77/2011

...Second Party in Reference (CGITA)
No. 78/2011

...Second Party in Reference (CGITA)
No. 79/2011

...Second Party in Reference (CGITA)
No. 80/2011

...Second Party in Reference (CGITA)
No. 81/2011

For the First Party in All References :

For the Second Party in All References :

AWARD**Reference (CGITA) No. 76/2011**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/24/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Lakshmansingh D. Patel Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 77/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/25/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bharatbhai Mathurbhai Patel, Temporary Regular Mazdoor in that Department w.e.f. 16.10.2008 is legal and justified? What relief the concerned workman Shri Bharatbhai Mathurbhai Patel is entitled to?”

Reference (CGITA) No. 78/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/26/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Kantilal Udesingh Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 79/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/27/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Amarsingh Sanabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 80/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/28/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Gemabhai Abhaysinh Baria, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 81/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/29/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bhamarsingh Dhirabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

1. The Reference (CGITA) No.76/2011 dates back to 12.10.2011, Reference (CGITA) Numbers 77/2011 dates back to 13.10.2011, Reference (CGITA) No.78/2011 dates back to 12.10.2011, Reference (CGITA) No.79/2011 dates back to 13.10.2011, Reference (CGITA) No.80/2011 dates back to 12.10.2011 and Reference (CGITA) No.81/2011 dates back to 13.10.2011. All the Reference (CGITA) Numbers 76/2011 to 81/2011 received on 03.11.2011 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. All these aforesaid references were consolidated on moving an application Ex. 17 by the first party Bharat Sanchar Nigam Limited, Bharuch, hereinafter, referred to as “first party” on 28.09.2017 praying that all the aforesaid references are of similar nature involving the same facts and party, grounds and reliefs and the second party workmen involving into the dispute have no objection, therefore, the application Ex. 17 was allowed on 28.09.2017 and the Reference (CGITA) No. 76/2011 was made leading case.
3. The brief facts of the case are that the workmen Lakshmansingh D. Patel, Bharatbhai Mathurbhai Patel, Kantilal Udesingh Patel, Amarsinh Sanabhai Patel, Gemabhai Abhaysinh Baria and Bhamarsinh Dhirabhai Patel were engaged as casual labours in the year 1985 to 1987 by Sub-Divisional Officer and General Manager, Post and Telegraph Department, Bharuch. All these workmen after serving for 6 years in the department after screening their period of work, experience and muster roll, were granted temporary status on the post of temporary regular mazdoor in the year 1991. It was the policy of the Post and Telegraph Department that the temporary mazdoors who completes 3 years of service are normally regularised as regular mazdoors, therefore, all the employees who were temporary mazdoors in the year 1991, were made regular mazdoors in the year 1994. It has been further alleged that all the aforesaid workmen were appointed in the year 1985 to 1987. Some workmen named Vinod B. Patel, Roopsinh Javarbhai, Somabhai Heerabhai, Bhikhabhai Bhadarbhai, Tadvai Raisinhbhai and others who worked along with the second party workmen appointed during the year 1985 to 1987 worked under K.M. Baria and M.I. Patel, Officers of the first party, were made regular mazdoor by the aforesaid officers. However, the applicants/workmen involved in the aforesaid references were deprived of this benefit by the same officers and the first party for the reasons best known to them. It has been further alleged that in the year 2000, the Telecommunication Department was converted into a Public Limited Company named Bharat Sanchar Nigam Limited giving the option to all the officers and employees to be absorbed into Bharat Sanchar Nigam Limited or to continue with the Department of Telecommunication, Government of India.
4. It has been further alleged that the second party workmen involving into the aforesaid references were made temporary regular mazdoors vide letter no. E-19/90-91 dated 22.03.1991 issued by Sub-Divisional Officer, Department of Telecommunication, GIDC, Ankleshwar. However, to the shock and surprise of all the workmen, after a delay of more than 10 years, notices dated 13.08.2001, 27.01.2004 and 13.04.2004 were issued to them by K.M. Baria and M.I. Patel stating that in the scrutiny, their certificates regarding their work, experience and appointment were found fake and false. All the workmen replied to the notices stating that the copies of the muster roll and certificates were issued to them by the aforesaid named authorities and such notices have thus no basis because no such enquiry was ordered into such allegations and they were not given any opportunity to defend such charges. It has been further alleged that they were also not asked to give options of absorption in Bharat Sanchar Nigam Limited or to continue with Department of Telecommunication. Thus all these notices were issued without any authority and they were deprived of the benefit of making them regular mazdoors.
5. Aggrieved by the action of the aforesaid authorities, the workmen approached the Central Administrative Tribunal by filing O.A. No. 315/2006 praying for their regularisation in the service which was challenged by the first party on the ground of jurisdiction of the Central Administrative Tribunal. The Tribunal disposed of the petitions on the ground of having no jurisdiction into the matter. Again aggrieved by the order of the Central Administrative Tribunal, all the applicants/workmen approached the Hon’ble High Court of Gujarat by filing Special Civil Application No. 12965 of 2007, wherein the Hon’ble High Court set aside the order of Central Administrative Tribunal and remitted the matter back to Central Administrative Tribunal for adjudicating the validity of grant of temporary status and to decide the question of regularisation of all the petitioners/workmen.
6. To the shock and surprise of the applicants/workmen on issuing notice dated 30.06.2006 to the first party, the first party issued a communication dated 16.06.2008 terminating the services of all the workmen despite granting protection by the Hon’ble High Court till the adjudication of the matter by the Central Administrative Tribunal. Thereafter, the workmen were constrained to prefer Misc. Civil Application No. 486 of 2008 before Central Administrative Tribunal for granting relief with a prayer to set aside the order dated 16.06.2008. The Central Administrative Tribunal without examining the issues on the basis of merit dismissed the O.A. No. 315 of 2006 and Misc. Civil Application No. 486 of 2008 on technical ground that Bharat Sanchar Nigam Limited has not been made as a necessary party, therefore, relief cannot be granted.
7. In the aforesaid circumstances, the workmen again approached the High Court of Gujarat by Special Civil Application No. 7118 of 2010 challenging the order of Central Administrative Tribunal dated 16.10.2008 but the High Court of Gujarat pleased to permit the applicants/workmen to withdraw the petition with a liberty to withdraw and approach the appropriate forum under the Industrial Disputes Act. Therefore, they raised the dispute before the Assistant Labour Commissioner (Central), Baroda who referred the dispute to the Ministry of Labour and Employment, Government of India for referring the matter to this Tribunal for adjudication. The applicants/workmen narrating the aforesaid story submitted the statement of claim into the Tribunal praying that they be reinstated, regularised from the date of termination quashing and setting aside the notice and order 30.06.2006 and 16.06.2008 respectively with cost and any other relief as the Tribunal deems fit.

8. The first party Bharat Sanchar Nigam Limited submitted written statement Ex.9 partly admitting the facts of the case submitted that these workmen were never issued slips regarding work experience by the officers K. M. Baria and M. I. Patel at any relevant time and slips/certificates submitted by them are fake and false. Therefore, they are not entitled to be regularised.
9. On the basis of the pleadings, the following issues arise:
 - i. Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Kantilal Udesingh Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified?
 - ii. To what relief, if any, the concerned workman is entitled?
10. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman Kantilal Udesingh Patel who submitted his affidavit Ex. 8 reiterating the averments made in the statement of claim and he has not said anything contrary in his cross-examination. He has also submitted the relevant orders and certificates of work and experience in the evidence. The first party did not prefer to examine any of his officers to rebut the evidence of the workman.
11. Both the parties submitted the written arguments. I considered the evidence oral and documentary of the workman as well as the documentary evidence of the first party.
12. It appears to be a admitted fact that the workman joined as a casual labour in the first party in the year 1985 who was made temporary regular mazdoor in the year 1991 and was deprived of the benefit of regular mazdoor as appears by the order dated 16.10.2008 issued by the officers of the first party but the first party has not led any oral evidence to rebut the aforesaid evidence.
13. Moreover, the first party has alleged that the work and experience certificates submitted by the workman were fake but the first party neither conducted the enquiry into the matter as the written statement is silent on this point and secondly, the first party appears to have not lodged any FIR into the Police Station for initiating the criminal action against this workman including all other workmen. Thus the first party has not come with the clean hands and that makes me to believe that the first party has been concealing the truth. Therefore, I come to the conclusion that the first party is concealing the truth and the second party workman deserves the relief sought by him partly because as stated, he joined as casual labour in the year 1985. Now he must have been more than 50 years old, therefore, it would be appropriate, instead of reinstating and regularising him, a lump-sum compensation of Rs.100000/- (Rupees One Lac) may be awarded to him.
14. Thus in the light of the aforesaid reasons, the reference is allowed with a direction to the first party to pay Rs.100000/- (Rupees One Lac) as lump-sum compensation to all the aforesaid workmen including this workman named Kantilal Udesingh Patel. Both the issues are decided accordingly.
15. The finding of issues and the award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जनवरी, 2019

का.आ. 70.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स उप प्रभागीय अधिकारी (प्रवेश), भारत संचार निगम लिमिटेड, भरुच और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 80/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.12.2018 को प्राप्त हुआ था।

[सं. एल-40012/28/2011-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 3rd January, 2019

S.O. 70.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Sub Divisional Officer (Admn.), Bharat Sanchar Nigam Limited, Bharuch and other and their workmen, received by the Central Government on 31.12.2018.

[No. L-40012/28/2011- IR(DU)]

RAJENDRA JOSHI, Dy. Director

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 18th December, 2018

Reference: (CGITA) No. 80/2011

1. The Sub-Divisional Officer (Admn.),
Bharat Sanchar Nigam Limited,
Jambusar Road, Bharuch (Gujarat)
2. The General Manager,
Bharat Sanchar Nigam Limited, Bharuch Telecom Division,
Opposite Bharati Talkies, Bharuch (Gujarat)
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Gujarat Circle, Telephone Bhawan, C.G. Road, Navrangpura,
Ahmedabad (Gujarat)

...First Party in Reference (CGITA) Numbers:
76/2011, 77/2011, 78/2011, 79/2011, 80/2011
& 81/2011

V/s

1. Shri Lakshmansingh D. Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
2. Shri Bharathbhai Mathurbhai Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
3. Shri Kantilal Udesingh Patel,
At Village Dabhai, Post Sampa, Village Shehera,
Panchmahal (Gujarat)
4. Shri Amarsinh Sanabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat)
5. Shri Gemabhai Abhaysinh Baria,
At Post Khojlwasham, Nr. High School,
Village Khojlwash, Tal. Shehera,
Panchmahal (Gujarat)
6. Shri Bhamarsinh Dhirabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat)

...Second Party in Reference (CGITA)
No. 76/2011

...Second Party in Reference (CGITA)
No. 77/2011

...Second Party in Reference (CGITA)
No. 78/2011

...Second Party in Reference (CGITA)
No. 79/2011

...Second Party in Reference (CGITA)
No. 80/2011

...Second Party in Reference (CGITA)
No. 81/2011

For the First Party in All References :
For the Second Party in All References :

AWARD**Reference (CGITA) No. 76/2011**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/24/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Lakshmansingh D. Patel Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 77/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/25/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bharatbhai Mathurbhai Patel, Temporary Regular Mazdoor in that Department w.e.f. 16.10.2008 is legal and justified? What relief the concerned workman Shri Bharatbhai Mathurbhai Patel is entitled to?”

Reference (CGITA) No. 78/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/26/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Kantilal Udesingh Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 79/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/27/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Amarsinh Sanabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 80/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/28/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Gemabhai Abhaysinh Baria, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 81/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/29/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bhamarsinh Dhirabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

1. The Reference (CGITA) No.76/2011 dates back to 12.10.2011, Reference (CGITA) Numbers 77/2011 dates back to 13.10.2011, Reference (CGITA) No.78/2011 dates back to 12.10.2011, Reference (CGITA) No.79/2011 dates back to 13.10.2011, Reference (CGITA) No.80/2011 dates back to 12.10.2011 and Reference (CGITA)

- No.81/2011 dates back to 13.10.2011. All the Reference (CGITA) Numbers 76/2011 to 81/2011 received on 03.11.2011 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. All these aforesaid references were consolidated on moving an application Ex. 17 by the first party Bharat Sanchar Nigam Limited, Bharuch, hereinafter, referred to as "first party" on 28.09.2017 praying that all the aforesaid references are of similar nature involving the same facts and party, grounds and reliefs and the second party workmen involving into the dispute have no objection, therefore, the application Ex. 17 was allowed on 28.09.2017 and the Reference (CGITA) No. 76/2011 was made leading case.
 3. The brief facts of the case are that the workmen Lakshmansingh D. Patel, Bharatbhai Mathurbhai Patel, Kantilal Udesingh Patel, Amarsinh Sanabhai Patel, Gemabhai Abhaysinh Baria and Bhamarsinh Dhirabhai Patel were engaged as casual labours in the year 1985 to 1987 by Sub-Divisional Officer and General Manger, Post and Telegraph Department, Bharuch. All these workmen after serving for 6 years in the department after screening their period of work, experience and muster roll, were granted temporary status on the post of temporary regular mazdoor in the year 1991. It was the policy of the Post and Telegraph Department that the temporary mazdoors who completes 3 years of service are normally regularised as regular mazdoors, therefore, all the employees who were temporary mazdoors in the year 1991, were made regular mazdoors in the year 1994. It has been further alleged that all the aforesaid workmen were appointed in the year 1985 to 1987. Some workmen named Vinod B. Patel, Roopsinh Javarbhai, Somabhai Heerabhai, Bhikhabhai Bhadarbhai, Tadvai Raisinhbhai and others who worked along with the second party workmen appointed during the year 1985 to 1987 worked under K.M. Baria and M.I. Patel, Officers of the first party, were made regular mazdoor by the aforesaid officers. However, the applicants/workmen involved in the aforesaid references were deprived of this benefit by the same officers and the first party for the reasons best known to them. It has been further alleged that in the year 2000, the Telecommunication Department was converted into a Public Limited Company named Bharat Sanchar Nigam Limited giving the option to all the officers and employees to be absorbed into Bharat Sanchar Nigam Limited or to continue with the Department of Telecommunication, Government of India.
 4. It has been further alleged that the second party workmen involving into the aforesaid references were made temporary regular mazdoors vide letter no. E-19/90-91 dated 22.03.1991 issued by Sub-Divisional Officer, Department of Telecommunication, GIDC, Ankleshwar. However, to the shock and surprise of all the workmen, after a delay of more than 10 years, notices dated 13.08.2001, 27.01.2004 and 13.04.2004 were issued to them by K.M. Baria and M.I. Patel stating that in the scrutiny, their certificates regarding their work, experience and appointment were found fake and false. All the workmen replied to the notices stating that the copies of the muster roll and certificates were issued to them by the aforesaid named authorities and such notices have thus no basis because no such enquiry was ordered into such allegations and they were not given any opportunity to defend such charges. It has been further alleged that they were also not asked to give options of absorption in Bharat Sanchar Nigam Limited or to continue with Department of Telecommunication. Thus all these notices were issued without any authority and they were deprived of the benefit of making them regular mazdoors.
 5. Aggrieved by the action of the aforesaid authorities, the workmen approached the Central Administrative Tribunal by filing O.A. No. 315/2006 praying for their regularisation in the service which was challenged by the first party on the ground of jurisdiction of the Central Administrative Tribunal. The Tribunal disposed of the petitions on the ground of having no jurisdiction into the matter. Again aggrieved by the order of the Central Administrative Tribunal, all the applicants/workmen approached the Hon'ble High Court of Gujarat by filing Special Civil Application No. 12965 of 2007, wherein the Hon'ble High Court set aside the order of Central Administrative Tribunal and remitted the matter back to Central Administrative Tribunal for adjudicating the validity of grant of temporary status and to decide the question of regularisation of all the petitioners/workmen.
 6. To the shock and surprise of the applicants/workmen on issuing notice dated 30.06.2006 to the first party, the first party issued a communication dated 16.06.2008 terminating the services of all the workmen despite granting protection by the Hon'ble High Court till the adjudication of the matter by the Central Administrative Tribunal. Thereafter, the workmen were constrained to prefer Misc. Civil Application No. 486 of 2008 before Central Administrative Tribunal for granting relief with a prayer to set aside the order dated 16.06.2008. The Central Administrative Tribunal without examining the issues on the basis of merit dismissed the O.A. No. 315 of 2006 and Misc. Civil Application No. 486 of 2008 on technical ground that Bharat Sanchar Nigam Limited has not been made as a necessary party, therefore, relief cannot be granted.
 7. In the aforesaid circumstances, the workmen again approached the High Court of Gujarat by Special Civil Application No. 7118 of 2010 challenging the order of Central Administrative Tribunal dated 16.10.2008 but the High Court of Gujarat pleased to permit the applicants/workmen to withdraw the petition with a liberty to withdraw and approach the appropriate forum under the Industrial Disputes Act. Therefore, they raised the dispute before the Assistant Labour Commissioner (Central), Baroda who referred the dispute to the Ministry of Labour and Employment, Government of India for referring the matter to this Tribunal for adjudication. The applicants/workmen narrating the aforesaid story submitted the statement of claim into the Tribunal praying that they be reinstated, regularised from the date of termination quashing and setting aside the notice and order 30.06.2006 and 16.06.2008 respectively with cost and any other relief as the Tribunal deems fit.

8. The first party Bharat Sanchar Nigam Limited submitted written statement Ex.9 partly admitting the facts of the case submitted that these workmen were never issued slips regarding work experience by the officers K. M. Baria and M. I. Patel at any relevant time and slips/certificates submitted by them are fake and false. Therefore, they are not entitled to be regularised.
9. On the basis of the pleadings, the following issues arise:
 - iii. Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Gemabhai Abhaysinh Baria, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified?
 - iv. To what relief, if any, the concerned workman is entitled?
10. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman Gemabhai Abhaysinh Baria who submitted his affidavit Ex. 8 reiterating the averments made in the statement of claim and he has not said anything contrary in his cross-examination. He has also submitted the relevant orders and certificates of work and experience in the evidence. The first party did not prefer to examine any of his officers to rebut the evidence of the workman.
11. Both the parties submitted the written arguments. I considered the evidence oral and documentary of the workman as well as the documentary evidence of the first party.
12. It appears to be a admitted fact that the workman joined as a casual labour in the first party in the year 1985 who was made temporary regular mazdoor in the year 1991 and was deprived of the benefit of regular mazdoor as appears by the order dated 16.10.2008 issued by the officers of the first party but the first party has not led any oral evidence to rebut the aforesaid evidence.
13. Moreover, the first party has alleged that the work and experience certificates submitted by the workman were fake but the first party neither conducted the enquiry into the matter as the written statement is silent on this point and secondly, the first party appears to have not lodged any FIR into the Police Station for initiating the criminal action against this workman including all other workmen. Thus the first party has not come with the clean hands and that makes me to believe that the first party has been concealing the truth. Therefore, I come to the conclusion that the first party is concealing the truth and the second party workman deserves the relief sought by him partly because as stated, he joined as casual labour in the year 1985. Now he must have been more than 50 years old, therefore, it would be appropriate, instead of reinstating and regularising him, a lump-sum compensation of Rs.100000/- (Rupees One Lac) may be awarded to him.
14. Thus in the light of the aforesaid reasons, the reference is allowed with a direction to the first party to pay Rs.100000/- (Rupees One Lac) as lump-sum compensation to all the aforesaid workmen including this workman named Gemabhai Abhaysinh Baria. Both the issues are decided accordingly.
15. The finding of issues and the award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जनवरी, 2019

का.आ. 71.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स उप प्रभागीय अधिकारी (प्रवेश), भारत संचार निगम लिमिटेड, भरुच 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, अहमदाबाद पंचाट (संदर्भ संख्या 77/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.12.2018 को प्राप्त हुए थे।

[सं. एल-40012/25/2011-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 3rd January, 2019

S.O. 71.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Sub Divisional Officer (Admn.), Bharat Sanchar Nigam Limited, Bharuch and other and their workmen, received by the Central Government on 31.12.2018.

[No. L-40012/25/2011– IR(DU)]

RAJENDRA JOSHI, Dy. Director

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 18th December, 2018

Reference: (CGITA) No. 77/2011

1. The Sub-Divisional Officer (Admn.),
Bharat Sanchar Nigam Limited,
Jambusar Road, Bharuch (Gujarat)
2. The General Manager,
Bharat Sanchar Nigam Limited, Bharuch Telecom Division,
Opposite Bharati Talkies, Bharuch (Gujarat)
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Gujarat Circle, Telephone Bhawan, C.G. Road, Navrangpura,
Ahmedabad (Gujarat)

...First Party in Reference (CGITA) Numbers:
76/2011, 77/2011, 78/2011, 79/2011, 80/2011
& 81/2011

V/s

1. Shri Lakshmansingh D. Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
2. Shri Bharathbhai Mathurbhai Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
3. Shri Kantilal Udesingh Patel,
At Village Dabhai, Post Sampa, Village Shehera,
Panchmahal (Gujarat)
4. Shri Amarsinh Sanabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat)
5. Shri Gemabhai Abhaysinh Baria,
At Post Khojlwasham, Nr. High School,
Village Khojlwash, Tal. Shehera,
Panchmahal (Gujarat)
6. Shri Bhamarsinh Dhirabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat)

...Second Party in Reference (CGITA)
No. 76/2011

...Second Party in Reference (CGITA)
No. 77/2011

...Second Party in Reference (CGITA)
No. 78/2011

...Second Party in Reference (CGITA)
No. 79/2011

...Second Party in Reference (CGITA)
No. 80/2011

...Second Party in Reference (CGITA)
No. 81/2011

For the First Party in All References :

For the Second Party in All References :

AWARD**Reference (CGITA) No. 76/2011**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/24/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Lakshmansingh D. Patel Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 77/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/25/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bharatbhai Mathurbhai Patel, Temporary Regular Mazdoor in that Department w.e.f. 16.10.2008 is legal and justified? What relief the concerned workman Shri Bharatbhai Mathurbhai Patel is entitled to?”

Reference (CGITA) No. 78/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/26/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Kantilal Udesingh Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 79/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/27/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Amarsinh Sanabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 80/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/28/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Gemabhai Abhaysinh Baria, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 81/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/29/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bhamarsinh Dhirabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

1. The Reference (CGITA) No.76/2011 dates back to 12.10.2011, Reference (CGITA) Numbers 77/2011 dates back to 13.10.2011, Reference (CGITA) No.78/2011 dates back to 12.10.2011, Reference (CGITA) No.79/2011

- dates back to 13.10.2011, Reference (CGITA) No.80/2011 dates back to 12.10.2011 and Reference (CGITA) No.81/2011 dates back to 13.10.2011. All the Reference (CGITA) Numbers 76/2011 to 81/2011 received on 03.11.2011 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. All these aforesaid references were consolidated on moving an application Ex. 17 by the first party Bharat Sanchar Nigam Limited, Bharuch, hereinafter, referred to as "first party" on 28.09.2017 praying that all the aforesaid references are of similar nature involving the same facts and party, grounds and reliefs and the second party workmen involving into the dispute have no objection, therefore, the application Ex. 17 was allowed on 28.09.2017 and the Reference (CGITA) No. 76/2011 was made leading case.
 3. The brief facts of the case are that the workmen Lakshmingsingh D. Patel, Bharatbhai Mathurbhai Patel, Kantilal Udesingh Patel, Amarsinh Sanabhai Patel, Gemabhai Abhaysinh Baria and Bhamarsinh Dhirabhai Patel were engaged as casual labours in the year 1985 to 1987 by Sub-Divisional Officer and General Manager, Post and Telegraph Department, Bharuch. All these workmen after serving for 6 years in the department after screening their period of work, experience and muster roll, were granted temporary status on the post of temporary regular mazdoor in the year 1991. It was the policy of the Post and Telegraph Department that the temporary mazdoors who completes 3 years of service are normally regularised as regular mazdoors, therefore, all the employees who were temporary mazdoors in the year 1991, were made regular mazdoors in the year 1994. It has been further alleged that all the aforesaid workmen were appointed in the year 1985 to 1987. Some workmen named Vinod B. Patel, Roopsinh Javarbhai, Somabhai Heerabhai, Bhikhabhai Bhadarbhai, Tadvai Raisinhbhai and others who worked along with the second party workmen appointed during the year 1985 to 1987 worked under K.M. Baria and M.I. Patel, Officers of the first party, were made regular mazdoor by the aforesaid officers. However, the applicants/workmen involved in the aforesaid references were deprived of this benefit by the same officers and the first party for the reasons best known to them. It has been further alleged that in the year 2000, the Telecommunication Department was converted into a Public Limited Company named Bharat Sanchar Nigam Limited giving the option to all the officers and employees to be absorbed into Bharat Sanchar Nigam Limited or to continue with the Department of Telecommunication, Government of India.
 4. It has been further alleged that the second party workmen involving into the aforesaid references were made temporary regular mazdoors vide letter no. E-19/90-91 dated 22.03.1991 issued by Sub-Divisional Officer, Department of Telecommunication, GIDC, Ankleshwar. However, to the shock and surprise of all the workmen, after a delay of more than 10 years, notices dated 13.08.2001, 27.01.2004 and 13.04.2004 were issued to them by K.M. Baria and M.I. Patel stating that in the scrutiny, their certificates regarding their work, experience and appointment were found fake and false. All the workmen replied to the notices stating that the copies of the muster roll and certificates were issued to them by the aforesaid named authorities and such notices have thus no basis because no such enquiry was ordered into such allegations and they were not given any opportunity to defend such charges. It has been further alleged that they were also not asked to give options of absorption in Bharat Sanchar Nigam Limited or to continue with Department of Telecommunication. Thus all these notices were issued without any authority and they were deprived of the benefit of making them regular mazdoors.
 5. Aggrieved by the action of the aforesaid authorities, the workmen approached the Central Administrative Tribunal by filing O.A. No. 315/2006 praying for their regularisation in the service which was challenged by the first party on the ground of jurisdiction of the Central Administrative Tribunal. The Tribunal disposed of the petitions on the ground of having no jurisdiction into the matter. Again aggrieved by the order of the Central Administrative Tribunal, all the applicants/workmen approached the Hon'ble High Court of Gujarat by filing Special Civil Application No. 12965 of 2007, wherein the Hon'ble High Court set aside the order of Central Administrative Tribunal and remitted the matter back to Central Administrative Tribunal for adjudicating the validity of grant of temporary status and to decide the question of regularisation of all the petitioners/workmen.
 6. To the shock and surprise of the applicants/workmen on issuing notice dated 30.06.2006 to the first party, the first party issued a communication dated 16.06.2008 terminating the services of all the workmen despite granting protection by the Hon'ble High Court till the adjudication of the matter by the Central Administrative Tribunal. Thereafter, the workmen were constrained to prefer Misc. Civil Application No. 486 of 2008 before Central Administrative Tribunal for granting relief with a prayer to set aside the order dated 16.06.2008. The Central Administrative Tribunal without examining the issues on the basis of merit dismissed the O.A. No. 315 of 2006 and Misc. Civil Application No. 486 of 2008 on technical ground that Bharat Sanchar Nigam Limited has not been made as a necessary party, therefore, relief cannot be granted.
 7. In the aforesaid circumstances, the workmen again approached the High Court of Gujarat by Special Civil Application No. 7118 of 2010 challenging the order of Central Administrative Tribunal dated 16.10.2008 but the High Court of Gujarat pleased to permit the applicants/workmen to withdraw the petition with a liberty to withdraw and approach the appropriate forum under the Industrial Disputes Act. Therefore, they raised the dispute before the Assistant Labour Commissioner (Central), Baroda who referred the dispute to the Ministry of Labour and Employment, Government of India for referring the matter to this Tribunal for adjudication. The applicants/workmen narrating the aforesaid story submitted the statement of claim into the Tribunal praying that they be reinstated, regularised from the date of termination quashing and setting aside the notice and order 30.06.2006 and 16.06.2008 respectively with cost and any other relief as the Tribunal deems fit.

8. The first party Bharat Sanchar Nigam Limited submitted written statement Ex.9 partly admitting the facts of the case submitted that these workmen were never issued slips regarding work experience by the officers K. M. Baria and M. I. Patel at any relevant time and slips/certificates submitted by them are fake and false. Therefore, they are not entitled to be regularised.
9. On the basis of the pleadings, the following issues arise:
 - i. Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bharatbhai Mathurbhai Patel, Temporary Regular Mazdoor in that Department w.e.f. 16.10.2008 is legal and justified?
 - ii. To what relief, if any, the concerned workman is entitled?
10. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman Bharatbhai Mathurbhai Patel who submitted his affidavit Ex. 8 reiterating the averments made in the statement of claim and he has not said anything contrary in his cross-examination. He has also submitted the relevant orders and certificates of work and experience in the evidence. The first party did not prefer to examine any of his officers to rebut the evidence of the workman.
11. Both the parties submitted the written arguments. I considered the evidence oral and documentary of the workman as well as the documentary evidence of the first party.
12. It appears to be a admitted fact that the workman joined as a casual labour in the first party in the year 1985 who was made temporary regular mazdoor in the year 1991 and was deprived of the benefit of regular mazdoor as appears by the order dated 16.10.2008 issued by the officers of the first party but the first party has not led any oral evidence to rebut the aforesaid evidence.
13. Moreover, the first party has alleged that the work and experience certificates submitted by the workman were fake but the first party neither conducted the enquiry into the matter as the written statement is silent on this point and secondly, the first party appears to have not lodged any FIR into the Police Station for initiating the criminal action against this workman including all other workmen. Thus the first party has not come with the clean hands and that makes me to believe that the first party has been concealing the truth. Therefore, I come to the conclusion that the first party is concealing the truth and the second party workman deserves the relief sought by him partly because as stated, he joined as casual labour in the year 1985. Now he must have been more than 50 years old, therefore, it would be appropriate, instead of reinstating and regularising him, a lump-sum compensation of Rs.100000/- (Rupees One Lac) may be awarded to him.
14. Thus in the light of the aforesaid reasons, the reference is allowed with a direction to the first party to pay Rs.100000/- (Rupees One Lac) as lump-sum compensation to all the aforesaid workmen including this workman named Bharatbhai Mathurbhai Patel. Both the issues are decided accordingly.
15. The finding of issues and the award is passed accordingly.

P.K. Chaturvedi, Presiding Officer

नई दिल्ली, 3 जनवरी, 2019

का.आ. 72.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स उप प्रभागीय अधिकारी (प्रवेश), भारत संचार निगम लिमिटेड, भरुच 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, अहमदाबाद-1 पंचाट (संदर्भ संख्या 76/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.12.2018 को प्राप्त हुए थे।

[सं. एल-40012/24/2011-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 3rd January, 2019

S.O. 72.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 76/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Sub Divisional Officer (Admn.), Bharat Sanchar Nigam Limited, Bharuch and other and their workmen, received by the Central Government on 31.12.2018.

[No. L-40012/24/2011– IR(DU)]

RAJENDRA JOSHI, Dy. Director

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 18th December, 2018

Reference: (CGITA) No. 76/2011

1. The Sub-Divisional Officer (Admn.),
Bharat Sanchar Nigam Limited,
Jambusar Road, Bharuch (Gujarat)
2. The General Manager,
Bharat Sanchar Nigam Limited, Bharuch Telecom Division,
Opposite Bharati Talkies, Bharuch (Gujarat)
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Gujarat Circle, Telephone Bhawan, C.G. Road, Navrangpura,
Ahmedabad (Gujarat)

...First Party in Reference (CGITA) Numbers:
76/2011, 77/2011, 78/2011, 79/2011, 80/2011
& 81/2011

V/s

1. Shri Lakshmansingh D. Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
2. Shri Bharathbhai Mathurbhai Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
3. Shri Kantilal Udesingh Patel,
At Village Dabhai, Post Sampa, Village Shehera,
Panchmahal (Gujarat)
4. Shri Amarsinh Sanabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat)
5. Shri Gemabhai Abhaysinh Baria,
At Post Khojilwasham, Nr. High School,
Village Khojilwash, Tal. Shehera,
Panchmahal (Gujarat)
6. Shri Bhamarsinh Dhirabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat)

...Second Party in Reference (CGITA)
No. 76/2011

...Second Party in Reference (CGITA)
No. 77/2011

...Second Party in Reference (CGITA)
No. 78/2011

...Second Party in Reference (CGITA)
No. 79/2011

...Second Party in Reference (CGITA)
No. 80/2011

...Second Party in Reference (CGITA)
No. 81/2011

For the First Party in All References :

For the Second Party in All References :

AWARD**Reference (CGITA) No. 76/2011**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/24/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Lakshmansingh D. Patel Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 77/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/25/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

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Reference (CGITA) No. 78/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/26/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

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Reference (CGITA) No. 80/2011

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The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/29/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bhamarsinh Dhirabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

1. The Reference (CGITA) No.76/2011 dates back to 12.10.2011, Reference (CGITA) Numbers 77/2011 dates back to 13.10.2011, Reference (CGITA) No.78/2011 dates back to 12.10.2011, Reference (CGITA) No.79/2011 dates back to 13.10.2011, Reference (CGITA) No.80/2011 dates back to 12.10.2011 and Reference (CGITA) No.81/2011 dates back to 13.10.2011. All the Reference (CGITA) Numbers 76/2011 to 81/2011 received on 03.11.2011 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. All these aforesaid references were consolidated on moving an application Ex. 17 by the first party Bharat Sanchar Nigam Limited, Bharuch, hereinafter, referred to as “first party” on 28.09.2017 praying that all the aforesaid references are of similar nature involving the same facts and party, grounds and reliefs and the second party workmen involving into the dispute have no objection, therefore, the application Ex. 17 was allowed on 28.09.2017 and the Reference (CGITA) No. 76/2011 was made leading case.
3. The brief facts of the case are that the workmen Lakshmansingh D. Patel, Bharatbhai Mathurbhai Patel, Kantilal Udesingh Patel, Amarsinh Sanabhai Patel, Gemabhai Abhaysinh Baria and Bhamsinh Dhirabhai Patel were engaged as casual labours in the year 1985 to 1987 by Sub-Divisional Officer and General Manager, Post and Telegraph Department, Bharuch. All these workmen after serving for 6 years in the department after screening their period of work, experience and muster roll, were granted temporary status on the post of temporary regular mazdoor in the year 1991. It was the policy of the Post and Telegraph Department that the temporary mazdoors who completes 3 years of service are normally regularised as regular mazdoors, therefore, all the employees who were temporary mazdoors in the year 1991, were made regular mazdoors in the year 1994. It has been further alleged that all the aforesaid workmen were appointed in the year 1985 to 1987. Some workmen named Vinod B. Patel, Roopsinh Javarbhai, Somabhai Heerabhai, Bhikhabhai Bhadarbhai, Tadvai Raisinhbhai and others who worked along with the second party workmen appointed during the year 1985 to 1987 worked under K.M. Baria and M.I. Patel, Officers of the first party, were made regular mazdoor by the aforesaid officers. However, the applicants/workmen involved in the aforesaid references were deprived of this benefit by the same officers and the first party for the reasons best known to them. It has been further alleged that in the year 2000, the Telecommunication Department was converted into a Public Limited Company named Bharat Sanchar Nigam Limited giving the option to all the officers and employees to be absorbed into Bharat Sanchar Nigam Limited or to continue with the Department of Telecommunication, Government of India.
4. It has been further alleged that the second party workmen involving into the aforesaid references were made temporary regular mazdoors vide letter no. E-19/90-91 dated 22.03.1991 issued by Sub-Divisional Officer, Department of Telecommunication, GIDC, Ankleshwar. However, to the shock and surprise of all the workmen, after a delay of more than 10 years, notices dated 13.08.2001, 27.01.2004 and 13.04.2004 were issued to them by K.M. Baria and M.I. Patel stating that in the scrutiny, their certificates regarding their work, experience and appointment were found fake and false. All the workmen replied to the notices stating that the copies of the muster roll and certificates were issued to them by the aforesaid named authorities and such notices have thus no basis because no such enquiry was ordered into such allegations and they were not given any opportunity to defend such charges. It has been further alleged that they were also not asked to give options of absorption in Bharat Sanchar Nigam Limited or to continue with Department of Telecommunication. Thus all these notices were issued without any authority and they were deprived of the benefit of making them regular mazdoors.
5. Aggrieved by the action of the aforesaid authorities, the workmen approached the Central Administrative Tribunal by filing O.A. No. 315/2006 praying for their regularisation in the service which was challenged by the first party on the ground of jurisdiction of the Central Administrative Tribunal. The Tribunal disposed of the petitions on the ground of having no jurisdiction into the matter. Again aggrieved by the order of the Central Administrative Tribunal, all the applicants/workmen approached the Hon’ble High Court of Gujarat by filing Special Civil Application No. 12965 of 2007, wherein the Hon’ble High Court set aside the order of Central Administrative Tribunal and remitted the matter back to Central Administrative Tribunal for adjudicating the validity of grant of temporary status and to decide the question of regularisation of all the petitioners/workmen.
6. To the shock and surprise of the applicants/workmen on issuing notice dated 30.06.2006 to the first party, the first party issued a communication dated 16.06.2008 terminating the services of all the workmen despite granting protection by the Hon’ble High Court till the adjudication of the matter by the Central Administrative Tribunal. Thereafter, the workmen were constrained to prefer Misc. Civil Application No. 486 of 2008 before Central Administrative Tribunal for granting relief with a prayer to set aside the order dated 16.06.2008. The Central Administrative Tribunal without examining the issues on the basis of merit dismissed the O.A. No. 315 of 2006 and Misc. Civil Application No. 486 of 2008 on technical ground that Bharat Sanchar Nigam Limited has not been made as a necessary party, therefore, relief cannot be granted.
7. In the aforesaid circumstances, the workmen again approached the High Court of Gujarat by Special Civil Application No. 7118 of 2010 challenging the order of Central Administrative Tribunal dated 16.10.2008 but the High Court of Gujarat pleased to permit the applicants/workmen to withdraw the petition with a liberty to withdraw and approach the appropriate forum under the Industrial Disputes Act. Therefore, they raised the dispute before the Assistant Labour Commissioner (Central), Baroda who referred the dispute to the Ministry of Labour and Employment, Government of India for referring the matter to this Tribunal for adjudication. The applicants/workmen narrating the aforesaid story submitted the statement of claim into the Tribunal praying that they be reinstated, regularised from the date of termination quashing and setting aside the notice and order 30.06.2006 and 16.06.2008 respectively with cost and any other relief as the Tribunal deems fit.

8. The first party Bharat Sanchar Nigam Limited submitted written statement Ex.9 partly admitting the facts of the case submitted that these workmen were never issued slips regarding work experience by the officers K. M. Baria and M. I. Patel at any relevant time and slips/certificates submitted by them are fake and false. Therefore, they are not entitled to be regularised.
9. On the basis of the pleadings, the following issues arise:
 - i. Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Lakshmansingh D. Patel Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified?
 - ii. To what relief, if any, the concerned workman is entitled?
10. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman Lakshmansingh D. Patel who submitted his affidavit Ex. 8 reiterating the averments made in the statement of claim and he has not said anything contrary in his cross-examination. He has also submitted the relevant orders and certificates of work and experience in the evidence. The first party did not prefer to examine any of his officers to rebut the evidence of the workman.
11. Both the parties submitted the written arguments Ex. 20 and 21 respectively. I considered the evidence oral and documentary of the workman as well as the documentary evidence of the first party.
12. It appears to be a admitted fact that the workman joined as a casual labour in the first party in the year 1985 who was made temporary regular mazdoor in the year 1991 and was deprived of the benefit of regular mazdoor as appears by the order dated 16.10.2008 issued by the officers of the first party but the first party has not led any oral evidence to rebut the aforesaid evidence.
13. Moreover, the first party has alleged that the work and experience certificates submitted by the workman were fake but the first party neither conducted the enquiry into the matter as the written statement is silent on this point and secondly, the first party appears to have not lodged any FIR into the Police Station for initiating the criminal action against this workman including all other workmen. Thus the first party has not come with the clean hands and that makes me to believe that the first party has been concealing the truth. Therefore, I come to the conclusion that the first party is concealing the truth and the second party workman deserves the relief sought by him partly because as stated, he joined as casual labour in the year 1985. Now he must have been more than 50 years old, therefore, it would be appropriate, instead of reinstating and regularising him, a lump-sum compensation of Rs.100000/- (Rupees One Lac) may be awarded to him.
14. Thus in the light of the aforesaid reasons, the reference is allowed with a direction to the first party to pay Rs.100000/- (Rupees One Lac) as lump-sum compensation to all the aforesaid workmen including this workman named Lakshmansinh D. Patel. Both the issues are decided accordingly.
15. The finding of issues and the award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जनवरी, 2019

का.आ. 73.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स महाप्रबंधक दूरसंचार विभाग, राजकोट और अन्य 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, अहमदाबाद के पंचाट (संदर्भ संख्या 1052/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.12.2018 को प्राप्त हुआ था।

[सं. एल-40012/203/93-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 3rd January, 2019

S.O. 73.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1052/2004) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad, as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager Telecom Department, Rajkot and others and their workmen, received by the Central Government on 31.12.2018.

[No. L-40012/203/93-IR(DU)]

RAJENDRA JOSHI, Dy. Director

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 20th December, 2018

Reference: (CGITA) No. 1052/2004

1. The General Manager,
Telecom Department, Amruta Estate, Behind Girnar Cinema,
Rajkot (Gujarat) – 360001
2. The Assistant Engineer (Cable),
Department of Telecom,
Rajkot (Gujarat) – 360001

...First Parties

V/s.

The President,
Saurashtra Employees Union, Umesh Commercial Complex, 213-214,
2nd Floor, Behind Chaudhary High School,
Rajkot (Gujarat) – 360001

...Second Party

For the First Parties : Shri H.R. Raval
For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/203/93–IR(DU) dated 27.05.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of the General Manager (Phones), Telecom Department, Rajkot/The Assistant Engineer, Cable, Telecom Department, Rajkot in terminating the services of Shri Sabir Abubhai Qureshi w.e.f. 31.12.1985 is legal and justified? If not, to what relief the workman is entitled?”

1. The reference dates back to 27.05.1997 and received on 31.05.1997 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. In response to the notice issued to the parties, the second party workman submit the statement of claim Ex. 3 on 11.11.1998 along with number of documents vide list Ex. 6. The first party submitted the written statement Ex. 7 on 23.04.2002 along with number of documents vide list Ex. 8.
3. On 17.02.2017, the legal heirs named Shain Sabir Qureshi has moved an application Ex. 26 alleging that his father (the workman) named Sabir Abubhai Qureshi has expired, therefore, the statement of claim be amended to substitute him as legal heirs of his father Sabir Abubhai Qureshi. The said application was allowed on 17.02.2017 and the case was listed for 28.04.2017 for leading evidence by the legal heirs Shain Sabir Qureshi but even after giving a dozen of opportunity to lead evidence, he has failed to appear in person or through advocate and to lead evidence.
4. Thus it appears that the legal heir of the second party workman is not willing to prosecute the case.
5. Therefore, the reference is disposed of in the absence of the evidence of the legal heir named Shain Sabir Qureshi of the second party workman named Sabir Abubhai Qureshi with the observation as under: “the action of the management of the General Manager (Phones), Telecom Department, Rajkot/The Assistant Engineer, Cable, Telecom Department, Rajkot in terminating the services of Shri Sabir Abubhai Qureshi w.e.f. 31.12.1985 is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जनवरी, 2019

का.आ. 74.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स उप प्रभागीय अधिकारी (प्रवेश), भारत संचार निगम लिमिटेड, भरुच और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 81/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.12.2018 को प्राप्त हुआ था।

[सं. एल-40012/29/2011-आईआर (डीयू)]

राजेंद्र जोषी, उप निदेशक

New Delhi, the 3rd January, 2019

S.O. 74.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 81/2011) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad, as shown in the Annexure, in the industrial dispute between the employers in relation to the Sub-Divisional Officer (Admn.), Bharat Sanchar Nigam Limited, Bharuch and other and their workmen, received by the Central Government on 31.12.2018.

[No. L-40012/29/2011- IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 18th December, 2018

Reference: (CGITA) No. 81/2011

1. The Sub-Divisional Officer (Admn.),
Bharat Sanchar Nigam Limited,
Jambusar Road, Bharuch (Gujarat)
2. The General Manager,
Bharat Sanchar Nigam Limited, Bharuch Telecom Division,
Opposite Bharati Talkies, Bharuch (Gujarat)
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Gujarat Circle, Telephone Bhawan, C.G. Road, Navrangpura,
Ahmedabad (Gujarat)

...First Party in Reference (CGITA) Numbers:
76/2011, 77/2011, 78/2011, 79/2011, 80/2011
& 81/2011

V/s.

1. Shri Lakshmansingh D. Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
2. Shri Bharathbhai Mathurbhai Patel,
At Post Sampa, Dhanka Falia, Sapa, Tal. Godhra,
Panchmahal (Gujarat)
3. Shri Kantilal Udesingh Patel,
At Village Dabhai, Post Sampa, Village Shehera,
Panchmahal (Gujarat)
4. Shri Amarsinh Sanabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat)

...Second Party in Reference (CGITA)
No. 76/2011

...Second Party in Reference (CGITA)
No. 77/2011

...Second Party in Reference (CGITA)
No. 78/2011

...Second Party in Reference (CGITA)
No. 79/2011

5. Shri Gemabhai Abhaysinh Baria,
At Post Khojlwasham, Nr. High School,
Village Khojlwash, Tal. Shehera,
Panchmahal (Gujarat) ...Second Party in Reference (CGITA)
No. 80/2011
6. Shri Bhamarsinh Dhirabhai Patel,
At Post Sampa, Village Sapa, Swaminaraya,
Falia, Kundala, Nr. Pathar Stand,
Panchmahal (Gujarat) ...Second Party in Reference (CGITA)
No. 81/2011

For the First Party in All References :

For the Second Party in All References :

AWARD

Reference (CGITA) No. 76/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/24/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Lakshmansingh D. Patel Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 77/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/25/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bharatbhai Mathurbhai Patel, Temporary Regular Mazdoor in that Department w.e.f. 16.10.2008 is legal and justified? What relief the concerned workman Shri Bharatbhai Mathurbhai Patel is entitled to?”

Reference (CGITA) No. 78/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/26/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Kantilal Udesingh Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 79/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/27/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Amarsinh Sanabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 80/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/28/2011–IR(DU) dated 12.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Gemabhai Abhaysinh Baria, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

Reference (CGITA) No. 81/2011

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/29/2011–IR(DU) dated 13.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bhamarsinh Dhirabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified? What relief the workman is entitled to?”

1. The Reference (CGITA) No.76/2011 dates back to 12.10.2011, Reference (CGITA) Numbers 77/2011 dates back to 13.10.2011, Reference (CGITA) No.78/2011 dates back to 12.10.2011, Reference (CGITA) No.79/2011 dates back to 13.10.2011, Reference (CGITA) No.80/2011 dates back to 12.10.2011 and Reference (CGITA) No.81/2011 dates back to 13.10.2011. All the Reference (CGITA) Numbers 76/2011 to 81/2011 received on 03.11.2011 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. All these aforesaid references were consolidated on moving an application Ex. 17 by the first party Bharat Sanchar Nigam Limited, Bharuch, hereinafter, referred to as “first party” on 28.09.2017 praying that all the aforesaid references are of similar nature involving the same facts and party, grounds and reliefs and the second party workmen involving into the dispute have no objection, therefore, the application Ex. 17 was allowed on 28.09.2017 and the Reference (CGITA) No. 76/2011 was made leading case.
3. The brief facts of the case are that the workmen Lakshmansingh D. Patel, Bharatbhai Mathurbhai Patel, Kantilal Udesingh Patel, Amarsinh Sanabhai Patel, Gemabhai Abhaysinh Baria and Bhamarsinh Dhirabhai Patel were engaged as casual labours in the year 1985 to 1987 by Sub-Divisional Officer and General Manger, Post and Telegraph Department, Bharuch. All these workmen after serving for 6 years in the department after screening their period of work, experience and muster roll, were granted temporary status on the post of temporary regular mazdoor in the year 1991. It was the policy of the Post and Telegraph Department that the temporary mazdoors who completes 3 years of service are normally regularised as regular mazdoors, therefore, all the employees who were temporary mazdoors in the year 1991, were made regular mazdoors in the year 1994. It has been further alleged that all the aforesaid workmen were appointed in the year 1985 to 1987. Some workmen named Vinod B. Patel, Roopsinh Javarbhai, Somabhai Heerabhai, Bhikhabhai Bhadarbhai, Tadvi Raisinhbhai and others who worked along with the second party workmen appointed during the year 1985 to 1987 worked under K.M. Baria and M.I. Patel, Officers of the first party, were made regular mazdoor by the aforesaid officers. However, the applicants/workmen involved in the aforesaid references were deprived of this benefit by the same officers and the first party for the reasons best known to them. It has been further alleged that in the year 2000, the Telecommunication Department was converted into a Public Limited Company named Bharat Sanchar Nigam Limited giving the option to all the officers and employees to be absorbed into Bharat Sanchar Nigam Limited or to continue with the Department of Telecommunication, Government of India.
4. It has been further alleged that the second party workmen involving into the aforesaid references were made temporary regular mazdoors vide letter no. E-19/90-91 dated 22.03.1991 issued by Sub-Divisional Officer, Department of Telecommunication, GIDC, Ankleshwar. However, to the shock and surprise of all the workmen, after a delay of more than 10 years, notices dated 13.08.2001, 27.01.2004 and 13.04.2004 were issued to them by K.M. Baria and M.I. Patel stating that in the scrutiny, their certificates regarding their work, experience and appointment were found fake and false. All the workmen replied to the notices stating that the copies of the muster roll and certificates were issued to them by the aforesaid named authorities and such notices have thus no basis because no such enquiry was ordered into such allegations and they were not given any opportunity to defend such charges. It has been further alleged that they were also not asked to give options of absorption in Bharat Sanchar Nigam Limited or to continue with Department of Telecommunication. Thus all these notices were issued without any authority and they were deprived of the benefit of making them regular mazdoors.
5. Aggrieved by the action of the aforesaid authorities, the workmen approached the Central Administrative Tribunal by filing O.A. No. 315/2006 praying for their regularisation in the service which was challenged by the first party on the ground of jurisdiction of the Central Administrative Tribunal. The Tribunal disposed of the petitions on the ground of having no jurisdiction into the matter. Again aggrieved by the order of the Central Administrative Tribunal, all the applicants/workmen approached the Hon’ble High Court of Gujarat by filing Special Civil Application No. 12965 of 2007, wherein the Hon’ble High Court set aside the order of Central Administrative Tribunal and remitted the matter back to Central Administrative Tribunal for adjudicating the validity of grant of temporary status and to decide the question of regularisation of all the petitioners/workmen.
6. To the shock and surprise of the applicants/workmen on issuing notice dated 30.06.2006 to the first party, the first party issued a communication dated 16.06.2008 terminating the services of all the workmen despite granting protection by the Hon’ble High Court till the adjudication of the matter by the Central Administrative

Tribunal. Thereafter, the workmen were constrained to prefer Misc. Civil Application No. 486 of 2008 before Central Administrative Tribunal for granting relief with a prayer to set aside the order dated 16.06.2008. The Central Administrative Tribunal without examining the issues on the basis of merit dismissed the O.A. No. 315 of 2006 and Misc. Civil Application No. 486 of 2008 on technical ground that Bharat Sanchar Nigam Limited has not been made as a necessary party, therefore, relief cannot be granted.

7. In the aforesaid circumstances, the workmen again approached the High Court of Gujarat by Special Civil Application No. 7118 of 2010 challenging the order of Central Administrative Tribunal dated 16.10.2008 but the High Court of Gujarat pleased to permit the applicants/workmen to withdraw the petition with a liberty to withdraw and approach the appropriate forum under the Industrial Disputes Act. Therefore, they raised the dispute before the Assistant Labour Commissioner (Central), Baroda who referred the dispute to the Ministry of Labour and Employment, Government of India for referring the matter to this Tribunal for adjudication. The applicants/workmen narrating the aforesaid story submitted the statement of claim into the Tribunal praying that they be reinstated, regularised from the date of termination quashing and setting aside the notice and order 30.06.2006 and 16.06.2008 respectively with cost and any other relief as the Tribunal deems fit.
8. The first party Bharat Sanchar Nigam Limited submitted written statement Ex.9 partly admitting the facts of the case submitted that these workmen were never issued slips regarding work experience by the officers K. M. Baria and M. I. Patel at any relevant time and slips/certificates submitted by them are fake and false. Therefore, they are not entitled to be regularised.
9. On the basis of the pleadings, the following issues arise:
 - v. Whether the action of the management of Bharat Sanchar Nigam Limited, Bharuch through its officers, in terminating the services of Shri Bhamarsinh Dhirabhai Patel, Casual Labourer in that Department w.e.f. 16.10.2008 is legal and justified?
 - vi. To what relief, if any, the concerned workman is entitled?
10. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman Bhamarsinh Dhirabhai Patel who submitted his affidavit Ex. 8 reiterating the averments made in the statement of claim and he has not said anything contrary in his cross-examination. He has also submitted the relevant orders and certificates of work and experience in the evidence. The first party did not prefer to examine any of his officers to rebut the evidence of the workman.
11. Both the parties submitted the written arguments. I considered the evidence oral and documentary of the workman as well as the documentary evidence of the first party.
12. It appears to be a admitted fact that the workman joined as a casual labour in the first party in the year 1985 who was made temporary regular mazdoor in the year 1991 and was deprived of the benefit of regular mazdoor as appears by the order dated 16.10.2008 issued by the officers of the first party but the first party has not led any oral evidence to rebut the aforesaid evidence.
13. Moreover, the first party has alleged that the work and experience certificates submitted by the workman were fake but the first party neither conducted the enquiry into the matter as the written statement is silent on this point and secondly, the first party appears to have not lodged any FIR into the Police Station for initiating the criminal action against this workman including all other workmen. Thus the first party has not come with the clean hands and that makes me to believe that the first party has been concealing the truth. Therefore, I come to the conclusion that the first party is concealing the truth and the second party workman deserves the relief sought by him partly because as stated, he joined as casual labour in the year 1985. Now he must have been more than 50 years old, therefore, it would be appropriate, instead of reinstating and regularising him, a lump-sum compensation of Rs.100000/- (Rupees One Lac) may be awarded to him.
14. Thus in the light of the aforesaid reasons, the reference is allowed with a direction to the first party to pay Rs.100000/- (Rupees One Lac) as lump-sum compensation to all the aforesaid workmen including this workman named Bhamarsinh Dhirabhai Patel. Both the issues are decided accordingly.
15. The finding of issues and the award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2019

का. आ. 75.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तरी रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 39/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.01.2019 प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 7th January, 2019

S.O. 75.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 07.01.2019.

[No. L-12025/01/2019– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 39/2013

BETWEEN :

Sri Neeraj Singh S/o Rajnath Singh
Village – Isipur PO – Malwa Khurd
Jusi Allahabad – 211019.

AND

1. General Manager
Northern Railway, Baroda House
New Delhi 110001.
2. Divisional Rail Manager
Northern Railway, Hazratganj
Lucknow 226001.
3. M/s. Shahid Faizan Ahmad & Brothers
654, Begum Ka Makbara, Faizabad (UP) 224001.

AWARD

1. The present industrial dispute has been filed by the workman, under provisions contained in the Section 2A (2) of the Industrial Disputes Act, 1947 for alleged termination of the services of the workman by the management of Northern Railway & others, for adjudication before this Central Government Industrial Tribunal –cum- Labour Court, Lucknow.

2. The case of the workman, Neeraj Singh, in brief, is that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 11.04.2009 to 25.11.2011 continuously when his services have been terminated without any notice. It is submitted by the workman that the opposite party No. 02 has kept opposite party No. 03 to escape from the responsibilities and labour laws though he performed duties of opposite party No. 2 under its directions. He also submitted that he was issued a gate pass by the opposite party No. 03, under directions of the opposite party No. 02, which used to be taken back at the end of the year. The workman has stated that he after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. Accordingly, the workman has prayed for reinstatement with full back wages with continuity in service.

3. The opposite party No. 01 & 02 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01 & 02; moreover the railway management entered into an agreement with the opposite party No. 03 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 & 2 that the claim of the workman be rejected without any relief to him being devoid of merit.

4. The opposite party No. 03 has also disputed the claim of the workman with submission that neither any post of Box Porter was ever vacant nor the opposite party No. 3 ever received work order or Form-V from railway administration nor the workman was ever appointed with the opposite party No. 1, 2 & 3 on the post of Box Porter; hence there is no question of his termination. It has submitted that the workman was never issued any gate pass by the opposite party No. 3 and various benefits such as salary, weekly holiday, Provident Fund and medical facilities are available to the regularly appointed employee who are appointed after adopting due procedure; and the workman is not entitled for the

same as there was no violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 03 has prayed that the claim of the workman be rejected.

5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

6. The opposite party No. 03 did not turn up after filing of its written statement.

7. The workman and opposite party No. 01 & 02 filed photocopies of documents in support of their cases. The workman examined himself; whereas the opposite party No. 01 & 02 examined Shri P. K. Singh, ADME (O&F), Northern Railway, Lucknow in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 11.04.2009 to 25.11.2011 continuously when his services have been terminated without any notice or notice pay or assigning any reason thereof in contravention to the provisions of Section 25 F of the I.D. Act, 1947. The learned authorized representative of the workman has also asserted that the workman after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. He has relied upon:

- (i) *The Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998*
- (ii) *Judgment dated 27.01.1999 of Hon'ble Calcutta High Court in Sheikh Jahangir Ali & others vs Calcutta Port Trust & others.*
- (iii) *(2006) 12 SCC 380 District Rehabilitation Officer & others vs Jay Kishore Maity & others.*
- (iv) *(2003)11 SCC 590 A.I. Railway Parcel & Goods Porters' Union vs Union of India & others.*

10. In rebuttal, the opposite party No. 01 & 02's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guards provided by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947. He has relied upon:

- (i) *2017 LLR 940, the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL*
- (II) *2018 LLR 758 Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati*

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman has come up with a case that he had been appointed by the opposite party No. 2 on the clear vacancy of Box Porter and the management of railways engaged the opposite party No. 3 in order to deprive the workman of his legitimate rights. It has also been contended by the workman that keeping in view the long and continuous service with the opposite party No. 1 & 02 he was entitled for grant of temporary status and other consequential benefits admissible to the employees with temporary status under Railway Establishment Rules; but on the contrary the management of Railways has acted in utter disregard to the norms and has terminated his services without any reason or rhyme or any notice or any notice pay in lieu thereof, which is violative of the provisions of the Section 25 F of the ID Act, 1947. It is also the case of the workman that keeping in view the pronouncement of the Hon'ble Apex Court regarding regularization/absorption of Box Porters with railway administration, he was also entitled for regularization/absorption into the services of the Railways. The workman has filed photocopy of gate pass/identity card, purported to be issued by opposite party No. 3.

13. Per contra, the opposite party No.1 & 2 has come forward with a clear cut case that the management of railways neither appointed the workman in any capacity nor there arises any question of his termination or violation of any of the provisions of the Industrial Disputes Act, 1947. It is the case of the management of railways that the management of railways entered into an agreement with M/s Shahid FAizan Ahmed & Brother's for transportation of driver line boxed from Charbagh & Alamnagar station and accordingly, the workman's services were availed by the said contractor/opposite party No. 3 by engaging him; and was paid accordingly. Thus, there was no direct employer-employee relationship between the management of railways and the workman, therefore, the management of railways is not liable to the workman in any way as claimed before this Tribunal. The opposite party No. 01 & 02 has filed photocopy of the contract dated 22.01.2009 entered between the railway administration and the opposite party No. 3.

14. Moreover, the opposite party No. 03 has also rebutted the claim of the workman with submissions that the workman had never been appointed by any of the opposite parties and he was not entitled for any of the benefits as claimed by him as they were admissible to the regularly appointed employees of the railways. It also mentioned that there was no vacancy of the Box Porter nor any such post was advertised by the railways or any recruitment was done in

pursuance thereof. However, the opposite party No. 03 did not turn up after filing its written statement. But its absence does not automatically create any legal rights in favour of the petitioner workman.

15. Having gone through the respective pleading of the parties and entire documentary evidence available on record it comes out that the railway administration entered into a contract with the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's to carry out the working according to the specification provided in the contract for a period or two years only; and in consequence thereto; workman had been engaged by the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's for transportation of Driver line boxes from Charbagh & Alam Nagar station railway platform.

The workman has examined himself in support of his case and during his cross-examination has stated that he had been appointed by the contractor viz. Shahid Faizan & Brothers on 11.04.2009 and had been terminated w.e.f. 25.11.2011 by the contractor without any notice. He admitted that the railway neither appointed nor terminated his services. He also stated that paper No. 9/5 is identity card, issued by the contractor.

On contrary, the management of the railway has examined Sri P. K. Singh, ADME (O&F), who stated in his cross-examination that contractor is being allotted 'work order', which is for a specific time period; however the time period keeps on changing with reference to the condition and this may be for 6 months, some time for 01 year and sometimes it may be for 02 years also, depending on the nature of the work. He stated that Indian Railway does not have direct relation with any Box Porter and the contractor is fully responsible for quality of work. He further stated that the contractor is directly related with the workman and Railways has no role in the appointment of Box Porter by the contractor; nor does the railway issues any identity card to any of the Box Porter engaged by the contractor. The management witness specially stated that since the contract used to be time bound, therefore, on its expiry, the contract is issued again; hence there is no relation with the railways regarding regularization.

16. During course of the oral submissions the learned authorized representative of the workman has stressed over the order of Hon'ble Apex Court's Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and has submitted that the case of the workman is covered with the said order of the Hon'ble Apex Court and since the railway management has given appointment/regularized other box porters in light of above order dated 15.02.2013 of the Hon'ble Supreme Court, therefore the workman is also entitled for regularization accordingly. The learned authorized representative of the management of railway has vehemently opposed the same. Having taken into account the contentions of the rival parties and perusal of the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and various letters filed by the workman, obtained through Right to Information Act, 2005, it appears that the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 was *in personam* and not *in rem*, therefore, the directions of the Hon'ble Supreme Court shall apply to the workmen who approached the Hon'ble Supreme Court; and since the workman never approached the Hon'ble Supreme Court, therefore, the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 is of no use for him.

Hon'ble Calcutta High Court in 2017 LLR 940, *the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL* has held that admission of the workmen that they were working under their respective contractor, is sufficient to establish that they were having no employer-employee relationship with BSNL management; hence, the workmen are not entitled to seek any relief from BSNL management. Hon'ble High Court has observed as under:

"The ratio of the Division Bench in the case of the Binoy Bhushan Chakraborty (supra) is that when a workman is engaged by a contractor to carry out some work at any establishment of BSNL, if such workman is retrenched by the contractor while working under him, BSNL cannot be regarded as employer of such workman with the meaning of "employer" as defined in the Industrial Disputes Act nor such workman can be held to be a "workman" under BSNL within the meaning of the said term, as defined under the said Act and such workman cannot claim to be absorbed in the service of BSNL."

Hon'ble Allahabd High Court in 2018 LLR 758 *Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati* has observed as under:

"Since, prima facie there was no employment of the respondent with the petitioner there could not have been any termination. I am therefore, of the definite opinion that the Labour Court decided the dispute erroneously. It had no jurisdiction to decide the matter. In fact, when the workman was not at all a workman as had been stated by the petitioner and as was also clear from the averment made in paragraph-10 of the counter affidavit the respondent/workman who had been engaged by a contractor had the remedy to file a claim under the Contract Labourer (Regulation and Abolition) Contract Rules, 1971 (hereinafter called the 1971 Rules)"

17. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination and to prove that the alleged termination by railways. It was the case of the workman that he had been appointed on the post of Box Porter under the opposite party No. 02 and had worked continuously w.e.f. 11.04.2011 to 25.11.2011, when his services have been terminated without any notice by the railways. This claim has been denied by the railway management; therefore, it was for the workman to lead evidence to show that he had in fact worked continuously for the claimed duration before his

alleged termination. In (2002) 3 SCC 25 *Range Forest Officer vs S.T. Hadimani* Hon'ble Apex Court has observed as under:

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

18. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

"It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has come up with a case that he had been appointed on the post of Box Porter under the opposite party No. 02 and thus, worked continuously w.e.f. 11.04.2009 to 25.11.2011, but has not produced any document neither original nor photocopy in support of his pleadings. The burden was on the workman to show by the way of cogent evidence that there was employee-employer relationship; and he actually worked for claimed duration; but he failed to do so as he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except photo copy of the so called identity card, purported to be issued by the opposite party No. 03 i.e. the contractor viz. M/s Shahid Faizan Ahmed & Brother's. Further, the opposite party No. 03, the contractor has also refuted the claim of the workman regarding his appointment with the railways. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01 & 02 i.e railways.

19. On the other hand the management of the railways has well proved its case by filing copy of the contract with the M/s Shahid Faizan Ahmed & Brother's for supply of labourers for transportation of Driver line boxes at railway platform.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work on the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had been appointed by the railway administration on the post of Box Porter or he worked continuously with the opposite party No. 01 & 02; and the alleged unjust or illegal order of termination was passed by the management of opposite party No. 01 & 02 or any provisions of the Industrial Disputes Act, 1947 had been violated by them.

20. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the workman could not be able to prove through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 01 & 02; rather from the evidence adduced it is established that he was and an employee of the contractor viz. M/s Shahid Faizan Ahmed & Brother's, therefore, the workman can not be granted the relief of reinstatement or any other relief sought by the workman against the opposite party No. 01 & 02.

21. Award as above.

LUCKNOW

20th December, 2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 7 जनवरी, 2019

का. आ. 76.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तरी प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 04/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.01.2019 प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 7th January, 2019

S.O. 76.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 07.1.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 04/2013

BETWEEN :

Sri Anil Kumar Maurya S/o Shyam Lal Maurya
Village – Jastha, PO – Baraul
Distt. – Allahabad.

AND

1. General Manager
Northern Railway, Baroda House
New Delhi 110001.
2. Divisional Rail Manager
Northern Railway, Hazratganj
Lucknow 226001.
3. M/s. Shahid Faizan Ahmad & Brothers
654, Begum Ka Makbara, Faizabad (UP) 224001

AWARD

1. The present industrial dispute has been filed by the workman, under provisions contained in the Section 2A (2) of the Industrial Disputes Act, 1947 for alleged termination of the services of the workman by the management of Northern Railway & others, for adjudication before this Central Government Industrial Tribunal-cum-Labour Court, Lucknow.

2. The case of the workman, Anil Kumar Maurya, in brief, is that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 03.04.2009 to 05.11.2011 continuously when his services have been terminated without any notice. It is submitted by the workman that the opposite party No. 02 has kept opposite party No. 03 to escape from the responsibilities and labour laws though he performed duties of opposite party No. 2 under its directions. He also submitted that he was issued a gate pass by the opposite party No. 03, under directions of the opposite party No. 02, which used to be taken back at the end of the year. The workman has stated that he after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. Accordingly, the workman has prayed for reinstatement with full back wages with continuity in service.

3. The opposite party No. 01 & 02 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01 & 02; moreover the railway management entered into an agreement with the opposite party No. 03 for executing the day to day casual work

at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 & 2 that the claim of the workman be rejected without any relief to him being devoid of merit.

4. The opposite party No. 03 has also disputed the claim of the workman with submission that neither any post of Box Porter was ever vacant nor the opposite party No. 3 ever received work order or Form-V from railway administration nor the workman was ever appointed with the opposite party No. 1, 2 & 3 on the post of Box Porter; hence there is no question of his termination. It has submitted that the workman was never issued any gate pass by the opposite party No. 3 and various benefits such as salary, weekly holiday, Provident Fund and medical facilities are available to the regularly appointed employee who are appointed after adopting due procedure; and the workman is not entitled for the same as there was no violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 03 has prayed that the claim of the workman be rejected.

5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

6. The opposite party No. 03 did not turn up after filing of its written statement.

7. The workman and opposite party No. 01 & 02 filed photocopies of documents in support of their cases. The workman examined himself; whereas the opposite party No. 01 & 02 examined Shri P. K. Singh, ADME (O&F), Northern Railway, Lucknow in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 03.04.2009 to 05.11.2011 continuously when his services have been terminated without any notice or notice pay or assigning any reason thereof in contravention to the provisions of Section 25 F of the I.D. Act, 1947. The learned authorized representative of the workman has also asserted that the workman after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. He has relied upon

- (i) *The Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998*
- (ii) *Judgment dated 27.01.1999 of Hon'ble Calcutta High Court in Sheikh Jahangir Ali & others vs Calcutta Port Trust & others.*
- (iii) *(2006) 12 SCC 380 District Rehabilitation Officer & others vs Jay Kishore Maity & others.*
- (iv) *(2003)11 SCC 590 A.I. Railway Parcel & Goods Porters' Union vs Union of India & others.*

10. In rebuttal, the opposite party No. 01 & 02's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guards provided by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947. He has relied upon:

- (i) *2017 LLR 940, the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL*
- (II) *2018 LLR 758 Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati*

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman has come up with a case that he had been appointed by the opposite party No. 2 on the clear vacancy of Box Porter and the management of railways engaged the opposite party No. 3 in order to deprive the workman of his legitimate rights. It has also been contended by the workman that keeping in view the long and continuous service with the opposite party No. 1 & 02 he was entitled for grant of temporary status and other consequential benefits admissible to the employees with temporary status under Railway Establishment Rules; but on the contrary the management of Railways has acted in utter disregard to the norms and has terminated his services without any reason or rhyme or any notice or any notice pay in lieu thereof, which is violative of the provisions of the Section 25 F of the ID Act, 1947. It is also the case of the workman that keeping in view the pronouncement of the Hon'ble Apex Court regarding regularization/absorption of Box Porters with railway administration, he was also entitled for regularization/absorption into the services of the Railways. The workman has filed photocopy of gate pass/identity card, purported to be issued by opposite party No. 3.

13. Per contra, the opposite party No.1 & 2 has come forward with a clear cut case that the management of railways neither appointed the workman in any capacity nor there arises any question of his termination or violation of any of the provisions of the Industrial Disputes Act, 1947. It is the case of the management of railways that the management of

railways entered into an agreement with M/s Shahid Faizan Ahmed & Brother's for transportation of driver line boxed from Charbagh & Alamnagar station and accordingly, the workman's services were availed by the said contractor/opposite party No. 3 by engaging him; and was paid accordingly. Thus, there was no direct employer-employee relationship between the management of railways and the workman, therefore, the management of railways is not liable to the workman in any way as claimed before this Tribunal. The opposite party No. 01 & 02 has filed photocopy of the contract dated 22.01.2009 entered between the railway administration and the opposite party No. 3.

14. Moreover, the opposite party No. 03 has also rebutted the claim of the workman with submissions that the workman had never been appointed by any of the opposite parties and he was not entitled for any of the benefits as claimed by him as they were admissible to the regularly appointed employees of the railways. It also mentioned that there was no vacancy of the Box Porter nor any such post was advertised by the railways or any recruitment was done in pursuance thereof. However, the opposite party No. 03 did not turn up after filing its written statement. But its absence does not automatically create any legal rights in favour of the petitioner workman.

15. Having gone through the respective pleading of the parties and entire documentary evidence available on record it comes out that the railway administration entered into a contract with the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's to carry out the working according to the specification provided in the contract for a period of two years only; and in consequence thereto; workman had been engaged by the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's for transportation of Driver line boxes from Charbagh & Alam Nagar station railway platform.

The workman has examined himself in support of his case and during his cross-examination has stated that he had been appointed by the contractor viz. Shahid Faizan & Brothers on 03.04.2009 and had been terminated w.e.f. 05.11.2011. He admitted that the railway neither appointed nor terminated his services. He also stated that paper No. 8/5 is identity card, issued by the contractor, Shahid Faizan.

On contrary, the management of the railway has examined Sri P. K. Singh, ADME (O&F), who stated in his cross-examination that contractor is being allotted 'work order', which is for a specific time period; however the time period keeps on changing with reference to the condition and this may be for 6 months, some time for 01 year and sometimes it may be for 02 years also, depending on the nature of the work. He stated that Indian Railway does not have direct relation with any Box Porter and the contractor is fully responsible for quality of work. He further stated that the contractor is directly related with the workman and Railways has no role in the appointment of Box Porter by the contractor; nor does the railway issues any identity card to any of the Box Porter engaged by the contractor. The management witness specially stated that since the contract used to be time bound, therefore, on its expiry, the contract is issued again; hence there is no relation with the railways regarding regularization.

16. During course of the oral submissions the learned authorized representative of the workman has stressed over the order of Hon'ble Apex Court's Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and has submitted that the case of the workman is covered with the said order of the Hon'ble Apex Court and since the railway management has given appointment/regularized other box porters in light of above order dated 15.02.2013 of the Hon'ble Supreme Court, therefore the workman is also entitled for regularization accordingly. The learned authorized representative of the management of railway has vehemently opposed the same. Having taken into account the contentions of the rival parties and perusal of the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and various letters filed by the workman, obtained through Right to Information Act, 2005, it appears that the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 was *in personam* and not *in rem*, therefore, the directions of the Hon'ble Supreme Court shall apply to the workmen who approached the Hon'ble Supreme Court; and since the workman never approached the Hon'ble Supreme Court, therefore, the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 is of no use for him.

Hon'ble Calcutta High Court in 2017 LLR 940, *the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL* has held that admission of the workmen that they were working under their respective contractor, is sufficient to establish that they were having no employer-employee relationship with BSNL management; hence, the workmen are not entitled to seek any relief from BSNL management. Hon'ble High Court has observed as under:

"The ratio of the Division Bench in the case of the Binoy Bhushan Chakraborty (supra) is that when a workman is engaged by a contractor to carry out some work at any establishment of BSNL, if such workman is retrenched by the contractor while working under him, BSNL cannot be regarded as employer of such workman with the meaning of "employer" as defined in the Industrial Disputes Act nor such workman can be held to be a "workman" under BSNL within the meaning of the said term, as defined under the said Act and such workman cannot claim to be absorbed in the service of BSNL."

Hon'ble Allahabd High Court in 2018 LLR 758 *Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati* has observed as under:

"Since, prima facie there was no employment of the respondent with the petitioner there could not have been any termination. I am therefore, of the definite opinion that the Labour Court decided the dispute erroneously. It had no jurisdiction to decide the matter. In fact, when the workman was not

at all a workman as had been stated by the petitioner and as was also clear from the averment made in paragraph-10 of the counter affidavit the respondent/workman who had been engaged by a contractor had the remedy to file a claim under the Contract Labourer (Regulation and Abolition) Contract Rules, 1971 (hereinafter called the 1971 Rules)”

17. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination and to prove that the alleged termination by railways. It was the case of the workman that he had been appointed on the post of Box Porter under the opposite party No. 02 and had worked continuously w.e.f. 11.04.2011 to 25.11.2011, when his services have been terminated without any notice by the railways. This claim has been denied by the railway management; therefore, it was for the workman to lead evidence to show that he had in fact worked continuously for the claimed duration before his alleged termination. In (2002) 3 SCC 25 *Range Forest Officer vs S.T. Hadimani* Hon'ble Apex Court has observed as under:

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.”

18. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

“It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management.”

In the present case the workman has come up with a case that he had been appointed on the post of Box Porter under the opposite party No. 02 and thus, worked continuously w.e.f. 03.04.2009 to 05.11.2011, but has not produced any document neither original nor photocopy in support of his pleadings. The burden was on the workman to show by the way of cogent evidence that there was employee-employer relationship; and he actually worked for claimed duration; but he failed to do so as he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except photo copy of the so called identity card, purported to be issued by the opposite party No. 03 i.e. the contractor viz. M/s Shahid Faizan Ahmed & Brother's. Further, the opposite party No. 03, the contractor has also refuted the claim of the workman regarding his appointment with the railways. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01 & 02 i.e railways.

19. On the other hand the management of the railways has well proved its case by filing copy of the contract with the M/s. Shahid Faizan Ahmed & Brother's for supply of labourers for transportation of Driver line boxes at railway platform.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work on the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had been appointed by the railway administration on the post of Box Porter or he worked continuously with the opposite party No. 01 & 02; and the alleged unjust or illegal order of termination was passed by the management of opposite party No. 01 & 02 or any provisions of the Industrial Disputes Act, 1947 had been violated by them.

20. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the workman could not be able to prove through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 01 & 02; rather from the evidence adduced it is established that he

was and an employee of the contractor viz. M/s Shahid Faizan Ahmed & Brother's, therefore, the workman can not be granted the relief of reinstatement or any other relief sought by the workman against the opposite party No. 01 & 02.

21. Award as above.

LUCKNOW.

20th December, 2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2019

का. आ. 77.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अदानी गैस लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 04/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.01.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2018-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th January, 2019

S.O. 77.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04/2016) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Adani Gas Limited and other and their workman, which was received by the Central Government on 02.01.2019.

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

D. K. HIMANSHU, Under Secy.

ANNEXURE

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 11th December, 2018

I.D. Application (CGITA) No. 04/2016

Sailesh Ramnaresh Yadav,
123, Savalji ki Chali, Heerawadi Char Rasta,
Paase Saijpur, Boogha,
Ahmedabad (Gujarat)

... Applicant

V/s

1. The Manager,
Adani Gas Limited,
Adani House, Meetakhali Six Cross Road,
Behind Bus Stand Navarangpura,
Ahmedabad (Gujarat)
2. The Manager/Director,
M/s. Indira Security and Other Services,
106, Narayan Complex, Opposite Havmor Restaurant,
Behind Navrangpura Bus Stand,
Ahmedabad (Gujarat)

...Opponents

For the Applicant	: Shri Raghuvir Mali
For the Opposite Party No. (1)	: None
For the Opposite Party No. (2)	: None

ORDER

1. This is an application moved by the applicant/second party workman, hereinafter referred to as applicant, alleging that the workman Sailesh Ramnaresh Yadav was engaged as Security Watchman by opposite parties The Manager/Director, M/s. Indira Security and Other Services, 106, Narayan Complex, Opposite Havmor Restaurant, Behind Navrangpura Bus Stand, Ahmedabad in the distribution division of Adani Gas Limited where he worked till 31.12.2009. During this period, his service was clean and unblemished. Unfortunately on 01.01.2010 after serving on 18 months, the applicant was retrenched without giving any notice or paying notice pay.
2. He has further alleged that second time on 09.05.2012, M/s. Galaxy Security and Manpower Company, a new contractor of the M/s. Adani Gas Limited re-engaged him but on 28.06.2012, he was again retrenched without giving notice and paying notice pay.
3. He has further alleged that the owners of M/s Galaxy Security and Manpower Company in order to deprive him from service benefits transferred the services of the entire watchman including the applicant to another organisation M/s Indira Security and Other Services. M/s Indira Security and Other Services used to pay him Rs.17853/- per month for working for 12 hours a day but he was not paid the wages for the work for 4 hours a day as overtime. His union gave a notice to the opposite party M/s Indira Security and Other Services but to no result. The opposite party no. 2 M/s Indira Security and Other Services terminated his services on 14.11.2013 for the third time despite the fact that he worked for more than 240 days in each year. Therefore, he has prayed for reinstatement along with arrear of wages from 14.11.2013 and Rs.20000/- as legal expenses. The applicant vide list Ex. 6 has submitted the zerox copies of muster roll.
4. Both the opposite parties were served by registered post. Acknowledgement of service of notice Ex. 4 and 5 have been received in the Tribunal. Despite service, the opposite parties did not submit the written statement/reply, therefore, on 31.07.2017, the case was ordered to proceed ex-parte against both the opposite parties.
5. The applicant has submitted his affidavit Ex. 7 in support of his application Ex. 1 reiterating the averments made in the application Ex. 1.
6. Therefore, the application Ex. 1 is allowed. The applicant Sailesh Ramnaresh Yadav is ordered to be reinstated by the opposite parties.
7. The opposite parties shall appoint the applicant Sailesh Ramnaresh Yadav within 30 days from the publication of this order in terms of the earlier appointment letter. The opposite parties shall also pay Rs.100000/- (Rupees One Lac) as compensation to the applicant Sailesh Ramnaresh Yadav.
8. The order is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 जनवरी, 2019

का. आ. 78.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ.एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 01/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.01.2019 को प्राप्त हुआ था।

[सं. एल-30011/35/2015-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th January, 2019

S.O. 78.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/2016) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad 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. Limited and other and their workman, which was received by the Central Government on 02.01.2019.

[No. L-30011/35/2015-IR(M)]

D.K. HIMANSHU, Under Secy.

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
 Ahmedabad,
 Dated 17th December, 2018

Reference: (CGITA) No. 01/2016

1. The Executive Director,
 ONGC Ltd., 5th Floor, Avani Bhavan, Chandkheda, Sabarmati,
 Ahmedabad (Gujarat) – 380005
2. The General Manager – LM (Cementing),
 Cementing Section, ONGC Ltd.,
 5th Floor, Avani Bhavan, Chandkheda, Sabarmati,
 Ahmedabad (Gujarat) – 380005
3. The General Manager – L I/C,
 Logistic, ONGC Ltd., 5th Floor, Avani Bhavan, Chandkheda, Sabarmati,
 Ahmedabad (Gujarat) – 380005
4. M/s. Suresh Oil Field Units and Maintenance Co.,
 Near Andaz Party Plot, Beside Shital Motor Workshop,
 Off. S.G. Highway, Mamatpura Road, Makarba,
 Ahmedabad (Gujarat) – 380005

...First Parties

V/s

The General Secretary,
 Gujarat Petroleum Employees Union,
 434/46, Gandhivas Naka,
 Gujarat Stadium Road, Sabarmati,
 Ahmedabad (Gujarat)

... Second Party

For the First Party No. 1, 2 & 3 : Shri K.V. Gadhia
 For the Second Party : Kum. Santoshben N. Bhendwal

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/35/2015–IR(M) dated 15.12.2015 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the union, General Secretary, Gujarat Petroleum Employees Union, Ahmedabad for reinstatement in service with full back wages of Shri Hasmukh Ramjibhai Parmar, Contractual labour in the establishment of Executive Director, ONGC Ltd., Ahmedabad is justified? If yes, what relief the workman is entitled to?”

1. The reference dates back to 15.12.2015 and received on 04.01.2016 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. In response to the notices issues to the parties, the second party union submitted the statement of claim Ex. 7 alleging that the workman Hasmukh Ramjibhai Parmar, hereinafter referred to as “workman” has been working as skilled workman in the establishment of ONGC, Ahmedabad as a light vehicle operator (driver) through various contractors since 01.12.1994 and lastly he was working through contractor M/s Suresh Oil Field Unit and Maintenance Company. These contracts were sham and bogus. Though he was working and engaged through contractors but has been working under direct supervision and control of officers of ONGC. His present was marked in the Cementing Section of ONGC. Only the wages were paid by the contractor which was Rs.15200/- per month. He has further alleged that on 23.01.2014, he was stopped and was not allowed to work by the ONGC. He was not given any chance of hearing. He has further alleged that on 27.05.2016, he was reinstated but without back wages and continuity of service. Therefore, he has prayed for payment of back wages w.e.f. 23.01.2014 to 26.05.2016.
3. The first party ONGC, hereinafter referred to as “ONGC”, submitted the written statement Ex. 9 denying the allegations of the workman levelled in the statement of claim Ex. 7 and submitted that it is wrong to say that this workman was unemployed from 23.01.2014 to 26.05.2016. Secondly, he has working under various contractors, lastly under M/s Suresh Oil Field Unit. There was no master-servant relationship between the workman and

ONGC. He has not made it clear in the statement of claim about the details of his employment with various contractors under whom he worked.

4. On the basis of the pleadings, the following issues arise:

i. Whether the demand of the union, General Secretary, Gujarat Petroleum Employees Union, Ahmedabad for reinstatement in service with full back wages of Shri Hasmukh Ramjibhai Parmar, Contractual labour in the establishment of Executive Director, ONGC Ltd., Ahmedabad is justified?

ii. To what relief, if any, the concerned workman is entitled?

5. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who submitted his affidavit Ex.10 reiterating the averments made in the statement of claim. In his cross-examination, he has admitted that ONGC never give him any appointment letter. He had been working under contractor M/ Suresh Oil Fields Unit and Maintenance Company, S.G. Highway, Ahmedabad. Wages were also paid by aforesaid contractor. His provident fund contribution was also deducted and deposited by the aforesaid contractor. This contractor also reinstated him on 26.05.2016. He has no proof that his services were terminated by ONGC.

6. The second party workman submitted the written argument Ex. 13. I considered the arguments of both the parties and also considered the oral and documentary evidence of the parties.

7. From the oral evidence on record, the workman has admitted that he was the contract employee of contractors M/ Suresh Oil Fields Unit and Maintenance Company, S.G. Highway, Ahmedabad. ONGC has no master-servant relationship with him, therefore, bears no liability regarding the workman. The documents submitted by the workman vide list Ex. 11/12 reveals that this workman was prosecuted under Section 379 and 114 of Indian Penal Code (IPC), wherein he was acquitted. Thus this copy of judgement establishes that the contractor M/ Suresh Oil Fields Unit and Maintenance Company disengaged him from the job on account of theft charges and as soon as the order of acquittal was obtained on 13.03.2016, he was reinstated by the aforesaid contractor.

8. It is noteworthy that the workman has not raised the dispute against the contractor. He has raised the dispute against ONGC, therefore, no relief can be granted. Thus Issue No. i and ii are decided accordingly. The reference has no force, hence rejected.

9. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 जनवरी, 2019

का. आ. 79.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ.एन.जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 172/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.01.2019 को प्राप्त हुआ था।

[सं. एल-30011/51/2006-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th January, 2019

S.O. 79.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 172/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad 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. Limited and their workman, which was received by the Central Government on 02.01.2019.

[No. L-30011/51/2006-IR(M)]

D.K. HIMANSHU, Under Secy.

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

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 12th December, 2018

Reference: (CGITA) No. 172/2006

The Asset Manager,
ONGC Ltd, Ankleshwar Asset,
Ankleshwar (Gujarat)

... First Party

V/s

Shri Hiteshkumar B. Jadav
Through The secretary,
Kamdar Hit Rakshak Sangh, 64, Rabari Colony, Odhav,
Ahmedabad (Gujarat) 382415

...Second Party

For the First Party : Shri K.V Gadhia
For the Second Party : Shri Ashwin J. Bhatt

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/51/2006–IR(M) dated 11.09.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar Asset, Ankleshwar in terminating the services of Shri Hiteshkumar B. Jadav w.e.f. 11.11.1998 is legal and just? If not, to what relief the concerned workman Sh. Hiteshkumar B. Jadav is entitled to?”

1. The reference dates back to 11.09.2006 and received on 25.09.2006 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. The Honourable High Court of Gujarat has passed the order on 01.03.2018 in Special Civil Application No. 1852 of 2015 with respect to Reference (CGITA) No. 172/2006. The operational part of order is as under:
 - “a. For above mentioned reasons, the impugned award is partly set aside and the reference case is remanded to learn Tribunal to take appropriate decision with reference to said limited issue i.e. as regards final relief to be awarded to the respondent in the light of findings recorded in respect of 8 issues.
 - b. The learned Tribunal shall endeavour to take appropriate decision and pass appropriate order to the aforesaid extent, as expeditiously as possible, and preferably within 8 weeks.
3. I perused the record of Reference (CGITA) No. 172/2006 which reveals that the second party workman Hiteshkumar B. Jadav was born in the year 1966. I have limited scope to pass order in the light of the order dated 01.03.2018 of Hon’ble High Court of Gujarat alternatively reinstatement in service or payment of compensation. I am of the view that the order of reinstatement will be proper without any back wages.
4. The first party is directed to reinstate the second party workman Hiteshkumar B. Jadav within 60 days from the publication of this award.
5. The award is passed accordingly.

P.K. CHATURVEDI Presiding Officer

नई दिल्ली, 8 जनवरी, 2019

का. आ. 80.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ०एन०जी०सी० लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक

विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 180/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.01.2019 को प्राप्त हुआ था।

[सं. एल-30011/52/2006-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th January, 2019

S.O. 80.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 180/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad 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. Limited and their workman, which was received by the Central Government on 02.01.2019.

[No. L-30011/52/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

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

Present : Pramod Kumar Chaturvedi,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 12th December, 2018

Reference: (CGITA) No. 180/2006

The Asset Manager,
ONGC Ltd, Ankleshwar Asset,
Ankleshwar (Gujarat)

... First Party

V/s

Shri Arvindkumar Natvarlal Barot,
Through The secretary,
Kamdar Hit Rakshak Sangh, 64, Rabari Colony, Odhav,
Ahmedabad (Gujarat) 382415

...Second Party

For the First Party : Shri K.V Gadhia
For the Second Party : Shri Ashwin J. Bhatt

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/52/2006-IR(M) dated 15.09.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar Asset, Ankleshwar in terminating the services of Shri Arvindkumar Natvarlal Barot w.e.f. 11.11.1998 is legal and just? If not, to what relief the concerned workman Sh. Arvindkumar Natvarlal Barot is entitled to?”

1. The reference dates back to 15.09.2006 and received on 25.09.2006 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. The Honourable High Court of Gujarat has passed the order on 03.03.2018 in Special Civil Application No. 2152 of 2015 with respect to Reference (CGITA) No. 180/2006. The operational part of order is as under:
 - “a. For above mentioned reasons, the impugned award is partly set aside and the reference case is remanded to learn Tribunal to take appropriate decision with reference to said limited issue i.e. as regards final relief to be awarded to the respondent in the light of findings recorded in respect of 8 issues.
 - b. The learned Tribunal shall endeavour to take appropriate decision and pass appropriate order to the aforesaid extent, as expeditiously as possible, and preferably within 8 weeks.

3. I perused the record of Reference (CGITA) No. 180/2006 which reveals that the second party workman Arvindkumar Natvarlal Barot was born in the year 1967. I have limited scope to pass order in the light of the order dated 03.03.2018 of Hon'ble High Court of Gujarat alternatively reinstatement in service or payment of compensation. I am of the view that the order of reinstatement will be proper without any back wages.
4. The first party is directed to reinstate the second party workman Arvindkumar Natvarlal Barot within 60 days from the publication of this award.
5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 जनवरी, 2019

का. आ. 81.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ०एन०जी०सी० लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 411/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.01.2019 को प्राप्त हुआ था।

[सं. एल-30015/8/2001-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th January, 2019

S.O. 81.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 411/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad 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. Limited and other and their workman, which was received by the Central Government on 02.01.2019.

[No. L-30015/8/2001-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 03rd December, 2018

Reference (CGITA) No. 411/2004

1. The Group General Manager (P),
ONGC Ltd., Ahmedabad Project, Chandkheda,
Ahmedabad (Gujarat)
2. M/s. Paroshram Labour Co. Op. Society,
Sahanand Complex, Shahibaug,
Ahmedabad (Gujarat)

...First Parties

V/s

The Vice President,
ONGC Employees Union,
177, Sunrise Shopping Centre,
Opp. Raichand Nagar, Sabarmati,
Ahmedabad (Gujarat) – 382470

...Second Party

For the First Parties : Shri C.S. Naidu Associates
 For the Second Party : Shri A.N. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30015/8/2001-IR(M) dated 06.09.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., in terminating the services of Shri Kantibhai M. Vaghela, Mukesh K. Macwan, Babubhai S. Chauhan, Parvinbhai D. Thakore, Rameshbhai M. Solanki and Prafulbhai P. Patel is legal, proper and justified? If not, to what relief the concerned workmen are entitled to?”

And

“Whether the demand of the union for regularising the services of Shri Kantibhai M. Vaghela, Mukesh K. Macwan, Babubhai S. Chauhan, Parvinbhai D. Thakore, Rameshbhai M. Solanki and Prafulbhai P. Patel from the date of their entry in service, is legal, proper and justified? If so, to what relief the concerned workmen are entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 06.09.2001 and received on 24.09.2001 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After issuing notice, the second party union submitted the statement of claim Ex. 5 on 20.08.2002 and the first party ONGC submitted the written statement Ex. 15 on 22.09.2004.
3. The case was fixed for evidence of the second party but since filing of statement of claim, the second party union or its workmen have been refraining to lead their evidence. Thus it appears that the second party union or its workmen are not willing to prosecute the reference.
4. Therefore, the reference in the absence of the evidence of the second party, is disposed of with the observation as under: “the action of the management of ONGC Ltd., in terminating the services of Shri Kantibhai M. Vaghela, Mukesh K. Macwan, Babubhai S. Chauhan, Parvinbhai D. Thakore, Rameshbhai M. Solanki and Prafulbhai P. Patel is legal, proper and justified and also the demand of the union for regularising the services of Shri Kantibhai M. Vaghela, Mukesh K. Macwan, Babubhai S. Chauhan, Parvinbhai D. Thakore, Rameshbhai M. Solanki and Prafulbhai P. Patel from the date of their entry in service, is illegal, improper and unjustified.”

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 8 जनवरी, 2019

का.आ. 82.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ऑयल इण्डिया लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 8/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 2.1.2019 को प्राप्त हुआ था।

[सं. एल-30011/51/2011-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th January, 2019

S.O. 82.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2012) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Oil India Limited and other and their workman, which was received by the Central Government on 2.1.2019.

[No. L-30011/51/2011-IR(M)]

D. K. HIMANSHU, Under Secy.

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.08 of 2012

In the matter of an Industrial Dispute between :-

The Management of Oil India Ltd., Duliajan, Dibrugarh.

M/s. R.K.Dutta and Sons, Oil Contractor, Tinsukia, Assam

...O.P/Management

Vrs

The Workmen represented by the General Secretary,

Oil India Workers Association, Duliajan, Assam

...Claimant/Workmen

APPEARANCES.

For the Management : Mr. S.N.Sarma, Sr. Advocate,

Mr. M.Hussain, Advocate.

For the Workman. : Mr.L.Mohan, Advocate.

Date of Award:- 18.12.2018

AWARD

1. This Industrial Dispute among workmen represented by the General Secretary, Oil India Workers Association, Duliajan, Assam and the management of Oil India Ltd., Duliajan, and Contractor M/S R.K.Dutta & Sons was referred to this Tribunal by the appropriate Government vide Notification dated 31/01/2012 with the following schedule :

SCHEDULE

“Whether the eleven contract workmen engaged by the management of Oil India Limited through contractor M/S R.K.Dutta, who were left out vide settlement dated 30.06.2001 should be given the same status of those workers benefited by the settlement dated 30.8.2006 and whether they are entitled to be given employment with immediate effect?.”

2. On receipt of the reference, notices were issued by this Tribunal to all concerned parties. Workmen side appeared and submitted their claim statement on 19.6.2012. Management side also submitted their written statement on 03.10.2012. The W.S. filed by the contractor on 21.01.2013 could not be taken into consideration as it was without any Affidavit or verification. In spite of repeated chances the concerned contractor did not submit any written statement with Affidavit or verification. Accordingly as per order dated 11.12.2013 the matter proceeded ex-parte against the contractor M/s. R.K. Dutta and Sons.

3. Claims of the workmen as narrated in their written statement may be summarized in brief, as under. It was stated that out of 31 numbers of employees engaged as contract labours in Oil India Ltd, Duliajan, 21 were considered as unlisted workers under the direct control of Oil India Ltd and vide settlement dated 30.08.2006 all benefits were extended to them. It was also stated that the employment was provided through contractor M/S R.K.Dutta & Sons. It was further stated that though 21 numbers of workers among 31 numbers of workers engaged through the contractor were given the status of listed workers, 10 numbers of workers were left out from the list and on 1/10/2008 their services were discontinued. It was further stated that thereafter the concerned workers raised their grievances before the Assistant Labour Commissioner (C), Dibrugarh who vide order dated 22.12.2008 issued a direction for restoring the services of those workers whose engagement was discontinued. This however did not bear any result for the concerned workmen. It was also stated that there was a settlement between the management and the Union in the year 2001-02 followed by another settlement dated 30.08.2006 but in spite of that settlement workers involved in this reference were not given any benefit despite the fact that they have been working for last 20-30 years. The dispute between the management and the concerned workmen was sought to be resolved by the concerned Labour Commissioner but despite several attempts the matter remained unresolved and ultimately it was sent to the concerned Ministry and the concerned Ministry sent the reference to this Tribunal as mentioned above. It was further mentioned that all the workmen appointed through M/S. R.K.Dutta and Sons were under the direct control and the supervision of Oil India Ltd who also used to provide

Provident Fund, etc. to those employees but the management disregarding the mandates of law terminated concerned employees and allowed the remaining 21 employees to continue. It was further stated that several efforts were made on behalf of the Union to give relief to the concerned workmen but nothing happened. The workmen side, in their claim statement, prayed for setting aside the “retrenchment” order and also prayed for issuing direction to the management to restore the concerned workmen along with back wages. It may be mentioned here that claim statement was submitted by one Khitish Sarkar, General Secretary of Oil India Workers Association.

4. On receipt of the copy of the claim statement the management submitted their written statement wherein they stated that since the workmen involved in this reference were admittedly contract labours, there cannot be any industrial dispute in regard to their service. It was also stated that there was no settlement in the year 2001. It was also mentioned that 11 contract labours (workmen involved in this reference) were engaged by M/S R.K.Dutta & Sons but as per communication received from Assistant Labour Commissioner (C), Dibrugarh it appeared that concerned labourers were under M/S R.K.Dutta & sons and not M/S R.K.Dutta. The management further mentioned that from the order of reference it transpired that the dispute was in respect of engagement of contract labourers and service conditions of contract labourers are governed by the Contract Labour (Regulation and Abolition) Act, 1970 and not by Industrial Disputes Act, 1947. It was further mentioned that Oil India being the principal employer could not have discharged any of the contract labour as no master and servant relationship existed between the management of Oil India and the concerned contract labourers. It was also stated that during conciliation meeting held at the instance of the Assistant Labour Commissioner (C), Dibrugarh it was found that the person who was representing as General Secretary was not the actual General Secretary of the Union. It was also pointed out to the Conciliation Officer that several civil matters including a Writ Petition before the Hon'ble High Court were pending in respect of the status of the person as the General Secretary. The management also prayed for framing a preliminary issue regarding the maintainability of order of reference. Management further stated that as per job contract, the contractor M/S R.K. Dutta and Sons was performing a job contract at Eastern Producing Area, Digboi from 5.12.05 to 31.12.08 by engaging its labourers. It was further stated that before signing of the conciliatory settlement dated 30.8.06 the contract labour Unions at the intervention of ALC (C), Dibrugarh, 21 contract labourers were jointly identified by the contract labour unions, the concerned contractor as well as the respective department who had deployed the contractor under the aforesaid contract. Accordingly, the names of those 21 contract labours were included in the list attached to the settlement dated 30.8.06. It was further stated that in respect of the present set of contract labours there was no record in respect of their employment by the contractor with the management's job contract. Referring to the Annexure-3, a copy of Attendance Register submitted by the workmen side along with the claim petition, it was stated by the management that from Annexure-3 it would be clear that it was Attendance Register of contractor M/S R.K.Dutta and Sons and not that of Oil India. The management side prayed for deciding the preliminary issue regarding maintainability of the Reference at the outset.

5. On receipt of the copy of the written statement submitted by the management side, workmen side submitted an additional claim statement wherein they raised objection to the prayer for framing preliminary issue and also made a similar prayer as was made in their original claim petition.

6. Workmen side examined 3 witnesses. W.W.1 Sri Khitish Sarkar, General Secretary of Oil India Workers Association, Duliajan in his examination-in-chief stated that the management of Oil India provided employment to the workers of Digboi Oil field supplied by M/S R.K.Dutta and Sons and the workers were under the direct control of management of Oil India Ltd. He further narrated the facts mentioned in the claim petition regarding inclusion of 21 workers as listed workers and exclusion of names of the concerned workers involved in this reference. He further deposed that when the matter was brought to the notice of Assistant Labour Commissioner (c), Dibrugarh he issued an order but nothing bore any meaningful result. He further stated that the management and the Unions arrived at a settlement in the year 2001-02 which was followed by another settlement dated 30.08.2006 and as per that settlement all the unlisted workers have been enjoying the benefits excluding the 11 numbers of concerned workers. He exhibited the certificate of registration of Trade Union as Exhibit-1. Copy of the settlement dated 30.8.2006 was exhibited as Exhibit-2. During his cross-examination he admitted that he worked in OIL and retired in the year 2007. He also admitted that the Constitution of Union was not produced by him to show that retired employees can be Office bearer of the Union. The management side also got a letter (Exhibit-A) exhibited through him which was addressed by AITUC to one Gopal Mili and Gunin Phukan, President and Secretary respectively of Oil India Workers Association, Duliajan, Dibrugarh mentioning that they were to act as President and Secretary respectively as Trade Union affiliated to the AITUC. The management also exhibited another letter (Exhibit-B) issued by AITUC wherein the name of W.W.1 was shown as one of the Advisors. He admitted that in the year 2008 he raised the dispute with the Assistant Labour Commissioner (C), Dibrugarh as General Secretary of the Union and he denied the suggestion of the management that in the year 2008 he was not the General Secretary of the concerned Union. He further admitted in his cross-examination that M/S R.K.Dutta & Sons was awarded a contract on 14.12.2005 for jungle cutting for 2 years for the first time vide Exhibit-C Exhibit-D was also exhibited list of unlisted work charged labourers signed by Unions as per the settlement dated 30.8.2006. It was also admitted that Exhibit-D containing 41 pages consisting of 1132 numbers of contract labourers and that he himself

agreed to the said list of workers and he also signed the pages of the letter. He further admitted that he signed the Exhibit-D in all the pages and did not raise any objection for exclusion of said contract labourers (involved in the reference) in the list. He further stated during cross-examination that list of workers listed along with Tripartite settlement dated 30.8.2006 were verified by him and he himself was also a signatory of that agreement. He also admitted that he raised the present dispute with the ALC (C), Dibrugarh after 1.10.2008. He also admitted that 11 workmen for whom this matter was referred were not appointed by Oil India. W.W.2, Sri Monoj Kumar Bharali also reiterated more or less the similar facts as stated by W.W.1 in his examination-in-chief. He was stated to be the Assistant Secretary of OIWA, Duliajan. During his cross-examination he stated that he was born in the year 1983 and only heard about the engagement of workers in Oil India Ltd. from other people prior to 1983. He also admitted that he had not submitted any proof of him being the Assistant General Secretary of the concerned Union before this Tribunal. He also admitted that 31 numbers of employees as mentioned in para-13 of his evidence on Affidavit were engaged by M/S R.K.Dutta & Sons which he came to know from the earlier office bearers of the Union. He further agreed that the list of contract labourers were supplied from the side of the Union and verified by the Department concerned. He further stated that the persons engaged by the contractor were usually given gate pass to enable them to enter into the operational areas of OIL. He further admitted that the salary and other benefits were paid by the concerned contractor. He further admitted that the list of contract labourers were prepared as per agreement dated 30.08.2006 and no objection was raised from the Union side. He further admitted during his cross-examination that the 11 contract labourers involved in this reference were neither appointed nor they were issued any dismissal letter by the OIL. W.W.3, Sri Pawan Urang stated that Oil India Workers Association is the registered union affiliated to AITUC. The remaining facts indicated by him in his evidence-in-Affidavit was similar to that of the facts mentioned in the evidence in-Affidavit of W.W.1 & 2. During cross-examination W.W.3 admitted that his age is 31 years and he became the member of the Union during the year 2004-05. He further stated that he was engaged by M/S R.K.Dutta & Sons in and around 1986 but later in his cross-examination he stated that he was working under the contractor from the year 2003. He also admitted that his statement in evidence in-Affidavit that he worked under M/S R.K.Dutta & Sons since 1982 is not correct. He further admitted that he was withdrawn by the management in the year 2008 and at that time he was working under M/S R.K.Dutta & Sons. He further admitted during his cross-examination that contractor engage the contract labourers when he gets job and as soon as the job is over he disengage the contract labourers and when a new contractor comes he engages the same workers if they (workers) are good in the work.

7. Management side examined 2 witnesses. M.W.1 Sri Arunjoyti Baruah, Chief Manager (E.R), Oil India Ltd. stated that 11 contract labourers involved in this reference were admittedly employees of M/S R.K.Dutta and hence, there was no question of their employment by the management of Oil India Ltd. or their retrenchment thereof. He further stated that the reference itself shows that without any application of mind, the present order of reference was made to please a member of Parliament (LS), who demanded vide his letter dated 27.12.2011 that the matter be referred to the Tribunal and accordingly on 31.01.2012 the order of reference was made. He further stated that there was no settlement dated 30.06.2001 as mentioned in the claim petition and as well as in the testimony of the workmen witnesses. He further stated that the General Secretary of Oil India Workers Association on 17.10.2008 and 01.11.2008 raised an Industrial Dispute before the Assistant Labour Commissioner (C), Dibrugarh with a joint representation that 9 contract labourers have been thrown out of employment with effect from 01.10.2008 and that they were being deprived of being identified as unlisted WCL in 2006. He further stated that on receipt of the said representation the concerned Assistant Labour Commissioner forwarded the same to the management on 22.12.2008 and the management vide its letter dated 12.01.2009 informed the concerned Assistant Labour Commissioner that the mentioned contract labourers do not come within the preview of identified contract labours as agreed during the conciliatory settlement dated 30.08.2006. He further stated that having been informed about the status of the concerned workmen, the concerned Assistant Labour Commissioner vide letter dated 22.10.2009 requested the management for exploring possibilities of engaging those contract labourers in any supplementary jobs contract though it was completely beyond his power conferred under the Industrial Dispute Act.

During cross-examination he admitted that he did not go through the written objection filed by the Company and that his examination in-chief on Affidavit has been prepared on the basis of the documents. During his cross-examination he stated that Exhibit-C is a contract with M/S R.K.Dutta & Sons for engaging 19 workers for cutting jungle and he also admitted that a contractor who has got a license from the Labour Commissioner is a licensed contractor and one who does not have the license is not a licensed contractor. He further stated that it was not necessary that only the licensed contractor is to be engaged. He denied the suggestion of the workmen side that the contract labourers involved were working since the year 2000 under M/S R.K.Dutta & Sons.

M.W.2 Sri Narendra Vashisht, General Manager (H.R) of Oil India Ltd. also stated similar facts in his evidence-in-chief on Affidavit as was stated by M.W.1. He further stated that conciliatory settlement dated 30.08.2006 was arrived at in view of the charter of demand dated 22.2.2006 raised by the contract labourers under the banner of "Oil Samuha Atalika Bhukta WCL Shramik" along with a series of agitational programme. The basic demand came as there was an

agreement in the year 2000 whereby some contract labourers were listed for certain financial benefits. He further stated that though equal pay for equal work and regularization in phased manner were main demands, ultimately it was agreed between the Union and the management in presence of the Conciliation Officer that those who were left out in the agreement of the year 2000 but were working in the year 2000 also should be enlisted in the list and they will be provided the financial benefits as enumerated in the agreement dated 30.08.2006. He further stated that the concerned labourers, engaged in jungle cutting works, Digboi through a contractor M/s. R.K.Dutta and Sons, were identified by the respective Union and they were 21 in number and accordingly as identified by the concerned Union the names of those 21 contract labourers were included in the list appended with the agreement dated 30.08.2006. During his cross-examination he stated that Memorandum of Settlement dated 30.08.2006 was signed by the management of Oil India and the various contractual Labour Unions including the Oil India Workers Association and the aforesaid agreement was signed by W.W.1, Sri Khitish Sarkar as General Secretary of the concerned Union and Sri Mohendra Singh, as President of the same Union. During cross-examination he also stated that he was also not aware of any representation submitted by the concerned 11 contract labourers involved in the reference when their names were left out in the list appended to the list with agreement dated 30.08.2006.

8. During argument learned Sr. Counsel appearing for the management submitted that the workmen involved in the present reference were admittedly contractual labourers and hence the reference itself is not maintainable. Apart from this he further submitted that settlement dated 30.06.2001 as mentioned in the reference order was admittedly a non-existent document and there have never been such settlement signed on such a date. He further submitted that the benefits extended to the workers as per settlement dated 30.08.2006 was confined only to those workers who were either working in the year 2000 or prior to the year 2000 under some contractor. He also reiterated that the workmen side has totally failed to show that any of those worker involved in this reference were engaged to work in OIL through any contractor since 2000 or prior to the year 2000. He further submitted that there is absolutely nothing to show that the contract labourers involved in this reference were working from or before the year 2000. He further mentioned that the list of the workers (as appended to the settlement dated 30.8.2006) were prepared jointly by the Union, concerned contractor and the respective department.

9. Learned counsel appearing for the workmen side submitted that the concerned workers have been working in OIL through contractors since the year 2000 and hence their names ought to have been identified during the settlement dated 30.8.2006 and all benefits ought to have been extended to them. He also prayed for issuing an order for inclusion of their names as unlisted workers along with benefits as enumerated in the aforesaid settlement.

10. On consideration of the entire materials on record including the "order of reference" and the evidence adduced by the parties it was clear that the settlement dated 30.08.2006 is the most important document in this matter because through this reference the appropriate Government raised the point as to whether the concerned workmen were also entitled to the same benefit as were extended to others by the settlement dated 30.08.2006. The said settlement dated 30.08.2006 has been exhibited in this case as Exhibit-2. On careful perusal of Exhibit-2 (Settlement dated 30.08.2006) it appeared that as per terms of settlement the unlisted WCL who were being engaged through contractor since 2000 or prior to the year 2000 shall be given certain financial and service related benefits. The list of the contract labourers appended to the aforesaid settlement was admittedly prepared after proper verification by the Union, concerned contractor and the concerned department of the management. This has been categorically admitted by the workmen witness during their cross-examination. There is absolutely nothing material on the record to show that any of these concerned contractual labourers (workmen involved in this reference) has been working under Oil India through any contractor since the year 2000 or prior thereto. Names of listed WCL (contract labours) were admittedly prepared after taking inputs from the respective Unions and relevant departments and contractors. Since the contract labours involved in this reference were not engaged since the year 2000 or prior thereto, their names were not included as listed of WCL and they, therefore, do not appear to have any justified claim to be benefited in terms of the settlement dated 30.8.2006.

11. In view of the above this reference stands disposed of with a no relief award.

Given under the hand and seal of this Tribunal on this 18th day of December, 2018.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 8 जनवरी, 2019

का. आ. 83.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ०एन०जी०सी० लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 738/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 2.1.2019 को प्राप्त हुआ था।

[सं. एल-30011/103/2001-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th January, 2019

S.O. 83.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 738/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad 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. Limited and other and their workman, which was received by the Central Government on 2.1.2019.

[No. L-30011/103/2001-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

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

Present : Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 12th December, 2018

Reference: (CGITA) No. 738/2004

1. The Executive Director,
ONGC Ltd., WRBC, Makarpura Road, Baroda (Gujarat) – 390009
2. M/s. Rachana Horticultural Services,
B-6, Gauri Park Society, Behind Aavkar Society, Manjalpur,
Baroda (Gujarat)
3. M/s. Garden Design Centre,
13, Heera Panna Society, Gorwa,
Baroda (Gujarat)

...First Parties

V/s

The Secretary,
Bhartiya Karamchari Sangh, Vishwakarma Shramasadhana Trust,
101, Shirali Complex, Anustu Tekri, Kothi Char Rasta,
Baroda (Gujarat)

...Second Party

For the First Party : Shri D.C. Gandhi Associates
For the Second Party : Shri Sudhir J. Shah

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/103/2001-IR(M) dated 22.10.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the union to absorb/regularize the services of Shri Inayat A. Pathan, Shri Tapodhan Pramod Iaj Umiyasankar and Shri Mukesh Patel as permanent and direct employees of ONGC Ltd., Baroda with time scale of pay of their category of work equivalent to their similar placed regular employees of ONGC Ltd. either from the date of entry of their service in ONGC Ltd. or through the contractor initially, by declaring the

contract as 'sham contract' is fair and justified? If so, to what relief the concerned workmen are entitled to and from which date and what other directions are necessary in the matter?"

1. The reference dates back to 22.10.2001 and received on 02.11.2001 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. The second party union The Secretary, Bhartiya Karamchari Sangh, Vishwakarma Shramsadhana Trust, 101, Shirali Complex, Anustu Tekri, Kothi Char Rasta, Baroda submitted the application Ex. 34 along with affidavits of 2 workmen named Mukeshbhai Jayantibhai Patel and Inayatkhan Amaullakhan Pathan stating that they do not want to prosecute the reference and want to withdraw all the case/reference/claims with respect to this reference. The application Ex. 34 is accepted and names of aforesaid workmen are hereby withdrawn from the reference. The third workman named Tapodhan Pramod Iaj Umiyasankar as informed by the union has not been traceable.
3. Thus the reference, in the light of the affidavits of the aforesaid workmen and statement of the union regarding the third workman, is finally disposed of as withdrawn.

P.K. CHATURVEDI, Presiding Officer