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No. 07] NEW DELHI, FEBRUARY 16—FEBRUARY 22, 2020, SATURDAY/MAGHA 27—PHALGUNA 3, 1941

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)

गृह मंत्रालय

नई दिल्ली, 14 फरवरी, 2020

का.आ. 192—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, गृह मंत्रालय के निम्नलिखित कार्यालय में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप गृह मंत्रालय के इन कार्यालयों को एतद्वारा अधिसूचित करती है:—

1. केन्द्रीय रिजर्व पुलिस बल,
पुलिस उप महानिरीक्षक का कार्यालय,
द्रुत कार्य बल,
रेंज-तीन, श्री कुंजा गेस्ट हाउस, बालावाला, देहरादून,
उत्तराखण्ड-248005

2. **केन्द्रीय औद्योगिक सुरक्षा बल,**
वरिष्ठ कमांडेंट का कार्यालय,
के.औ.सुरक्षा बल, चतुर्थ आरक्षित वाहिनी, शिवगंगई,
तमिलनाडु-630301

[फा. सं. 11029/01/2019-हिन्दी]

सहेली घोष रॉय, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 14th February, 2020

S.O. 192.—In pursuance of sub rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following office of the Ministry of Home Affairs, wherein the percentage of the staff, having working knowledge of Hindi has gone above 80%:—

1. **Centre Reserve Police Force,**

Office of the Dy. Inspector General of Police,
R. A. F. Range-III, Shri Kunja Guest House, Balawala
Central Reserve Police Force, Dehradun,
Uttarakhand-248005

2. **Central Industrial Security Force**

Office of the Senior Commandant,
CISF, 4th Reserve Battalion, Shivganga
Tamilnadu-630301

[F. No. 11029/01/2019-Hindi]

SAHELI GHOSH ROY, Jt. Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 19 फरवरी, 2020

का.आ. 193.—पेंशन निधि विनियामक और विकास प्राधिकरण अधिनियम, 2013 (2013 का 23) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री सुप्रतिम बंधोपाध्याय को पदभार ग्रहण करने की तारीख से 65 वर्ष की आयु पूरी होने तक अथवा अगले आदेशों तक, जो भी पहले हो, 4.50 लाख रुपए प्रतिमाह के समेकित वेतन (आवास तथा कार की सुविधा के बिना) पर पेंशन निधि विनियामक और विकास प्राधिकरण (पीएफआरडीए) में अध्यक्ष के पद पर नियुक्त करती है।

[फा. सं. 19/1/2019-पीआर]

अंशुमन शर्मा, उप सचिव

MINISTRY OF FINANCE**(Department of Financial Services)**New Delhi, the 19th February, 2020

S.O. 193.—In exercise of powers conferred by Section 4 of the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013), the Central Government hereby appoints Shri Supratim Bandyopadhyay to the post of Chairperson, PFRDA, with a consolidated salary of Rs. 4.50 lakh per month (without facility of house and car) for a period of 05 years, with effect from the date of assumption of charge of the post or till attaining the age of 65 years or until further orders, whichever is the earliest.

[F. No. 19/1/2019-PR]

ANSHUMAN SHARMA, Dy. Secy.

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

नई दिल्ली, 20 फरवरी, 2020

का.आ. 194.—केंद्र सरकार एतद्वारा, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए असम राज्य सरकार, गृह और राजनीति (ए) विभाग :: दिसपुर, गुवाहाटी की दिनांक 25 अक्तूबर, 2018 की अधिसूचना सं. एचएमए.19015/110/2018-राजनीति(ए)-एच और पी (ईसीएफ :: 84671)/14 के माध्यम से प्राप्त सहमति से, बराक वैली के रास्ते मेघालय से बांग्लादेश को किए जाने वाले अवैध कोयला व्यापार के संबंध में भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 420, 471, 468, 323, 506 के तहत करीमगंज पुलिस थाना मामला संख्या 647/2018 तथा ऐसे किसी एक या अधिक अपराधों से जुड़े या उससे सम्बद्ध किसी दुष्प्रयास, दुष्प्रेरणा और षडयंत्र तथा उसी संव्यवहार में किए गए एवं / अथवा उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(धों) का अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त असम राज्य में करती है।

[फा. सं. 228/63/2018-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

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

New Delhi, the 20th February, 2020

S.O. 194.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Assam, Home & Political (A) Department :: Dispur, Guwahati issued vide Notification No. HMA.19015/110/2018-Political(A)-H&P (eCF::84671)/14 dated 25th October, 2018, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole State of Assam for investigation of the offences relating to Karimganj PS Case No. 647/2018, u/s 420, 471, 468, 323, 506 of Indian Penal Code, 1860 (Act No. 45 of 1860) regarding illegal coal trade from Meghalaya to Bangladesh via Barak Valley and any attempt, abetment and conspiracy in relation to or in connection with one or more of such offences and/or any other offence(s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/63/2018-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 20 फरवरी, 2020

का.आ. 195.—केंद्र सरकार एतद्वारा, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए बिहार राज्य सरकार, गृह विभाग (पुलिस शाखा) की अधिसूचना सं. 9/सीबीआई-80-15/2019 एचपी-9112/पटना, दिनांक 01.11.2019 के तहत दी गई सहमति से, नवादा टाउन थाने में मुख्य डाकघर, नवादा, बिहार के सरकारी धन से संबंधित भा.दं.सं. की धारा 409, 420, 467, 468 के अंतर्गत दर्ज प्रकरण सं. 592/2019, दिनांक 09.05.2019 का अन्वेषण करने तथा ऐसे किसी एक या अधिक अपराधों से जुड़े या उससे सम्बद्ध किसी दुष्प्रयास, दुष्प्रेरणा और षड्यंत्र तथा उसी संव्यवहार में किए गए एवं / अथवा उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(धों) का अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त बिहार राज्य में करती है।

[फा. सं. 228/38/2019-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 20th February, 2020

S.O. 195.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Bihar, Home Department (Police Branch), issued vide Notification No. 9/C.B.I.-80-15/2019 HP-9112/Patna dated 01.11.2019, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole State of Bihar for investigation into the Nawada Town P.S. Case No-592/2019 dated 09.05.2019, under section 409, 420, 467, 468 IPC relating to Government money pertaining to Head Post Office, Nawada, Bihar and any attempt, abetment and conspiracy, in relation to or in connection with one or more such offence(s) and/or any other offence(s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/38/2019-AVD-II]

S.P.R. TRIPATHI, Under Secy.

नई दिल्ली, 20 फरवरी, 2020

का.आ. 196.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की अधिनियम संख्या 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) अनुभाग-4, आदेश सं. /VI-पी-4-2019, लखनऊ, दिनांक 2 नवंबर, 2019 के पत्र सं. 3565 बी/VI- पी-4-19 के माध्यम से सूचित सहमति से, हज़रतगंज पुलिस थाना, जिला लखनऊ में भारतीय दंड संहिता (वर्ष 1860 की अधिनियम सं. 45) की धारा 409, 420, 467, 468, 471 के तहत दर्ज मामला अपराध सं. 540/2019 का अन्वेषण तथा उत्तर प्रदेश पावर सेक्टर इम्प्लॉईज ट्रस्ट की धनराशि को प्राईवेट कम्पनी दीवान हाउसिंग फाईनांस कॉर्पोरेशन लिमिटेड (डीएचएफसीएल) की असुरक्षित निधि में गैरकानूनी रूप से जमा कराने से संबंधित जांच/अन्वेषण तथा ऐसे एक या अधिक अपराधों से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(धों) का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तर प्रदेश राज्य में करती है।

[फा. सं. 228/37/2019-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 20th February, 2020

S. O. 196.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, Home (Police) Section-4, Order No. /VI-P-4-2019, Lucknow, conveyed vide letter No. 3565 B/VI-P-4-19 dated 2nd November, 2019, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole State of Uttar Pradesh for

investigation of Case Crime No. 540/2019 under section 409, 420, 467, 468, 471 of the Indian Penal Code (Act No. 45 of 1860), registered at Police Station, Hazratganj, District Lucknow, as well as for enquiry/investigation into illegal deposition of funds of U.P. State Power Sector Employees Trust into insecure funds of private company Dewan Housing Finance Corporation Limited (DHFCL) and any attempt, abetment and conspiracy in relation to or in connection with one or more of such offences and/ or any other offence (s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/37/2019-AVD-II]

S. P. R. TRIPATHI, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 14 फरवरी, 2020

का.आ. 197.—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. गंगटोक डिपो
इंडियन ऑयल कॉर्पोरेशन लिमिटेड,
बागेखोला, डाकघर: माझितार,
पूर्व सिक्किम – 737136
2. जम्मू एएफएस
इंडियन ऑयल कॉर्पोरेशन लिमिटेड,
23 विंग एयर फोर्स स्टेशन,
जम्मू, सतवारी – 180003

[सं. 11011/1/2017 (हिन्दी)]

ऊषा बिन्जोला, संयुक्त निदेशक (राजभाषा)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 14th February, 2020

S.O. 197.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the central Government hereby notifies the following offices of the Public Sector Undertakings under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more percent of the staff have acquired working Knowledge of Hindi :—

1. Gangtok Depot
Indian Oil Corporation Ltd.,
Bagekhola, Post Office: Majhitar,
East Sikkim - 737136,
2. Jammu AFS
Indian Oil Corporation Ltd.,
23 Wing Air Force Station,
Jammu, Satwari-180003

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

USHA BINJOLA, Jt. Director (OL)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 12 फरवरी, 2020

का.आ. 198.—राष्ट्रपति, श्री अशोक कुमार सिंह पीठासीन अधिकारी केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय सं. 2, चंडीगढ़ को दिनांक 07.02.2020 से छः माह तक की अवधि अथवा नियमित रूप से पद भरे जाने तक अथवा अगले आदेशो तक केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय सं. 1, चंडीगढ़ के पीठासीन अधिकारी के पद का अतिरिक्त प्रभार विस्तृत करते हैं।

[सं. अ-11016/02/2019-सीएलएस-II]

सतीश चन्दर, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 12th February, 2020

S.O. 198.—The President is pleased to extend the additional charge of the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No.1, Chandigarh entrusted to Shri Ashok Kumar Singh, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No.2, Chandigarh for a further period of six months with effect from 07.02.2020, or till the post is filled up on regular basis, or until further orders, whichever is the earliest.

[No. A-11016/02/2019-CLS-II]

SATISH CHANDER, Under Secy.

शुद्धिपत्र

नई दिल्ली, 13 फरवरी, 2020

का.आ. 199.—इस मंत्रालय की दिनांक 16.01.2020 की अधिसूचना सं. एल 12011/90/2009—आईआर (बी.-II) के पंचाट संदर्भ सं. 54/2009 में निम्नलिखित संशोधन किया जाता है।

पंचाट सं. 54/2009 के पृष्ठ सं. 1 पर लिखित 1 पार्टी एवं 2 पार्टी को निम्न

पढ़ा जाये**1 पार्टी**

सचिव,
सिंडीकेट बैंक इम्पलाइज यूनियन,
सं. 138, 2 मेन रोड,
सिसादरीपुरम,
बंगलोर — 560020

2 पार्टी

जनरल मैनेजर (आई.जी.)
सिंडीकेट बैंक,
जनरल मैनेजर आफिस
सं. 69, 9 मेन रोड, ब्लाक 2, जयानगर,
बंगलोर:—560011

के स्थान पर**1 पार्टी**

जनरल मैनेजर (आई. जी.)
सिंडीकेट बैंक,
जनरल मैनेजर आफिस
सं. 69, 9 मेन रोड, ब्लाक 2, जयानगर,
बंगलोर:—560011

2 पार्टी

सचिव,
सिंडीकेट बैंक इम्पलाइज यूनियन,
सं. 138, 2 मेन रोड,
सिसादरीपुरम,
बंगलोर —560020

[सं. एल-12011/90/2009-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

CORRIGENDUM

New Delhi, the 13th February, 2020

S.O. 199.— This Ministry's Notification No. L-12011/90/2009-IR(B-II) dated 16/01/2020 in Award I.D. No. 54/2009 is amended as under :—

At page No. 1 of the Award I.D. No. 54/2009, I Party & II Party may be:

Read As :-**I Party :**

The Secretary,
Syndicate Bank Employees Union,
No. 138, 2nd Main Road,
Seshadripuram,
Bangalore-560020

II Party

The General Manager (IG),
Syndicate Bank,
General Manager's Office
No. 69, 9th Main Road, II Block, Jayanagar,
Bangalore-560011

Instead of :-**I Party :**

The General Manager(IG),
Syndicate Bank,
General Manager's Office
No. 69, 9th Main Road, II Block, Jayanagar,
Bangalore-560011

II Party

The Secretary,
Syndicate Bank Employees Union,
No. 138, 2nd Main Road,
Seshadripuram,
Bangalore-560020

[No. L-12011/90/2009- IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 20TH DECEMBER 2019**PRESENT :** JUSTICE SMT. RATNAKALA, Presiding Officer**CR 54/2009****I Party**

The Secretary,
Syndicate Bank employees
Union, No. 138,
2nd Main Road,
Seshadripuram,
Bangalore – 560020.

II Party

The General Manager (IG),
Syndicate Bank,
General Manger's Office,
No. 69, 9th main, II block,
Jayanagar,
Bangalore - 560011.

Appearance

Advocate for I Party : Mr. S. B. Sai Prakash

Advocate for II Party : Mr. Ramesh Upadhaya

AWARD

The Central Government vide Order No.L-12011/90/2009-IR(B-II) dated 23.11.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Syndicate Bank, Regional Office, Bellary, Karnataka in awarding the punishment of reduction of basic pay by one stage for a period of one year Sh. Ramakrishna, employee Number 352482, Clerk, Syndicate Bank, Royal Circle, Bellary vide its order No. 53/ROB/IRC/F-12/AIR2007 dated 18.05.2007 is justified and legal? What relief the workman is entitled to?”

1. The 1st Party Trade union has espoused the cause of the workman, employee of the 2nd Party who suffered minor punishment by way of Disciplinary Action taken by the 2nd Party. Before imposing the punishment order, he was issued charges alleging, assisting a co-employee for cheating and impersonation against the employee Bank. The claim of the 1st party before this Tribunal is, the enquiry was concluded in a day and Enquiry report was submitted based on which the Disciplinary Authority imposed the punishment of reduction of Basic Pay by one stage for a period of one year which was confirmed by the Appellate Authority; he did not cause any financial loss to the Bank nor did gain any pecuniary gain / benefit at the cost of the Bank; all the charges are flimsily framed, irrelevant and unwarranted.

2. The 2nd Party refuted the allegations made by the 1st party stating that all opportunities were provided to the 1st Party.

3. On the rival pleadings of both the parties on 23.04.2012 a Preliminary Issue was framed on Domestic Enquiry and the 2nd Party has led its evidence by examining its Enquiry Officer as MW-1 and got marked Ex M-1 to Ex M-19 and he was discharged without cross examination. There was no rebuttal evidence from the 1st Party; the Preliminary Issue is answered in the affirmative. Thereafter also, the 1st Party remained continuously absent.

4. Heard Sh. RU for the 2nd Party.

5. The allegation against the workman as per the Charge Sheet was to the effect that, while working as a Clerk at Bellary main branch between 30.07.1990 to 24.06.2000, he introduced SB A/c No. 37280 at Bellary main Branch on 20.05.1996 in the name of Smt. Lakshamma W/o Sh. Honnurappa..... Said Account holder was sanctioned FL Dairy Loan on 06.06.1997, and the loan became irregular / NPA. The residential address furnished in the account opening form is the residential address of Sh. Honnaiah who was a Clerk at Regional Office Bellary and known to the 1st Party. The Account Holder is the wife of said H. Honnaiah but in the account opening form, the name is mentioned as Sh. Honnurappa. Sh. Honnaiah in his letter dated 23.06.2005 admitted the liability of the loan availed by his wife. Thereby, the 1st Party facilitated the wife of H. Honnaiah for furnishing false and misleading information to open the account. He has assisted Sh. Honnaiah in committing act of cheating and impersonation.

6. During the enquiry, the 2nd Party examined one Official witness / their Senior Manager working at Vigilance Unit and produced 16 documents. The witness was thoroughly cross-examined; the 1st party did not adduce rebuttal evidence. The loan transaction papers, the statements of witnesses formed the part of Management Exhibits. MW-1 in his deposition stated that, he visited the residence of Smt. Lakshamma at Gadang Street, Bellary along with the Senior Manager (RC), Bellary Branch and Manager (RD) Bijapur Main Branch on 22.06.2005. During the said visit, Smt. Lakshamma confirmed her signatures on the loan documents; in this regard, he produced the joint inspection report (marked as MEX-11) and statement of the witnesses recorded by him.

The 1st Party did not dispute the fact that, he had introduced the SB Account 37280 of Smt. Lakshamma at the request of Sh. Honnaiah / Staff of Bellary RO. However, his explanation was that, Smt. Lakshamma was his relative and Sh. Honnaiah had told him that, he does not have SB A/c at Bellary main Branch.

The Enquiry Officer took note of the fact that, at the introducer's column the 1st Party had not stated for how long he knew Smt. Lakshamma; that impressed the Enquiry Officer to record that being a responsible staff signing as introducer without knowing the depositor's address and antecedents was not proper on the part of the 1st Party. Having noticed that, there was no evidence establishing the allegation of furnishing false and misleading information assisting Sh. H. Honnaiah in cheating and impersonation and the Loan Account was closed on full settlement thereby, causing no loss to the Bank, the Enquiry Officer held the workman guilty of the commission of gross misconduct of *“doing prejudicial to the interest of Bank vide clause 5 (J) of the Bipartite settlement”* for introducing Smt. Lakshamma without verifying the correctness of the facts mentioned in the account opening form.

7. The Disciplinary Authority has passed a detailed order by considering the defence viz a viz the Enquiry Report and the evidence placed before the Enquiry Officer, before imposing the punishment of withholding the Basic Pay of the workman by one stage for one year. As such the punishment order does not have any

implication on his future career; neither it has caused any monetary loss to him. It cannot be inferred as disproportionate to the misconduct proved. By catena of Judgements, higher Courts have reminded the Tribunals to contain from intervening in the Punishment Order, where the charges are proved during the Domestic Enquiry. The jurisdiction under Section 11-A of the I.D Act cannot be exercised in the present circumstance.

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 20th December, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, सतलुज जल विद्युत निगम लिमिटेड, शिमला, एच.पी. 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 - चंडीगढ़, पंचाट (संदर्भ संख्या 12/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/85/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 200.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2015) of the Central Government Industrial Tribunal-cum Labour Court-2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Satluj Jal Vidyut Nigam Limited, Shimla, H.P. & Others, and their workmen which were received by the Central Government on 14.01.2020.

[No. L-42012/85/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.12/2015

Registered on:-18.05.2015

Swaroop Chand S/o Ami Chand, R/o Vill. Jhalli, P.O. and Sub.
Tehsil Nithar, Distt. Kullu, H.P..

...Workman

Versus

1. The General Manager, Satluj Jal Vidyut Nigam Limited, Unit Rampur Hydro Electric Project (412 MW) Jhakhri, Tehsil Rampur Bsr, Distt. Shimla, H.P.
2. The Project Manager, Gamon India Limited, Rampur Hydro Electric Project (412 MW), Package-1, Avaeri, P.O. Nogli, Tehsil Nirmand, Distt. Kullu, H.P.
3. The Chairman-cum-Managing Director, Bharat Hydel Project Private Limited, 9, PPCL Colony, Opposite Radhaswami Bhawan, Uday Vihar, Haridwar, Bye-pass Road Dehradun.

...Respondent/Management

AWARD
Passed on:-07.01.2020

Central Government vide Notification No. L-42012/85/2015-IR(DU) Dated 07.05.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of M/s Bharat Hydel Project Pvt. Ltd., a sub-contractor of M/s Gammon India Ltd. engaged by S.J.V.N Ltd. in terminating the services of sh. Swarup Chand S/o Sh. Ami Chand w.e.f. 23.11.2014 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?”

1. Both the parties were put to notice and claimant Swaroop Chand filed statement of claim, with the averment, that he was employed with respondent no.1 as watch and ward staff/security guard in the Rampur Hydro Electric Project 412 MW, package-1, in the month of August 2012, initially on the payment of Rs.5,000/- per month, which was later on increased to Rs.10,000/- per month. He worked 12 hours per day till 23.11.2014 when the services of the workman was terminated by respondent no.3 with the connivance of other respondents. The principal employer i.e. respondent no.1 assigned the work of construction on contract and execution of Adits, Head Race Tunnel, Diversion Tunnel from Jhakri to Averi to M/s Gammon India Limiter i.e. respondent no.2 who had further contracted out some portion of Head Race Tunnel to M/s Bharat Hydel Projects Pvt. Ltd. i.e. respondent no.3. The work of the workman was extracted by the respondents together for the benefit of the respondents especially the principal employer i.e. respondent no.1. The respondent no.1 has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 and it has not given any notice or compensation in lieu of notice while terminating the services of the workman which is against the settled principles of Law. Therefore, it is prayed that the termination of the workman dated 23.11.2014 may be set aside and other relief which this Hon'ble Tribunal deems fit may kindly be ordered in favor of the petitioner/workman in the interest of justice and fair play.

2. Respondent No.1 has filed its written statement, alleging therein that the present claim application is not maintainable against the replying respondent as there is no averments made in the petition as to how the answering respondent is liable to pay compensation and other relief as claimed in the petition by the petitioner. The petitioner/workman was engaged in the service by M/s K.R. Care Securicos, Head Office Sai 9, Kilokary, near CTC Plaza Ashram, New Delhi-110014 and claim petition is bad for non-joinder of necessary party. There is no relationship of employer and employee between the parties. It is therefore, prayed that the petition filed against the answering respondent may kindly be dismissed in view of the reply given by the respondent in the interest of justice and fair play.

3. Respondent no.2 and 3 has not filed any written statement and was proceeded ex parte vide order dated 06.10.2015.

4. The workman has filed its replication to the written statement filed by respondent no.1, alleging the same facts which are already alleged in the claim petition as such, it does not required to be repeated again.

5. In support of his case, the workman Swaroop Chand appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.A-1 and has been cross-examined by the learned counsel of respondent no.1. Furthermore, claimant has examined an independent witness Bhim Sen, who has also been cross-examined by the learned counsel of respondent no.1.

6. Respondent No.1 has examined Sh. Narinder Kumar, AGM(Law), RHPS, who has filed his affidavit Ex.MW1/A and cross-examined by the workman counsel.

7. I have heard Sh. O.P. Chauhan, AR for the workman and Sh. Rajesh Kumar, AR for respondent no.1 and have gone through the records carefully.

8. Before averting to the real controversy between the parties, it is pertinent to mention that some facts are admitted between the parties which are required to be mentioned in order to cut-short the discussion with respect to those facts. Admittedly, respondent no.1 i.e. General Manager, Satluj Jal Vidyut Nigam Ltd., is the main-employer who has contracted with the respondent no.2 i.e. The Project Manager, Gamon India Limited, for completion of work and subsequently respondent no.2 has sub-contracted the work to respondent no.3 i.e. Chairman-cum-Managing Director, Bharat Hydel Project Private Limited, for its completion. The dispute between the parties relates with the relation of respondents and workman because respondent no.1 General Manager, Satluj Jal Vidyut Nigam Limited has specifically alleged in its written statement that workman was employed by M/s K.R. Care Securicos for security purposes and there did not exist relationship of employer and employee between the workman and respondents as such, the claimant is not entitled for any relief.

9. There is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop. Sugar Mills Ltv. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.**

10. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different inasmuch as the management/respondent no.1 in its written statement has categorically denied the factum of employment of the claimant inasmuch as it has been asserted that the workman was engaged by M/s K.R. Care Securicos as such, it has to be proved by the workman that there exists relationship of employer and employee between the respondents and claimant/workman. In this regard, reference can be made to the decision of **Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532**, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. In these circumstances, it stands proved that claimant is a workman and relationship of employer-employee has to be between the parties.

11. The issue as to whether the workman was engaged by respondent no.1 directly or through contractors is the bone of contention between the parties. Hence, question remains to be seen whether the workman has proved that he was directly engaged with the respondents in the month of August, 2012 and regularly continued till his termination in the year 2014. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single document to prove that workman/claimant was directly employed by the respondent no.1 or other respondents no.2 and 3.

12. The Hon'ble Supreme Court after analysing the catena of cases has laid down in **Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014**, two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

- 1) Whether the principal employer pays the salary instead of contractor and
- 2) Whether the principal employer controls and supervise the work of the employees?

13. The facts regarding the payment of salary by the management or contractor to the workman as watch and ward security guard in the Rampur Hydro Electric Project initially on monthly wages of Rs.5,000/- which was later increased to Rs.10,000/- per month has to be proved by the competent evidence. Workman has not mentioned anything regarding the mode of payment of wages, salary, letter of appointment etc. in his claim statement as well as affidavit filed as evidence. It is also not clear either by the claim statement or by the affidavit of the workman that who was the ultimate employer under whom he was rendering his services. It is pertinent to mention that workman has neither stated in his claim statement nor in his replication with respect to the written statement filed by the respondent no.1 regarding the security agency M/s K.R. Care Security Ltd. It appears that workman was engaged by M/s K.R. Care Security Agency and was paid accordingly by him that is why there is nothing on record to prove the factum of salary, mode of payment and attendance register, if any, with respect to the services rendered by him. In this connection, learned counsel of the workman has contended that payment of salary was subject to the control and supervision of the respondent no.1 and virtually it was paid by the respondent no.1 as is alleged by the workman during the course of cross-examination by the respondent no.1 counsel. I am not satisfied with the arguments of the learned counsel of the workman as nothing is mentioned in the pleading/claim petition as well as affidavit submitted by the workman in support of the claim petition. It is also pertinent to mention that there is nothing in the form of evidence that the workman

was directly paid by respondent no.1, 2 or 3 as the case may be. Thus, on this issue, it can be inferred that there is nothing on record to prove the factum of salary/payment by the respondent M/s Bharat Hydel Project Pvt. Ltd. as the sub-contractor of respondent no.1 Satluj Jal Vidyut Nigam Ltd. Unit Rampur Hydro Electric Project.

14. Secondly, so far as, the question of controls and supervision is concerned. Workman as witness has categorically stated that his work was supervised by the respondent no.1. Except this, nothing is brought on record to prove that it is respondent no.1 who was supervising and controlling the work of workman/claimant. The learned counsel of claimant argued that he was rendering the services in the premises of respondent no.1 and it has all control and supervision through its employees. There is no such reliable evidence on record. However, the apex court in the case of International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374] has held as follows:-

“If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

15. Thus, the principle enunciated by the Hon’ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the workman is mum on this score and workman has not mentioned any specific averments in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by respondent no.1. There is nothing on record to prove that it is the respondent no.1 who grants leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the security premise of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the respondents for a specific work inefficient manner done by the respondents in the establishment regarding which there is no evidence at all.

16. Learned counsel of the workman/claimant argued that though there is no documentary evidence with respect to the engagement of workman by the respondents but an independent witness namely Bhim Sen has been examined by the workman to prove the factum of employment by the respondent no.1 being the principle employer, who has engaged respondent no.2 as his contractor and respondent no.2 has engaged respondent no.3 as a sub-contractor. Hence, it should be presumed that respondent no.1 namely The General Manager, Satluj Jal Vidyut Nigam Limited, Unit Rampur Hydro Electric Project(412 MW) was the employer of the workman as such, there exists relationship of employer and employee. No doubt witness Bhim Sen has stated that he was working as Fitter with respondent no.1 during the year 2008-2014 and get Rs. 22,000/-. This witness has further stated that Sh. Swaroop Chand along with other co-workmen were working as Security Guard with respondent no.1 till 2014 when he left the work of the company. This witness has refused like as workman/claimant that he was working with M/s K.R. Care Securicos Security Ltd. Contrary to this, learned counsel of respondent no.1 argued that this witness was not in the job with the respondent as is alleged by him in his examination-in-chief. It is further argued that the photocopy of the identity card Ex.WW1/M1 is fake and forged but there is nothing on record to prove that the identity card of the witness Bhim Sen is factually fake and forged. Hence, mere suggestion of respondent no.1 counsel has no force in the light of the statement of this witness on oath. The factum of relation with respondent no.1 or respondent no.2 or 3 is still remains to be proved because there is nothing on record to justify the claim that workman was paid by respondent no.1, 2 or 3 whatsoever as is stated by the workman. I may also in the consonance of the argument of the learned counsel of respondent no.1 that there is nothing like principal-employer envisaged in the Industrial Disputes Act, 1947 like as Employees Provident Fund, 1952 Act, where liability has to be incurred by the principal-employer regarding the payment of employees provident fund in case contractor fails in his duty to pay fund as is envisaged in the provisions of the Act itself. Learned counsel of respondent no.1 has further drawn my attention towards the Photostat copy of

the identity card filed by the witness Bhim Sen and argued that this certificate is issued by the Kedar Rai Govt. Contractor and not by respondent no.1 as such evidence given by the witness Bhim Sen cannot be accepted on its face value. The contention of learned counsel of respondent no.1 has truth in itself as witness Bhim Sen has not submitted any documents regarding his engagement by any of the respondent nos.1, 2 or 3. Hence, his oral evidence cannot be treated trustworthy in the absence of documentary evidence.

17. In view of the above legal and factual discussion and due regard to the facts and circumstances of the case, this Tribunal is of the view that workman has failed to prove that he was engaged by M/s. Bharat Hydel Project Ltd., a sub-contractor of M/s Gammon India Ltd. engaged by S.J.V.N. Ltd. Hence, the workman is not entitled for any relief as claimed in the claim petition and the award is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 201.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, सतलुज जल विद्युत निगम लिमिटेड, शिमला, एच.पी. 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 - चंडीगढ़, पंचाट (संदर्भ संख्या 13/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/84/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवसर सचिव

New Delhi, the 13th February, 2020

S.O. 201.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2015) of the Central Government Industrial Tribunal-cum Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Satluj Jal Vidyut Nigam Limited, Shimla, H.P.& Others, and their workmen which were received by the Central Government on 14.01.2020.

[No. L-42012/84/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 13/2015

Registered on:-18.05.2015

Sunder Singh S/o Late Sh. Prem Shukh, R/o Village & P.O. Kungal Balti,
Tehsil Rampur, Distt. Shimla, H.P..

...Workman

Versus

1. The General Manager, Satluj Jal Vidyut Nigam Limited, Unit Rampur Hydro Electric Project (412 MW) Jhakhri, Tehsil Rampur Bsr, Distt. Shimla, H.P.
2. The Project Manager, Gamon India Limited, Rampur Hydro Electric Project (412 MW), Package-1, Avaeri, P.O. Nogli, Tehsil Nirmand, Distt. Kullu, H.P.
3. The Chairman-cum-Managing Director, Bharat Hydel Project Private Limited, 9, PPCL Colony, Opposite Radhaswami Bhawan, Uday Vihar, Haridwar, Bye-pass Road Dehradun.

...Respondent/Management

AWARD
Passed on:-07.01.2020

Central Government vide Notification No. L-42012/84/2015-IR(DU) Dated 07.05.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of M/s Bharat Hydel Project Pvt. Ltd., a sub-contractor of M/s Bharat Hydel Project Pvt. Ltd., a sub contractor of M/s Gammon India Ltd. engaged by S.J.V.N. Ltd. in terminating the services of Sh. Sunder Singh S/o Late Sh. Prem Sukh w.e.f. 23.11.2014 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?”

1. Both the parties were put to notice and claimant Sunder Singh filed statement of claim, with the averment, that he was employed with respondent no.1 as watch and ward staff/security guard in the Rampur Hydro Electric Project 412 MW, package-1, on 01.07.2012, initially on the payment of Rs.5,000/- per month, which was later on increased to Rs.10,000/- per month. He worked 12 hours per day till 23.11.2014 when the service of the workman was terminated by respondent no.3 with the connivance of other respondents. The principal employer i.e. respondent no.1 assigned the work of construction on contract and execution of Adits, Head Race Tunnel, Diversion Tunnel from Jhakri to Averi to M/s Gammon India Limiter i.e. respondent no.2 who had further contracted out some portion of Head Race Tunnel to M/s Bharat Hydel Projects Pvt. Ltd. i.e. respondent no.3. The work of the workman was extracted by the respondents together for the benefit of the respondents especially the principal employer i.e. respondent no.1. The respondent no.1 has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 and it has not given any notice or compensation in lieu of notice while terminating the services of the workman which is against the settled principles of Law. Therefore, it is prayed that the termination of the workman dated 23.11.2014 may be set aside and other relief which this Hon'ble Tribunal deems fit may kindly be ordered in favor of the petitioner/workman in the interest of justice and fair play.

2. Respondent No.1 has filed its written statement, alleging therein that the present claim application is not maintainable against the replying respondent as there is no averments made in the petition as to how the answering respondent is liable to pay compensation and other relief as claimed in the petition by the petitioner. The petitioner/workman was engaged in the service by M/s K.R. Care Securicos, Head Office Sai 9, Kilokary, near CTC Plaza Ashram, New Delhi-110014 and claim petition is bad for non-joinder of necessary party. There is no relationship of employer and employee between the parties. It is therefore, prayed that the petition filed against the answering respondent may kindly be dismissed in view of the reply given by the respondent in the interest of justice and fair play.

3. Respondent no.2 and 3 has not filed any written statement and was proceeded ex parte vide order dated 06.10.2015.

4. The workman has filed its replication to the written statement filed by respondent no.1, alleging the same facts which are already alleged in the claim petition as such, it does not required to be repeated again.

5. In support of his case, the LR of the workman Smt. Raksha Devi appeared in the witness box and tendered her affidavit in evidence which is marked as Ex.WW1/A and has been cross-examined by the learned counsel of respondent no.1.

6. Respondent No.1 has examined Sh. Narinder Kumar, AGM(Law), RHPS, who has filed his affidavit Ex.MW1/A and been cross-examined by the workman counsel.

7. I have heard Sh. O.P. Chauhan, AR for the workman and Sh. Rajesh Kumar, AR for respondent no.1 and have gone through the records carefully.

8. Before averting to the real controversy between the parties, it is pertinent to mention that some facts are admitted between the parties which are required to be mentioned in order to cut-short the discussion with those facts. Admittedly, respondent no.1 i.e. General Manager, Satjul Jal Vidyut Nigam Ltd., is the main-employer who has contracted the work to respondent no.2 i.e. The Project Manager, Gamon India Limited, and subsequently respondent no.2 has sub-contracted the work to respondent no.3 i.e. Chairman-cum-Managing Director, Bharat Hydel Project Private Limited, for its completion. The dispute between the parties relates with the relation of respondents with the workman because respondent no.1 General Manager, Satluj Jal Vidyut Nigam Limited has specifically alleged in its written statement that workman is employed by M/s K.R. Care Securicos and there does not exists relationship of employer and employee between the workman and respondents as such, the claimant is not entitled for any relief.

9. There is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop. Sugar Mills Ltv. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.**

10. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different inasmuch as the management/respondent no.1 in its written statement has categorically denied the factum of employment of the claimant inasmuch as it has been asserted that the workman was engaged by M/s K.R. Care Securicos as such, it has to be proved by the workman that there exists relationship of employer and employee between the respondents and claimant/workman. In this regard, reference can be made to the decision of **Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532**, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. In these circumstances, it stands proved that claimant is a workman and relationship of employer-employee has to be between the parties.

11. The issue as to whether the workman was engaged by respondent no.1 directly or through contractors is the bone of contention between the parties. Hence, question remains to be seen whether the workman has proved that he was directly engaged with the respondents on 01.07.2012 and regularly continued till his termination in the year 2014. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single document to prove that workman/claimant was directly employed by the respondent no.1 or other respondents no.2 and 3.

12. The Hon'ble Supreme Court after analysing the catena of cases has laid down in **Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014**, two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

- 1) Whether the principal employer pays the salary instead of contractor and
- 2) Whether the principal employer controls and supervise the work of the employees?

13. The facts regarding the payment of salary by the management or contractor to the workman as watch and ward security guard in the Rampur Hydro Electric Project initially on monthly wages of Rs.5,000/- which was later increased to Rs.10,000/- per month has to be proved by the competent evidence. Workman has not mentioned anything regarding the mode of payment of wages, salary, letter of appointment etc. in his claim statement as well as affidavit filed as evidence. It is also not clear either by the claim statement or by the affidavit of the workman that who was the ultimate employer under whom he was rendering his services. It is pertinent to mention that workman has neither stated in his claim statement nor in his replication with respect to the written statement filed by the respondent no.1 regarding the security agency M/s K.R. Care Security Ltd. It appears that workman was engaged by M/s K.R. Care Security Agency and was paid accordingly by him that is why there is nothing on record to prove the factum of salary, mode of payment and attendance register, if any, with respect to the services rendered by him. In this connection, learned counsel of the workman has contended that payment of salary was subject to the control and supervision of the respondent no.1 and virtually it was paid by the respondent no.1 as is alleged by the workman during the course of cross-examination by the respondent no.1 counsel. I am not satisfied with the arguments of the learned counsel of the workman as nothing is mentioned in the pleading/claim petition as well as affidavit submitted by the workman in support of the claim petition. It is also pertinent to mention that there is nothing in the form of evidence that the workman was

directly paid by respondent no.1, 2 or 3 as the case may be. Thus, on this issue, it can be inferred that there is nothing on record to prove the factum of salary/payment by the respondent M/s Bharat Hydel Project Pvt. Ltd. as the sub-contractor of respondent no.1 Satluj Jal Vidyut Nigam Ltd. Unit Rampur Hydro Electric Project.

14. Secondly, so far as, the question of controls and supervision is concerned. Workman as witness has categorically stated that his work was supervised by the respondent no.1. Except this, nothing is brought on record to prove that it is respondent no.1 who was supervising and controlling the work of workman/claimant. The learned counsel of claimant argued that he was rendering the services in the premises of respondent no.1 and it has all control and supervision through its employees. There is no such reliable evidence on record. However, the apex court in the case of International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374] has held as follows:-

“If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

15. Thus, the principle enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the workman is mum on this score and workman has not mentioned any specific averments in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by respondent no.1. There is nothing on record to prove that it is the respondent no.1 who grants leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the security premise of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the respondents for a specific work inefficient manner done by the respondents in the establishment regarding which there is no evidence at all.

16. In view of the above legal and factual discussion and due regard to the facts and circumstances of the case, this Tribunal is of the view that workman has failed to prove that he was engaged by M/s. Bharat Hydel Project Ltd., a sub-contractor of M/s. Gammon India Ltd. engaged by S.J.V.N. Ltd. Hence, the workman is not entitled for any relief as claimed in the claim petition and the award is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, सतलुज जल विद्युत निगम लिमिटेड, शिमला, एच.पी. 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 - चंडीगढ़, पंचाट (संदर्भ संख्या 14/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/83/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 202.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2015) of the Central Government Industrial Tribunal-cum Labour Court-2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Satluj Jal Vidyut Nigam Limited, Shimla, H.P.& Others, and their workmen which were received by the Central Government on 14.01.2020.

[No. L-42012/83/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.14/2015

Registered on:-18.05.2015

Ram Lal S/o Shyam Lal, R/o Vill. Thonala, P.O. Delath,
Tehsil Rampur, Distt. Shimla, H.P..

...Workman

Versus

1. The General Manager, Satluj Jal Vidyut Nigam Limited, Unit Rampur Hydro Electric Project (412 MW) Jhakhri, Tehsil Rampur Bsr, Distt. Shimla, H.P.
2. The Project Manager, Gamon India Limited, Rampur Hydro Electric Project (412 MW), Package-1, Avaeri, P.O. Nogli, Tehsil Nirmand, Distt. Kullu, H.P.
3. The Chairman-cum-Managing Director, Bharat Hydel Project Private Limited, 9, PPCL Colony, Opposite Radhaswami Bhawan, Uday Vihar, Haridwar, Bye-pass Road Dehradun.

...Respondent/Management

AWARD

Passed on:-07.01.2020

Central Government vide Notification No. L-42012/83/2015-IR(DU) Dated 07.05.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of M/s Bharat Hydel Project Pvt. Ltd., a sub-contractor of M/s Gammon India Ltd. engaged by S.J.V.N Ltd. in terminating the services of Sh. Ram Lal S/o Sh. Shyam Lal w.e.f. 23.11.2014 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?”

1. Both the parties were put to notice and claimant Ram Lal filed statement of claim, with the averment, that he was employed with respondent no.1 as watch and ward staff/security guard in the Rampur Hydro Electric Project 412 MW, package-1, on 01.09.2012, initially on the payment of Rs. 5,000/- per month, which was later on increased to Rs.10,000/- per month. He worked 12 hours per day till 23.11.2014 when the services of the workman was terminated by respondent no.3 with the connivance of other respondents. The principal employer i.e. respondent no.1 assigned the work of construction on contract and execution of Adits, Head Race Tunnel, Diversion Tunnel from Jhakri to Averi to M/s Gammon India Limiter i.e. respondent no.2 who had further contracted out some portion of Head Race Tunnel to M/s Bharat Hydel Projects Pvt. Ltd. i.e. respondent no.3. The work of the workman was extracted by the respondents together for the benefit of the respondents especially the principal employer i.e. respondent no.1. The respondent no.1 has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 and it has not given any notice or compensation in lieu of notice while terminating the services of the workman which is against the settled principles of Law. Therefore, it is prayed that the termination of the workman dated 23.11.2014 may be set aside and other relief which this Hon'ble Tribunal deems fit may kindly be ordered in favor of the petitioner/workman in the interest of justice and fair play.

2. Respondent No.1 has filed its written statement, alleging therein that the present claim application is not maintainable against the replying respondent as there is no averments made in the petition as to how the

answering respondent is liable to pay compensation and other relief as claimed in the petition by the petitioner. The petitioner/workman was engaged in the service by M/s K.R. Care Securicos, Head Office Sai 9, Kilokary, near CTC Plaza Ashram, New Delhi-110014 and claim petition is bad for non-joinder of necessary party. There is no relationship of employer and employee between the parties. It is therefore, prayed that the petition filed against the answering respondent may kindly be dismissed in view of the reply given by the respondent in the interest of justice and fair play.

3. Respondent no.2 and 3 has not filed any written statement and was proceeded ex parte vide order dated 06.10.2015.

4. The workman has filed its replication to the written statement filed by respondent no.1, alleging the same facts which are already alleged in the claim petition as such, it does not required to be repeated again.

5. In support of his case, the workman Ram Lal appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.WW1/A and has been cross-examined by the learned counsel of respondent no.1. Furthermore, claimant has examined an independent witness Bhim Sen, who has also been cross-examined by the learned counsel of respondent no.1.

6. Respondent No.1 has examined Sh. Narinder Kumar, AGM(Law), RHPS, who has filed his affidavit Ex.MW1/A and been cross-examined by the workman counsel.

7. I have heard Sh. O.P. Chauhan, AR for the workman and Sh. Rajesh Kumar, AR for respondent no.1 and have gone through the records carefully.

8. Before averting to the real controversy between the parties, it is pertinent to mention that some facts are admitted between the parties which are required to be mentioned in order to cut-short the discussion with those facts. Admittedly, respondent no.1 i.e. General Manager, Satluj Jal Vidyut Nigam Ltd., is the main-employer who has contracted with the respondent no.2 i.e. The Project Manager, Gamon India Limited, for completion of work and subsequently respondent no.2 has sub-contracted the work to respondent no. 3 i.e. Chairman-cum-Managing Director, Bharat Hydel Project Private Limited, for its completion. The dispute between the parties relates with the relation of respondents with the workman because respondent no.1 General Manager, Satluj Jal Vidyut Nigam Limited has specifically alleged in its written statement that workman was employed by M/s K.R. Care Securicos for security purposes and there did not exist relationship of employer and employee between the workman and respondents as such, the claimant is not entitled for any relief.

9. There is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop. Sugar Mills Ltv. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.**

10. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different inasmuch as the management/respondent no.1 in its written statement has categorically denied the factum of employment of the claimant inasmuch as it has been asserted that the workman was engaged by M/s K.R. Care Securicos as such, it has to be proved by the workman that there exists relationship of employer and employee between the respondents and claimant/workman. In this regard, reference can be made to the decision of **Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532**, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the

Act. In these circumstances, it stands proved that claimant is a workman and relationship of employer-employee has to be between the parties.

11. The issue as to whether the workman was engaged by respondent no.1 directly or through contractors is the bone of contention between the parties. Hence, question remains to be seen whether the workman has proved that he was directly engaged with the respondents 01.09.2012 and regularly continued till his termination in the year 2014. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single document to prove that workman/claimant was directly employed by the respondent no.1 or other respondents no.2 and 3.

12. The Hon'ble Supreme Court after analysing the catena of cases has laid down in Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014, two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

- 1) Whether the principal employer pays the salary instead of contractor and
- 2) Whether the principal employer controls and supervise the work of the employees?

13. The facts regarding the payment of salary by the management or contractor to the workman as watch and ward security guard in the Rampur Hydro Electric Project initially on monthly wages of Rs.5,000/- which was later increased to Rs.10,000/- per month has to be proved by the competent evidence. Workman has not mentioned anything regarding the mode of payment of wages, salary, letter of appointment etc. in his claim statement as well as affidavit filed as evidence. It is also not clear either by the claim statement or by the affidavit of the workman that who was the ultimate employer under whom he was rendering his services. It is pertinent to mention that workman has neither stated in his claim statement nor in his replication with respect to the written statement filed by the respondent no.1 regarding the security agency M/s K.R. Care Security Ltd. It appears that workman was engaged by M/s K.R. Care Security Agency and was paid accordingly by him that is why there is nothing on record to prove the factum of salary, mode of payment and attendance register, if any, with respect to the services rendered by him. In this connection, learned counsel of the workman has contended that payment of salary was subject to the control and supervision of the respondent no.1 and virtually it was paid by the respondent no.1 as is alleged by the workman during the course of cross-examination by the respondent no.1 counsel. I am not satisfied with the arguments of the learned counsel of the workman as nothing is mentioned in the pleading/claim petition as well as affidavit submitted by the workman in support of the claim petition. It is also pertinent to mention that there is nothing in the form of evidence that the workman was directly paid by respondent no.1, 2 or 3 as the case may be. Thus, on this issue, it can be inferred that there is nothing on record to prove the factum of salary/payment by the respondent M/s Bharat Hydel Project Pvt. Ltd. as the sub-contractor of respondent no.1 Satluj Jal Vidyut Nigam Ltd. Unit Rampur Hydro Electric Project.

14. Secondly, so far as, the question of controls and supervision is concerned. Workman as witness has categorically stated that his work was supervised by the respondent no.1. Except this, nothing is brought on record to prove that it is respondent no.1 who was supervising and controlling the work of workman/claimant. The learned counsel of claimant argued that he was rendering the services in the premises of respondent no.1 and it has all control and supervision through its employees. There is no such reliable evidence on record. However, the apex court in the case of International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374] has held as follows:-

"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

15. Thus, the principle enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal,

taking of disciplinary action and continuity of service etc. Claim petition filed by the workman is mum on this score and workman has not mentioned any specific averments in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by respondent no.1. There is nothing on record to prove that it is the respondent no.1 who grants leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the security premise of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the respondents for a specific work inefficient manner done by the respondents in the establishment regarding which there is no evidence at all.

16. Learned counsel of the workman/claimant argued that though there is no documentary evidence with respect to the engagement of workman by the respondents but an independent witness namely Bhim Sen has been examined by the workman to prove the factum of employment by the respondent no.1 being the principle employer, who has engaged respondent no.2 as his contractor and respondent no.2 has engaged respondent no.3 as a sub-contractor. Hence, it should be presumed that respondent no.1 namely The General Manager, Satluj Jal Vidyut Nigam Limited, Unit Rampur Hydro Electric Project(412 MW) was the employer of the workman as such, there exists relationship of employer and employee. No doubt witness Bhim Sen has stated that he was working as Fitter with respondent no.1 during the year 2008-2014 and get Rs. 22,000/-. This witness has further stated that Sh. Ram Lal along with other co-workmen were working as Security Guard with respondent no.1 till 2014 when he left the work of the company. This witness has refused like as workman/claimant that he was working with M/s K.R. Care Securicos Security Ltd. Contrary to this, learned counsel of respondent no.1 argued that this witness was not in the job with the respondent as is alleged by him in his examination-in-chief. It is further argued that the photocopy of the identity card Ex.WW1/M1 is fake and forged but there is nothing on record to prove that the identity card of the witness Bhim Sen is factually fake and forged. Hence, mere suggestion of respondent no.1 counsel has no force in the light of the statement of this witness on oath. The factum of relation with respondent no.1 or respondent no.2 or 3 is still remains to be proved because there is nothing on record to justify the claim that workman was paid by respondent no.1, 2 or 3 whatsoever as is stated by the workman. I may also in the consonance of the argument of the learned counsel of respondent no.1 that there is nothing like principal-employer envisaged in the Industrial Disputes Act, 1947 like as Employees Provident Fund, 1952 Act, where liability has to be incurred by the principal-employer regarding the payment of employees provident fund in case contractor fails in his duty to pay fund as is envisaged in the provisions of the Act itself. Learned counsel of respondent no.1 has further drawn my attention towards the Photostat copy of the identity card filed by the witness Bhim Sen and argued that this certificate is issued by the Kedar Rai Govt. Contractor and not by respondent no.1 as such evidence given by the witness Bhim Sen cannot be accepted on its face value. The contention of learned counsel of respondent no.1 has truth in itself as witness Bhim Sen has not submitted any documents regarding his engagement by any of the respondent nos.1, 2 or 3. Hence, his oral evidence cannot be treated trustworthy in the absence of documentary evidence.

17. In view of the above legal and factual discussion and due regard to the facts and circumstances of the case, this Tribunal is of the view that workman has failed to prove that he was engaged by M/s. Bharat Hydel Project Ltd., a sub-contractor of M/s. Gammon India Ltd. engaged by S.J.V.N. Ltd. Hence, the workman is not entitled for any relief as claimed in the claim petition and the award is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, सतलुज जल विद्युत निगम लिमिटेड, शिमला, एच.पी. 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 - चंडीगढ़, पंचाट (संदर्भ संख्या 15/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/82/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2015) of the Central Government Industrial Tribunal-cum Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Satluj Jal Vidyut Nigam Limited, Shimla, H.P.& Others, and their workmen which were received by the Central Government on 14.01.2020.

[No. L-42012/82/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.15/2015

Registered on:-18.05.2015

Chain Ram S/o Tiru Ram, R/o Vill. Dagot, P.O. Deem,
Tehsil Nirmand, Distt. Kullu, H.P..

...Workman

Versus

1. The General Manager, Satluj Jal Vidyut Nigam Limited, Unit Rampur Hydro Electric Project (412 MW) Jhakhri, Tehsil Rampur Bsr, Distt. Shimla, H.P.
2. The Project Manager, Gamon India Limited, Rampur Hydro Electric Project (412 MW), Package-1, Avaeri, P.O. Nogli, Tehsil Nirmand, Distt. Kullu, H.P.
3. The Chairman-cum-Managing Director, Bharat Hydel Project Private Limited, 9, PPCL Colony, Opposite Radhaswami Bhawan, Uday Vihar, Haridwar, Bye-pass Road Dehradun.

...Respondent/Management

AWARD

Passed on:-07.01.2020

Central Government vide Notification No. L-42012/82/2015-IR(DU) Dated 07.05.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of M/s Bharat Hydel Project Pvt. Ltd., a sub-contractor of M/s Gammon India Ltd. engaged by S.J.V.N Ltd. in terminating the services of Sh. Chain Ram S/o Sh. Tiru Ram w.e.f. 23.11.2014 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?”

1. Both the parties were put to notice and claimant Chain Ram filed statement of claim, with the averment, that he was employed with respondent no.1 as watch and ward staff/security guard in the Rampur Hydro Electric Project 412 MW, package-1, on 20.06.2011, initially on the payment of Rs.5,000/- per month, which was later on increased to Rs.10,000/- per month. He worked 12 hours per day till 23.11.2014 when the services of the workman was terminated by respondent no.3 with the connivance of other respondents. The principal employer i.e. respondent no.1 assigned the work of construction on contract and execution of Adits, Head Race Tunnel, Diversion Tunnel from Jhakri to Averi to M/s Gammon India Limiter i.e. respondent no.2 who had further contracted out some portion of Head Race Tunnel to M/s Bharat Hydel Projects Pvt. Ltd. i.e. respondent no.3. The work of the workman was extracted by the respondents together for the benefit of the respondents especially the principal employer i.e. respondent no.1. The respondent no.1 has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 and it has not given any notice or compensation in lieu of notice while terminating the services of the workman which is against the settled principles of Law. Therefore, it is prayed that the termination of the workman dated 23.11.2014 may be set aside and other relief which this Hon'ble Tribunal deems fit may kindly be ordered in favor of the petitioner/workman in the interest of justice and fair play.

2. Respondent No.1 has filed its written statement, alleging therein that the present claim application is not maintainable against the replying respondent as there is no averments made in the petition as to how the

answering respondent is liable to pay compensation and other relief as claimed in the petition by the petitioner. The petitioner/workman was engaged in the service by M/s K.R. Care Securicos, Head Office Sai 9, Kilokary, near CTC Plaza Ashram, New Delhi-110014 and claim petition is bad for non-joinder of necessary party. There is no relationship of employer and employee between the parties. It is therefore, prayed that the petition filed against the answering respondent may kindly be dismissed in view of the reply given by the respondent in the interest of justice and fair play.

3. Respondent no.2 and 3 has not filed any written statement and was proceeded ex parte vide order dated 06.10.2015.

4. The workman has filed its replication to the written statement filed by respondent no.1, alleging the same facts which are already alleged in the claim petition as such, it does not required to be repeated again.

5. In support of his case, the workman Chain Ram appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.A-1 and has been cross-examined by the learned counsel of respondent no.1. Furthermore, claimant has examined an independent witness Bhim Sen, who has also been cross-examined by the learned counsel of respondent no.1.

6. Respondent No.1 has examined Sh. Narinder Kumar, AGM(Law), RHPS, who has filed his affidavit Ex.MW1/A and been cross-examined by the workman counsel.

7. I have heard Sh. O.P. Chauhan, AR for the workman and Sh. Rajesh Kumar, AR for respondent no.1 and have gone through the records carefully.

8. Before averting to the real controversy between the parties, it is pertinent to mention that some facts are admitted between the parties which are required to be mentioned in order to cut-short the discussion with respect to those facts. Admittedly, respondent no.1 i.e. General Manager, Satluj Jal Vidyut Nigam Ltd., is the main-employer who has contracted with the respondent no.2 i.e. The Project Manager, Gamon India Limited, for completion of work and subsequently respondent no.2 has sub-contracted the work to respondent no.3 i.e. Chairman-cum-Managing Director, Bharat Hydrel Project Private Limited, for its completion. The dispute between the parties relates with the relation of respondents and workman because respondent no.1 General Manager, Satluj Jal Vidyut Nigam Limited has specifically alleged in its written statement that workman was employed by M/s K.R. Care Securicos for security purposes and there did not exist relationship of employer and employee between the workman and respondents as such, the claimant is not entitled for any relief.

9. There is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop. Sugar Mills Ltv. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.**

10. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different inasmuch as the management/respondent no.1 in its written statement has categorically denied the factum of employment of the claimant inasmuch as it has been asserted that the workman was engaged by M/s K.R. Care Securicos as such, it has to be proved by the workman that there exists relationship of employer and employee between the respondents and claimant/workman. In this regard, reference can be made to the decision of **Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532**, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the

Act. In these circumstances, it stands proved that claimant is a workman and relationship of employer-employee has to be between the parties.

11. The issue as to whether the workman was engaged by respondent no.1 directly or through contractors is the bone of contention between the parties. Hence, question remains to be seen whether the workman has proved that he was directly engaged with the respondents on 20.06.2011 and regularly continued till his termination in the year 2014. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single document to prove that workman/claimant was directly employed by the respondent no.1 or other respondents no.2 and 3.

12. The Hon'ble Supreme Court after analysing the catena of cases has laid down in **Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014**, two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

- 1) Whether the principal employer pays the salary instead of contractor and
- 2) Whether the principal employer controls and supervise the work of the employees?

13. The facts regarding the payment of salary by the management or contractor to the workman as watch and ward security guard in the Rampur Hydro Electric Project initially on monthly wages of Rs.5,000/- which was later increased to Rs.10,000/- per month has to be proved by the competent evidence. Workman has not mentioned anything regarding the mode of payment of wages, salary, letter of appointment etc. in his claim statement as well as affidavit filed as evidence. It is also not clear either by the claim statement or by the affidavit of the workman that who was the ultimate employer under whom he was rendering his services. It is pertinent to mention that workman has neither stated in his claim statement nor in his replication with respect to the written statement filed by the respondent no.1 regarding the security agency M/s K.R. Care Security Ltd. It appears that workman was engaged by M/s K.R. Care Security Agency and was paid accordingly by him that is why there is nothing on record to prove the factum of salary, mode of payment and attendance register, if any, with respect to the services rendered by him. In this connection, learned counsel of the workman has contended that payment of salary was subject to the control and supervision of the respondent no.1 and virtually it was paid by the respondent no.1 as is alleged by the workman during the course of cross-examination by the respondent no.1 counsel. I am not satisfied with the arguments of the learned counsel of the workman as nothing is mentioned in the pleading/claim petition as well as affidavit submitted by the workman in support of the claim petition. It is also pertinent to mention that there is nothing in the form of evidence that the workman was directly paid by respondent no.1, 2 or 3 as the case may be. Thus, on this issue, it can be inferred that there is nothing on record to prove the factum of salary/payment by the respondent M/s Bharat Hydel Project Pvt. Ltd. as the sub-contractor of respondent no.1 Satluj Jal Vidyut Nigam Ltd. Unit Rampur Hydro Electric Project.

14. Secondly, so far as, the question of controls and supervision is concerned. Workman as witness has categorically stated that his work was supervised by the respondent no.1. Except this, nothing is brought on record to prove that it is respondent no.1 who was supervising and controlling the work of workman/claimant. The learned counsel of claimant argued that he was rendering the services in the premises of respondent no.1 and it has all control and supervision through its employees. There is no such reliable evidence on record. However, the apex court in the case of **International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]** has held as follows:-

“If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

15. Thus, the principle enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the workman is mum on this score and workman has not mentioned any specific averments in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by respondent no.1. There is nothing on record to prove that it is the respondent no.1 who grants leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the security premise of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the respondents for a specific work inefficient manner done by the respondents in the establishment regarding which there is no evidence at all.

16. Learned counsel of the workman/claimant argued that though there is no documentary evidence with respect to the engagement of workman by the respondents but an independent witness namely Bhim Sen has been examined by the workman to prove the factum of employment by the respondent no.1 being the principle employer, who has engaged respondent no.2 as his contractor and respondent no.2 has engaged respondent no.3 as a sub-contractor. Hence, it should be presumed that respondent no.1 namely The General Manager, Satluj Jal Vidyut Nigam Limited, Unit Rampur Hydro Electric Project(412 MW) was the employer of the workman as such, there exists relationship of employer and employee. No doubt witness Bhim Sen has stated that he was working as Fitter with respondent no.1 during the year 2008-2014 and get Rs. 22,000/-. This witness has further stated that Sh. Chain Ram along with other co-workmen were working as Security Guard with respondent no.1 till 2014 when he left the work of the company. This witness has refused like as workman/claimant that he was working with M/s K.R. Care Securicos Security Ltd. Contrary to this, learned counsel of respondent no.1 argued that this witness was not in the job with the respondent as is alleged by him in his examination-in-chief. It is further argued that the photocopy of the identity card Ex.WW1/M1 is fake and forged but there is nothing on record to prove that the identity card of the witness Bhim Sen is factually fake and forged. Hence, mere suggestion of respondent no.1 counsel has no force in the light of the statement of this witness on oath. The factum of relation with respondent no.1 or respondent no.2 or 3 is still remains to be proved because there is nothing on record to justify the claim that workman was paid by respondent no.1, 2 or 3 whatsoever as is stated by the workman. I may also in the consonance of the argument of the learned counsel of respondent no.1 that there is nothing like principal-employer envisaged in the Industrial Disputes Act, 1947 like as Employees Provident Fund, 1952 Act, where liability has to be incurred by the principal-employer regarding the payment of employees provident fund in case contractor fails in his duty to pay fund as is envisaged in the provisions of the Act itself. Learned counsel of respondent no.1 has further drawn my attention towards the Photostat copy of the identity card filed by the witness Bhim Sen and argued that this certificate is issued by the Kedar Rai Govt. Contractor and not by respondent no.1 as such evidence given by the witness Bhim Sen cannot be accepted on its face value. The contention of learned counsel of respondent no.1 has truth in itself as witness Bhim Sen has not submitted any documents regarding his engagement by any of the respondent nos.1, 2 or 3. Hence, his oral evidence cannot be treated trustworthy in the absence of documentary evidence.

17. In view of the above legal and factual discussion and due regard to the facts and circumstances of the case, this Tribunal is of the view that workman has failed to prove that he was engaged by M/s. Bharat Hydel Project Ltd., a sub-contractor of M/s. Gammon India Ltd. engaged by S.J.V.N. Ltd. Hence, the workman is not entitled for any relief as claimed in the claim petition and the award is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, सतलुज जल विद्युत निगम लिमिटेड, शिमला, एच.पी. 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 2- चंडीगढ़, के पंचाट (संदर्भ संख्या 16/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/86/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 204.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2015) of the Central Government Industrial Tribunal-cum Labour Court-2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Satluj Jal Vidyut Nigam Limited, Shimla, H.P.& Others, and their workmen which were received by the Central Government on 14.01.2020.

[No. L-42012/86/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.16/2015

Registered on:-18.05.2015

Uttam Singh S/o Bala Ram, R/o Vill. Duga, P.O. Bouri,
Tehsil Nirmand, Distt. Shimla, H.P..

...Workman

Versus

1. The General Manager, Satluj Jal Vidyut Nigam Limited, Unit Rampur Hydro Electric Project (412 MW) Jhakhri, Tehsil Rampur Bsr, Distt. Shimla, H.P.
2. The Project Manager, Gamon India Limited, Rampur Hydro Electric Project (412 MW), Package-1, Avaeri, P.O. Nogli, Tehsil Nirmand, Distt. Kullu, H.P.
3. The Chairman-cum-Managing Director, Bharat Hydel Project Private Limited, 9, PPCL Colony, Opposite Radhaswami Bhawan, Uday Vihar, Haridwar, Bye-pass Road Dehradun.

...Respondent/Management

AWARD

Passed on:-07.01.2020

Central Government vide Notification No. L-42012/86/2015-IR(DU) Dated 07.05.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of M/s Bharat Hydel Project Pvt. Ltd., a sub-contractor of M/s. Gammon India Ltd. engaged by S.J.V.N Ltd. in terminating the services of Sh. Uttam Singh S/o Sh. Bela Ram w.e.f. 23.11.2014 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?”

1. Both the parties were put to notice and claimant Uttam Singh filed statement of claim, with the averment, that he was employed with respondent no.1 as watch and ward staff/security guard in the Rampur Hydro Electric Project 412 MW, package-1, on 07.07.2010, initially on the payment of Rs.5,000/- per month, which was later on increased to Rs.10,000/- per month. He worked 12 hours per day till 23.11.2014 when the services of the workman was terminated by respondent no.3 with the connivance of other respondents. The principal employer i.e. respondent no.1 assigned the work of construction on contract and execution of Adits, Head Race Tunnel, Diversion Tunnel from Jhakri to Averi to M/s Gammon India Limiter i.e. respondent no.2 who had further contracted out some portion of Head Race Tunnel to M/s Bharat Hydel Projects Pvt. Ltd. i.e. respondent no.3. The work of the workman was extracted by the respondents together for the benefit of the respondents especially the principal employer i.e. respondent no.1. The respondent no.1 has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 and it has not given any notice or compensation in lieu of notice while terminating the services of the workman which is against the settled principles of Law. Therefore, it is prayed that the termination of the workman dated 23.11.2014 may be set aside and other relief which this Hon'ble Tribunal deems fit may kindly be ordered in favor of the petitioner/workman in the interest of justice and fair play.

2. Respondent No.1 has filed its written statement, alleging therein that the present claim application is not maintainable against the replying respondent as there is no averments made in the petition as to how the answering respondent is liable to pay compensation and other relief as claimed in the petition by the petitioner. The petitioner/workman was engaged in the service by M/s K.R. Care Securicos, Head Office Sai 9, Kilokary, near CTC Plaza Ashram, New Delhi-110014 and claim petition is bad for non-joinder of necessary party. There is no relationship of employer and employee between the parties. It is therefore, prayed that the petition filed against the answering respondent may kindly be dismissed in view of the reply given by the respondent in the interest of justice and fair play.

3. Respondent no.2 and 3 has not filed any written statement and was proceeded ex parte vide order dated 06.10.2015.

4. The workman has filed its replication to the written statement filed by respondent no.1, alleging the same facts which are already alleged in the claim petition as such, it does not required to be repeated again.

5. In support of his case, the workman Uttam Singh appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.A-1 and has been cross-examined by the learned counsel of respondent no.1. Furthermore, claimant has examined an independent witness Bhim Sen, who has also been cross-examined by the learned counsel of workman as well as learned counsel of respondent no.1.

6. Respondent No.1 has examined Sh. Narinder Kumar, AGM(Law), RHPS, who has filed his affidavit Ex.MW1/A and cross-examined by the workman counsel.

7. I have heard Sh. O.P. Chauhan, AR for the workman and Sh. Rajesh Kumar, AR for respondent no.1 and have gone through the records carefully.

8. Before averting to the real controversy between the parties, it is pertinent to mention that some facts are admitted between the parties which are required to be mentioned in order to cut-short the discussion with respect to those facts. Admittedly, respondent no.1 i.e. General Manager, Satjul Jal Vidyut Nigam Ltd., is the main-employer who has contracted with the respondent no.2 i.e. The Project Manager, Gamon India Limited, for completion of work and subsequently respondent no.2 has sub-contracted the work to respondent no.3 i.e. Chairman-cum-Managing Director, Bharat Hydel Project Private Limited, for its completion. The dispute between the parties relates with the relation of respondents and workman because respondent no.1 General Manager, Satluj Jal Vidyut Nigam Limited has specifically alleged in its written statement that workman is employed by M/s K.R. Care Securicos for security purposes and there did not exist relationship of employer and employee between the workman and respondents as such, the claimant is not entitled for any relief.

9. There is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop. Sugar Mills Ltv. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.**

10. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different inasmuch as the management/respondent no.1 in its written statement has categorically denied the factum of employment of the claimant inasmuch as it has been asserted that the workman was engaged by M/s K.R. Care Securicos as such, it has to be proved by the workman that there exists relationship of employer and employee between the respondents and claimant/workman. In this regard, reference can be made to the decision of **Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532**, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of “workman” as provided in Section 2(S) of the Act. In these circumstances, it stands proved that claimant is a workman and relationship of employer-employee has to be between the parties.

11. The issue as to whether the workman was engaged by respondent no.1 directly or through contractors is the bone of contention between the parties. Hence, question remains to be seen whether the workman has proved that he was directly engaged with the respondents on 07.07.2010 and regularly continued till his termination in the year 2014. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single document to prove that workman/claimant was directly employed by the respondent no.1 or other respondents no.2 and 3.

12. The Hon’ble Supreme Court after analysing the catena of cases has laid down in **Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014**, two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

- 1) Whether the principal employer pays the salary instead of contractor and
- 2) Whether the principal employer controls and supervise the work of the employees?

13. The facts regarding the payment of salary by the management or contractor to the workman as watch and ward security guard in the Rampur Hydro Electric Project initially on monthly wages of Rs.5,000/- which was later increased to Rs.10,000/- per month has to be proved by the competent evidence. Workman has not mentioned anything regarding the mode of payment of wages, salary, letter of appointment etc. in his claim statement as well as affidavit filed as evidence. It is also not clear either by the claim statement or by the affidavit of the workman that who was the ultimate employer under whom he was rendering his services. It is pertinent to mention that workman has neither stated in his claim statement nor in his replication with respect to the written statement filed by the respondent no.1 regarding the security agency M/s K.R. Care Security Ltd. It appears that workman was engaged by M/s K.R. Care Security Agency and was paid accordingly by him that is why there is nothing on record to prove the factum of salary, mode of payment and attendance register, if any, with respect to the services rendered by him. In this connection, learned counsel of the workman has contended that payment of salary was subject to the control and supervision of the respondent no.1 and virtually it was paid by the respondent no.1 as is alleged by the workman during the course of cross-examination by the respondent no.1 counsel. I am not satisfied with the arguments of the learned counsel of the workman as nothing is mentioned in the pleading/claim petition as well as affidavit submitted by the workman in support of the claim petition. It is also pertinent to mention that there is nothing in the form of evidence that the workman was directly paid by respondent no.1, 2 or 3 as the case may be. Thus, on this issue, it can be inferred that there is nothing on record to prove the factum of salary/payment by the respondent M/s Bharat Hydel Project Pvt. Ltd. as the sub-contractor of respondent no.1 Satluj Jal Vidyut Nigam Ltd. Unit Rampur Hydro Electric Project.

14. Secondly, so far as, the question of controls and supervision is concerned. Workman as witness has categorically stated that his work was supervised by the respondent no.1. Except this, nothing is brought on record to prove that it is respondent no.1 who was supervising and controlling the work of workman/claimant. The learned counsel of claimant argued that he was rendering the services in the premises of respondent no.1 and it has all control and supervision through its employees. There is no such reliable evidence on record. However, the apex court in the case of **International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]** has held as follows:-

“If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

15. Thus, the principle enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the workman is mum on this score and workman has not mentioned any specific averments in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by respondent no.1. There is nothing on record to prove that it is the respondent no.1 who grants leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the security premise of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the respondents for a specific work inefficient manner done by the respondents in the establishment regarding which there is no evidence at all.

16. Learned counsel of the workman/claimant argued that though there is no documentary evidence with respect to the engagement of workman by the respondents but an independent witness namely Bhim Sen has been examined by the workman to prove the factum of employment by the respondent no.1 being the principle employer, who has engaged respondent no.2 as his contractor and respondent no.2 has engaged respondent no.3 as a sub-contractor. Hence, it should be presumed that respondent no.1 namely The General Manager, Satluj Jal Vidyut Nigam Limited, Unit Rampur Hydro Electric Project(412 MW) was the employer of the workman as such, there exists relationship of employer and employee. No doubt witness Bhim Sen has stated that he was working as Fitter with respondent no.1 during the year 2008-2014 and get Rs. 22,000/-. This witness has further stated that Sh. Uttam Singh along with other co-workmen were working as Security Guard with respondent no.1 till 2014 when he left the work of the company. This witness has refused like as workman/claimant that he was working with M/s K.R. Care Securicos Security Ltd. Contrary to this, learned counsel of respondent no.1 argued that this witness was not in the job with the respondent as is alleged by him in his examination-in-chief. It is further argued that the photocopy of the identity card Ex.WW1/M1 is fake and forged but there is nothing on record to prove that the identity card of the witness Bhim Sen is factually fake and forged. Hence, mere suggestion of respondent no.1 counsel has no force in the light of the statement of this witness on oath. The factum of relation with respondent no.1 or respondent no.2 or 3 is still remains to be proved because there is nothing on record to justify the claim that workman was paid by respondent no.1, 2 or 3 whatsoever as is stated by the workman. I may also in the consonance of the argument of the learned counsel of respondent no.1 that there is nothing like principal-employer envisaged in the Industrial Disputes Act, 1947 like as Employees Provident Fund, 1952 Act, where liability has to be incurred by the principal-employer regarding the payment of employees provident fund in case contractor fails in his duty to pay fund as is envisaged in the provisions of the Act itself. Learned counsel of respondent no.1 has further drawn my attention towards the Photostat copy of the identity card filed by the witness Bhim Sen and argued that this certificate is issued by the Kedar Rai Govt. Contractor and not by respondent no.1 as such evidence given by the witness Bhim Sen cannot be accepted on its face value. The contention of learned counsel of respondent no.1 has truth in itself as witness Bhim Sen has not submitted any documents regarding his engagement by any of the respondent nos.1, 2 or 3. Hence, his oral evidence cannot be treated trustworthy in the absence of documentary evidence.

17. In view of the above legal and factual discussion and due regard to the facts and circumstances of the case, this Tribunal is of the view that workman has failed to prove that he was engaged by M/s Bharat Hydrel Project Ltd., a sub-contractor of M/s Gammon India Ltd. engaged by S.J.V.N. Ltd. Hence, the workman is not entitled for any relief as claimed in the claim petition and the award is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रधानाचार्य, केन्द्रीय विद्यालय, हिसार 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 - चंडीगढ़, पंचाट (संदर्भ संख्या 66/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/10/2016-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 205.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 66/2015) of the Central Government Industrial Tribunal-cum Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Principal, Kendriya Vidyalaya, Hissar & Others, and their workmen which were received by the Central Government on 14.01.2020.

[No. L-42012/10/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 66/2015

Registered on:-09.03.2016

Rajesh S/o Nand Lal, Vill. Satroad Kala, Teh. & Distt. Hissar, Hissar-125001.

...Workman

Versus

The Principal, Kendriya Vidyalaya, Hissar Cantt., Hissar-125006.

...Management

AWARD

Passed on:-03.01.2020

Central Government vide Notification No. L-42012/10/2016-IR(DU) Dated 22.02.2016, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of Principal, Kendriya Vidyalaya, Hissar Cantt. Hissar in terminating the services of the workman Sh. Rajesh Kumar S/o Nand Lal, Electrician from Oct, 2014 is legal and justified? If not, what relief the workman is entitled to and from which date?”

1. Both the parties were put to notice and claimant Rajesh filed statement of claim, with the averment, that the establishment in which he had worked, is covered under the definition of industry and is an industry under the I.D. Act, 1947. The Hon'ble Supreme Court and Hon'ble High Court after consideration on the establishment had declared the management-establishment as industry. The workman had orally engaged by the Kendriya Vidyalaya Hissar Cantt. as Electrician-cum-Plumber which is regular in nature on DC rate on 24.03.2001 and terminated the services of the workman in October 2014. The workman had performed his duties satisfactorily and even not a single complaint is against the workman having unblemished record. The workman had worked continuously for 240 days in every calendar year even then his name had not been entered in the seniority list. The management has violated the provisions of Section 25-E, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. The management had not issued any EPF slip and ESIC slip to the workman. The management has terminated the services of the workman illegally and engaged fresh hands and juniors to the workman were retained in service. The workman is unemployed since his termination by the management. The workman had given registered notice to the management-establishment and when the management did not reply then the workman filed a dispute under Section 2-F of the Industrial Disputes Act, 1947. It is therefore, prayed that the workman be reinstated in service with continuity of service and all consequential benefits and with full back wages.

2. Management has filed its written statement, alleging therein that workman has no right to invoke the extra ordinary jurisdiction of this Hon'ble Tribunal as no legal right of the workman has been infringed. The management has denied the relationship of employee and employer between the parties by stating that there is no post of Electrician-cum-Plumber in the organisation. The workman has concealed the material facts from this Hon'ble Tribunal and present case does not falls under the category of Industrial Disputes Act. Moreover, the workman has never completed 240 days attendance in any calendar year and the payment in respect of the workman is annexed as Annexure R-1. It is settled law that in absence of any promise, the answering defendant hock, temporary and casual appointee cannot invoke the doctrine of legitimate expectation when appointment to

the post could be made only by following the proper procedure for selection and in the present case, no promise has been made by the management to continue or make the workman permanent, which is unconstitutional in public appointments. The bare perusal and admission of the workman that he has been appointed on 24.03.2001 on oral order as regular employee on the post of Electrician-cum-Plumber at DC rate is totally baseless and far from the facts. In fact, the workman was called for the work as and when required by the management. Moreover, the workman is not an uneducated person who does not know about his rights, further the Kendriya Vidyalaya Sangathan is registered as a society under the Societies Registration Act 1860. The primary aim of the Sangathan is to provide, establish, endow, maintain control and manage the Central Schools (Kendriya Vidyalayas) located all over India and abroad. The allegation of the workman regarding his appointment on 24.03.2001 on verbal order as regular employee on the post of Electrician-cum-Plumber at DC rate is totally wrong and baseless. Therefore, it is prayed that this Hon'ble Court may be pleased to dismiss the claim petition with cost being devoid of any merits and further imposing special cost over the workman for harassing and for dragging the management into unwanted litigation on the basis of false and frivolous allegation and further approaching this Hon'ble Tribunal without any evidence.

3. In support of his case, the workman Rajesh Kumar appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.WW1/A and has been cross-examined by the learned counsel of management. Workman Rajesh Kumar has stated that documents filed by the management along with written statement regarding the payments relates with the extra work done by him during his services and it is not a regular payments. This witness has further denied the knowledge about the availability of the sanctioned post of Electrician in the school. During the course of cross-examination, the workman has answered the question put by the Tribunal that he was initially paid Rs.8,000/-, subsequently Rs.10,000/- per month and so forth according to DC rates through cheques but no evidence has been adduced in documentary form about the Rs.8,000/- and Rs.10,000/- whatsoever paid through cheque by the management.

4. Management has submitted the affidavit of witness Satyaveer Singh, Principal, who has filed his affidavit in evidence marked as Ex.MW1/A and proved the documents pertaining to detail of payment as Ex.MW1/1. This witness has stated that he has joined the Hisar Kendriya Vidyalaya on 23.08.2018 as Principal and workman was not employed during his tenure. Nothing is stated by this witness which may throw some light about the manner of appointment and mode of payment to the workman by the management.

5. I have heard Sh.Vishal Yadav, Ld. Counsel for the workman and Sh. R.S. Sharma, Ld. Counsel for the management and have gone through the records carefully.

6. There is no dispute about the preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to the case of **Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.**

7. There is hardly any dispute with the preposition of law as propounded in the aforesaid cases. However, the factual scenario in the present case is bit different, inasmuch as the management in its written statement has clearly admitted the factum of employment of the claimant inasmuch as it has been stated that the workman was engaged in the establishment as a Electrician-cum-Plumber on 24.03.2001 as and when his services required and he worked till October 2014. As such, it clearly establishes relationship of employer-employee between the management and claimant. In this regard, reference can be made to the decision in the case of **Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532**, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part-time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of “workman” as provided in Section 2(S) of the Act. In these circumstances, it stands proved that there existed relationship of employer-employee between the parties.

8. It is a specific case of the workman/claimant that he was engaged as regular Electrician-cum-Plumber by the school-management on 24.03.2001 as per DC rate by oral order of the Central Government School, Hisar Cantt. and worked as such till October 2014 when his services were illegally terminated. According to workman, he in fact had completed more than 240 days of service in each calendar year and no notice period was given to him prior to his termination of services by the management. The affidavit filed by the claimant/workman is in the line of the averment made in the claim statement submitted by him but workman has not filed any documentary evidence regarding regular work done by him with the management and payment made accordingly. There is nothing on record to show that workman was regularly making his signatures in attendance-register of the school along with other employees to prove that he is regularly worked with the management like other employees. The workman has not summoned the attendance register or payment register whatsoever it may be to prove that he was making his regular attendance in the school and earning salary on monthly basis as a regular employee. The facts alleged in the claim statement regarding his regular appointment is logically not trustworthy because management is a government-institution registered under the Societies Registration Act and has its rules and regulations about the regular appointment. So, it cannot be presumed without cogent evidence or appointment letter that he was appointed on regular basis with the management on sanctioned post.

9. Now the vital question arises for consideration is whether termination of the claimant/workman from his services by the management from the month of October, 2014 is in accordance with law or in violation of Section 25-F of the ID Act? According to the testimony of the claimant/workman the work of Electrician-cum-Plumber on which he was working was of permanent nature and that his services were terminated by the management in violation of Section 25-F, 25-G and 25-H of the ID Act. It is neither the case of the management that any notice or compensation in lieu of notice period was given to the claimant prior to termination of his services nor any such evidence has been adduced on record by the management. The learned counsel of management argued that claimant/workman was not a regular employee of the school-management as such, there was no need to issue any notice before stopping his services nor it requires any retrenchment compensation as he had worked during the period on daily basis as per requirement. In this connection, learned counsel of the management has drawn my attention towards the documents filed as Ex.MW1/1 which is also admitted by the workman during the cross-examination and argued that these documents relate with the academic year 2002-2003 upto 2014-2015 which are itself a proof beyond doubt that workman had rendered his services on need basis and payment is accordingly made to the workman. The workman has accepted the payment made therein Ex.MW1/1 with the clarification that the payment was made with respect to the additional work done by him during the period. The question which naturally arises as to whether claimant/workman really rendered his services as a regular employee and got salary along with the payment made in Ex.MW1/1 for additional work. The answer is in negative because if he was engaged as a regular employee even on DC rate then question for taking additional services and payment thereof does not arise as is stated by the workman in his cross-examination. Furthermore, there is nothing in the claim petition or replication filed by the workman that document Ex.MW1/1 pertains to the additional work done by the workman and payment made thereof hence, the admission of the workman with respect to the additional work has no force in the eye of Law without any pleading and averments made in the claim petition as well as replication filed by him after the submission of the written statement filed by the management.

10. There is another aspect of the matter. The claimant has stated in his cross-examination with respect to the question put by the Tribunal that he was paid initially Rs.8,000/-, subsequently Rs.10,000/- and so forth according to DC rates as monthly salary and payment was made by the management through cheques. Naturally cheque has to be encashed through the bank-account but he has not filed any bank passbook with respect to the payment made by the management in form of salary. Learned counsel of the management argued that the statement of the witness regarding payment of Rs.8,000/- or Rs.10,000/- in the year 2001 and onwards is a glaring example of telling lie when confronted by the Tribunal through the questions to meet the end of justice. Learned counsel further argued that there is nothing on record to show that in the year 2001 DC rate was such a exaggerated rate which might result in Rs.8,000/- or Rs.10,000/- as monthly salary in the year 2001. The argument advanced by the learned counsel of the management has force and the statement given by the workman does not inspire confidence of the Tribunal with respect to Rs.8,000/- or Rs.10,000/- in the year 2001 and subsequent years as per DC rate without any documentary evidence.

11. On the basis of the above critical examination of the evidence and documents filed by both the parties, it is crystal clear that the workman has miserably failed to prove that he has rendered 240 days of service from the year 2001 to 2014 or 240 days in preceding year before his termination by the management from the service. As such, there is no need to give show cause notice or retrenchment compensation in lieu of notice as is prescribed under Section 25-F of the Industrial Disputes Act, 1947. Similarly, it cannot be observed that management has utterly violated the provisions of Section 25-F or 25-h of the ID Act with respect to the workman who is unable to prove that he was regular employee even though on daily wages and worked regularly from the year 2001 to 2014. Hence, award is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 206.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स जी.एम. एसजेवीएन लिमिटेड नाथपा झखरी हाइड्रो पावर स्टेशन, किन्नौर, (एच.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय - चंडीगढ़, पंचाट (संदर्भ सं. 82/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/157/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 206.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 82/2014) of the Central Government Industrial Tribunal-cum Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The G.M. SJVN Ltd. Nathpa Jhakhri Hydro Power Station, Kinnaur, (H.P.) & Others, and their workmen which were received by the Central Government on 04.02.2020.

[No. L-42012/157/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.82/2014

Registered on:-02.02.2015

Kuldeep S/o Partap Singh, R/o Vill. Badhal, P.O. Jeori, Teh. Rampur,
Distt. Shimla, HP.

...Workman

Versus

1. The G.M. SJVN Ltd. Nathpa Jhakhri Hydro Power Station, Nathpa, Distt. Kinnaur, H.P.

2. M/s. JBS Enterprises Pvt. Ltd., NB-2, Vrindavan Society, Thane-400601.

3. M/s. S.M. Electricals, Shop No.1 (Basement) Kasauli Road,
Parwanoo, Distt. Solan, H.P.

...Respondents/Managements

AWARD

Passed on:-14.01.2020

Central Government vide Notification No. L-42012/157/2014-IR(DU) Dated 22.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of SJVN Ltd., Nathpa Jhakri(HP) in terminating the services of Shri Kuldeep S/o Shri Pratap Singh, w.e.f. November 2010 who was engaged by the SJVN Ltd. through the contractors is just, valid & legal? If not to what relief the workman is entitled for and what directions are necessary in the matter?”

1. Both the parties were put to notice and claimant Kuldeep filed statement of claim, with the averment, that he was initially appointed in the month of June, 2006 in 1500 MW power project of respondent/management through M/s. JBS Enterprises Pvt. Ltd. and worked with the said firm for two years thereafter, the work of project was taken by M/s S.M. Electricals and the claimant worked till November, 2010 with the said firm as T-mate and thereafter as Electrician when the services of the claimant/workman was terminated. The respondent/management has assailed the services of the claimant/workman for multifarious duties such as rectification of faults in cables at different places, to distribute/dispatch official files from one office to another. Moreover, the workman has completed more than 240 days in each calendar year during the aforesaid period. The respondent/management has adopted pick and choose policy and juniors to the workman are still working for the aforesaid project. Under these circumstances, the claimant had no other alternative to approach the Labour-cum-Conciliation Officer, Chandigarh, which has been forwarded to this Tribunal by the Assistant Labour Commissioner(C) Chandigarh. The respondents/management have failed to re-engage the services of the claimant/workman despite of the repeated requests and representations made. The respondents/managements are engaged in the work of Power Projects and falls under the definition of the Industry as defined in the Industrial Disputes Act and the workman falls within the definition of workman. The work against which the workman was engaged was fully done under the control and supervision of the respondent/management and the management being the principal employer, the claimant/workman should be re-engaged in the service by the principal employer/management. It is therefore prayed that the workman may be reinstated in service along with seniority and continuity in service and other consequential benefits.

2. Respondent No.1 i.e. S.J.V.N. Ltd. has filed its written statement, alleging therein that the claimant was appointed through M/s JBS Enterprises Pvt. Ltd. as the said establishment is an independent contractor, who had entered into contract with SJVNL Ltd. for civil works had hired/engaged the claimant on its own in order to fulfill its contractual obligation with S.J.V.N Ltd. There were no explicit or implicit directions/instructions from SJVN Ltd. to said M/s JBS Enterprises Pvt. Ltd. either to engage or disengage any workman. It is submitted that the claimant was engaged by the contractor and was an employee of the contractor as such, SJVN Ltd. has no knowledge of the duties assigned to him by the contractor and the contents pertaining to duties performed during night hours are also denied due to want of knowledge. It is submitted that as per records available with SJVN Ltd. as provided by the contractor, the claimant was given full one month notice and was even awarded retrenchment benefits and SJVN Ltd. has no control on the work force employed by the contractor and engagement and termination is beyond the control of SJVN Ltd. The contents of para 7 of the claim petition is denied as the SJVN Ltd. or its contractor are not under any obligation to engage or re-engage any one including the claimant as the appointment was on purely contractual basis and when the contract came to an end i.e. after two years, the employment was bound to be terminated automatically. It is denied that respondent exercised complete control over the employment, work and continuance of service of claimant in whatsoever form or manner because claimant was an employee of contractor and not of respondent. The claimant was employed by the contractor under the terms and conditions of the contract and the claimant cannot lay claim towards his employment with principal employer i.e. SJVN Ltd. as the said establishment is a government organization and employments in it are not made through backdoor channels as is being agitated by the claimant. It is therefore, prayed that claim petition of the workman is devoid of merits and has been instituted with an intention of unjust enrichment at the cost of SJVN Ltd. as such, the same may be dismissed with heavy cost.

3. Respondent No.2 i.e. M/s JBS Enterprises Pvt. Ltd. has filed its written statement, admitting the facts that the claimant has worked as T-Mate and denied that no multifarious duties such as rectification of faults in cables at different places to distribute/dispatch official files and documents from one office to another was ever entrusted upon the claimant. It is further averred that the contract work of the respondent no.2 had been terminated in the year 2010 and afterwards respondent no.3 had taken the contract work from respondent no.1 and all the dues pending of the claimant towards respondent no.2 has already been settled and no cause of action exists towards respondent no.2. The claimant was asked to appear in the interview and the claimant was not found suitable for the job. The respondent no.2 has no role after the expiry of the contractual work taken by it and after the expiry of contract, respondent no.3 had taken the contractual work. It is therefore, respectfully prayed that the present claim may kindly be dismissed in the interest of justice.

4. Respondent No.3 i.e. M/s S.M. Electricals has filed its written statement, admitting the facts that the claimant has worked as T-Mate and denied that no multifarious duties such as rectification of faults in cables at

different places to distribute/dispatch official files and documents from one office to another was ever entrusted upon the claimant. As per Clause 8 of the employment letter dated 03.11.2008, the services of the claimant stands automatically terminated when the contract work finished in November 2010 and no pick and choose policy was adopted by the answering-respondent as no re-employment or reinstatement is feasible with the respondent. The claimant had been paid full and final payment through Labour Office Kinnaur at Rekonpeo. It is further submitted that vide registered letter dated 15.10.2010, the claimant deliberately refused to receive the registered letter with the false report managed thereon. It is therefore respectfully prayed that the present claim may kindly be dismissed in the interest of justice.

5. The workman has filed its replication to the written statement filed by respondent no.1, alleging the same facts which are already alleged in the claim petition as such, it does not required to be repeated again.

6. In support of his case, the workman Kuldeep appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.WW1/A. But in spite of the several opportunities, claimant/workman did not turn up for cross-examination by the respondents/managements. Learned counsel of the claimant/workman Sh. Rajesh Kashyap moved an application that workman is not giving any instruction to him as such, he is forced to withdraw his power of attorney on behalf of the workman and requested that appropriate order be passed. Consequently, opportunity of the workman for cross-examination was closed by this Tribunal on 16.05.2019 with the observation that affidavit filed by the workman as evidence shall not be read in evidence.

3. Respondent No.1 S.J.V.N. Ltd. has examined Sh. Chander Mohan, Senior Manager, NJHPS, who has filed his affidavit Ex.MW1/A but none turn up on behalf of the workman to cross-examine this witness. Thus, the facts alleged in the affidavit of the Senior Manager, NJPHs remains intact and uncontroverted.

4. Respondent No.2 M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 M/s. S.M. Electricals have not produced any evidence and remained absent hence, proceeded ex parte on 18.10.2019.

5. In view of the above facts and statement made by the learned counsel of the workman, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim Award'. Since there is no adjudication of claim petition or case on merits as such, it would not preclude the workman from seeking fresh reference in accordance with Law.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 207.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स जी.एम. एसजेवीएन लिमिटेड नाथपा झखरी हाइड्रो पावर स्टेशन, किन्नौर, (एच.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय - चंडीगढ़, पंचाट (संदर्भ संख्या 83/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/158/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 207.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 83/2014) of the Central Government Industrial Tribunal-cum Labour Court-2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The G.M. SJVN Ltd. Nathpa Jhakhri Hydro Power Station, Kinnaur, (H.P.) & Others, and their workmen which were received by the Central Government on 04.02.2020.

[No. L-42012/158/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**Present:** Sh. A. K. Singh, Presiding Officer**ID No. 83/2014****Registered on:-02.02.2015**Devinder Kumar S/o Mast Ram Kashyap, R/o Vill. Jagocha,
P.O. Khaneri, Teh. Rampur, Distt. Shimla, HP.

...Workman

Versus

1. The G.M. SJVN Ltd. Nathpa Jhakhri Hydro Power Station, Nathpa, Distt. Kinnaur, H.P.
2. M/s. JBS Enterprises Pvt. Ltd., NB-2, Vrindavan Society, Thane-400601.
3. M/s. S.M. Electricals, Shop No.1 (Basement)
Kasauli Road, Parwanoo, Distt. Solan, H.P. ...Respondents/Managements

AWARD**Passed on:-14.01.2020**

Central Government vide Notification No. L-42012/158/2014-IR(DU) Dated 22.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of SJVN Ltd., Nathpa Jhakri(HP) in terminating the services of Shri Devinder Kumar S/o Shri Mast Ram Kashyap, w.e.f. November 2010 who was engaged by the SJVN Ltd. through the contractors is just, valid & legal? If not to what relief the workman is entitled for and what directions are necessary in the matter?”

1. Both the parties were put to notice and claimant Devinderl Kumar filed statement of claim, with the averment, that he was initially appointed in the month of June, 2006 in 1500 MW power project of respondent/management through M/s JBS Enterprises Pvt. Ltd. and worked with the said firm for two years thereafter, the work of project was taken by M/s S.M. Electricals and the claimant worked till November, 2010 with the said firm as T-mate and thereafter as Electrician when the services of the claimant/workman was terminated. The respondent/management has assailed the services of the claimant/workman for multifarious duties such as rectification of faults in cables at different places, to distribute/dispatch official files from one office to another. Moreover, the workman has completed more than 240 days in each calendar year during the aforesaid period. The respondent/management has adopted pick and choose policy and juniors to the workman are still working for the aforesaid project. Under these circumstances, the claimant had no other alternative to approach the Labour-cum-Conciliation Officer, Chandigarh, which has been forwarded to this Tribunal by the Assistant Labour Commissioner(C) Chandigarh. The respondents/management have failed to re-engage the services of the claimant/workman despite of the repeated requests and representations made. The respondents/managements are engaged in the work of Power Projects and falls under the definition of the Industry as defined in the Industrial Disputes Act and the workman falls within the definition of workman. The work against which the workman was engaged was fully done under the control and supervision of the respondent/management and the management being the principal employer, the claimant/workman should be re-engaged in the service by the principal employer/management. It is therefore prayed that the workman may be reinstated in service along with seniority and continuity in service and other consequential benefits.

2. Respondent No.1 i.e. S.J.V.N. Ltd. has filed its written statement, alleging therein that the claimant was appointed through M/s JBS Enterprises Pvt. Ltd. as the said establishment is an independent contractor, who had entered into contract with SJVN Ltd. for civil works had hired/engaged the claimant on its own in order to fulfill its contractual obligation with S.J.V.N Ltd. There were no explicit or implicit directions/instructions from SJVN Ltd. to said M/s JBS Enterprises Pvt. Ltd. either to engage or disengage any workman. It is submitted that the claimant was engaged by the contractor and was an employee of the contractor as such, SJVN Ltd. has no knowledge of the duties assigned to him by the contractor and the contents pertaining to duties performed during night hours are also denied due to want of knowledge. It is submitted that

as per records available with SJVN Ltd. as provided by the contractor, the claimant was given full one month notice and was even awarded retrenchment benefits and SJVN Ltd. has no control on the work force employed by the contractor and engagement and termination is beyond the control of SJVN Ltd. The contents of para 7 of the claim petition is denied as the SJVN Ltd. or its contractor are not under any obligation to engage or re-engage any one including the claimant as the appointment was on purely contractual basis and when the contract came to an end i.e. after two years, the employment was bound to be terminated automatically. It is denied that respondent exercised complete control over the employment, work and continuance of service of claimant in whatsoever form or manner because claimant was an employee of contractor and not of respondent. The claimant was employed by the contractor under the terms and conditions of the contract and the claimant cannot lay claim towards his employment with principal employer i.e. SJVN Ltd. as the said establishment is a government organization and employments in it are not made through backdoor channels as is being agitated by the claimant. It is therefore, prayed that claim petition of the workman is devoid of merits and has been instituted with an intention of unjust enrichment at the cost of SJVN Ltd. as such, the same may be dismissed with heavy cost.

3. Respondent No.2 i.e. M/s JBS Enterprises Pvt. Ltd. has filed its written statement, admitting the facts that the claimant has worked as T-Mate and denied that no multifarious duties such as rectification of faults in cables at different places to distribute/dispatch official files and documents from one office to another was ever entrusted upon the claimant. It is further averred that the contract work of the respondent no.2 had been terminated in the year 2010 and afterwards respondent no.3 had taken the contract work from respondent no.1 and all the dues pending of the claimant towards respondent no.2 has already been settled and no cause of action exists towards respondent no.2. The claimant was asked to appear in the interview and the claimant was not found suitable for the job. The respondent no.2 has no role after the expiry of the contractual work taken by it and after the expiry of contract, respondent no.3 had taken the contractual work. It is therefore, respectfully prayed that the present claim may kindly be dismissed in the interest of justice.

4. Respondent No.3 i.e. M/s S.M. Electricals has filed its written statement, admitting the facts that the claimant has worked as T-Mate and denied that no multifarious duties such as rectification of faults in cables at different places to distribute/dispatch official files and documents from one office to another was ever entrusted upon the claimant. As per Clause 8 of the employment letter dated 03.11.2008, the services of the claimant stands automatically terminated when the contract work finished in November 2010 and no pick and choose policy was adopted by the answering-respondent as no re-employment or reinstatement is feasible with the respondent. The claimant had been paid full and final payment through Labour Office Kinnaur at Rekonpeo. It is further submitted that vide registered letter dated 15.10.2010, the claimant deliberately refused to receive the registered letter with the false report managed thereon. It is therefore respectfully prayed that the present claim may kindly be dismissed in the interest of justice.

5. The workman has filed its replication to the written statement filed by respondent no.1, alleging the same facts which are already alleged in the claim petition as such, it does not required to be repeated again.

6. In support of his case, the workman Devinder Kumar appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.WW1/A and has been cross-examined by the learned counsel of respondent no.1, 2 and 3.

7. Respondent No.1 S.J.V.N. Ltd. has examined Sh. Chander Mohan, Senior Manager, NJHPS, who has filed his affidavit Ex.MW1/A and cross-examined by the workman counsel.

8. Respondent No.2 M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 M/s S.M. Electricals have not produced any evidence and remained absent hence, proceeded ex parte on 18.10.2019.

9. I have heard Sh. Rajesh Kashyap, Ld. Counsel for the workman and Sh. Jivender Katoch, Ld. Counsel for respondent no.1 and have gone through the records carefully.

10. There is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop.**

Sugar Mills Ltv. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.

11. There is hardly any dispute with the proposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is quite different inasmuch as the facts alleged in the claim petition regarding the relationship with respondent no.1 i.e. S.J.V.N. Ltd., principal employer and respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals are of two folds i.e. the first one relation of the workman with respondent no.1 i.e. S.J.V.N. and relation of workman with respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals respectively. The first issue as to whether the workman was engaged and was under the control of respondent no.1 i.e. S.J.V.N. Ltd. directly, at the very outset, it may be mentioned that there is no single document to prove that the workman was directly employed by respondent no.1 i.e. S.J.V.N. and remains in its control throughout his services. The Hon'ble Supreme Court after analysing the catena of cases has laid down in **Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014**, two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

- 1) Whether the principal employer pays the salary instead of contractor and
- 2) Whether the principal employer controls and supervise the work of the employees?

12. The facts regarding the payment of salary by respondent no.1 i.e. S.J.V.N. to the workman is concerned, the workman has not mentioned anything regarding the mode of payment of wages/salary, appointment letter etc. in his claim statement as well as affidavit filed as evidence with respect to respondent no.1. Learned counsel of the workman/claimant argued that this fact is not disputed that respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals were the contractors of respondent no.1 i.e. S.J.V.N. Ltd. and the ultimate control lies with the respondent no.1 i.e. S.J.V.N. Ltd. As such, the workman is deemed to be in the employment of respondent no.1 i.e. S.J.V.N. Ltd.. Contrary to this, learned counsel of respondent no.1 relied on the facts mentioned in the replication of the workman and cross-examination of the workman. It is contended that there is a specific admission of the workman himself that he was working with M/s S.M. Electricals i.e. respondent no.3 as T-mate and subsequently as electrician and it was contractor M/s S.M. Electricals who paid all his emoluments. Learned counsel of respondent no.1 further argued that the workman himself has admitted during the course of cross-examination that his EPF was deducted by the respective contractors. Thus, according to the learned counsel of respondent no.1, by virtue of the facts alleged in the replication of the workman as well as cross-examination of the workman, it is crystal clear that he was neither employed by respondent no.1 i.e. S.J.V.N. nor salary or EPF was paid to him by respondent no.1 i.e. S.J.V.N. as such, there did not exist relationship of employer and employee with workman and respondent no.1 i.e. S.J.V.N.

13. So far as control and supervision is concerned, the Apex Court in the case of **International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]** has held as follows:-

"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

14. Thus, the principle enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a

complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the workman is mum on this score and workman has not mentioned any specific averments in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by respondent no.1 i.e. S.J.V.N. Ltd. There is nothing on record to prove that it is the respondent no.1 i.e. S.J.V.N. Ltd. who grants leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision by the S.J.V.N. Ltd. as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the respondent no.1 for a specific work inefficient manner done by the contractors/respondents in the establishment.

15. So far as the second contention about the relationship of workman with respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals are concerned. It is also not disputed that M/s J.B.S Enterprises Ltd. i.e. respondent no.2 was the first contractor to whom work was assigned by respondent no.1 S.J.V.N. Ltd. and workman was engaged by J.B.S. Enterprises Pvt. Ltd. i.e. respondent no.2 and after the expiry of the contract with respondent no.2 M/s J.B.S. Enterprises Pvt. Ltd., contract was allotted to respondent no.3 i.e. M/s S.M. Electricals when the services of workman comes to an end in the month of November 2010 after expiry of contract. This fact is clearly state in Para 2 of the replication of the workman as well as facts accepted in the cross-examination of the workman. In the opening line of the cross-examination of workman by respondent no.1 i.e. S.J.V.N. Ltd., workman Devinder Kumar has admitted that he was working with M/s S.M. Electricals i.e. respondent no.3 and subsequent contract was given to M/s Ashoka Electricals. This witness has further admitted that he performed his duty with M/s S.M. Electricals i.e. respondent no.3 and orally terminated by M/s S.M. Electricals after the expiry of the contract. The learned counsel of respondent no.1 argued that in fact, the work of respondent no.1 i.e. S.J.V.N. Ltd. has to be accomplished by several contractors. The first one was respondent no.2 subsequent respondent no.3 and subsequently Ashoka Electricals. Learned counsel argued that the contract allotted to M/s S.M. Electricals comes to an end in the month of November and subsequent contract was allotted to M/s Ashoka Electricals. It is a specific case of respondent no.1 that workman did not turn up for interview called by M/s Ashoka Electricals, resulting his services comes to an end with the respondents. The workman has admitted in his cross-examination that he does not know about the payment made by M/s Ashoka Electricals to workman who was worked with him at the relevant time. According to the workman Devinder Kumar, after his termination by M/s S.M. Electricals, he did not visit to the place of work from the year 2010 which reflect that workman has not made any effort with the subsequent contractor M/s Ashoka Electricals for his employment. The agreement filed by respondent no.1 with respect to respondent no.2 and 3 and subsequent contractor Ashoka Electricals reveals that there is a specific clause regarding the service condition and payments in which it is mention in sub-clause C of the agreement as follows:-

***“C. The contractor shall make payment to the workman hired by him for this job by 7th of each month and will submit a copy of master roll by 10th of each month duly signed by the authorized representative of EIF. In case of his failure to do so, EIC shall make direct payment to the workman hired by him and shall recover the payments so made by SJVNL from the pending dues of the contractor along with 25% cost as SJVNL overhead.*”**

16. Thus, liability of engagement and payment was with the contractors. There is no dispute that contract entered with M/s S.M. Electricals by respondent no.1 i.e. S.J.V.N. Ltd. come to an end in the month of November 2010 as is stated by the workman himself, resulting his alleged retrenchment/termination from the job assigned to him. Workman Devinder Kumar as a witness, has specifically admitted that he was paid all the emoluments by the contractor M/s S.M. Electricals at the time of the retrenchment/termination. As such, it cannot be assumed that due to expiry of the contract and terms and conditions of the employment, there was any requirement to give one month notice or one month salary in lieu of notice as is envisaged under Section 25 of the Industrial Disputes Act, 1947.

17. It is pertinent to mention that workman has claimed his reinstatement with respondent no.1 i.e. S.J.V.N. Ltd. by virtue of its being a principal employer. Learned counsel of the workman has argued that the work of respondent no.1 is for a long time as is crystal clear from the agreement entered into between the respondent no.1 i.e. S.J.V.N. and Ashoka Electricals subsequent to the termination of the workman. Learned

counsel of workman further argued that work is still going on and the respondent no.1. i.e. S.J.V.N. is under obligation to get him re-employed or re-engaged. Contrary to this, learned counsel of respondent no.1 argued that there is no such provision envisaged in Industrial Disputes Act, that even, without any relationship of employer and employee between the workman and principal employer he is under obligation to reinstate the workman or give him compensation or wages for his termination or retrenchment due to expiry of contract with its contractors. The argument of the learned counsel of respondent no.1 i.e. S.J.V.N. Ltd. is legally justified and with respect to the present case, as is discussed above, workman has no any kind of relationship of employer and employee with the respondent no.1 i.e. S.J.V.N. Ltd. As such, the oral argument advanced by the learned counsel of workman has no force with respect to the re-engagement or any wages payable to the workman by respondent no.1 i.e. S.J.V.N. Ltd. So far as the liability of respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals is concerned, there is no allegation that respondent no.2 has not paid salary or emoluments, EPF etc. before the work taken over by respondent no.3 i.e. M/s S.M. Electricals through contract entered into between respondent no.1 i.e. S.J.V.N. Ltd. Workman Devinder Kumar has himself admitted that all the emoluments has been paid by respondent no.3 i.e. M/s S.M. Electricals at the time of expiry of the contract with respondent no.1 i.e. S.J.V.N. Ltd. as such, nothing remains to be given by respondent no.3 also to the workman.

18. In view of the above discussion and observation, workman has failed to prove that he was employed by respondent no.1 i.e. S.J.V.N. Ltd. and his services were retrenched illegally without giving any notice or one month salary in lieu of notice as is required under Section 25 of the Industrial Disputes Act, 1947. Similarly, there is no evidence on record to prove that he had ever approached with the Ashoka Electrical subsequent contractor for his engagement after the expiry of contract with respondent no.3 M/s S.M. Electricals. So, employment of other workers by Ashoka electrical has no reason for engagement of workman/claimant. Hence, the workman is not entitled for any relief as claimed in the claim petition and the award is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 208.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स जी.एम. एसजेवीएन लिमिटेड नाथपा झखरी हाइड्रो पावर स्टेशन, किन्नौर, (एच.पी.) 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 - चंडीगढ़, पंचाट (संदर्भ संख्या 84/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/159/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 208.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2014) of the Central Government Industrial Tribunal-cum Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The G.M. SJVN Ltd. Nathpa Jhakhri Hydro Power Station, Kinnaur, (H.P.) & Others, and their workmen which were received by the Central Government on 04.02.2020.

[No. L-42012/159/2014-IR-(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:** Sh. A. K. Singh, Presiding Officer**ID No. 84/2014**

Registered on:-02.02.2015

Anil Kumar S/o Charan Dass, R/o Vill. Khakrola(Bhalna), P.O. Nogli,
Teh. Rampur, Distt. Shimla, HP.

...Workman

Versus

1. The G.M. SJVN Ltd. Nathpa Jhakhri Hydro Power Station, Nathpa, Distt. Kinnaur, H.P.

2. M/s. JBS Enterprises Pvt. Ltd., NB-2, Vrindavan Society, Thane-400601.

3. M/s. S.M. Electricals, Shop No.1 (Basement) Kasauli Road,
Parwanoo, Distt. Solan, H.P.

...Respondents/Managements

AWARD**Passed on:-14.01.2020**

Central Government vide Notification No. L-42012/159/2014-IR(DU) Dated 22.12.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of SJVN Ltd., Nathpa Jhakri(HP) in terminating the services of Shri Anil Kumar S/o Shri Charan Dass, w.e.f. November 2010 who was engaged by the SJVN Ltd. through the contractors is just, valid & legal? If not to what relief the workman is entitled for and what directions are necessary in the matter?”

1. Both the parties were put to notice and claimant Anil Kumar filed statement of claim, with the averment, that he was initially appointed in the month of June, 2006 in 1500 MW power project of respondent/management through M/s JBS Enterprises Pvt. Ltd. and worked with the said firm for two years thereafter, the work of project was taken by M/s S.M. Electricals and the claimant worked till November, 2010 with the said firm as T-mate and thereafter as Electrician when the services of the claimant/workman was terminated. The respondent/management has assailed the services of the claimant/workman for multifarious duties such as rectification of faults in cables at different places, to distribute/dispatch official files from one office to another. Moreover, the workman has completed more than 240 days in each calendar year during the aforesaid period. The respondent/management has adopted pick and choose policy and juniors to the workman are still working for the aforesaid project. Under these circumstances, the claimant had no other alternative to approach the Labour-cum-Conciliation Officer, Chandigarh, which has been forwarded to this Tribunal by the Assistant Labour Commissioner(C) Chandigarh. The respondents/management have failed to re-engage the services of the claimant/workman despite of the repeated requests and representations made. The respondents/managements are engaged in the work of Power Projects and falls under the definition of the Industry as defined in the Industrial Disputes Act and the workman falls within the definition of workman. The work against which the workman was engaged was fully done under the control and supervision of the respondent/management and the management being the principal employer, the claimant/workman should be re-engaged in the service by the principal employer/management. It is therefore prayed that the workman may be reinstated in service along with seniority and continuity in service and other consequential benefits.

2. Respondent No.1 i.e. S.J.V.N. Ltd. has filed its written statement, alleging therein that the claimant was appointed through M/s JBS Enterprises Pvt. Ltd. as the said establishment is an independent contractor, who had entered into contract with SJVN Ltd. for civil works had hired/engaged the claimant on its own in order to fulfill its contractual obligation with S.J.V.N Ltd. There were no explicit or implicit directions/instructions from SJVN Ltd. to said M/s JBS Enterprises Pvt. Ltd. either to engage or disengage any workman. It is submitted that the claimant was engaged by the contractor and was an employee of the contractor as such, SJVN Ltd. has no knowledge of the duties assigned to him by the contractor and the contents pertaining to duties performed during night hours are also denied due to want of knowledge. It is submitted that

as per records available with SJVN Ltd. as provided by the contractor, the claimant was given full one month notice and was even awarded retrenchment benefits and SJVN Ltd. has no control on the work force employed by the contractor and engagement and termination is beyond the control of SJVN Ltd. The contents of para 7 of the claim petition is denied as the SJVN Ltd. or its contractor are not under any obligation to engage or re-engage any one including the claimant as the appointment was on purely contractual basis and when the contract came to an end i.e. after two years, the employment was bound to be terminated automatically. It is denied that respondent exercised complete control over the employment, work and continuance of service of claimant in whatsoever form or manner because claimant was an employee of contractor and not of respondent. The claimant was employed by the contractor under the terms and conditions of the contract and the claimant cannot lay claim towards his employment with principal employer i.e. SJVN Ltd. as the said establishment is a government organization and employments in it are not made through backdoor channels as is being agitated by the claimant. It is therefore, prayed that claim petition of the workman is devoid of merits and has been instituted with an intention of unjust enrichment at the cost of SJVN Ltd. as such, the same may be dismissed with heavy cost.

3. Respondent No.2 i.e. M/s JBS Enterprises Pvt. Ltd. has filed its written statement, admitting the facts that the claimant has worked as T-Mate and denied that no multifarious duties such as rectification of faults in cables at different places to distribute/dispatch official files and documents from one office to another was ever entrusted upon the claimant. It is further averred that the contract work of the respondent no.2 had been terminated in the year 2010 and afterwards respondent no.3 had taken the contract work from respondent no.1 and all the dues pending of the claimant towards respondent no.2 has already been settled and no cause of action exists towards respondent no.2. The claimant was asked to appear in the interview and the claimant was not found suitable for the job. The respondent no.2 has no role after the expiry of the contractual work taken by it and after the expiry of contract, respondent no.3 had taken the contractual work. It is therefore, respectfully prayed that the present claim may kindly be dismissed in the interest of justice.

4. Respondent No.3 i.e. M/s S.M. Electricals has filed its written statement, admitting the facts that the claimant has worked as T-Mate and denied that no multifarious duties such as rectification of faults in cables at different places to distribute/dispatch official files and documents from one office to another was ever entrusted upon the claimant. As per Clause 8 of the employment letter dated 03.11.2008, the services of the claimant stands automatically terminated when the contract work finished in November 2010 and no pick and choose policy was adopted by the answering-respondent as no re-employment or reinstatement is feasible with the respondent. The claimant had been paid full and final payment through Labour Office Kinnaur at Rekonpeo. It is further submitted that vide registered letter dated 15.10.2010, the claimant deliberately refused to receive the registered letter with the false report managed thereon. It is therefore respectfully prayed that the present claim may kindly be dismissed in the interest of justice.

5. The workman has filed its replication to the written statement filed by respondent no.1, alleging the same facts which are already alleged in the claim petition as such, it does not required to be repeated again.

6. In support of his case, the workman Anil Kumar appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.WW1/A and has been cross-examined by the learned counsel of respondent no.1, 2 and 3.

7. Respondent No.1 S.J.V.N. Ltd. has examined Sh. Chander Mohan, Senior Manager, NJHPS, who has filed his affidavit Ex.MW1/A and cross-examined by the workman counsel.

8. Respondent No.2 M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 M/s S.M. Electricals have not produced any evidence and remained absent hence, proceeded ex parte on 18.10.2019.

9. I have heard Sh. Rajesh Kashyap, Ld. Counsel for the workman and Sh. Jivender Katoch, Ld. Counsel for respondent no.1 and have gone through the records carefully.

10. There is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop.**

Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.

11. There is hardly any dispute with the proposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is quite different inasmuch as the facts alleged in the claim petition regarding the relationship with respondent no.1 i.e. S.J.V.N. Ltd., principal employer and respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals are of two folds i.e. the first one relation of the workman with respondent no.1 i.e. S.J.V.N. and relation of workman with respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals respectively. The first issue as to whether the workman was engaged and was under the control of respondent no.1 i.e. S.J.V.N. Ltd. directly, at the very outset, it may be mentioned that there is no single document to prove that the workman was directly employed by respondent no.1 i.e. S.J.V.N. and remains in its control throughout his services. The Hon'ble Supreme Court after analysing the catena of cases has laid down in **Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014**, two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

- 1) Whether the principal employer pays the salary instead of contractor and
- 2) Whether the principal employer controls and supervise the work of the employees?

12. The facts regarding the payment of salary by respondent no.1 i.e. S.J.V.N. to the workman is concerned, the workman has not mentioned anything regarding the mode of payment of wages/salary, appointment letter etc. in his claim statement as well as affidavit filed as evidence with respect to respondent no.1. Learned counsel of the workman/claimant argued that this fact is not disputed that respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals were the contractors of respondent no.1 i.e. S.J.V.N. Ltd. and the ultimate control lies with the respondent no.1 i.e. S.J.V.N. Ltd. As such, the workman is deemed to be in the employment of respondent no.1 i.e. S.J.V.N. Ltd.. Contrary to this, learned counsel of respondent no.1 relied on the facts mentioned in the replication of the workman and cross-examination of the workman. It is contended that there is a specific admission of the workman himself that he was working with M/s S.M. Electricals i.e. respondent no.3 as T-mate and subsequently as electrician and it was contractor M/s S.M. Electricals who paid all his emoluments. Learned counsel of respondent no.1 further argued that the workman himself has admitted during the course of cross-examination that his EPF was deducted by the respective contractors. Thus, according to the learned counsel of respondent no.1, by virtue of the facts alleged in the replication of the workman as well as cross-examination of the workman, it is crystal clear that he was neither employed by respondent no.1 i.e. S.J.V.N. nor salary or EPF was paid to him by respondent no.1 i.e. S.J.V.N. as such, there did not exist relationship of employer and employee with workman and respondent no.1 i.e. S.J.V.N.

13. So far as control and supervision is concerned, the Apex Court in the case of **International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]** has held as follows:-

“If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

14. Thus, the principle enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the workman is mum on this score and workman has not mentioned any specific averments in his affidavit regarding the appointment, authority of

dismissal or taking of disciplinary action by respondent no.1 i.e. S.J.V.N. Ltd. There is nothing on record to prove that it is the respondent no.1 i.e. S.J.V.N. Ltd. who grants leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision by the S.J.V.N. Ltd. as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the respondent no.1 for a specific work inefficient manner done by the contractors/respondents in the establishment.

15. So far as the second contention about the relationship of workman with respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals are concerned. It is also not disputed that M/s J.B.S Enterprises Ltd. i.e. respondent no.2 was the first contractor to whom work was assigned by respondent no.1 S.J.V.N. Ltd. and workman was engaged by J.B.S. Enterprises Pvt. Ltd. i.e. respondent no.2 and after the expiry of the contract with respondent no.2 M/s J.B.S. Enterprises Pvt. Ltd., contract was allotted to respondent no.3 i.e. M/s S.M. Electricals when the services of workman comes to an end in the month of November 2010 after expiry of contract. This fact is clearly state in Para 2 of the replication of the workman as well as facts accepted in the cross-examination of the workman. In the opening line of the cross-examination of workman by respondent no.1 i.e. S.J.V.N. Ltd., workman Anil Kumar has admitted that he was working with M/s S.M. Electricals i.e. respondent no.3 and subsequent contract was given to M/s Ashoka Electricals. This witness has further admitted that he performed his duty with M/s S.M. Electricals i.e. respondent no.3 and orally terminated by M/s S.M. Electricals after the expiry of the contract. The learned counsel of respondent no.1 argued that in fact, the work of respondent no.1 i.e. S.J.V.N. Ltd. has to be accomplished by several contractors. The first one was respondent no.2 subsequent respondent no.3 and subsequently Ashoka Electricals. Learned counsel argued that the contract allotted to M/s S.M. Electricals comes to an end in the month of November and subsequent contract was allotted to M/s Ashoka Electricals. It is a specific case of respondent no.1 that workman did not turn up for interview called by M/s Ashoka Electricals, resulting his services comes to an end with the respondents. The workman has admitted in his cross-examination that he does not know about the payment made by M/s Ashoka Electricals to workman who was worked with him at the relevant time. According to the workman Anil Kumar, after his termination by M/s S.M. Electricals, he did not visit to the place of work from the year 2010 which reflect that workman has not made any effort with the subsequent contractor M/s Ashoka Electricals for his employment. The agreement filed by respondent no.1 with respect to respondent no.2 and 3 and subsequent contractor Ashoka Electricals reveals that there is a specific clause regarding the service condition and payments in which it is mention in sub-clause C of the agreement as follows:-

***“C. The contractor shall make payment to the workman hired by him for this job by 7th of each month and will submit a copy of master roll by 10th of each month duly signed by the authorized representative of EIF. In case of his failure to do so, EIC shall make direct payment to the workman hired by him and shall recover the payments so made by SJVNL from the pending dues of the contractor along with 25% cost as SJVNL overhead.*”**

16. Thus, liability of engagement and payment was with the contractors. There is no dispute that contract entered with M/s S.M. Electricals by respondent no.1 i.e. S.J.V.N. Ltd. come to an end in the month of November 2010 as is stated by the workman himself, resulting his alleged retrenchment/termination from the job assigned to him. Workman Anil Kumar as a witness, has specifically admitted that he was paid all the emoluments by the contractor M/s S.M. Electricals at the time of the retrenchment/termination. As such, it cannot be assumed that due to expiry of the contract and terms and conditions of the employment, there was any requirement to give one month notice or one month salary in lieu of notice as is envisaged under Section 25 of the Industrial Disputes Act, 1947.

17. It is pertinent to mention that workman has claimed his reinstatement with respondent no.1 i.e. S.J.V.N. Ltd. by virtue of its being a principal employer. Learned counsel of the workman has argued that the work of respondent no.1 is for a long time as is crystal clear from the agreement entered into between the respondent no.1 i.e. S.J.V.N. and Ashoka Electricals subsequent to the termination of the workman. Learned counsel of workman further argued that work is still going on and the respondent no.1. i.e. S.J.V.N. is under obligation to get him re-employed or re-engaged. Contrary to this, learned counsel of respondent no.1 argued that there is no such provision envisaged in Industrial Disputes Act, that even, without any relationship of employer and employee between the workman and principal employer he is under obligation to reinstate the workman or give him compensation or wages for his termination or retrenchment due to expiry of contract with its contractors. The argument of the learned counsel of respondent no.1 i.e. S.J.V.N. Ltd. is legally justified and with respect to the present case, as is discussed above, workman has no any kind of relationship of employer and employee with the respondent no.1 i.e. S.J.V.N. Ltd. As such, the oral argument advanced by the learned

counsel of workman has no force with respect to the re-engagement or any wages payable to the workman by respondent no.1 i.e. S.J.V.N. Ltd. So far as the liability of respondent no.2 i.e. M/s J.B.S. Enterprises Pvt. Ltd. and respondent no.3 i.e. M/s S.M. Electricals is concerned, there is no allegation that respondent no.2 has not paid salary or emoluments, EPF etc. before the work taken over by respondent no.3 i.e. M/s S.M. Electricals through contract entered into between respondent no.1 i.e. S.J.V.N. Ltd. Workman Anil Kumar has himself admitted that all the emoluments has been paid by respondent no.3 i.e. M/s S.M. Electricals at the time of expiry of the contract with respondent no.1 i.e. S.J.V.N. Ltd. as such, nothing remains to be given by respondent no.3 also to the workman.

18. In view of the above discussion and observation, workman has failed to prove that he was employed by respondent no.1 i.e. S.J.V.N. Ltd. and his services were retrenched illegally without giving any notice or one month salary in lieu of notice as is required under Section 25 of the Industrial Disputes Act, 1947. Similarly, there is no evidence on record to prove that he had ever approached with the Ashoka Electrical subsequent contractor for his engagement after the expiry of contract with respondent no.3 M/s S.M. Electricals. So, employment of other workers by Ashoka electrical has no reason for engagement of workman/claimant. Hence, the workman is not entitled for any relief as claimed in the claim petition and the award is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 209.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रबंध निर्देशक, इंडियन मेडिसिन्स फार्मास्युटिकल कॉर्पोरेशन लिमिटेड, अल्मोड़ा, उत्तराखंड 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 - चंडीगढ़, पंचाट (संदर्भ संख्या 115/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.02.2020 को प्राप्त हुए थे।

[सं. एल-42011/169/2018-आईआर (डीयू)]

डी. के. हिमांशु, अवसर सचिव

New Delhi, the 13th February, 2020

S.O. 209.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 115/2018) of the Central Government Industrial Tribunal-cum-Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Indian Medicines Pharmaceutical Corporation Ltd, Almora, Uttarakhand & Others, and their workmen which were received by the Central Government on 04.02.2020.

[No. L-42011/169/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 115/2018

Registered on:-29.01.2019

The President, Uttarakhand State Committee, Center of Indian Trade Union (CITU),
Local Bus Stand, Dehradun-288001.

...Union

Versus

The Managing Director, M/s. Indian Medicines Pharmaceutical Corporation Ltd.,
Mohan, Distt-Almora, Uttarakhand-263601.

...Management

AWARD**Passed on:-16.01.2020**

Central Government vide Notification No. L-42011/169/2018-IR(DU) Dated 11.01.2019, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the claim of workmen namely Sh. Anil Kumar Borai, Manoj Pargai and Sh. Rajesh Negi for regularisation having worked for approximately 10 years or so as temporary/contract workmen with annual or biannual artificial break of a day or two with the M/s Indian Medicines Pharmaceutical Corporation Ltd., Mohan Distt.-Almora (IMPCL) is legal and justified? If so, what relief the workmen are entitled to and to what extent?”

1. On the receipt of the above reference, notice was sent to the union as well as the management. The postal article sent to the union, referred above, is duly served as per status report of the registered post. Hence, in spite of the sufficient opportunity, none turned up before the Tribunal on behalf of the union. However, union is given an opportunity to file claim petition but none turned up in spite of the repeated opportunities and claim statement is not filed on behalf of the union which shows that the union is not interested in adjudication of the reference on merit.

2. Since the union has neither put their appearance nor has they led any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim Award’. It is also clarified that passing of the no claim award/no dispute award would not bar the union from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 210.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कुलपति, इंदिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय, नई दिल्ली 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 - नई दिल्ली, पंचाट (संदर्भ संख्या 15/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/143/2010-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 210.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2011) of the Central Government Industrial Tribunal-cum Labour Court- 2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Vice Chancellor, Indira Gandhi National Open University, New Delhi & Others, and their workmen which were received by the Central Government on 13.01.2020.

[No. L-42012/143/2010-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2, NEW DELHI****PRESENT : SMT. PRANITA MOHANTY**, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi**INDUSTRIAL DISPUTE CASE No.15/2011****Date of Passing Award : 13th December, 2019**

Shri Surjeet,
S/o. Late Shri Ram Krishan,
r/o. H.No. 355/1, Millhai,
Faridabad, Haryana.

...Workman/Claimant

Versus

The Management of
Indira Gandhi National Open University,
Through its
Vice Chancellor,
R.No.1, Block No.8, Maidan Garhi,
New Delhi 110068.

...Management

Appearances :-

None : For the Workmen

Shri Vishwajeet Mangla, A/R : For the Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the Ministry of Labour, Government of India vide letter No.L-42012/143/2010-IR(DU) dated 09.03.2011 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short “the Act”) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the action of the Management of IGNOU in terminating the services of Shri Surjeet s/o. late Shri Ram Kishan w.e.f. 1/11/2007 is just, fair and legal ? If not, to what relief the workman concerned is entitled to and from which date ?’

2. Both parties were put to notice and the claimant/ workman filed statement of claim dated 15/7/2014 with the averments inter-alia that he had been in the employment of Management as Safai Karamchari since 2002 and at the time of his engagement, he had filled in and signed certain forms as prescribed by IGNOU, which documents are in the custody of the Management. Though he had completed all the formalities, however no appointment letter was issued by the Management in his favour. His last drawn wages were Rs.172/- per day which comes near about Rs.4500/- per month. It is pleaded that since very beginning the Management had been indulging into unfair labour practice and had been flouting the implementation of labour laws . At times the Management had been keeping the workman and other workers on the rolls of the establishment of the University and would arbitrarily transfer their services in the account of some contractor without communicating with the workers. This was also done on 1/11/2007 when the Management in its illegal designs decided to place the workman in the account of a contractor whose engagement for housekeeping work was neither communicated to the workman and his colleagues and on the very first day, the contractor announced that he shall be paying Rs.3470/- per month to the workers and those who are interested in working on that wage may stay back and other can leave, though prior to 1/11/2007 the workman and other co-employees were getting Rs.4500/- per month and minimum wage notified by the Govt. of NCT of Delhi was Rs.3516/- per month. Since the workers were being put to a straight loss of Rs.1030/-, they wanted to see the Hon’ble Vice Chancellor of the University on 2/11/2007 to express their grievance but they were not allowed to enter in the University premises, rather the Management in pursuance of their illegal designs & adopting unfair labour practice called some anti social elements who gave beatings to the workman and other co-employees. Not only this, the Management also called the police inside the premises and terminated the services of the workman & other co-employees in illegal manner, without issuing any charge sheet or holding domestic enquiry and without giving any notice or notice pay or service compensation. Such an action of the Management in terminating the services of the workman w.e.f. 1/11/2007 is unwarranted, illegal and in violation of the provisions of Section 25-F of the Act. Thereafter the workman approached the office of Regional Labour Commissioner where conciliation proceedings were held but failed due to adamant attitude of Management. It is also pleaded that the

workman is unemployed since the date of his illegal termination from services. The workman has prayed for reinstatement with continuity of service, back wages and consequential benefits.

3. Management resisted the claim of the workman, by filing written statement and took preliminary objections on the grounds inter alia that the workman/claimant was never appointed by the Management, rather he was employed as a safai karamchari through a contractor who had been assigned the contract of cleaning work through open tender system. The Management had engaged the services of contractor M/s Sybex Computers Systems Pvt. Ltd. vide agreement dated 1/4/2011. It has been denied that the workman was initially appointed on daily wage basis or that he was being paid Rs.4500/- per month or that the Management ever terminated the services of the claimant/workman. In nut shell the stand of the Management is that there does not exist relationship of employee & employer between the parties. Prayer has been made by the Management for dismissal of the claim petition with costs.

4. On the pleadings of the parties, following issues were framed in this case :

- 1) Whether the proceeding is maintainable ?
- 2) Whether there exists employer & employee relationship between the workman and the Management ?
- 3) Whether the service of the workman was illegally terminated by the Management w.e.f. 1/11/2007 ?
- 4) To what relief the claimant is entitled to ?

5. Perusal of the record shows that despite number of opportunities granted to the workman/claimant to adduce evidence in support his case regarding his engagement/employment by the Management of IGNOU and illegal termination of his services by the Management w.e.f. 1/11/2007, he did not lead any evidence. It is a matter of record that the claimant had opted not to participate in the proceedings since 11/3/2019 onwards. Ultimately this Tribunal was left with no option but to close his evidence vide order dated 10/12/2019. Since the claimant himself did not adduce any oral or documentary evidence to prove his case, A/R for the Management chose not to lead any evidence or to show that the proceeding before this Tribunal are not maintainable.

6. At the outset it is mentioned that onus was upon the claimant/workman to prove the relationship of employee & employer between the parties and to prove that his services were illegally & unjustifiably terminated by Management of IGNOU w.e.f. 1/11/2007. The workman/claimant has failed to discharge the onus. In view of the fact that the claimant has not led any evidence in support of his case, this Tribunal is constrained to pass "No Dispute Award" in the matter. Award is passed accordingly.

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

PRANITA MOHANTY, Presiding Officer

13th December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 211.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कुलपति, इंदिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय, नई दिल्ली 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 - नई दिल्ली, पंचाट (संदर्भ संख्या 23/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/152/2010-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 211.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2011) of the Central Government Industrial Tribunal-cum Labour Court- 2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Vice Chancellor, Indira Gandhi National Open University, New Delhi & Others and their workmen which were received by the Central Government on 13.01.2020.

[No. L-42012/152/2010-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2, NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No. 23/2011

Date of Passing Award : 13th December, 2019

Smt. Saroj Devi,
W/o. Shri Sukhbir Singh ,
r/o. H.No.180, F-II, Block,,
Madangir, New Delhi 110068.

...Workman/Claimant

Versus

The Management of
Indira Gandhi National Open University,
Through its
Vice Chancellor,
R. No.1, Block No.8, Maidan Garhi,
New Delhi 110068.

...Management

Appearances :-

None : For the Workman
Shri Atul Bhardwaj, Proxy A/R : For the Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the Ministry of Labour, Government of India vide letter No.L-42012/152/2010-IR(DU) dated 09.03.2011 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short “the Act”) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the action of the Management of IGNOU in terminating the services of Smt. Saroj w/o. Shri Sukhbir Singh w.e.f. 1/11/2007 is just, fair and legal ? If not, to what relief the workman concerned is entitled to and from which date ?’

2. Both parties were put to notice and the claimant/ workman filed statement of claim dated 15/7/2014 with the averments inter-alia that she had been in the employment of Management as Safai Karamchari since 2005 and at the time of her engagement, she had filled in and signed certain forms as prescribed by IGNOU, which documents are in the custody of the Management. Though she had completed all the formalities, however no appointment letter was issued in her favour. Her last drawn wages were Rs.172/- per day which comes near about Rs.4500/- per month. It is pleaded that since very beginning the Management had been indulging into unfair labour practice and had been flouting the implementation of labour laws. At times the Management had been keeping the workman and other workers on the rolls of the establishment of the University and would arbitrarily transfer their services in the account of some contractor without communicating with the workers. This was also done on 1/11/2007 when the Management in its illegal designs decided to place the workman in the account of a contractor whose engagement for housekeeping work was neither communicated to the workman and her colleagues and on the very first day, the contractor announced

that he shall be paying Rs.3470/- per month to the workers and those who are interested in working on that wage may stay back and other can leave, though prior to 1/11/2007 the workman and other co-employees were getting Rs.4500/- per month and minimum wage notified by the Govt. of NCT of Delhi was Rs.3516/- per month. Since the workers were being put to a straight loss of Rs.1030/-, they wanted to see the Hon'ble Vice Chancellor of the University on 2/11/2007 to express their grievance but they were not allowed to enter in the University premises, rather the Management in pursuance of their illegal designs & adopting unfair labour practice called some anti social elements who gave beatings to the workman and other co-employees. Not only this, the Management also called the police inside the premises and terminated the services of the workman & other co-employees in illegal manner, without issuing any charge sheet or holding domestic enquiry and without giving any notice or notice pay or service compensation. Such an action of the Management in terminating the services of the workman w.e.f. 1/11/2007 is unwarranted, illegal and in violation of the provisions of Section 25-F of the Act. Thereafter the workman approached the office of Regional Labour Commissioner where conciliation proceedings were held but failed due to adamant attitude of Management. It is also pleaded that the workman is unemployed since the date of her illegal termination from services. The workman has prayed for reinstatement with continuity of service, back wages and consequential benefits.

3. Management resisted the claim of the workman, by filing written statement and took preliminary objections on the grounds inter alia that the workman/claimant was never appointed by the Management, rather she was employed as a safai karamchari through a contractor who had been assigned the contract of cleaning work through open tender system. The Management had engaged the services of contractor M/s Sybex Computers Systems Pvt. Ltd. vide agreement dated 1/4/2011. It has been denied that the workman was initially appointed on daily wage basis or that he was being paid Rs. 4500/- per month or that the Management ever terminated the services of the claimant/workman. In nut shell the stand of the Management is that there does not exist relationship of employee & employer between the claimant and the Management herein. Prayer has been made by the Management for dismissal of the claim petition with costs.

4. On the pleadings of the parties, following issues were framed in this case :

- 1) Whether the proceeding is maintainable ?
- 2) Whether there exists employer & employee relationship between the workman and the Management ?
- 3) Whether the service of the workman was illegally terminated by the Management w.e.f. 1/11/2007 ?
- 4) To what relief the claimant is entitled to ?

5. Perusal of the record shows that despite number of opportunities granted to the workman/claimant to adduce evidence in support his case regarding his engagement/employment by the Management of IGNOU and illegal termination of his services by the Management w.e.f. 1/11/2007, he did not lead any evidence. It is a matter of record that the claimant had opted not to participate in the proceedings since 11/3/2019 onwards. Ultimately this Tribunal was left with no option but to close his evidence vide order dated 10/12/2019. Since the claimant himself did not adduce any oral or documentary evidence to prove his case, A/R for the Management chose not to lead any evidence or to show that the proceeding before this Tribunal are not maintainable.

6. At the outset it is mentioned that onus was upon the claimant/workman to prove the relationship of employee & employer between the parties and to prove that his services were illegally & unjustifiably terminated by Management of IGNOU w.e.f. 1/11/2007. The workman/claimant has failed to discharge the onus. In view of the fact that the claimant has not led any evidence in support of her case, this Tribunal is constrained to pass "No Dispute Award" in the matter. Award is passed accordingly.

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

PRANITA MOHANTY, Presiding Officer

13th December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 212.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, दूरसंचार (पश्चिम), भारत संचार निगम लिमिटेड, देहरादून 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 - नई दिल्ली, पंचाट (संदर्भ संख्या 38/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2020 को प्राप्त हुए थे।

[सं. एल-40012/14/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 212.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2013) of the Central Government Industrial Tribunal-cum Labour Court- 2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecom (West) Bharat Sanchar Nigam Limited, Dehradun & Others, and their workmen which were received by the Central Government on 13.01.2020.

[No. L-40012/14/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 38/2013

Date of Passing Award- 20th December, 2019

Between:

Shri Ratan Prakash,
S/o Late Shri Sadanand,
40, Lunia Mohalla, Block-I,
Dehradun
Dehradun-248001

... Workman

Versus

Chief General Manager, Telecom (West)
Bharat Sanchar Nigam Limited,
Windlass Shopping Complex, Rajpur Road,
Dehradun- 248001.

...Management

Appearances:-

Shri Arvind Kumar (A/R) : For the Workman

Ms. Atul Bhardwaj (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/14/2013 (IR(DU)) dated 22.04.2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, Dehradun of cancelling the candidature of Shri Ratan Prakash, TSM and thereby depriving him of promotion of the cadre of LDC/ Phone Mechanic is unjustified? To what relief the workman concerned is entitled to?”

Being noticed the claimant as well as the respondent BSNL appeared and filed their respective claim and WS. The claimant has pleaded that he is working in the post of TSM in BSNL under SSA Dehradun since the year 2001. The management BSNL conducted a competitive examination for filling up the post of Telephone mechanic/LDC in Circle Lable on 31.10.2010. As per procedure out of the total vacancies 40% are to be filled up from among the persons working in BSNL subject to fulfillment of eligibility criteria and 60% is to be filled up from among the outside applicants. The claimant had submitted application, received the hall ticket for the said competitive examination and also appeared in the examination on 31.10.2010. He was the only eligible candidate from SSA, BSNL Dehradun to appear in the examination for the post of Home Mechanic. All together 34 employees of Dehradun Circle, had participated in the examination including claimant. The result of the examination declared by the management on 08.07.2011 wherein names of 9 candidates were shown as successful and 9 others were shown as unsuccessful. There was no information about the remaining 16 candidates. Since, the name of the claimant was neither in the list of successful nor in the unsuccessful candidates, he filed an application under RTI Act to know the result of his candidature. On 11.08.2011 he received information that the candidature of 16 applicants has been rejected including the claimant. His effort for revaluation of his examination papers yield no result. He then filed another application under RTI and the respondent in reply to the same dated 05.10.2011 apprised the claimant that the candidature of all the candidates under SSA Dehradun was cancelled since there were no vacancies in SSA Dehradun for the post of Telephone mechanic. He later obtained the vacancy position before the examination and came to know that there was no vacancy in SSA Dehradun but there were 2 vacancies in maintenance division. Though he was fully qualified for the post of telephone mechanic in SSA Dehradun and maintenance, his candidature was arbitrarily rejected by the management. Describing the same as unfair labour practice and claiming promotion from the date when the other candidates appearing in the examination were promoted he raised a dispute before the labour commissioner. The conciliation since failed the Appropriate Government referred the matter to this tribunal for adjudication.

The management filed WS denying the stand taken by the claimant. While admitting that limited departmental competitive examination for promotion to the Grade of Telecom Mechanic was conducted for SSA on 31.10.2010 and that the claimant had appeared in the examination, the management has explained that the said examination was specifically for different SSAs and the person working in one SSA is eligible for promotion in the same SSA and no interchange between the SSAs is permissible. The claimant had wrongly applied and appeared for promotion in SSA Dehradun. Since, there was no vacant post for the post of Telephone mechanic in SSA Dehradun his candidature was rejected and result was not published. Refuting the claim of the claimant about unfair labour practice the management pleaded for dismissal of the claim as not maintainable.

The claimant filed rejoinder denying the averments of the management. On the rival pleading the following issues were framed for adjudication.

ISSUES

1. Whether the action of the management of BSNL, Dehradun of cancelling the candidature of Shri Ratan Prakash, TSM and thereby depriving him of promotion to the cadre of LDC/Phone Mechanic is unjustified?
2. To what relief the workman concerned is entitled to?”

The claimant examined himself as WW1 and filed documents marked in a series of WW1/1 to WW1/8. These documents include the Hall Ticket issued to him for the examination the information received by him under RTI regarding his result, rejection of candidature, vacancy position, etc. He has also filed the recruitment rule of telecom mechanics of 2002 marked as WW1/8. Similarly the Assistant General Manager of BSNL testified as MW1 But no document on behalf of the management has been placed on record.

During course of argument the Ld. A/R for the workman submitted that this is a clear case of unfair labour practice in as much as the claimant was deprived of being considered for the promotion. He also argued that the stand taken by the management that the selection to the post of Telephone mechanic was circle wise which means the persons of a particular Circle are to be considered for promotion in the vacancies of the same circle is a misconception of fact and the said plea taken by the management has not been substantiated by any document. It is profitable to look into the recruitment rule of telecom mechanics in BSNL published on 20th Feb 2002. Needless to say that both the parties filed this document on record and placed reliance on the same. This rule i.e. Telecom Mechanic (Recruitment) Rule 2002 came into force on 20th Feb 2002 i.e. the date of

publication. This rule was published prior to the date of the alleged examination. A careful perusal of the said rule shows that the number of post classification and scale of pay is governed as per the column 2 to 4 of the table attached to the Rule. In none of the columns or nowhere in the Rule it has been mentioned that the vacancies shall be notified circle wise and the persons working in the same circle would be eligible for promotion subject to their qualifying the departmental test. Besides this document no other document has been placed on record by the management to lead this tribunal to a conclusion that the vacancies were to be filled up on Circle basis and for that reason the candidature of the claimant was dismissed.

The other argument taken by the claimant is that if it accepted for the sake of argument that there were no vacancies in SSA Dehradun as per the information received under RTI and marked as WW1/7 there were two vacancies in maintenance division without any indication about the Circle. Those vacancies being open for the candidates of all the circles the candidature of the claimant/workman could have been considered for the same but the management without assigning any good reason rejecting the candidature. No convincing reply argument was advanced on behalf of the management for the same. Hence, from the oral and documentary evidence the one and only conclusion which can be derived is that the workman who was working as a TSM in the SSA Dehradun was having all other qualifications for promotion to the post of Telephone Mechanic and the management without any valid reason rejected his candidature and did not publish his result which amounts to unfair labour practice. The management witness examined as MW1 has stated that the limited departmental examination was held for filling up the post of Telephone mechanics in different SSA. The vacancies notified for the examination was SSA wise and as per the Telecom Mechanic recruitment rule the vacancies of one SSA can be filled by way of promotion from the among employees of that SSA subject to the qualification in the examination. At the cost of repetition it is stated here that no document in support of the oral statement of MW1 has been filed. Moreover the Telephone Mechanic Recruitment Rule 2002 nowhere prescribes that the vacancies occurring in one SSA would be filled up by the candidates of that SSA only subject to their qualification. Hence, the evidence of the management does not inspire confidence for rejecting the prayer of the claimant/workman and it is held that the refusal of his candidature amounts to unfair labour practice as described in Schedule V of the Industrial Disputes Act.

The next important question is what relief the workman is entitled to for the discrimination shown to him the claimant has pleaded that he be given promotion from the date when the persons whose result was published were given promotion i.e. from 31.10.2011. As admitted by the claimant and the management the workman had appeared for the examination but his result was not published. It is not brought on record whether the workman had qualified himself in the examination or not. In view of the situation this tribunal does not feel it proper to give any direction to the management for given the workman promotion instantaneously. On the contrary it is felt proper to give a direction to the management to publish the result of the workman who had appeared in the examination and act accordingly subject to the result of the qualification of the workman in the said examination. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the workman. It is held that the action of the management in cancelling the candidature of the workman Shri Ratan Prakash for the departmental examination for promotion to the cadre of phone mechanic is illegal. Management is here by directed to publish the result of the workman within 3 months from the date of publication of this award and if the workman would be found to have qualify in the examination he will be given promotion with effect from 31.10.2011 and all the consequential service benefits including promotional pay would be allow to him from that date. Management would not be liable for payment of interest on the financial dues if would be payable to the claimant. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

PRANITA MOHANTY, Presiding Officer

20th December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, मदर डेयरी फ्रूट्स एंड वेजिटेबल्स प्राइवेट लिमिटेड, पिलखुआ, गाजियाबाद (उ.प्र.) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय - नई दिल्ली, पंचाट (संदर्भ संख्या 04/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/154/2012-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 213.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04/2013) of the Central Government Industrial Tribunal-cum-Labour Court- 2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Mother Dairy Fruits & Vegetables Pvt.Ltd., Pilkhua, Ghaziabad (UP) & Others, and their workmen which were received by the Central Government on 24.01.2020.

[No. L-42012/154/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2, NEW DELHI****PRESENT :** SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi**INDUSTRIAL DISPUTE CASE No. 4/2013****Date of Passing Award : 20th December, 2019**

General Secretary,
Mother Dairy Employees Union,
28/6, Subash Nagar, Gali No.1,
Near Indian Public School,
Meerut 250001 (UP).

...Workmen/Claimant Union

Versus

General Manager,
Pilkhuwa Dairy Union,
Mother Dairy Fruits & Vegetables Pvt. Ltd.,
18 Kilometer Milestone,
Pilkhua, Ghaziabad (UP).

...Management

Appearances :-

Shri Inderjeet, A/R : For the Workman Union

Shri Ranjan Jha, A/R : For the Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the Ministry of Labour, Government of India vide letter No.L-42011/154/2012-IR(DU) dated 16th/23rd January, 2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short “the Act”) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the action of management of Mother Dairy Pilkhua unit in not adopting the IDA pattern of wage structure which is applicable in the Mother Dairy Organization and depriving the workers of Pilkhua Union of consequential benefits, is unjustified ? If so, what relief workmen are entitled to ?’

2. Both parties were put to notice and the workman Union filed statement of claim through Shri Sanjay Kumar, General Secretary of the Union, with the averments inter alia that Pilkhua Unit of the Management herein is a part and parcel of Mother Dairy Fruit & Vegetable Pvt. Ltd, which is a public sector undertaking of the Central Government and therefore an Authority under Article 12 of the Constitution of India and hence same is not only bound by the constitutional mandate but also by the orders, instructions and guidelines issued by the Central Govt. in the matter of fixation of pay, dearness allowance and other terms & conditions of the employees working under the Management. Pilkhua Unit of the Management has been running since 2001 through direct employees on its payrolls as well as through contract labourers. 103 Nos. of Technicians – who constitute a small fraction of total work-force to do regular & perennial nature of work, are direct employees of the Management on its pay rolls at Pilkhua Unit but majority of them are being paid wages ranging from Rs.1.40 lacs to Rs.1.60 lacs per annum, whereas their counter-parts (designated as Assistant-II) working at Delhi Unit of the Mother Dairy are getting a sum of Rs.23,413/- (viz. Basic Pay of Rs.12150/-, DA of Rs.6889/-, Canteen Allowance Rs.1215/-, Washing Allowance Rs.729/- and LTA Rs.2430/-) per month, which is nearly the double of the wages & allowance being paid to the workmen of Pilkhua Unit. It is pleaded that since both the Pilkhua and Delhi Unit of the Management of Mother Dairy fall in the National Capital Region (NCR) and the company has a common balance sheet, there can be no justification at all for the Management in not granting benefit of same/similar wage structure to the workmen of Pilkhua Unit. Such an action of the Management in not granting the benefit of IDA wage structure and other consequential benefit is unjustified and thus prayer has been made for directing the Management to re-fix the wages and allowances of the workmen as per IDA pattern w.e.f. 2009 – the date when they were taken on its pay rolls.

3. Management refuted the claim of the workman Union, by filing written statement, submitting that Management is a Private Limited company incorporated under Companies Act, 1956 created under Section 43 of National Dairy Development Board (NDDDB) and it is neither a “State” nor “any other Authority” defined under Article 12 of the Constitution of India. NDDDB is the 100% shareholder of Mother Dairy Fruit & Vegetable Pvt. Ltd and there is no shareholding of the Government. The Management company is neither performing any function of public importance nor closely related to governmental functions. Hence directions of Govt. of India pertaining to public sector company are not applicable upon the Management. It is alleged that fixing of wage structure is the policy decision of the Management company which has a discretion to decide wage structure for its employees and for overall benefit of the company. “Cost to company” (CTC) wage structure is growth oriented wage structure and better for overall growth of the company. The employees of the Management company are getting wage structure as per policy of the Management and they had duly accepted the same at the time of appointment. It is alleged that during pendency of the present reference, the Workmen Union arrived at an amicable settlement with the Management company on the issues raised in the present reference and as per terms of settlement dated 14/5/2013, regular employees of the company were given substantial increase in their salary and other benefits. Duration of the said settlement is of three years and the said employees have started getting benefit of the said settlement. Denying the allegations of the workmen Union that the workmen are entitled for re-fixing the wages & allowances as per IDA pattern of wage structure, it has been stated that the Delhi Unit are separate Units and the Management company has the discretion to take its policy decision with respect to separate Unit. It is misnomer that CTC pattern of wage structure is not good for the workmen of the Pilkhua Unit. The Management company followed the CTC pattern of wage structure just to maintain the financial viability of the company and to keep the company on growth oriented path. Prayer has been made for dismissal of the claim petition.

4. Rejoinder was filed on behalf of the workmen Union whereby it denied the allegations of the Management and reiterated its own case as set up in the claim petition.

5. On the pleadings of the parties, following issues were framed by my learned Predecessor on 13/1/2014 :-

- 1) Whether Mother Dairy Fruit and Vegetable Pvt. Ltd. is an instrumentality/agency of the State and hence an “Authority” under Article 12 of the Constitution of India ?
- 2) As per terms of reference.

6. In order to prove its case the workmen Union examined two witnesses – one Shri D.L. Sachdev, National Secretary of All India Trade Union Congress (INTUC) as WW1 who filed his affidavit Ex.WW1/A and relied on documents Ex.WW1/1 to Ex.WW1/5 and another Shri Sanjay Kumar, Vice President of Workmen Union as WW2 who also tendered his evidence by way of affidavit Ex.WW2/A and relied on the documents Ex.WW1/1 to Ex.WW1/2 (already exhibited). On the other hand, the Management examined one Shri Mani Shankar Jha, Deputy General Manager (HR) as MW1 who filed his affidavit Ex.MW1/A and placed reliance on the documents Ex.MW1/1 to Ex.MW1/4.

7. Arguments were advanced by Shri Inderjeet Singh, A/R for the workmen Union and Shri Ranjan Jha, A/R for the Management/ Perused the records carefully. Findings on the above issues are as follows.

Issue No. 1 :-

8. According to the case of the workmen Union, Mother Dairy Fruit & Vegetable Pvt. Ltd. is a public sector undertaking of the Central Government and therefore an Authority under Article 12 of the Constitution of India and hence same is required to abide by the constitutional mandate as well as the orders, instructions and guidelines issued by the Central Govt. in the matter of fixation of pay, dearness allowance and other terms & conditions of the employees working under the Management. However, the workmen Union has not led any cogent evidence to prove that the Management company is an instrumentality/agency of the State/Government or that it is an "Authority" under Article 12 of the Constitution of India. On the contrary, the Management has filed on record a copy of the List of Central Public Sector Enterprises (CPSEs) Ex.MW1/3 wherein the direct holding of the Central Government is 51% or more and the said list does not contain the name of Management company. During the course of arguments, A/R for the Management also filed on record a copy of Article of Association of the Management company to show that it is a Private Limited Company constituted under the Companies Act, 1956 and its share capital is Rs.150 crores divided into 15 crores equity shares of Rs.10 each. The said Article of Association is marked as Ex.C-1 and its perusal shows that the Directors of the Company are/were appointed by the NDDB. A careful perusal of Ex.C-1 substantiates the claim of the Management that Management company is a Private Limited company incorporated under Companies Act, 1956 created under Section 43 of National Dairy Development Board (NDDB) and it is not an instrumentality/agency of the State/Government. Consequently, this issue is answered in favour of the Management and against the workmen Union.

Issue No. 2 :-

9. At the outset it is mentioned that in the statement of claim, the workmen Union has also tried to highlight that at Pilkhua Unit of the Management, regular and perennial nature of work is also got down from the labours engaged through the contractors and in this way, the Management is not only exploiting the contractual labours but also giving lesser wages to the workers on its roll than their counterparts working at Patpar Ganj Unit of the Management. It is well settled that the Industrial Court derives its jurisdiction from the reference (See Mukand Ltd. Vs. Mukand Staff and Officers" Association, (2004) 10 SCC 460). Keeping in view the terms of reference, as mentioned in para 1 hereinabove, this Tribunal is required to adjudicate the issue/industrial dispute relating only to the workers working on the roll of the Management Unit and not relating to the labours engaged through contractor/s.

10. As per the pleadings of the parties and evidence adduced on record, it is manifest that the Management company is having three Units – two at Delhi viz. at Patpar Ganj and Mangolpuri area and one at Pilkhua (UP). Around 235 Nos. of workmen on the payroll of the Management company are working at Pilkhua Unit of the Management company. The Management company has been adopting different wage structure for different Units, that is to say the workmen working at Patpar Ganj unit are being provided IDA wage structure (industrial pattern of DA), while the worker working at its Pilkhua Unit are being granted cTC wage structure (cost to company wage structure). MW1 Mani Shankar Jha showed his ignorance if the workmen working in Mangolpuri Unit (where the work of food processing relating to frozen veg etc. are done) are getting their salary/wages on Central DA pattern. He admitted that the gross salary and pattern of salary of workers working in the unit at Patpar Ganj and Pilkhua are different. He assigned the reason for the same is location advantage, settlement done from time to time and nature of work done at those Units.

11. Short question arises, therefore, arises for consideration is whether action of the Management in not adopting the IDA pattern of wage structure in respect of workers working at its Pilkhua Unit is just and fair.

12. During the course of arguments, learned A/R appearing for the workmen Union argued that the Management had adopted a discriminatory approach in respect of wages being paid to the workers working at Pilkhua Unit because the workers working at its Patparganj Unit are getting almost the double the wages than those of Pilkhua Unit. He placed reliance on the decision of the Apex Court in the case of Sangam Press Versus The Workmen, 1975 (31) FLR 42 and New Egerton Woolen Mills Versus New Egerton Woolen Mills, 1962-II, LLJ 782 to buttress his submission that in case of fair wage, the company's capacity to bear the financial burden must receive consideration. He argued that since the Management has not pleaded any financial difficulty, a comparison may be made with the Patparganj Unit of the company in relation to the wage structure of workers working at its Pilkhua Union and action of the Management in not adopting the IDA pattern of wage structure for the workers of Pilkhua Unit may be held to be illegal and unjustified.

13. Per contra, learned A/R for the Management strenuously argued that it is always the prerogative of the Management to decide how to run its business and to formulate policy for running its business in a profitable, economic or convenient manner. He placed much reliance on the decision of Hon'ble Supreme Court in **D. Macropollo & Co. Versus Their Employees Union, (1958) 2 LLJ and in Parry & Co.Ltd. Vs. PC Pal & others, AIR 1970 SC 1334.** wherein their lordships held that *if a scheme for reorganization has been adopted by an employer for reasons of economy or convenience and it has been introduced in all the areas of its business, the fact that its implementation would lead to the discharge/retrenchment of some of the employees would have no material bearing on the question as to whether the scheme was adopted by the employer in a bona fide or not. It was not the function of the Labour Court/Industrial Tribunal to go into the question whether such a scheme is profitable or not and whether it should have been adopted by the employer. It was beyond the competency of Labour Court to go into the question of propriety of company's decision to reorganize its business and it was for the employer to decide whether a particular policy for running its business will be profitable, economic or convenient. The Labour Court/Industrial Tribunal has no power to inquiry into such a decision so long as it is not actuated by any consideration for victimization or any such unfair labour practice.*

14. There is no dispute about proposition of law that an employer/Management can evolve a policy/scheme relating to the service conditions vis-à-vis recruitment and promotion of different cadres of workers as well as their wage structure so that the business is run on a profitable, economic or convenient way. However, such a policy/scheme should be the same for all the workers/employees, though may be posted at different Units/branches of the establishment. It is not in dispute that the Management which is a Private Ltd. company created by NDDB, is running its business at three different units – one at Pilkhua (UP) and other two at Patparganj and Mangolpuri areas of Delhi. It is undisputed fact that overall control and supervision in respect of aforesaid three Units is that of the Management company. There is nothing on record to suggest that three Units are having distinct entities or that separate balance sheet and/or Profit & Loss Account is maintained in respect of these Units. It is a matter of record that during pendency of the proceedings, a memorandum of Settlement (Ex.MW1/4) under Section 18(1) read with Section 2(p) of the ID Act was entered into between the Management company and the workmen Union on 14/5/2013, with respect to their pay/wage and allowances and perusal of the same shows that the workmen at Pilkhua Units are being paid wages even as per Memo of Settlement Ex.MW1/4, on the CTC wage pattern and not on IDA wage pattern. Rule of law is that once an establishment either a Limited company or Pvt. Ltd. company, is a single entity, pay/wage revision in respect of its employees/workers has to be based on the performance/profitability of the Company as a whole & not separately for each Unit, that is to say that different Units within the same establishment/company can not have different wage pattern. Once the Management company is running its business through its three Units though located at different areas/stations, it was/is the moral and legal obligation of the Management to ensure that all the workers on its pay rolls, though may be working at different locations, are paid wages according to one & the same wage structure – either IDA wage pattern or CTC wage pattern, so that there is no discrimination or favouritism to one set of employees. It has come on record that the Management company is adopting different wage pattern for the workers working at its different Units, inasmuch as the workers posted at its Patparganj Unit are being paid wages according to IDA wage pattern, whereas the workers posted at its Pilkhua Unit are being paid wages according to CTC wage pattern. Version of the workmen Union that the workers who are getting wages according to IDA wage pattern are getting almost double the wages than those of workers who are given wages by the Management according to CTC wage pattern, has gone unchallenged. It emerges that the Management is giving favour to one set of its employees, to the disadvantage of other set of employees/workers posted at different location/Unit. This procedure being adopted by the Management amounts to unfair labour practice, as enshrined under item 9 of the Fifth Schedule of Section 2(ra) of the Act, inasmuch it shows favouritism to the workers of Delhi's Patparganj Unit, in partiality against its workers working at Pilkhua Unit. Such an unfair labour practice requires to be curbed, inasmuch as an employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities.

15. It is fairly settled that once the workmen are doing same duties and responsibilities as are being performed by their counterparts, **they are entitled to get wages at par, on the principle of "Equal Pay for Equal Work"**. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017 Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

“The principle of “equal pay for equal work” can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

16. Having regard to the aforesaid facts & circumstances of the case, this Tribunal is of the opinion that the workmen working at Pilkhwa Unit of the Management are entitled to get equal pay/wages as are being paid to their counterparts working at Patparganj Unit. Consequently, action of the Management in not adopting the IDA pattern of wage structure which is applicable in its premier Patparganj Unit and thereby depriving the workers deployed at Pilkhwa Unit of consequential benefits of IDA wage pattern, is held to be unfair and unjustified. The workmen to the proceedings are held entitled to get wages based on IDA wage pattern at par with their counterparts working at Patparganj Unit, **w.e.f. 23 January, 2013** – the date when the matter was referred to this Tribunal by the appropriate Govt. This issue is, therefore, decided in favour of the workman/claimant Union.

ORDER

The reference is answered on the contest in favour of the workmen Union. It is held that the workmen to the proceedings are entitled to get wages based on IDA wage pattern, at par with their counterparts working at Patparganj Unit **w.e.f. 23 January, 2013** – the date when the matter was referred to this Tribunal by the appropriate Govt. The Management shall pay the same alongwith arrears within three months from the date of publication of the Award. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

PRANITA MOHANTY, Presiding Officer

20th December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधिशासी अभियंता ई-2, ऑल इंडिया रेडियो, नई दिल्ली 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 - नई दिल्ली, पंचाट (संदर्भ संख्या 07/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुए थे।

[सं. एल-42012/36/2004-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 214.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2005) of the Central Government Industrial Tribunal-cum-Labour Court- 2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Executive Engineer E-2, All India Radio, New Delhi & Others, and their workmen which were received by the Central Government on 24.01.2020.

[No. L-42012/36/2004-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 07/2005

Date of Passing Award- 20th December, 2019

Between:

Shri Shaji Antony,
S/o Shri Antony K.A.

...Workmen

Shri Umesh Sharma,
S/o Shri Om Prakash,

Shri Dinesh Sharma,
S/o Shri Dayal Singh,

Shri Bhuwan Chand Pandey,
S/o Late Mathura Dutt Pandey

Shri Sohan Pal Singh,
S/o Shri Prem Pal Singh

Through:- All India Civil Construction Employees Union,
Plot No. 1, Aram Bagh, Near Udasin Mandir,
Paharganj, New Delhi- 110055

Versus

1. The Executive Engineer E-2, Civil Construction,
All India Radio
Pushpa Bhawan,
New Delhi-

2. M/s. Kalyani System Engineers,
(Fire Safety Division),
H-Block, 19/36, Sector-7,
Rohini, Delhi- 110085.

...Managements

Appearances:-

Shri Vijay (A/R) : For the Workmen

Ms. Jaya Tomar (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of All India Radio, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/36/2004 IR(DU) dated 13.01.2005 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Executive Engineer (CE) II Civil Construction Wing. All India Radio, Siri Fort Auditorium, New Delhi in not regularizing the services of Shri Shaji Antony, Shri Umesh Sharma, Shri Dinesh Sharma, Shri Bhuwan Chand Pandey, and Shri Sohan Pal Singh is legal and justified? If not, to what relief these workmen are entitled and from which date?”

As per the claim statement the claimant Saji Anthony is working as Fire Pump operator Umesh Sharma is working as Helper, Dinesh Sharma is working as a Operator, Bhuwan Chand Pandey is working as a Fire Operator and Sohan Pal Singh is working as Pump Operator for the management for a considerably long period as on the date of filing of the claim statement. Their posting being in All India Radio Civil Construction Wing are working under the control and supervision of executive Engineer (CE-II) Civil Construction Wing. They are

working uninterruptly to the utmost satisfaction of the employer. The nature of work discharged by them in perennial in nature since the All India Radio Civil Construction wing at Siri Fort Auditorium is responsible for ensuring fire safety mechanism of the building and office of AIR. The management as the Principal employer has installed fire fighting system and fire alarming system in its establishment and these workmen are attending the work of maintenance and operation of the said system since the date of their employment. Though they were directly employed by the management, in the year 1983 management entered into a contract with the contractor for supply of manpower and the workman were asked to execute the work as if they are the employees of the contractor whose contract was extended from time to time. The nature of the job and work discharged by them being perennial in nature and they being under the control or supervision of the executive engineer are the employees of the management All India Radio Civil Construction Wing. But to deprive them of their legal rights the management in collusion with the contractor tried to show them as the employees of the contractor and this was so done to avoid the implementation of various facilities guaranteed to the workman under the labour law. They were not even given the minimum wage and other benefits like leave facility, house rent, Provident Fund etc. The management is not registered under the Contract Labour (Regulation and Abolition Act) to engage contractual workers since all the work done are perennial in nature. By imposing a contractor the management is paying less than the minimum wages to them and making them to sign on blank vouchers. No record of payment of salary is being maintained either by the management or by the contractor. The workman made several representations demanding regularization of their services and giving them temporary status since they worked for more than 240 days in a calendar year. The said request was never heeded to. The operation and maintenance of the fire fighting system being a prohibited nature of work as per section 10(2) of the Contract Labour (Regulation and Abolition Act) 1970 the management being a government department instead of acting as a model employer, is acting in complete violation of the directions issued by the Hon'ble Supreme Court in this regard. On 01.10.1999 by issuing a letter the Principal Employer and the contractor gave a threatening to the workmen for discontinuance of their service. Apprehending un employment the workman filed a writ petition bearing no. 6572 of 1999 before the Hon'ble High Court of Delhi. But the said application became anfractuous in view of Hon'ble Supreme Court's observation in the Steel Authority India case. The contract between the management and the contractor is only a camouflage to deprive the workman of their legitimate rights. Finding no other remedy the workman raised a dispute before the Labour Commissioner for redressal of their grievance where a conciliation proceeding was initiated. But the effort for the conciliation turned out futile for non cooperation of the management. The appropriate government then referred the matter to this tribunal for adjudication. The cause of the workmen has been espoused by the All India Radio Civil Construction Wing employees union by resolution dated 11.02.2002. In this proceeding the claimant workman have prayed that they being the direct employees of management and the contract between the management and the contractor being sham they be declared as the regular employees of the management and an award be passed for all consequential benefits.

Being noticed the management All India Radio appeared and filed WS refuting the stand taken by the workmen. While pleading that there is no cause of action for raising the dispute the management has stated that it is a government organization having its own Rule for recruitment of the employees. Those recruited employees are the regular employees of the management. These workmen were never engaged by the management and they were deputed to work in the premises of the management by one M/s Kalyani System Engineers. It has also been stated that as per the existing procedure, the running and maintenance of the EFA System, Fire Fighting System, Air Conditioning System etc at various sites of the respondent are being done through contracts. The said contractors are awarded contract by open bidding and the contractor employees his own staff to execute the awarded work as per the contract. These workmen being engaged by M/s Kalyani System Engineers, there exists no employer employee relationship between them. The management department is an autonomous corporation of the Ministry of Information and Broadcasting created under Prasar Bharti (Broadcasting Corporation of India) Act 1990. It has also been pleaded that the management is not an industry and thus, the proceeding is not maintainable. It has also been denied that the management is not required to register itself under the Contract Labour Regulation and Abolition Act 1976 since it has never engaged 20 or more contract labours. As provided u/s 1(4) (a) of the Act. It has been further pleaded that these workmen since never worked for a period of more than 120 days in a year they cannot avail the benefits of Contract Labour Act. Thereby the management has denied the claim of the workmen for regularization in the service of the management. However the management has admitted that the claimant had moved a writ petition before the Hon'ble High Court of Delhi registered as WPC No. 6572 of 1999 in which an order of status quo was passed. Though M/s Kalyan System Engineer's contract with the management has expired, the management entered into an arrangement with the claimants were under the claimant are still working for maintenance of the Fire Fighting System at Siri Fort Auditorium being engaged under different contractors. It has also been pleaded by the management that the contract between the management and the contractor Kalyani engagement was extended only once and for the writ petition filed before the Hon'ble High Court of Delhi wherein the order of

status quo was passed, the management is left with no option but to allow the claimants to continue working. Thereby the management admitted that the claimants are still working for the management.

Though notice was issued to the management No.2 i.e. M/s Klayan Engineers after filing of WS by management No.1 none appeared on behalf of the said management.

On 08.11.2010 this tribunal had passed an order to the effect that the dispute need to be decided in terms of the reference and no separate issue need to be framed. Hence, the points which need to be decided are as follows.

Points for determination

- (a) Whether the proceeding is maintainable.
- (b) Whether there exist any relationship of employer and employee between the management and the workmen.
- (c) Whether the workmen are entitled to the relief of regularization as claimed by them.
- (d) To what other relief they are entitled to.

The workmen examined themselves as WW1, WW2, WW3, WW4 and WW5 and proved several documents which have been marked in a series of WW1/1 to WW1/17. Similarly the management No.1 examined one of its Executive Engineer as MW1 who also proved the documents in a series of marked as MW1/1 to MW1/2.

During course of hearing on the prayer by the workmen the management filed the contract executed between the management All India Radio and contractor Kalyani System Engineers.

At the outset of the argument the Ld. A/R for the workmen by placing reliance in the case of *Steel Authority of India and others vs. National Union Waterfront workers and others* submitted that as per the definition of Contract Labour u/s 2(1)(b) of the CLRA Act, the workman shall be deemed to be a workman when he is hired in or inconnection with the work of an establishment by or through a contractor with or without a knowledge of the Principal Employer. A workman may be hired (1) in an establishment by the Principal Employer (2) in connection with the work of the establishment of the Principal Employer through a contractor or (3) by a contractor. If the workman is hired in connection with the work of an establishment by the Principal Employer through a contractor he merely acts as an agent so there will be master and servant relationship between the Principal Employer and the workman. He has also placed reliance in the case of **Sonia Gandhi and others vs. Government of NCT of Delhi and others** to argue that when there exists an employer and employee relationship between the Principal Employer and the workman and the later if fulfills all other conditions is entitled to regularization of service. He focused his argument to say that in this case the admitted facts are that the workmen are working in the premises of the management since the year 1992 and the nature of work discharged by them are perennial in nature. The workmen have placed sufficient documents to prove these aspects of their claim. Hence, an award should be passed in their favour for regularization of their service.

The counter argument advanced by the management is that there never existed any employer employee relationship between the management and the workmen. The workmen have admitted during their examination that Kalyani System Engineers is their employer and they are receiving salary from the said contractor. When the contract between the management and the Kalyani came to an end the employment of workmen was supposed to end. But for the writ filed by management and registered as WPC No. 1578 of 2008 in which an order was passed on 23.02.2010 the Hon'ble High Court directed to maintain status quo in respect of the employment of the workmen, and thus they are still continuing. It was further argued that the management is an autonomous body having its own rules and regulations for recruitment and these workmen having not been recruited through proper procedure cannot be regularized in service. The management in this regard relied upon the case of *Secretary State of Karnatak vs. Uma Devi*. Management has also placed reliance in the case of workmen of **Neelgiri Cooperative Marketing Society vs. State of Tamil Nadu reported in AIR 2004 SC 1639** and submitted that the Hon'ble Supreme Court have laid down certain considerations and tests for determination of the relationship between the employer and employee. The claimants of this proceeding since could not stand the test, it would be wrong to hold that they are the employees of the management.

FINDING

Point No.2:- Whether there exist any employer employee relationship between management AIR and the workmen.

The workmen testified as witnesses and stated that they were employed by the management in the year 1992 against posts like Fire Pump Operator, Helper, and Fire Operator etc and continuing as such till date. They

do not know about any contractor nor ever appointed by the contractor. In the pleading as well as in the oral testimony they have stated that the contract between the management and the so called contractor is a sham document to deprive them of their legal rights. Since, they have worked for more than 240 days in a calendar year, are entitled to be declared as temporary employees and then regularized in service against available permanent vacancies. But the management did not pay any heed to their claim. While adducing oral evidence all these witnesses have stated that, till 01.10.1999 they were working under the management directly when the management hired the service of the contractor who threatened them of discontinuance from services. Apprehending disengagement they filed a writ application before the Hon'ble High Court of Delhi which was registered as WPC No. 4572 of 1999. By filing a copy of the order passed in the said application as WW1/17 the claimants have stated that the writ was withdrawn for the judgment passed in the case of *Sail vs. Waterfront Workers Union*. Taking advantage of the same the management subjected the workmen to different harassment and the workmen raised a labour dispute which was registered as ID No. 07/2005. Ex-parte award was passed which was challenged by the management in WPC No. 1578 of 2008 in which the matter was remanded to this tribunal and the management was directed to maintain status-quo in respect of the service of the workmen. These statements of the workmen have been admitted by the management. In their oral statement the workmen have further stated that during course of their employment they are working under the direct control or supervision of the management and the JE of the management is taking their attendance every day. Not only that they have been issued identity cards duty pass etc by the management. While placing reliance and exhibiting the photocopy of the attendance sheet I-card etc the workmen have pleaded that those documents created during an undisputed point of time are based on facts and proves the claim of the workmen. In reply the Ld. A/R for the management submitted that one Kalyani System Engineer was the contractor through whom the workmen were initially appointed and they are continuing as such through different contractors who have been changed from time to time for the status-quo order passed by the Hon'ble High Court. Thus, for all practical purposes they are the employees of the contractor. Mere issue of identity card or gate pass by the management will not confer any right on the workmen to be declared as the direct employees of the management AIR.

The Ld. A/R for the management while drawing the attention of the tribunal to the statement of the workmen recorded during the proceeding submitted that they have admitted themselves to be the employees of the Kalayni System. But this statement of the Ld. A/R stands contrary to the statement of claimant Dinesh Sharma examined as WW2 who during cross examination has stated in clear term that he is not an employee of Kalyani System Engineers and his salary is being paid by AIR. The other witnesses Bhuwan Chand Pandey has also stated in the same line.

During course of hearing of the proceeding the management was called upon to file the contract executed between the AIR and the contractor. Only one document has been filed and marked as MW1/2 which is a tender paper issued inviting tenders from the contractors for executing different Jobs. Except that no other document has been filed to prove that the management is executing the work of Firefighting system and the maintenance of the same through the contractor and the workmen are discharging their duty till date through different contractors engaged from time to time. In view of the admission by the management witnesses and the contention in the WS the fact which emerges is that the workmen are continuing to work in the premises of the management since the year 1992 continuously.

Now it is to be seen if for such engagement in work there exist any employer employee relationship between the management and the workmen. In the case of *Steel Authority of India vs. National Union Waterfront Worker Union* reported in (2001) 7SCC Page 1, the Hon'ble Apex Court have prescribed for the effective control test to ascertain about the relationship of the workman with the management or the contractor. Not only that in the case of **Chintaman Rao (1958(II)LLJ252)** the Apex court ruled that the concept of employment involves 3 ingredients (i) Employer (ii) Employee (iii) Contract of Employment. The employer is one who employs or engages the service of other person. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee, where under the employee agrees to serve the employer subject to his control and supervision. In the case of **Food Corporation of India reported in (1985(ii) LLJ4)** the Hon'ble Apex Court pronounced that the contract of employment always discloses a relationship of command and obedience between them. Where a contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the contractor would not become more than the workman of the third person.

Not only that in the case of **Shankar Balajiwal reported in 1962(1) LLJ 119** the Hon'ble Supreme court have clarified that the control of the management which is a necessary element of the relationship of master of servant is not directed towards providing or dictating the nature of the article to be produced or work to be done, but refers to other incident having bearing on the process of the work the person carries out. The manner of work is to be distinguished from the type of work to be performed. In the case of **Ram Singh and**

Others vs. Union Territory Chandigarh and Others (2004)¹ SCC 126 the Hon'ble Apex Court have elaborately discussed the factors to be considered for determining the employer employee relationship and the factors include control, integration power of appointment, liability to pay, liability to organize work etc. Thus, from the above analysis of the Principle of Law, it emerges that the effective control is a test to determine the employer employee relationship between the parties.

In this proceeding the workmen have all along maintained that they are working under the supervision and control of management and not the contractor. While testifying as WW1, WW2, WW3, WW4 and WW5 they fortified the said fact. WW2 an employee still working for management has also stated that the management has all sort of administrative control over the workers. This statement alone indicates the effective supervision of the work of the workman by management which is also evident from the document like the certificate of merit granted to them by management and placed on record so also the allotment of duty during visit of dignitaries to the premises and grant of special duty pass for the purpose. Hence, in absence of any better evidence adduced by the management it is concluded that the workmen are the employee of the management and the contract between the management and the contractor is a camouflage. This view is taken for the reason that the management though took a stand that despite change of contractor the workmen are allowed to continue under the new contractor, no document to that effect has been filed. Point no. 2 is accordingly answered in favour of the workmen and it is held that they are working for the management since the year 1992 till date directly under its supervision and control and getting the salary from the management since no document has been placed by the management to prove that it is the contractor who is paying them the salary. Though argument was advanced that the burden is on the workmen to prove that they are getting the salary from the management, this tribunal takes a different view in this regard since the management being a Government Department is in an advantageous position in this regard and had the opportunity of producing the documents to show that payment is being made to the contractor towards the salary of these workmen or could have produced documents that the salary of these workmen are being credited to the account of the workmen by the contractor every month notwithstanding the facts that the burden of proof lies on the workmen. It is a decided principal of law that the party in possession of best evidence is obliged to file the same in a proceeding if those documents are capable of throwing light on the points of dispute, notwithstanding the fact that the burden for proving the same lies with his adversary. In this proceeding for non production of the contract between the management and the contractor, non production of the documents showing renewal of the contract and continuance of these workmen under the new contractor lead to a conclusion that the plea taken by the management about the status of the workmen as the employees of the contractor is false and not worthy of acceptance. While deciding issue No.2 in favour of the workmen it is held that the claimant/workmen of this proceeding are working under the management continuously since 1992.

Point No.3:- Whether the workmen are entitled to the relief of regularization as claimed by them.

Strenuous argument was advanced by the Ld. A/R for the management on the ground that the management is a corporation of the Government of India created under an Act. It is an autonomous organization having its own Rules for recruitment of employees. These claimants were never recruited through the procedure of recruitment which makes their engagement illegal and they cannot be regularized against permanent vacancies. To support the stand the management has relied upon the judgment of the constitution bench of the Hon'ble Supreme Court in the case of **Secretary State of Karnatak and Others vs. Uma Devi reported in (2006)**⁴ SCC 1 and submitted that the claim of regularization of the workmen is not permissible under law for the improper recruitment.

In the preceding paragraph it has already been held that the workmen have successfully established their relationship as employee with the employer AIR. The Ld. A/R for the workmen by placing reliance in the judgment of Hon'ble Supreme court in the case of **Umrula Grampanchayat vs. Secretary Municipal Union and others** and also in the case of **Maharashtra State Road Transport Corporation and another vs. Casteribe Rajya Pariwahan Karamchari Sangathan reported in (2009) 8 SCC556** and also in the case of **ONGC Limited vs. Petroleum Coal Labour Union and others reported in 2015(II) LLJ 257SC** submitted that the tribunal has got wide power to adjudicate the Industrial dispute and impose upon the employer to strike balance and secure industrial Peace and harmony between the employer and the workmen. Thereby, he argued that the management when allowed the workmen to work continuously since 1992 for a perennial nature of work, their continuance without regularization amounts to unfair labour practice and this tribunal should take cognizance of the same and direct regularization.

Before considering the argument advanced by the workmen it is necessary to consider the argument advanced by the management with regard to the process of employment of the workmen as mentioned in the case of Uma Devi referred supra. This issue had come up of for consideration in the case of **Shri Ajay Pal**

Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014 disposed of on 09th July 2014 in which Hon'ble Supreme Court have held that:

“The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case.”

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh referred supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on temporary basis for prolonged period. Not only that the Hon'ble High Court of **Jammu and Kashmir in the case of J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970** have held:

“Unfair Labour Practice-what amounts to-workmen continued in temporary/contractual capacity for years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen- clearly amounts to unfair labour practice- directions issued by Tribunal to appellant Bank to frame scheme for regularization of respondent workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant- Bank to frame scheme, held, justified.”

On behalf of the workmen argument has been advanced that the facts of Urmala Grampanchayat referred supra are identical to the facts of this case and in the case of Urmala Grampanchayat the Hon'ble Supreme Court have clearly held that when the workmen were allowed to continue for a considerable long period without being regularized, they are entitled to such regularization. Reliance has also been placed in the case of **ONGC vs. Petroleum Coal Labour Union and others reported in 2015 LAB I.C Page 2483** referred supra to fortify the argument. Thus, taking into consideration the ratio decided in the above discussed judgment and also considering the fact that the workmen are working for the management since the year 1992 and the reference of the contractor is only for names sake as no documents have been proved it is held that the workmen are entitled to regularization in service since, they are discharging perennial nature of work which they have stated in their oral testimony and remained uncontroverted during the proceeding. This issue is accordingly answered in favour of the claimant/workmen.

Point No.1:- Whether the proceeding is maintainable.

Point No.4:- To what other relief they are entitled to.

Though in the written statement the management has challenged the maintainability of the proceeding for want of cause of action later on the same was abandoned as no evidence or argument was advanced for the same. Thus, it is held that the proceeding is maintainable. In view of the finding given with regard to point no. 2 and 3 it is held that the claimant workmen are entitled to regularization of their service with effect from their first day of engagement in the year 1992 alongwith all consequential service benefit.

ORDER

The reference be and the same is answered in favour of the workmen and it is directed that the management shall regularize the service of the workmen w.e.f. the first date of their appointment grant them equal pay and other service benefits at par with its employees of the same grade. The management shall complete the exercise of regularization of their service within 3 months from the date when this award would become executable and pass orders with regard to their pay and other service benefits from the date of regularization within the said period. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

PRANITA MOHANTY, Presiding Officer

20th December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स महाप्रबंधक, अशोक होटल, नई दिल्ली 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 - नई दिल्ली, पंचाट (संदर्भ संख्या 75/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुए थे।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 215.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 75/2014) of the Central Government Industrial Tribunal-cum Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Ashok Hotel, New Delhi. & Others, and their workmen which were received by the Central Government on 24.01.2020.

[No. L-42025/07/2020-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2, NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No.75 of 2014

Date of Passing Award : 20th December, 2019

Shri Vishal
S/o. Shri Raj Pal
represented by
Shri S.S. Upadhyay,
President,
Ashok Hotel Mazdoor Janta Union,
C-47-48 Ashok Hotel Staff Quarter
50-B Chankyapuri,
New Delhi.

Versus

The Management of Ashok Hotel,
Represented by its
General Manager,
50-B Chankyapuri,
New Delhi.

... Workman/Claimant

...Management

Appearances :-

Shri S.S. Upadhyay A/R : For the Workman

None : For the Management

AWARD

This Award shall decide a petition which was directly filed by the workman under Section 2-A of the Industrial Disputes Act, 1947(in short “the Act”), with the averments that that the workman was working with the Management of Ashok Hotel as a Houseman since 2002 alongwith other permanent employees. The Management deprived him legal benefits such as regular pay scale, uniform, bonus etc. The contractor was paying him salary after receiving the same from the Management, for which the contractor was getting commission. The Management was changing the contractor from time to time though the workmen

continuously worked for years from the day of his joining till his illegal termination/removal from service in March, 2013. The workman/claimant was Member of the Ashok Hotel Mazdoor Janta Union who took up his case for regularization of his services and had filed an industrial dispute ID No.182/2006 (titled Dinesh s/o. Nathu Ram and 59 others). Shri Lal Singh, Presiding Officer of Industrial Tribunal vide Award dated 31/3/2009 declared all the 60 employees including the workman herein to be employees of the Management Hotel. Instead of implementing the said Award, the Management filed Writ Petition bearing WP (C) No. 632/2009 before the Hon'ble High Court and vide order dated 12/4/2010 of the Hon'ble High Court, both the parties were directed to maintain status quo. It is pleaded that the Management did not seek any permission of Hon'ble High Court before terminating the services of the workman on verbal order. Even no notice or notice pay was paid by the Management and thus, the Management violated the provisions of Section 25-F of the Act. The workman sent a representation dated 17/9/2013 and got sent demand letter dated 26/9/2013 through Union but to no response. It is also pleaded that the Management illegally terminated the services of the workman w.l.e.f. March, 2013. Prayer has been made for reinstatement of the workman with continuity of services and full back wages.

2. Perusal of the record shows that the Management did not file any reply/written statement to the claim petition, despite opportunities granted. Hence, the matter was proceeded ex parte against the Management vide order dated 24/5/2019.

3. In support of his case, the claimant examined himself as WW1 and tendered his evidence by way of affidavit Ex.WW1/A and relied on the documents Ex.WW1/1 to Ex.WW1/13.

4. Arguments were advanced by Shri S.S.Upadhyay, A/R for the workman/ claimant. Perused the records carefully.

5. Testimony of the workman Vishal who appeared as WW1 is in line with the averments made in the claim petition and same has gone unchallenged and unassailed, since none appeared on behalf of the Management to cross examine him or to lead any evidence in rebuttal. As per the testimony of the workman/claimant, he was the member of Ashok Hotel Mazdoor Janta Union and the said Union had undertaken the case of the claimant **for regularization of his services** vide ID No.182/6/06 and copy of the Award dated 31/3/2009 passed in the said industrial dispute is Ex.WW1/2, perusal of which shows that the name of the workman connected to the present proceedings, was given at Sl.No.34 in para 2 thereof. Perusal of the same also shows that the terms of reference of the said ID No.182/5/06 was "Whether the workmen working in housekeeping department through contractors are entitled to be regularized in proper pay and post with M/s Ashoka Hotgel and if so, what directions are necessary in this respect". While giving findings on issue No.1 to the following effect, Shri Lal Singh, Presiding Officer of Industrial Tribunal-1, Delhi vide award dated 31/3/2009 (Ex.WW1/2) answered the reference in favour of the workmen :-

"19. Issue No.1 : This issue is comprised of the terms of reference as referred in para No.1 of this Award. The burden of proof of the same was on the workmen. Issue No.2 and 3 have been decided in favour of the workmen. Contract agreement being camouflage, the workmen are employees of Management No.1, the principal employer. Workmen could not be deprived of welfare legislation. The Management must frame some policy/scheme for these workmen who have been engaged, ignoring the rules of Management No.1. Till then they are entitled to salary at par with their counterparts appointed on regular basis with Management No.1. When such policy is framed, the workmen be considered for regularization by giving relaxation of age to the extent of their service and in educational requirement, in case they are found otherwise medically fit.

20. The reference is answered accordingly in affirmative and in favour of workmen. This award is hereby passed. Management of M/s Ashok Hotel be directed to regularize the services of workmen in proper pay and post, with effect from the date of commencement of conciliation proceedings with consequential benefits..."

It is, thus, crystal clear that vide aforesaid Award, the Management of M/s Ashok Hotel was directed to regularize the services of workmen in proper pay and post, with effect from the date of commencement of conciliation proceeding with consequential benefits. It is evident from the perusal of the aforesaid Award that contract agreement between the Management of Ashok Hotel & the contractors namely M/s BHM Services Pvt. Ltd. and M/s Sparking Enterprises, was held to be camouflage and workmen were deemed to be the employees of the principal employer viz. Management of Ashok Hotel. The workmen were also held entitled to salary at par with their counterparts appointed on regular basis with Management of Ashok Hotel.

6. It is undisputed fact that against the aforesaid Award (Ex.WW1/2), the Management moved Hon'ble High Court vide W.P. (C) No.632/2010 and vide order dated 12/4/2010 (copy of which has been filed on

record as Ex.WW1/3), both the parties were directed to maintain status quo in relation to the engagement of housekeeping staff. The Management has neither disputed the authenticity of the aforesaid order of the Hon'ble High Court, nor has filed on record any document to show that the said order has been varied or set aside by the Hon'ble High Court vide subsequent order. Thus, it is crystal clear that vide aforesaid order dated 12/4/2010, the parties to the Writ inclusive of Management and the contractors namely M/s BHM Services Pvt. Ltd. and M/s Sparking Enterprises, were directed to maintain status quo in relation to the engagement of housekeeping staff. Even if it is assumed that the workman/claimant was not the direct employee of the Management of Ashok Hotel and was engaged by it through contractor M/s BHM Services Pvt. Ltd. or M/s Sparking Enterprises, in whose favour the Management of Ashok Hotel had given contract, in that eventuality also it was the responsibility of the Management of Ashok Hotel being the principal employer to abide by the orders of Hon'ble High Court and to ensure that service conditions of the workmen to the said proceedings are not changed.

7. The version of the workman/claimant that his services have been terminated by the Management of Ashok Hotel by oral order w.e.f. March, 2013 and no permission of the Hon'ble High Court has been taken before terminating his services, has gone unassailed & un rebutted.

8. It is mentioned that Section 33 of the Act clearly provides that during pendency of the proceedings either before the Conciliation Officer or Labour Court or Industrial Tribunal, no employer shall alter or change the conditions of service of the workman without written permission/approval from the authority before which such proceedings are pending. In case of contravention of the provisions of Section 33 by any employer, aggrieved employee has been given a right to make a complaint in writing under Section 33-A of the Act before the Authority before whom such proceedings were pending at the time of retrenchment/discharge etc. of the workman.

9. Section 33-A of the Act enjoins upon the Industrial Adjudicator a twin duty – the first is to find out as to whether the employer has contravened the provisions of Section 33 and to answer the question as to whether the dismissal or such other punishment as may have been imposed upon the workman is justified in law.

10. The workman/claimant WW1 has categorically deposed that while terminating his services w.e.f. March, 2013, the Management of Ashok Hotel has not taken any permission from the court of law. It is evident from the documents Ex.WW1/2 and Ex.WW1/3 that dispute regarding regularization of services of the workmen including the claimant herein was pending in March, 2003 when his services were allegedly terminated by the Management. The management has not filed on record any document to show that it had sought any permission from the Competent authority or from any Court of law. This impliedly means that proceedings between the parties were still pending when the services of the claimant herein were disengaged/terminated w.e.f. March, 2013 **without any express permission from the Competent Authority.** Needless to mention that discharge/dismissal of the workman from employment, without complying with the provisions of Section 33(2)(b) of the Act, by an employer amounts to altering the terms & conditions of his employment. All these facts clearly indicate that the Management establishment has contravened the provisions of Section 33,

11. It is fairly settled that conditions contained in the proviso to Section 33(2)(b) of the Act are mandatory in nature and non-compliance of the same would render the order of discharge or dismissal etc. void or inoperative. To this view, I am fortified by the decision as reported in **2003 LLR 68 Indian Telephone Industries Ltd.Vs. Prabhakar H.Manvare.**

12. The version of the workman/claimant that he was not allowed to perform duty w.e.f. March, 2013 has gone un rebutted. He has also filed on record copy of the letter dated 26/9/2013 (Ex.WW1/12 colly.) addressed to the General Manager of Ashok Hotel, intimating about illegal removal from service and had requested for taking him back on duty. Testimony of the workman that no notice or notice pay/compensation was given to him by the Management before terminating his services, has also gone unchallenged. It is evident that the Management has terminated the services of the workman, without any approval from the Competent Authority and without payment of wages for one month, as provided under Section 33(2)(b) of the Act as well as under Section 25-F of the Act. Consequently, this Tribunal has no hesitation to hold that action of the Management in dismissing/terminating the services of the claimant him w.e.f. March, is illegal and unwarranted.

13. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. Testimony of the claimant that he worked with the Management of Ashok Hotel through contractors continuously w.e.f. 2003 to March, 2013 has gone unassailed. There is no show cause notice or memo issued to the claimant/workman by the Management. Moreover, the job of the workman/claimant is of perennial and regular nature as he was serving as housekeeper in the premises of the Management. It would not be out of place to mention here that provisions of Section

33(2)(b) of the Act are almost akin to the provisions of Section 25-F of the Act as both these provisions lay down certain conditions precedent to the retrenchment/discharge of workmen and also requires the employer to give one month's wages in lieu of notice.

14. The Hon'ble Apex Court in case "Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii) **Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages.** If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).

16. However, Hon'ble Apex Court in the case of General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716 observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. **One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.**"

17. In the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190, it was observed by the Apex Court as under :-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically be passed. The award of reinstatement with full back

wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wager has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post of a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.”

18. There is nothing on record to show that the workman was holding permanent post or that he was a permanent/regular employee of Management of Ashok Hotel on the day when his services were terminated by the Management. The workman has not disclosed as to what was his last drawn wages. He has also neither pleaded nor testified that despite efforts he could not get any job or that he is not gainfully employed since the date of his termination or that he is getting lesser wages than that which he was getting from the Management.

19. Having regard to the judicial trends as well as the facts & circumstances of the present case, this Tribunal considers that compensation amount of Rs.1,00,000/- (Rupees One Lakh) will be just and reasonable. Therefore, compensation amount of Rs.One Lakh is hereby awarded in favour of the claimant/workman which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization.

ORDER

The reference is answered on the contest in favour of the workmen Union. The Management is directed to pay lumpsum compensation of Rs.One Lakh to the workman within three months, from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization.

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

PRANITA MOHANTY, Presiding Officer

20th December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 216.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सचिव, रक्षा मंत्रालय, नई दिल्ली 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 - नई दिल्ली, पंचाट (संदर्भ संख्या 69/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुए थे।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 216.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 69/2019) of the Central Government Industrial Tribunal-cum Labour Court- 2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Secretary, Ministry of Defence, New Delhi & Others, and their workmen which were received by the Central Government on 24.01.2020.

[No. L-42025/07/2020-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 69/2019

Date of Passing Award- 20th December, 2019

Between:

Shri Titu Ram and 39 others,
Through- Hindustan Engineering and General Mazdoor Union,
Head Office:- D-2/24, Sultanpuri, Delhi- 110086.

... Workmen

&

Hindustan Engineering and General Mazdoor Union,
Branch Office:- A-193, Karampura,
New Delhi- 110015.

Versus

1. The Secretary, Union of India, Ministry of Defence,
South Block, New Delhi- 110011.
2. Director General, Army Supply Corps. (A.S.C),
Sena Bhawan, P.O. Delhi Headquarter, New Delhi-110011.
3. Shri Rajshekhar Sharma, Lieutenant Colonel,
210, FOL Depot, ASC Delhi Cantt.,
New Delhi- 110010.

...Managements

Appearances:-

Shri Kailash (A/R) : For the Workmen.

Ms. Pragya Srivastava (A/R) : For the Managements

AWARD

This Award shall dispose of a complaint/application filed by the workman Titu Ram and 36 others (list appended) u/s 33A of the ID Act 1947 (herein after referred to as the Act)

The averments in the complaint, in short is that the workmen have been working in the office of Commandant, 2010 FOL Department, Delhi Cant New Delhi since long as casual workers to the utmost satisfaction of the employer. Their demand for regularization in service of the management was not considered despite repeated request and representation. Having no other efficacious remedy, the workmen had approached the Labour Commissioner, where a conciliation proceeding was taken up. The conciliation since failed, the appropriate Government referred the dispute to this tribunal for adjudication. The dispute has been registered as Id NO. 71/2013. The management after entering appearance in that proceeding being aggrieved by the same, terminated the services of the workmen w.e.f 1st April 2019, in gross violation of the provisions of section 33 of the ID Act. Hence, the petition.

Being noticed, management appeared and filed reply pleading inter alia on the maintainability of the petition filed by the workmen. The contentions raised are that the management being in discharge of sovereign function of the state is not an industry. Moreover the business of the management is governed as per the policy decision of the government in the Ministry of Defence. On 13th April 2012 the ministry issued a standard operating procedure on outsourcing of services and according to the same outsourcing of goods and services was to be done through valid contracts. Again on 7th Feb 2018, direction was issued from IFA Head Quarter Delhi for undertaking outsourcing as per the direction of Ministry of Defence vide letter No. 10(4)/2007/D(MOV) dated 13.04.2012. Not only that, as per the letter no. 58840/HCL/ST-17(B) dated 25th Jan 2019 of Head Quarter Western Command, a direction was received to undertake contract for outsourcing/hiring of casual labours for financial year 2019-2020 as per policy of Government of India. In view of the said direction, it was necessary to undertake outsourcing of service of casual labours through contractor for all

routine task of FOL Depot. The respondent no. 3 never acted in his personal capacity or with any kind of vindication in disengaging the service of the workman w.e.f 1st April 2019.

It has also been pleaded that as per the policy the FOL depot is to undertake “Casual daily rated personnel” i.e for work load of ad hoc nature. Labours will be employed on day to day basis and paid on daily rates on contingent bills. They will be treated as casual employees. There is no continuity in hiring and hiring of a particular persons does not exceed 240 days. While admitting disengagement of the applicants w.e.f 1st April 2019, it has been stated by the management that the Competent Authority in the meantime has granted sanction for hiring casual labours and procedure for such hiring on daily basis has already started w.e.f 1st May 2019.

With regard to the status quo order passed by this tribunal directing not to change the service conditions, pending disposal of Id No. 73/2013, it has been stated that the said order came to the knowledge of the management after 1st April 2019.

In their replication, workmen have stated that the stand taken by the management are not based on fact. While admitting that they have been taken on work w.e.f 1st May, 2019, advanced their grievance for non release of their remuneration for the period between 1st April to 30 April 2019.

Neither party opted to adduce oral or documentary evidence. During course of argument, the Ld. A/R for the workmen submitted that in view of the facts of disengagement and re-engagement of the workmen as admitted by the management, the tribunal should pass an award for appropriate relief to the workmen on account of change of service condition by the management during the pendency of the Industrial Dispute before this tribunal. In his counter reply, the Ld. A/R for the management submitted that the alleged disengagement never amounts to change of service condition since the claimants were /are working as casual workers on daily wage and their engagement is purely on need basis.

As observed in the preceding paragraph no evidence has been adduced by the management to prove that the workmen are engaged on need basis and are daily wagers.

It is not disputed that the claimant/applicants of this petition are working for the management for a pretty long period and their engagement period varies from 1982 to 2010. It is not disputed that they were/are working continuously and the duties discharged by them are perennial in nature, though the competent authority at one point of time had decided to outsource the said services and later on decided to engage daily wagers directly. The Industrial and Labour law while defining workmen have not drawn any distinction between regular and casual employees, or temporary employees. In the case of **Delhi Cantonment Board vs. CGIT and others decided by the Hon'ble High Court of Delhi and reported in 129 (2006) DLT 610**, it has been held that

“There is no distinction in Industrial Law between a permanent employee and a temporary employee. As long as the person is employed to do any manual, skilled, unskilled, technical, operational, clerical or supervisory work for hire or reward, he is a workman and the Industrial dispute Act, and will get the benefits of the Act.

Provision of Law laid u/s 33 of the Act clearly provides that during pendency of the proceedings either before the conciliation officer or Labour Court or Industrial tribunal, no employer shall alter or change the conditions of service of the workman without written permission/approval from the authority before which such proceedings are pending. In case of contravention of the provisions of section 33 by any employer, aggrieved employee has been given a right to make a complaint in writing under section 33A of the Act before the Authority before whom such proceedings were pending at the time of retrenchment/discharge etc. of the workman.

Section 33A of the Act enjoins upon the Industrial Adjudicator a twin duty- the first is to find out as to whether the employer has contravened the provisions of section 33 and to answer the question as to whether the dismissal or such other punishment as may have been imposed upon the workman is justified in law.

It is manifest from the pleadings of the parties and the documents filed and marked as WW1/1 to WW1/6 and MW1/1 to MW1/5 that the claimants were engaged as casual workers by the management whether or not, there exists any relationship between them as employer and employee and if the claimants are entitled to the relief of regularization of service is the subject matter of dispute in Id No. 73/2013 pending before this tribunal. But the management without any express permission from this tribunal terminated their services w.e.f. 1st April 2019. Needless to mention that the disengagement of the claimants was without complying with the provisions of section 33(2)(b) of the Act and thereby amounts altering the terms and conditions of their employment in contravention of the provisions of law laid u/s 33 of the Act.

The law is well settled that conditions contained in the proviso to section 33(2)(b) of the act are mandatory in nature and non compliance of the same would render the order of discharge or dismissal etc. void

or inoperative. To this view, I am fortified by the decision as reported in **2003 LLR 68 Indian Telephone Industries Ltd. vs. Prabhakar H. Manyare**. The management has terminated the services of the workman, without any approval from the Competent Authority and without payment of wages for one month, as provided under section 33(2)(b) of the Act. On the contrary, the plea of the workman/claimant that they were not allowed to perform duty without sufficient cause, is acceptable. Consequently, this tribunal has no hesitation to hold that action of the management in dismissing/terminating the services of the claimants is illegal and void. Not the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that claimant was continuously in the employment of the management for a long period. There is no show cause notice or charge-sheet issued to the claimant/workman by the management. Moreover, the job of the workman is of perennial and regular nature. Provisions of section 33(2)(b) of the Act are almost akin to the provisions of section 25-F of the Act as both these provisions lay down certain conditions precedent to the retrenchment/discharge of workmen and also required the employer to give one month's wages in lieu of notice.

The Hon'ble Apex Court in case **Deepali Gundu Surwase vs. Kranti Junior Adhyak Mahavidyalaya** reported as (2013) 10SCC 324 has held as under:

“The propositions which can be culled out from the aforementioned judgments are:

- (1) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- (2) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as no nest. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one months notice or pay in lieu thereof and compensation in terms of section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. **Anoop Sharma vs. Executive Engineer, Public Health Division No.1 Panipat (2010)5 SCC 497**.

A bench of three judges of the Hon'ble Supreme Court in the case of **Hindustan Tin Works Private Limited vs. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80** held that relief of reinstatement with continuity of service can be granted where termination of services is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventually the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

Yet in another latest case of **Bholanath Lal and others vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** decided on 10.05.2018 Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

“The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the Principles of Natural Justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the constitution and interfere with the award passed by the Labour Court, etc. merely because

there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same the courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 50 percent back wages, in as much as termination of the claimant/workman is per-se illegal and the claimant/workman is not gainfully employed anywhere since after his termination by the management. Award is passed accordingly against management.

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

PRANITA MOHANTY, Presiding Officer

20th December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रिलायंस इन्फोकॉम इंजीनियरिंग प्राइवेट लिमिटेड, कोलकाता 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 – कोलकाता, पंचाट (संदर्भ संख्या 02/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.01.2020 को प्राप्त हुआ था।

[सं. एल-40011/38/2011-आईआर (डीयू)]

डी. के. हिमांशु, अवसर सचिव

New Delhi, the 13th February, 2020

S.O. 217.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2012) of the Central Government Industrial Tribunal-cum Labour Court- Kolkata, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Reliance Infocom Engineering Pvt Ltd., Kolkata & Others, and their workmen which were received by the Central Government on 06.01.2020.

[No. L-40011/38/2011-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 02 of 2012

Parties: Employers in relation to the management of M/s. Reliance Infocom Engineering Pvt Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : Mr. S. Bhattacharjee, learned counsel

State: West Bengal.

Industry:

Dated: 31st December, 2019

AWARD

Case of the union is that the company under reference had employed a number security personnel and deployed them at different mobile towers of Reliance across entire Purba Medinipur. The number of concerned workmen in the present dispute is 40 who were employed in different areas for the period ranging from 2002 to 2010. The workmen under reference are rendering their services continuously for the company, but the management is not paying monthly wages as fixed by the Ministry of Labour & Employment, Government for Watch & Ward staff. The company is also regularly denying various statutory benefits as admissible to them, namely, Bonus, HRA, Leave, PF, ESI etc. Therefore, the dispute arose and was sponsored by the Purba Medinipore Zela Security Service and Allied Workers Union. Conciliation proceeding was initiated by the Assistant Labour Commissioner (Central), Kolkata. During conciliation proceeding the management of the company participated in one or two occasions, but their attitude was to avoid the conciliation proceeding on different pretext. The Company also turned down the request of the ALC, Kolkata to negotiate the matter at bipartite level. The management falsely contended in the conciliation proceeding that during the project of the BTS sites in different districts of West Bengal used to be guarded by Security Guards and the services of those security personnel were dispensed with through due process of law on completion of construction work of BTS by the end of 2008. Management also contended that all legal compensation in consonance with the relevant applicable laws were paid to the Security Guards and thereafter the company never employed any person for guarding BTS sites. The conciliation proceeding ultimately failed due to adamant and uncompromising attitude adopted by the management and ultimately the failure report was submitted to the Government and the dispute has been referred to this Tribunal by the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 vide Order No.L-40011/38/2011-IR(DU) dated 03.02.2012 in following words:

“Whether the action of the management of Reliance Infocom Engineering Pvt. Ltd., Kolkata for not paying monthly wages as fixed by the Government of India and denying other statutory benefits to 40 number of security personnel deployed at different mobile towers of Reliance across entire Purba Medinipur District is legal and justified? What relief the 40 workmen are entitled to?”

2. The management of the company under reference filed its written statement denying allegations of the union and pleaded inter alia that the Central Government is not the appropriate Government within the meaning of Section 2(a) of the Act of 1947. Reliance Infocom Engineering Pvt. Ltd. is not a controlled industry, neither it is a telecom company. It does not run telecommunication business and has no separate license statutorily required to be given by the Government of India to run the telecommunication business. It is further pleaded that the workmen are not the employees of Reliance Infocom Engineering Pvt. Ltd., but of contractors engaged by the company. Such contractors are responsible for the payment of wages to the said workmen. The workmen of Reliance Infocom Engineering Pvt. Ltd. has not espoused such claim and there is no community of interest between the claimant and the workmen of the company. Therefore, the dispute cannot assume the character of an industrial dispute. It is also pleaded that the reference is not maintainable as there is no relationship of employer and employee between the company and the workmen under reference. The union has no *locus standi* to espouse the cause of the workmen. The reference is bad for mis-joinder of parties. There is a complete statute with regard to minimum wages under the Minimum Wages Act, 1948 and the rate of minimum wages is within the scope and ambit of the provisions of the said Act. The Paschim Banga Security & Co. Workmen's Union is not a party to the present reference.

3. In reply to the written statement, the union has filed its rejoinder reiterating its earlier averments and has pleaded that the workmen under reference are working under the direct supervision and control of the company. They are engaged in receiving materials on behalf of the company entering through transport and salary receipt issued by the company and the receipt of oil delivery of the incoming party transporter prove that the workmen are exclusively involved and engaged in functioning of the tower sites under the full authority and control of the company. The workmen also keep the respective keys of the fence and rooms where machines are kept for proper functioning. At present the workmen under reference are getting salary of Rs.3000/= per month, but further enhancement of rate of wages, House Rent, D.A., Bonus etc. are being ignored by the management without any substantial reason.

4. On behalf of the union WW-01, Gaur Hari Maity has been examined, but no witness has been examined for the management. The management also remained absent after cross-examination of WW-01.

5. I have heard the learned counsel appearing for the union. As the management remained absent, no argument could be heard for the management.

6. From the pleadings of parties it appears that the issue referred to this Tribunal and the relationship of employer and employee between company and the workmen under reference are the main issue which have to be dealt with.

Appropriate Government

7. “Appropriate Government” has been defined under Section 2(a) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act of 1947 for convenience). According to Section 2(a) of the Act of 1947 in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to any industrial dispute concerning the establishments or companies mentioned in Section 2(a)(i) of the Act of 1947, the appropriate Government shall be the Central Government and in rest of disputes the State Government shall be the appropriate Government. Thus definition of the appropriate Government may be divided into three parts:

- (a) In relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company;
- (b) In relation to any industrial dispute concerning any such controlled industry as may be specified by the Central Government and
- (c) In relation to any industrial dispute concerning various other establishments which are specified in sub-clause (i) of Section 2(a) of the Act of 1947.

8. The learned counsel for the union has contended that Reliance Infocom Engineering Pvt. Ltd. is a controlled industry engaged in the telecommunication services. Learned counsel has filed photo copy of the Extraordinary Gazette of India dated 4th November, 2004 in support of his contention that Reliance Infocom Engineering Pvt. Ltd. is a controlled industry. He has also filed a list of infrastructure providers Category 1 as on 4th February, 2019 to show that M/s. Reliance Infrastructure Ltd. earlier known as Reliance Infocom Ltd. is registered with the Department of Telecommunication. The company under reference is shown at Serial No. 30 in above list, but I do not find any substance in the contention of the learned counsel for the union as the notification dated 4th November, 2004 itself indicates that the Central Government has specified for the purpose of Section 2(a) of the Act of 1947 the controlled industry engaged in telegraph service. It is true that telegraph service is controlled by the Central Government under Section 4 of the Indian Telegraph Act, 1885. From the notification itself it is evident that the names of controlled industry engaged in telegraph service has been specified by the Central Government. It is gathered from the language of the notification that not all industries engaged in telegraph service is controlled industry, but only those industries which are specified by the Central Government are the controlled industry in the telegraph service. According to Section 4 of the Indian Telegraph Act, 1885 the Central Government have the exclusive privilege of establishing, maintaining and working telegraph. However, the Central Government may grant a license to any person to establish, maintain or work for telegraph. Exercising powers conferred under Section 4(1) of the Act of 1985 the Central Government grants license to any company, but nowhere it is mentioned in the Act that all the companies which has been granted license to establish, maintain or work in telegraph shall be controlled industry. The name of such company has to be specified by the Central Government. The list of IP-I as filed by the union shows only name, registered address and contact details of the companies registered under infrastructure provider Category – I. The infrastructure providers cannot be deemed to be engaged in telegraph service as controlled by the Central Government. Simply registration of the company as infrastructure provider with the department of telecommunication does not confer a company the status of a controlled industry. Hence, I come to the conclusion that the union has failed to establish that the Reliance Infocom Engineering Pvt. Ltd. is a controlled industry for the purposes of Section 2(a) of the Act of 1947 and if it is not a controlled industry, Central Government cannot be held to be appropriate Government as defined under Section 2(a) of the Act of 1947. Thus this reference is bad for above reasons.

Relationship of employer and employee

9. The union has contended that the 40 workmen under reference are working and rendering their services to the company under reference and there is direct employer and employee relationship between the company and them. But, the case of the company during conciliation proceeding was that the company had employed Security Guards to watch tower sites whose services had already been dispensed with after following the provisions of law and necessary compensation had also been paid to them in the year 2008 when the construction site was completed. It is further mentioned that thereafter the company never employed security personnel. The company engaged only contractors for such services. In failure report submitted by the Regional Labour Commissioner (Central), Kolkata copy of which is on record, it has been mentioned that earlier security personnel were employed during construction period on BTS site who have been retrenched with due

compensation as per Act when the construction work was completed. However, certain people at the vicinity of BTS were engaged due to socio and political reasons and they were paid money to avoid any untoward event and disruption. In fact, those towers were remotely monitored and the persons of human element and their services was not required. Thus, the burden lies on the union to prove that the workmen under reference are still working for the company and there is employer and employee relationship.

10. While dealing with the relationship of employer and employee, question immediately emerges as to what are the tests to decide the relationship. Hon'ble the Apex Court in Balwant Rai Saluja & Anr. V. Air India & Ors., 2014 (9) SCALE 567 = CDJ 2014 SC 694 while determining the relationship of employer and employee has held as follows:

"61. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer – employee relationship would include, inter alia, (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision we have already taken note of the observations in Bengal Nagpur Cotton Mills case (supra), the International Airport Authority of India case (supra) and the NALCO case (supra)."

11. The aspect of relationship of employer – employee is a pure question fact and initial burden is on the person who claims the existence of employer – employee relationship. The aspect of burden of proof has been elaborately dealt with by Hon'ble the Apex Court in Nilgiri Cooperative Marketing Society Limited v. State of Tamilnadu and Ors., JT 2004 (2) SC 51 wherein it has been held that

"47. It is well settled principle of law that the person who sets up a plea of existence of employer employee relationship, the burden would be upon him.

48. In N.C. Jhon vs. Secretary, Thodupuzha Taluk Shop and Commercial Establishment Workers' Union & Ors. (1973 Lab. I.C. 398) the Kerala High Court held –

"The burden of proof being on the workmen to establish the employer employee relationship an adverse inference cannot be drawn against the employer that if he were to be produce books of account they would have proved employer employee relation."

49. In Swapan Dasgupta and Ors. vs. The First Labour Court of West Bengal and Ors. (1976 Lab. I.C. 202) it has been held –

"where a person asserts that he was a workman of the Company and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other persons."

50. The question is whether the relationship between the parties is one of the employer and employee is a pure question of fact....."

12. Further in a case of Bank of Baroda v. Ghemar Bhai Harjibhai Rabary, 2005 (3) Scale 353 Hon'ble the Supreme Court has observed –

"8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman. The decree of such proof so required vary from case to case."

13. In the instant case, the union has not filed any document to show that the workmen concerned were ever appointed by the company and the salaries were paid to them by the company. Whatever documents have been filed by the union, they relate to the period prior to 2008. Simply because some receipts were issued in the name of a person as a token of receipt of goods, it cannot be presumed that the concerned person was a workman of the company. In view of above, I am of the view that the union has failed to discharge its burden to prove that the 40 persons under reference were employed by the company and are still working for the company.

14. Therefore, the reference has to be answered in negative and against the workmen under reference. They are not entitled for any relief.

15. An Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 31st December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कमांडर वर्क्स इंजीनियर, कोलकाता, कोलकाता 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 – कोलकाता, पंचाट (संदर्भ संख्या 26/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.12.2019 को प्राप्त हुआ था।

[सं. एल-14011/06/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 218.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2015) of the Central Government Industrial Tribunal-cum Labour Court- Kolkata, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commander Works Engineer, Kolkata & Others, and their workmen which were received by the Central Government on 27.12.2019.

[No. L-14011/06/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 26 of 2015

Parties: Employers in relation to the management of Commander Works Engineer, Kolkata No. 1

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management :

On behalf of the Workmen :

State: West Bengal

Dated, 18th December, 2019

AWARD

By Order No.L-14011/06/2015-IR(DU) dated 26.05.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

“Whether the action of the immediate employer M/s. Makloyed Electrical Enterprises, Howrah, MES Contractor in terminating the service of 4 nos. of workers namely Sh. Badal Baidya, Sh. Srinivas Rao, Sh. Jayanta Paul and Sh. Gauranaga Nayak all deployed as contractual workers and non-cooperation on the part of the MES Authority in attending the conciliation process under ID Act, 1947 before the conciliation officer to sort out the dispute raised by agitating union is proper or justified? If not, what compensation relief these set of workers are entitled to?”

2. As per statement of claim the workmen concerned who are four in numbers were working in the establishment of M/s. Garrison Engineer, Kolkata for manning and operation of pumps, valves and generating sets installed in the pump house and unit areas inside and outside Fort Willam under the contractors engaged by Commander Works Engineer, Kolkata. After completion of the contract of M/s. Santosh International in April, 2014, fresh contract was awarded to Ms. Makloyed Electrical Enterprises in the month of September, 2014.

During the intervening period from May, 2014 to 22nd September, 2014 the work was carried out departmentally by engaging some of these workers. Initially only five workers were engaged, but when it was pointed out that it was not humanly possible for only five workers, then 10 workers were engaged, but they were paid very meager wages @ Rs.2000/= per month for two months, @ Rs.2500/= per month and @ Rs.6000/= for one month which was below the prevailing prescribed minimum wages of Rs.363/= per day. A bulk amount used to be handed over by the administration to senior worker who distributed the amount amongst workers by obtaining their signature on a piece of paper. On account of engagement of some regular workers recruited by the department, the issue of curtailment of shifts from the scope of work was taken up with the Chief Engineer, Kolkata by the union. However, two proposals were resolved by the workers, (1) to share work of 19 workers with the existing 31 workers or (2) to carry out the work by senior 19 workers according to their first joining in this work for one term and in next term those who were not given the work would get first chance. The first proposal was preferred by the workers and when the contract was awarded to M/s. Makloyed Electrical Enterprises, the above two proposals were given to the contractor by the workers. The representative of the contractor agreed with the second proposal and a list of 19 workers were given, but during actual deployment of workers on 22nd September, 2014, four senior workers who are under reference were left. The matter of engaging senior workers was taken with the Garrison Engineer, but ultimately he expressed his inability to intervene as the engagement was to be decided by the contractor. The union took up the matter with the Regional Labour Commissioner (Central), Kolkata, but the department did not cooperate and never appeared before the Labour Commissioner. Therefore, a failure report was submitted to the Government whereupon the reference was made to this Tribunal.

3. In reply to the averments of statement of claim the management of Commander Works Engineer filed its written statement pleading therein that the tender for manning and operation of pumps, valves and generator sets inside and outside Fort William was issued and accepted by the Head Quarters, Commander Works Engineer. The date of commencement and completion was 20th October, 2014 and 19th September, 2015. The work was completed within stipulated date and time mentioned in MES contractors' order sheet. During the progress of work an industrial dispute was raised before the Deputy Chief Labour Commissioner (Central) stating that M/s. Makloyed Electrical Enterprises, MES contractor has illegally retrenched four number of workers, namely, Sh. Badal Baidya, Sh. Srinivas Rao, Sh. Jayanta Paul and Sh. Gauranaga Nayak. Previously for similar nature of work 32 number of man power were engaged by the job contract. The last contract was awarded to M/s. Santosh International under contract No. CWE/KOL/03 of 2013-14. Subsequently the deployment of man power had been reduced by the department to save the Government interest. Time is the essence of contract and each and every year contract for outsourcing man power were being concluded by the department. It was the responsibility of the awarded contractor to put their own man power as per contract requirement and the department could not ask the contractor to put a particular man on the job. The department neither employed directly any man power, nor terminated any worker.

4. No rejoinder was filed by the union.

5. Opportunities were given to the union as well as management, but neither of the parties adduced any evidence. Hence this Tribunal was left with no option, but to close their opportunities.

6. On perusal of record it is revealed that the work of manning and operation of pumps, valves and generator set installed in pump house and unit area of inside and outside of Fort William were admittedly used to be performed by the man power engaged by the contractors and it is also admitted case between the parties that for above work tenders were used to be issued and accepted by the department. In this process, as per statement of claim itself M/s. J.B. Nath & Sons was awarded contract for the period 2009-10, M/s. Santosh International for 2010-11, again M/s. Santosh International for 2011-12, Makloyed Electrical Enterprises for 2012-13 and again M/s. Santosh International for 2013-14. However, after the end of contract with M/s. Santosh International, the same was awarded to M/s. Makloyed Electrical Enterprises and the above contractors used to engage workers on their own. Department had nothing to do with the engagement or deployment of workers. All these facts are admitted facts between the parties. It is not the case of the union that the department ever retrenched the workmen under reference. From its own statement of claim it is established that it was M/s. Makloyed Electrical Enterprises, MES contractor did not engage these workers under reference. Thus the department has nothing to do with the dispute. From the statement of claim it is also established that the workers were engaged only for the period during subsistence of contract. Though no written statement has been filed by the contractor, M/s. Makloyed Electrical Enterprises, but in absence of any oral or documentary evidence it is also not established that the workmen concerned were ever engaged by any of the contractors. The union has

filed a note sheet mentioning the name of workers who worked and received wages, but the same are neither admitted nor proved by the union by adducing oral evidence.

7. In view of above, I am of the definite opinion that the union has utterly failed to establish any case, either against the contractor, M/s. Makloyed Electrical Enterprises or against the department. Hence the action of the contractor, M/s. Makloyed Electrical Enterprises in not engaging or say terminating the workers under reference cannot be said to be improper or unjustified.

8. Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 18th December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स क्वांटम ग्लोबल इंफ्राटेक (पी) लिमिटेड, कोलकाता 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 – कोलकाता, पंचाट (संदर्भ संख्या 06/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.12.2019 को प्राप्त हुए थे।

[सं. एल-42011/19/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 219.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06/2015) of the Central Government Industrial Tribunal-cum Labour Court- Kolkata, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Quantum Global Infratech (P) Ltd, Kolkata, & Others, and their workmen which were received by the Central Government on 27.12.2019.

[No. L-42011/19/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 06 of 2015

Parties: Employers in relation to the management of M/s. Quantum Global Infratech (P) Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

State: West Bengal.

Industry: Telecommunication.

Dated: 18th December, 2019

AWARD

By Order No.L-42011/19/2015-IR(DU) dated 23/24.02.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. Quantum Global Infratech (P) Ltd., contractor of M/s. Indus Tower Ltd. is justified in terminating the security personnel as per Annexure-A at the age of 58 years instead of 65 years stipulated under Section 10(b) of the Private Security Agency (Regulation) Act, 2005 is legal and/or justified? If not, what relief the workmen are entitled to?”

Annexure – A**Name of the workmen**

1. HAPUDDIN SEKH
2. SK. NAZRA MURSHED ALI
3. JOYDEB JANA
4. NARAYAN BARMAN
5. RAMPADA PAUL
6. NARAYAN CHANDRA DAS
7. BISHNUPADA SANTRA
8. SK. PIYAR ALI
9. ANALENDU KUMAR PURKAIT
10. HIMANSHU MANNA
11. ASHIS KUMAR DAS
12. ACHINTYA MAITY
13. VIVEKANANDA DAS
14. SUDARSAN MANNA
15. SRIKANTA SAMANTA
16. SRIPATI ROY CHOWDHURY
17. SHAMSUDDIN KHAN

2. When the case was listed last for hearing, none of the parties were present. It transpires from record that this reference is pending in this Tribunal since 03.03.2015 and all the parties entered appearance, but no step is taken by the union to file statement of claim inspite of sufficient opportunity. Management also preferred not to file any written statement. Union is found absent since 02.05.2019, i.e., on two consecutive dates.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of termination of the concerned security personnel at the age of 58 years instead of 65 years stipulated under Section 10(b) of the Private Security Agency (Regulation) Act, 2005 as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 18th December, 2019

नई दिल्ली, 13 फरवरी, 2020

का.आ. 220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिंदुस्तान एंटीबायोटिक्स लिमिटेड, कोलकाता 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 – कोलकाता, पंचाट (संदर्भ संख्या 17/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2020 को प्राप्त हुए थे।

[सं. एल-42011/80/2012-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 220.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/2012) of the Central Government Industrial Tribunal-cum Labour Court- Kolkata, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Hindustan Antibiotics Ltd., Kolkata, & Others, and their workmen which were received by the Central Government on 21.01.2020.

[No. L-42011/80/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 17 of 2012

Parties: Employers in relation to the management of Hindustan Antibiotics Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. S. Dere, learned counsel

On behalf of the Workmen : Mr. S. Bhattacharjee, learned counsel

State: West Bengal.

Industry: Medicines.

Dated: 13th January, 2020

AWARD

By Order No.L-42011/80/2012-IR(DU) dated 12.10.2012/16.10.2012 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Hindustan Antibiotics Ltd. in dismissing the service of Shri Partha Tarafdar w.e.f. 11.08.2009 is legal or justified? If not, what relief the workman is entitled to?”

2. Brief facts as it appear from the statement of claim filed on behalf of the workman are that the concerned workman, Shri Partha Tarafdar was appointed by the company on 3rd November, 1982 as Junior Medical Representative. He was transferred from Kolkata to Dharampuri, Tamil Nadu by order dated 9th May, 2000. He was also relieved from Kolkata Office on 22nd May, 2000. His representation moved on the ground of personal difficulties was also not considered by the company. Thereafter a chargesheet was issued to the workman concerned with the allegation that on 1st June, 2000 at about 2.30 P.M. he along with more than hundred people came to the office of the company band gharaod, intimidated and threatened the Divisional

Manager and Regional Manager who were present at that time in the office. The Regional Manager was also alleged to have been manhandled inside his room and was also pressurized to revoke the relieving order of transfer of the workman concerned. He was placed under suspension and was directed not leave the head quarter without written permission of the authority. Enquiry Officer was appointed and the enquiry commenced on 12th December, 2000. The workman concerned participated during enquiry. After conclusion of proceeding the Enquiry Officer submitted his report on 28th December, 2001. After a prolonged silence, show cause notice was issued to him on 4th May, 2009 after a period of 7 years and 4 months from the date of submission of enquiry report. It is alleged by the workman concerned that the management had already made up its mind to concur with the findings of the Enquiry Officer. The enquiry report shows total non application of mind and there was also violation of the principles of natural justice. The Enquiry Officer has recorded that the witness, Shri D. Bhowmik (MW-2) was present at the scene of occurrence, but the chargesheet did not record his presence. Therefore, the Enquiry Officer brought extraneous facts into chargesheet and consequently arrived at a perverse conclusion by trying to make out a case not even made out in the chargesheet. There is no evidence in support of findings recorded by the Enquiry Officer. Contrary to the findings of the Enquiry Officer, MW-3 has stated that he did not see Shri Partha Tarafdar in the mob. All the witnesses of the management have also stated on similar line. There is no evidence to support the conclusion of the Enquiry Officer in proving 6 out of 7 charges. It is also alleged that during his suspension period no subsistence allowance was paid to him which prejudiced the case of the workman. It is further alleged that the workman was not given reasonable opportunity to produce his witness, Dr. R.N. Chatterjee despite repeated request. The request of the workman to hold enquiry at Kolkata was also turned down by the Enquiry Officer. He did not consider the genuine difficulty of the workman. The onus of proving allegations was also shifted on the workman that he was not present on the scene of occurrence on 1st June, 2000. The workman was sick and he was on sick leave prior to the date of occurrence, but his version was not believed by the Enquiry Officer, though the Presenting Officer never challenged the authenticity of the medical papers submitted by the workman which shows biasness on the part of the Enquiry Officer. The disciplinary authority concurring with the enquiry report passed dismissal order against the workman in most unjust and improper manner which resulted in industrial dispute raised by the union before the Labour Commissioner.

3. The management of the company filed its written statement denying the allegations made by the workman concerned. It has been pleaded that the company is a Government of India Undertaking which became sick and was referred to the BIFR for its revival. For revival of the company the management had decided to transfer medical representatives of the company into potential areas of the company as part of restructuring exercise so that adequate man power could be equally distributed to all the head quarters and places of business of the company. Three Medical Representatives, namely, Mr. Partha Tarafdar, Mr. D.K. Biswas and Mr. A.B. Thakur were transferred to Hubli in Bangalore, Dharampuri in Chennai and Merut in Uttar Pradesh respectively and they were relieved from the Kolkata office. ON 1st June, 2000 at around 2.30 P.M> the workman concerned along with Mr. D.K. Biswas accompanied by hundred outsiders came to the Divisional Office at Kolkata demanding recall of transfer orders. In this process the mob became unruly, intimidated and threatened company's officials with dire consequences, unless transfer orders were cancelled. The Divisional Manager of the company and the Regional Manager of the company were also manhandled. FIR was lodged with the local Police Station. Due to the said riotous activities the officers of the company were afraid of attending office at Kolkata. Therefore, the management had decided to close down its operation from Kolkata Divisional Office. In order to protect the services of other employees posted at Kolkata, the company offered them to be transferred to other branches or divisions in other states. Due serious misconduct on the part of the workman concerned and Mr. D.K. Biswas, a charge sheet was issued against them and they were placed under suspension on 06.06.2000. The concerned workman was entitled to subsistence allowance at the place where he was transferred since he was relieved from Kolkata Office. As per Clause 27(e) of the certified Standing Orders of the company during suspension the employee shall not leave station, except with the written permission of the company. The concerned workman on his transfer did not report for duty at all. Being aggrieved by non-receipt of subsistence allowance at Kolkata, the workman had approached the appropriate authority under the West Bengal Payment of subsistence Allowance Act who had directed the company to pay subsistence allowance directly to the workman concerned without insisting upon the presence in the office. However, the order was challenged by the company before the Hon'ble Calcutta High Court which had directed the company to deposit subsistence allowance with the Registrar General of the Court. After issue of chargesheet the workman replied to the charges which was found not satisfactory, therefore, domestic enquiry was initiated. Mr. S.R. Joshi, retired Chief Manager, Bank of Maharashtra was appointed as Enquiry Officer and Mr. A.K. Ranganath, Deputy Marketing Manager of the company was appointed as the Presenting Officer. Full opportunity was afforded by the Enquiry Officer to the workman concerned to defend his case. ON perusal of oral as well as the documentary evidence of the management and also of the workman concerned, the Enquiry Officer submitted his report on 28th December, 2001 holding 6 charges out of 7 charges as proved. Show cause notice was issued to the workman. The

workman submitted his reply to the show cause notice. After perusal of the enquiry report as well as reply of the workman the disciplinary authority dismissed him from service. Appeal was preferred by the workman concerned which was also dismissed. At the time of initiation of enquiry the workman concerned was not at all in the roll of the Kolkata Office of the company, therefore, holding enquiry in the head office at Pune did not cause any prejudice to the workman. The company also provided necessary expenses to the workman so that he could bring witness from Kolkata. The principles of natural justice had been followed by the Enquiry Officer. No illegality has been committed in enquiry.

4. It is material to mention here that the workman concerned Partha Tarafdar had died before submitting his statement of claim. Therefore, the union had filed statement of claim pleading his case. On behalf of the union WW-01, Shri Sasanka Mouli Roy was examined and cross-examined. On behalf of the management MW-01, Shri Srikant Dattatraya Dalvi was examined.

5. I have heard the learned counsel for the parties.

6. During the course of argument learned counsel for the union has relied on **Anwarun Nisha Khatun v. State of Bihar and others**, (2002) 6 SCC 703, **Captain M. Paul Anthony v. Bharat Gold Mines Ltd. & Another**, (1999) 3 SCC 679, **Bombay Forgings Ltd. v. Prem Singh K. Sonar & Others**, 1999 (4) LLN 178, **Veena Shamrao Kadke v. Presiding Officer, University & College Tribunal & Others**, 2004 (4) LLN 249 to argue that non-payment of subsistence allowance causes prejudice to the defence of the concerned workman. He has further relied on **D. Indroji Rao v Management of Chamundi Machine Tools Ltd. & Another**, ILR 1999 Ker 1487 and **Workmen represented by Brooke bond Employees (Sales Unit) & Others v. Eighth Industrial Tribunal & Others**, 2002 (2) LLN 1060 for his argument that refusal to adjourn hearing of enquiry for non-payment of travelling allowance to witness of defence prejudices the case of the workman.

7. Learned counsel for the management has contended that as per clause 27(e) of the Certified Standing Orders during suspension period the employee cannot leave the head quarters without permission of the company. As the workman concerned did not join at the place of his transfer, he is not entitled for subsistence allowance. It is submitted that sufficient opportunity was provided to the workman concerned to adduce defence evidence. The workman concerned participated in the proceedings and the Enquiry Officer complying with the principles of natural justice submitted his report that six charges out of seven were duly proved.

8. For a valid enquiry the Hon'ble Apex Court in **Sur Enamel & Stamping Works v. their workmen**, reported in AIR 1963 SC 1914 has laid down following ingredients to be followed:

- (1) The employee proceeded against has been informed clearly of the charges leveled against him;
- (2) The witnesses are examined ordinarily in the presence of the employee in respect of the charges;
- (3) The employee is given fair opportunity to cross-examine witnesses;
- (4) The employee is given a fair opportunity to examine witnesses including himself in his defence, if he so wishes and
- (5) The Enquiry Officer record his findings with reasons for the same in his report.

9. Now coming to the instant case, it is not disputed that the workman concerned was properly informed about the charges leveled against him and the witnesses of the management were also examined in his presence. Opportunity to cross-examine the management witness is also not denied. The only contention advanced by the learned counsel for the workman is that during suspension period, he was not provided with subsistence allowance which caused prejudice to him and also that his witness could not be examined as his request to hold enquiry at Kolkata was turned down. He was also not given travelling allowance to facilitate participation of his and his witness in the proceeding.

Non-Payment of subsistence allowance

10. Non-payment of subsistence allowance to the workman by the company is not disputed. Now the question is whether non-payment of subsistence allowance prejudiced the defence of the workman concerned? The case law cited by the learned counsel for the workman in **Bombay Forgings Ltd. v. Prem Singh K. Sonar** (supra) lays down that non-payment of subsistence allowance prejudices the case of defence and vitiates the enquiry. The Hon'ble Bombay High Court has relied on the decision of the Hon'ble Apex Court in the case of **M. Paul Anthony v. Bharat Gold Mines** (supra) wherein it has been held that

".....the provisions of payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. When the employee is placed under suspension, he is demobilized and the salary is also paid to him at a reduced rate under the nick name of "subsistence allowance", so that the employee may sustain himself. The very object of paying the reduced salary to

the employee during the period of suspension would be frustrated if even subsistence allowance is not paid because "subsistence" means of supporting life, especially a minimum livelihood. The act of non-payment of subsistence allowance can be linked to slow poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance would gradually serve himself to death."

11. Further in **Veena Shamrao Kakde v. Presiding Officer, University & College Tribunal** (supra) the Hon'ble Bombay High Court has reiterated the same principle as follows:

"8. This Court while dealing with the bunch of writ petitions took the view that since the subsistence allowance was not paid to the employees during the course of enquiry proceedings, the enquiry itself vitiated. There is no reason for this Court to take different view of the matter especially when it is admitted position that subsistence allowance was not paid to the petitioner when the enquiry was going on against her. It would also be relevant to note that enquiry against the petitioner was conducted at Nagpur and she was required to attend the dates of enquiry at Nagpur from Chimur and it is contended that she was also not paid the T.A. and D.A. for the purpose of attending the dates of enquiry. It would reveal that the management college did not dispute the allegations of the petitioner before the Tribunal that subsistence allowance as well as T.A. and D.A. was not paid, and therefore, the only conclusion could be reached is that the petitioner was not paid the subsistence allowance as well as T.A. and D.A. which has prejudiced her right of putting her defence."

12. Thus from the above case law it is established that during suspension period the delinquent employee must be paid subsistence allowance, non-payment of which vitiates the enquiry. But the learned counsel for the management has submitted that where service rule provides for presence of suspended employee at the head quarter and the employee concerned defaults, he is not entitled for subsistence allowance and no prejudice would be caused to him. Learned counsel for the management has relied on the **Certified Standing Orders of Hindustan Antibiotics Ltd** wherein clause 27(e) provides "during the period of suspension, the employees shall not leave the station, except with the written permission of the management". Though the application of this clause to Medical Representative like concerned workman has been objected by the learned counsel for the workman on the ground that according to Section 2(f) of the Payment of Wages Act which defines 'industrial establishment' and which is applicable to "industrial establishment" defined under Section 3(d) of the Industrial Employment (Standing Orders) Act, 1946 only workshop and other establishment in which articles are produced, adapted or manufactured with a view to their use, transport or sale comes within the definition of industrial establishment and the workman concerned was not working in such workshop or establishment. But the submission of the learned counsel for the workman does not find force in view of clause 1 of the Certified Standing Orders of the company which deals with scope of orders. According to above clause 1, the Certified Standing Orders shall apply to all the employees of the company who are workmen within the definition of Industrial Disputes Act, 1947. It is not disputed that Shri Biswas is a workman within the definition of the Industrial Disputes Act, 1947. Thus application of the Certified Standing Orders to the workman concerned is not doubtful.

13. The Hon'ble Apex Court in **State of Bihar & Others v. Arbind**, AIR 2013 SC 3329 while dealing with similar issue has held that an order of suspension never puts an end to the service of an employee. He is only not entitled to the salary, but is eligible to get subsistence allowance. Subsistence allowance is governed by the service rules and is given to a suspended employee for his sustenance. Hon'ble the Apex Court has relied on **Anwarun Nisha Khatun v. State of Bihar** (supra) wherein the employee claimed for subsistence allowance for the entire period of suspension of her husband, who was not terminated and during the pendency of the enquiry had breathed his last. Wife preferred a writ petition before the Hon'ble Patna High Court which was dismissed on the ground that the husband of the appellant therein was not present for one day at the head quarters and hence not entitled to the benefits. In the above case law under Rule 96(2) of Bihar Service Code a government employee is required to furnish a certificate that he was not engaged in any other employment, business, profession or vocation. The Hon'ble Court was of the view that where the rule does not provide for marking of attendance, his subsistence allowance cannot be denied for that reason. Thus the Hon'ble Court by necessary corollary has held that where necessary rules provide for marking attendance at the head quarters and the suspended employee does not present himself at the head quarters, denial of subsistence allowance would not prejudice his defence. In the present case, clause 2(e) of the Certified Standing Orders specifically provides that during period of suspension the employee shall not leave the station, except with the written permission of the management. The workman concerned admittedly never joined at the place of his transfer and admittedly he remained absent at the head quarters. Therefore, in view of principles laid down by the Hon'ble Apex Court the workman concerned was not entitled for subsistence allowance, non-payment of which does not prejudice his defence.

14. Though appropriate authority under the West Bengal Payment of Subsistence Allowance Act had directed the company to pay subsistence allowance to the workman concerned, appeal against this order is pending before the Hon'ble Calcutta High Court wherein the company had deposited entire amount of subsistence allowance with the Registrar General by the order of the Court and the concerned workman was permitted to withdraw 50% of the amount. However, the Division Bench of the Hon'ble High Court has remanded the matter to the Single Judge and as it appears from the order, further withdrawal of the amount deposited with the Registrar General of the High Court is not allowed. However, the matter is pending before the Hon'ble High Court and the order of the prescribed authority under the West Bengal Payment of Subsistence Allowance Act is not final.

Opportunity to defend through legal practitioner

15. Learned counsel for the union has contended that the Presenting Officer was well equipped with law relating to domestic enquiry, therefore, the workman concerned demanded to be represented through a legal practitioner, but that was turned down by the Enquiry Officer which amounts to denial of principles of natural justice. I find no substance in the argument of the learned counsel. From the perusal of enquiry proceedings it appears that the Presenting Officer, Shri A.K. Ranganath was simply a science graduate. He was not a law graduate. On demand of the workman concerned this fact was disclosed by the Presenting Officer before the Enquiry Officer. He had also disclosed that he had conducted domestic enquiry only twice. Thus, it cannot be said that the Presenting Officer was having a legal qualification. In **Dinesh Chandra Pandey v. High Court of M.P.**, CDH 2010 SC 578 it has been held –

“7. The bare reading of this rule shows that the government servant may take the assistance of any other government servant to represent his case, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the authority is a legal practitioner or the domestic authority having regard to the circumstances of the case, so permits. The express ‘may’ cannot be read as ‘shall’. The normal rule is that a delinquent officer would be entitled to engage another officer to present his case. But if the Presenting Officer is a ‘legal practitioner’, he may normally be permitted to engage a legal practitioner. The third category is where the disciplinary authority having regard to the circumstances of the case so permits. It is therefore, not absolutely mandatory that the disciplinary authority should permit the engagement of a legal practitioner irrespective of the facts of the circumstances of the case.”

Thus, it is explicitly clear that where neither the Presenting Officer, nor the Enquiry Officer is a legal practitioner, the delinquent employee cannot be permitted to be represented through a legal practitioner. In the present case, refusal of the Enquiry Officer to permit the workman concerned to engage a lawyer during enquiry is not a violation of the principles of natural justice.

Refusal to pay expenses to the workman

16. The learned counsel for the union submitted that during enquiry the workman concerned was not paid expenses to attend enquiry and to bring his witnesses to the place of enquiry which was neither head quarters at Kolkata, nor the place where he was transferred. The enquiry proceeding dated 13th February, 2001 shows that the workman concerned raised the issue of non-payment of subsistence allowance as well as expenses to attend enquiry. He had submitted that in absence of expenses it was not possible for him to stay in a hotel in Pune and continue to incur expenditure. On his request the Enquiry Officer ruled that the financial matters are beyond the purview of enquiry to deal with. However, the management was directed to consider the request of the workman concerned upon which the Presenting Officer submitted the view of the management before the Enquiry Officer by way of filing representation Annexure II that the request of workman concerned for advance money from the management was not justified and hence cannot be considered. The Enquiry Officer also ruled that the expenses of defence witness for attending enquiry at Pune shall be reimbursed as per rule. On insistence of the workman concerned for issue of direction to the management to pay expenses the Enquiry Officer was of the view that he did not have jurisdiction to decide or direct the management in this regard. The conduct of the management can also be seen from the proceeding dated 3rd October, 2001 wherein it is mentioned that the demand draft of Rs.5600/= was given to the workman concerned, but this demand draft was payable at Vijaya Bank, Patna. It was a matter of utter surprise when the head quarters of the company was at Kolkata, the workman concerned was transferred to Dharampuri, Chennai and enquiry was being held at Pune, what caused the management of the company to prepare a draft which was payable at Patna. It was nothing but denial of expenses to the workman to attend enquiry or produce witnesses.

17. Further the workman concerned had requested the Enquiry Officer to hold enquiry at Kolkata, at least for once, so that he could produce his witness, Dr. R.N. Chatterjee who had written prescription due to illness of the workman for the period in question. The workman has contended that he remained sick from 19th May, 2000

till 12th June, 2000. Therefore, he could not be present at the scene of occurrence on 01.06.2000. Thus prescription and examination of witness was very much material to decide the charges leveled against the workman. It is true, as contended by the workman concerned, that a renowned doctor cannot be compelled by the workman to travel from Kolkata to Pune to prove his signature on prescription issued by him. Thus, refusal of the Enquiry Officer to hold enquiry at Kolkata to enable the workmen concerned to examine his witness, Dr. R.N. Chatterjee certainly tantamount to denial of natural justice.

18. In workmen represented by **Brooke bond Employees** (supra) the Enquiry Officer refused to direct the company to bear the expenses of the workman for producing witnesses from Keonjhar in his defence though admittedly everything took place at Keonjhar and vital witnesses of the workmen were residence of Keonjhar. It was held by Hon'ble Calcutta High Court that the principles of natural justice was violated by the Enquiry Officer in conducting the departmental enquiry. It was observed –

“25. In the present case, the enquiry officer refused to direct the respondent-company to bear the expenses of the workman for producing the witnesses from Keonjhar in his defence though, admittedly everything took place at Keonjhar and the vital witnesses for the workman were residents of Keonjhar and thereby the principles of natural justice were violated by the enquiry officer.....”

Perverse finding

19. Where findings of enquiry officer are not supported by material on record, the same are perverse findings. No reasonable person can arrived at the findings on the material available on record which the Enquiry Officer arrived at. The management had examined three witnesses in support of the chares leveled against the workman concerned. MW-1, Shri N.G. Shanbhag has stated that he has not seen Shri Partha Tarafdar during the period of incident. His cross-examination is relevant for the issue which may be reproduced below:

“I have not seen Mr. P. Tarafdar during the seen that occur dt. 01.06.2000 in my Calcutta Office. About reference ME 3/1 I say that date on this letter is 2.6.2000 where as in the body it is stated ----- on 1.6.2000 i.e. today around 2.30 ----- about the differences in these two dates I do not feel that there is a discrepancy and hence not reported to Police Station later on. After lodging this FIR I have left Calcutta and I am not aware about subsequent development in respect of said FIR. I say that I have not seen Mr. Tarafdar during incidence reference of his name in the report was based on the information I gathered from my subordinates and hence it can be said as based on hearsay information.”

MW-2, Shri D.N. Chakraborty has also stated that “during entire episode narrated above, I have not seen Mr. Partha Tarafdar in the office or in the mob inside the office.” He has further stated “I say the name of Mr. Partha Tarafdar was stated in the report based on the information given to him by Mr. Bhowmick, AMO (A/c). However, it is a fact that I have personally not seen Mr. Partha Tarafdar there.

20. The management has also examined Mr. D. Bhowmick as MW-3. His cross-examination may be reproduced below –

“I say that I have not seen Mr. Partha Tarafdar either outside the office or inside the office in the mob on 1.6.2000. Referring ME-4/4 last three lines which reads as According to eye witness by AMO(Accounts) and Mr. S. Chakraborty, MR(HEMAX), Mr. P. Tarafdar, MR was also observing all along from outside office premises. I say that this statement is not correct and not true. I am aware that sometime Mr. Partha Tarafdar rang me and conveyed about his sickness and he will be on leaved and letter/application will follow. However, I do not remember the exact date when Mr. Tarafdar telephoned me. However, I say that this telephonic information may be 10 days approximately prior to the incident. I have conveyed about the sickness and leave of Mr. Tarafdar to his controlling officer RM Mr. DN Chakraborty.”

Thus all the witness examined by the management did not support the case of the management. It is surprising as to how the Enquiry Officer concluded the presence of the workman concerned in the scene of occurrence when the management witnesses themselves say that the workman concerned was not present at the scene of occurrence. Where the evidence of the management itself falsify the presence of the workman concerned, no reasonable person can arrive at the conclusion of the Enquiry Officer. Therefore, findings of the Enquiry Officer are nothing but perverse.

21. It is also material to note that the workman concerned had filed prescription issued by Dr. Chatterjee and leave application along with this medical certificate was sent by the workman concerned to his office under certificate of posting on 19.05.2000. He had also made a telephonic call to Mr. D. Bhowmick about his illness

and his leave request. This fact has been confirmed by MW-3, Mr. D. Bhowmick. Thus, the findings concluded by the Enquiry Officer is not supported by the material on record which also renders the same perverse.

22. Learned counsel for the workman has also submitted that chargesheet was given to the workman concerned on 6th of June, 2000 and he was placed under suspension with the same order. The enquiry started from 13th December, 2000 and continued till 7th January, 2002. The Enquiry Officer submitted his report to the disciplinary authority on 1st February, 2002, but the disciplinary authority issued show cause notice to the workman in 2009. Thus the company deliberately kept the workman under suspension for a period of 7 years which itself shows that the officers of the company was biased against the workman concerned. There was no justification for delay in keeping the matter pending. In **O.P. Gupta v. Union of India & others**, AIR 1987 SC 2257 it has been observed that the natural justice demands conclusion of departmental proceeding with a reasonable diligence and within reasonable period of time.

“..... It is clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle is not to be recognized, it would imply that the executive is being vested with a total arbitrary and unfettered power of placing its officer under disability and distress for indefinite duration.”

23. Thus, in view of above discussion, I come to the conclusion that the enquiry was not in consonance with the principles of natural justice. Therefore, it is vitiated and held to be not valid, illegal and improper.

24. After the domestic enquiry is held illegal and improper, question crops up whether the employer is entitled to get any opportunity to lead evidence in order to substantiate charges against the workman concerned. If yes, under what circumstances? In **Shankar Chakraborty v. Britannia Biscuit Co. Ltd.**, AIR 1979 SC1652 : 1979-II-LLJ 194 SC The Hon'ble Apex Court has held –

“Having given our most anxious consideration to the question raised before us, and minutely examining the decision in Cooper Engineering Ltd. case (supra) to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudicating upon a penal termination of service of workman either under S. 10 or under S. 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman, Cooper Engineering Ltd. case (supra) merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges.

(Emphasis supplied)

25. Referring the principles laid down in Shankar Chakraborty case (supra) the Hon'ble Apex Court in **M.L.Singh v. Punjab National Bank**, 2018 LAB I.C. 4321 observed –

“44. This Court while answering the aforesaid question held that it is for the employer to ask for such opportunity to lead evidence to prove the charge of misconduct and once such prayer is made in any form, i.e., orally or by application or in the pleading, the same cannot be denied to the employer. It has to be granted to enable him to prove the misconduct. This Court further held that no duty is cast upon the Court to offer such opportunity to the employer suo motu, if he does not ask for it. In other words, he has to ask for from the Court by any of the three modes mentioned above.”

26. In the present case there is no prayer by the company in any form, either oral or by any application or in the pleading asking for opportunity to lead evidence to prove the charge of misconduct. Hence no question of giving opportunity to the employer to lead evidence arises. Consequently dismissal of the workman concerned on the basis of invalid, illegal and improper enquiry cannot be sustained and liable to be quashed. Admittedly the workman, Partha Tarafdar has died, therefore, his heirs are entitled only for back wages.

27. The workman concerned in his statement of claim has pleaded that during the period of suspension he was not gainfully employed anywhere. This fact is also supported by affidavit filed by the workman. There is no rebuttal of this pleading. Therefore, the workman is entitled for back wages. However, it is admitted case of the

workman that after his transfer from Calcutta to Dharampuri, he never joined his duty at transferred place. In these circumstances, the workman is entitled for 70% back wages only.

28. Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 13th January, 2020

नई दिल्ली, 13 फरवरी, 2020

का.आ. 221.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स क्वांटम ग्लोबल इन्फ्राटेक (पी) लिमिटेड, कोलकाता 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 – कोलकाता, पंचाट (संदर्भ संख्या 03/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.01.2020 को प्राप्त हुए थे।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 221.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2019) of the Central Government Industrial Tribunal-cum Labour Court- Kolkata, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Quantum Global Infratech (P) Ltd, Kolkata, & Others, and their workmen which were received by the Central Government on 22.01.2020.

[No. L-42025/07/2020-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Application No. CGIT-03 of 2019 (Under Section 2A of the I.D. Act, 1947)

Parties: Shri Naba Kumar Kar,
Vill. & P.O. Shipur, P.S. Egra,
Dist. Purba Medinipur,
Pin – 721448.

...Applicant

- Vs -

M/s. Quantum Global Infratech Ltd.,
BC – 200, Sector I, Salt Lake City,
Kolkata – 700064.

...Opp. Party

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Applicant : None

On behalf of the Opposite Party : None

State: West Bengal.

Dated: 14th January, 2020

AWARD

This application has been moved by the workman, Shri Naba Kumar Kar under Section 2A of the Industrial Disputes Act, 1947 (hereinafter called as the Act of 1947 for convenience) challenging his termination dated 29th May, 2016.

2. Brief facts as mentioned in the application are that the Applicant was employed 1st September, 2007 by M/s. Rainbow International Solutions. However, after change of contractor he was employed by M/s. Frontline Business Solutions on 30th June, 2009. He remained in employment from 1st February, 2011 till 29th May, 2016 by the present contractor, M/s. Quantum Global Infratech Ltd., but M/s. Indus Towers remained principal employer who had engaged various contractors from time to time. The wages were paid by the company and the Applicant rendered continuous service. However, on 29th May, 2016 he was stopped to perform his duties. The Opposite Party company had issued one letter dated 14th June, 2016 wherein it was alleged that he remained absent from his duties and he was directed to submit his explanation. The notice was replied by the Applicant. Dispute was raised before the Regional Labour Commissioner, but the conciliation process did not yield any fruitful result and a certificate was issued under section 2A(2) of the Act of 1947 by the Regional Labour Commissioner. It is submitted that stoppage of work by the company amounted to termination of service, therefore, the Applicant has filed this application under Section 2A of the Act of 1947.

3. Notice was issued to the Opposite Party, but none appeared for the company, therefore, the case proceeded ex parte against the Opposite Party.

4. On the date of hearing the Applicant remained absent and adduced no evidence.

5. The Applicant has alleged that since 29th May, 2016 he was prevented from discharging his duties, but it is not mentioned that who had obstructed or prevented him from discharging his duties. The Applicant has filed a letter dated 16th August, 2016 issued by M/s. Quantum Global Infratech Ltd. wherein it is mentioned that since 30th May, 2016 the Applicant was not performing his duties at Shibpur Site. However, it is also mentioned that a chance to perform duties was again given to the Applicant and he could work from 16th August, 2016 to 31st August, 2016, failing which the Applicant shall be deemed to be no longer interested in the employment. Thus from the document filed by the Applicant himself it is established that the Opposite Party never stopped him from discharging his duties, rather he himself remained absent from the site and despite giving an opportunity to do his duties, the Applicant remained absent. The Applicant nowhere in his application has mentioned that after receiving notice dated 16th August, 2016, he appeared for duty but was stopped from working by a particular person. Even his name is not mentioned. The allegation made by the Applicant is mere wild allegation. Moreover in absence of evidence by the Applicant, the averments made in the application under Section 2A of the Act of 1947 cannot be deemed to be substantiated and the case of the Applicant in absence of evidence is liable to be disbelieved.

6. The application under Section 2A of the Act of 1947 is therefore rejected.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 14th January, 2020

नई दिल्ली, 13 फरवरी, 2020

का.आ. 222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कमांडेंट कमांड अस्पताल वायु सेना, बंगलौर 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 – बेंगलूर, पंचाट (संदर्भ संख्या 13/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.01.2020 को प्राप्त हुए थे।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 222.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2014) of the Central Government Industrial Tribunal-cum Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commandant Command Hospital Air Force, BANGALORE & Others, and their workmen which were received by the Central Government 06.01.2020.

[No. L-42025/07/2020-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 27TH DECEMBER 2019**PRESENT :** JUSTICE SMT. RATNAKALA, Presiding Officer**ID 13/2014****I Party**

Sh. M.T. Murthy,
No. 74, Richas Garden,
4th Cross, Kalkere Main Road,
Ramamurthy Nagar,
BANGALORE – 560 043.

II Party

1. The Commandant Command Hospital Air Force,
Agram Post,
BANGALORE – 560 007.
2. The Group Captain,
Chief Administrative Office,
Disciplinary Authority,
Command Hospital AF,
Agram Post,
BANGALORE – 560 007.
3. The Secretary,
Union of India,
Ministry of Defence,
South Block,
New Delhi – 110 011.

Appearance

Advocate for I Party : Mr. Ravindranatha. K

Advocate for II Party : Mr. Sumangala Hegde

AWARD

1. The claim of the 1st Party is, he was appointed as a Helper w.e.f 01.07.1997 and was subsequently appointed as Sales Attendant w.e.f 01.06.2001; he was issued Charge Sheets dated 31.10.2008 and 12.11.2012. In respect of the second Charge Sheet, he submitted his reply dated 16.11.2012 requesting to drop the allegations against him. He was issued warning on 17.11.2012 indicating that, recurrence of misconduct of similar nature or otherwise in future would result in initiating Disciplinary proceedings against him; vide order dated 22.11.2012, he was placed on leave without pay w.e.f 23.11.2012 in terms of Rule 16 of terms and conditions of service of civilian employees of Unit Run Canteen paid out of non-public fund; simultaneously, he was issued a memo dated 22.11.2012 proposing to hold Enquiry and he was called upon to submit his defence within 7 days. He submitted his written statement. Joint enquiry was proposed vide order dated 10.12.2012 along with Co-employee Sh. Prabhu Lal Sinha. Said Sh. Prabhu Lal Sinha sought mercy and to allow him to work vide request letter dated 22.12.2012. The 2nd Party revoked the order of 22.12.2012 and directed Sh. Prabhu Lal Sinha to join duty at URC, CHAFB w.e.f 14.02.2013; he had not drawn pay and allowances for the interregnum period. The 2nd Party issued show cause notice dated 28.03.2013 and called upon him to show cause as to why one or more punishments mentioned in Army Headquarter letter of 28.04.2003 should not be awarded to him for the charged misconduct. They issued another order dated 03.04.2013 directing him to submit his reply by 11.04.2013; vide reply dated 04.04.2013 he requested to absolve him from the alleged misconduct. By conducting parse enquiry and without giving reasonable opportunity and in violation of principles of natural justice, the 2nd Party imposed the punishment of dismissal from service. On noticing that

Sh. Prabhu Lal Sinha was reinstated, he submitted his request for reconsideration and reinstatement by treating him equally with Sh. Prabhu Lal Sinha. His appeal was rejected by the 2nd Party on the ground that the appeal was submitted belatedly. His further effort seeking reconsideration went in vain. The action of the 2nd Party is illegal, unjustifiable and discriminatory. He is deprived of his livelihood because of the punishment order.

2. The 2nd Party in their Counter Statement though admitted the identity of the 1st Party workman, it was contended that, he sold liquor unauthorisedly to an unauthorised person thereby violating Terms and Conditions of the Service at Unit Run Canteen / URC; he was warned to desist such misconduct in future; he has submitted his written statement accepting unauthorised sale of liquor on 04.11.2012. He has committed unauthorised selling of liquor during the pendency of Enquiry; they found discrepancy in the liquor stock at URC; he admitted the discrepancy and also unauthorised selling of liquor. Vide order dated 22.11.2012, he was placed on leave without pay until further orders w.e.f 23.11.2012 in terms of Rule 16 of *Terms and Conditions of Service of Civilian Employees of Unit Run Canteen paid out of non-public fund*. He was placed on leave without pay w.e.f 22.11.2012 since Disciplinary proceeding was initiated against him based on certain written statement given by him on oath to a duly appointed Court of Enquiry which was constituted to enquire in to the discrepancy found in stock of liquor at URC. In the said Court of Enquiry, he accepted in writing unauthorised sale of liquor for several years against illegal gratifications. He was provided proper opportunity during the Enquiry; it was found that, he committed misconduct by unauthorizedly selling liquor. Sh. Prabhu Lal Sinha who is another URC employee was also proceeded along with the 1st Party for the misconduct; both were issued Dismissal Orders dated 31.05.2013 to take effect from 01.06.2013, said Sh. Prabhu Lal Sinha filed mercy petition on 04.06.2013 to the Command Hospital, Air force which was duly considered and he was reinstated after revoking the dismissal order and by awarding a punishment lower in order.

However, the 1st Party workman filed mercy petition beyond the period of 45 days permitted for such Appeal vide Rule 25 of the relevant Rules. Hence, his application is rejected by the Appellate Authority. Proper procedure is followed by the 2nd Party; mercy petition is rejected as the same was submitted after the period prescribed which is barred by limitation. The 2nd Party URC is the Non-government establishment run exclusively by the Hospital for the Welfare of the Defence Personnel's and their families.

3. On the rival pleadings, issues were framed by my Learned Predecessor and the first issue pertaining to the fairness of the Domestic Enquiry was treated as Preliminary Issue. After a full-fledged trial, the issue is answered negatively vide order dated 03.06.2019 thereby negating the veracity of the entire exercise of Enquiry, in lieu of the charges levelled against the workman.

4. It is from record that, the 2nd Party in their Counter Statement had not pleaded for opportunity to prove their charges afresh, in the event finding on Preliminary Issue goes against them. In that view of the matter, the question of holding fresh Enquiry before this Tribunal on the allegation will not arise; consequently, the workman who is in the receiving end encashes the lapses of the 2nd Party. In the given circumstance, the 2nd Party since failed to prove their charges against the 1st Party workman, the punishment order passed against the workman as at Ex WW-15 is without foundation, illegal and not justified.

The eventuality is the workman is entitled for reinstatement with continuity of service without Back Wages (the workman after the finding to the Preliminary Issue was recorded has not come to the witness box to testify about his unemployment). In the net, I pass the following award.

AWARD

The petition is allowed

The order of penalty of dismissal from service passed by the 2nd Party dated 31.05.2013 against the 1st Party workman Sh. M.T. Murthy w.e.f 01.06.2013 is not legal hence set aside.

The 2nd Party is directed to reinstate the 1st Party workman Sh. M.T. Murthy (Pass No. CHAFB/CSD/PVT/41/08) to his original post with continuity of service and without back wages.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 27th December, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 13 फरवरी, 2020

का.आ. 223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महासचिव, भारत इलेक्ट्रॉनिक्स वर्कर्स यूनियन फोरम, बंगलौर 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 – बंगलौर के पंचाट (संदर्भ संख्या 05/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.01.2020 को प्राप्त हुए थे।

[सं. एल-14011/06/2018-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th February, 2020

S.O. 223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2019) of the Central Government Industrial Tribunal-cum-Labour Court-Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Secretary, Bharat Electronics Workers Unity Forum, BANGALORE & Others, and their workmen which were received by the Central Government 06.01.2020.

[No. L-14011/06/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 21st JANUARY 2020**PRESENT :** JUSTICE SMT. RATNAKALA, Presiding Officer**C R No.05/2019****I Party****II Party**

The General Secretary,
Bharat Electronics Workers Unity Forum, Jalahalli Post,
Bangalore – 13.

The General Manager (IR),
Bharat Electronics Limited,
BEL Circle,
Bangalore – 13.

Appearances :

I Party : None

II Party : None

1. The Government of India, Ministry of Labour vide order No. L-14011/6/2018-IR(DU) dated 04.02.2019 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as “The Act”) (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

“Whether the action of the management of BEL in unilaterally fixing 5% towards contribution for pension scheme w.e.f. 01.01.2012 for non-executives is justified? If not to what relief the Union is entitled to?”

2. On receipt of the reference order, notice was issued to both parties. Though served, they did not appear on the hearing dates.

3. In the circumstance, it is inevitable to hold that the 2nd Party failed to justify their action. At the same time the 1st Party workmen since did not pursue the dispute espoused by them, concerned workmen are not entitled for any relief.

AWARD

Reference is Rejected

(Dictated to U D C, transcribed by him, corrected and signed by me on 21st JANUARY 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 224.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 36/2015-16) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 प्राप्त हुआ था।

[सं. एल-41011/64/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 224.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2015-16) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Nagpur* as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 17.02.2020.

[No. L-41011/64/2015-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

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

Case No. CGIT/NGP/36/2015-16

Date: 23.12.2019

<u>Party No. 1(a)</u>	The Divisional Railway Manager, South Eastern Central Railways, Bilaspur (CG) BILASPUR
<u>Party No. 1(B)</u>	The Sr. Divisional Commercial Manager, South East Central Railway, Kingsway Station Road Nagpur-440001
<u>Party No. 1(c)</u>	The Chief Parcel Supervisor, South East Central Railway, Parcel Office, Gondia.

V/s

<u>Party No. 2:</u>	The General Secretary, Parcel Porter Sanghatana, New Mankapur, Plot No. 37, Mhada Colony ke pas, Nagpur-440030
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AWARD(Dated: 23rd December, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of South Eastern Central Railway and their workman, Shri Ashwin Bhimrao Ambade through the union, for adjudication, as per letter No .L-41011/64/2015 – IR (B-I) dated 07.12.2015, with the following schedule:-

"Whether Shri. Ashwin Bhimrao Ambade, License Porter is a workman?"

"Whether the action of the management not to allow him to work after 05/12/2011 even after receiving the license fee up to 31/12/2011 and sudden seizure of badge without any show cause is legal and justified? If not, then what relief Sh. Ashwin Bhimrao Ambade, License Porter is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to which, the workman Shri. Ashwin Bhimrao Ambade ("The workman" in short) through his union ("The union" in short) filed the statement of claim and the management of SECR, ("Party No.1" in short) filed the written statement.

3. The union/workman/applicant filed a statement of claim by asserting the following facts:-

- i) That, the Parcel Porter Sanghatana is a registered Trade Union under the Indian Trade Union Act, 1929 vide Registration No. NGP: 4403, dated 29/07/1997 and the claimant is the member of the Union.
- ii) That, workman undergone Medical Fitness and found fit for such job. The Fitness Certificate was issued by the Medical Officer I/C Railway Hospital, Nagpur. He was advised by the Railway to Pay License Fee and accordingly he paid it and obtained the Metal Badge and Red Shirt uniform from the Management/Party No. 1. An Identity Card was also issued by the Party No. 1 authorizing him to perform his duties at railway platforms within the Station limits. There was strong relationship existing between the workman and the management of Senior Divisional Commercial Manager S.E.C Railway of Nagpur Division.
- iii) That, the workman was regularly, promptly performing his duties with the Station Manager S.E.C. Railway, Gondia, and during the visit of Commercial Officer, they said officer snatched the license from the Porter without valid reason.
- iv) That, the livelihood of the workman is depending on it. He is the bread winner of his family and such rude behavior is misuse of official position. It is "unfair labour means" & violation of law.

And prayed that, (Respondent-1) be ordered to return his badge to earn for his livelihood immediately. Disciplinary action on the current Commercial officer for violating norms and snatching the bread & butter of a innocent workman by violating the labour law and lay-off compensation as an award.

4. On behalf of the management i.e. Party No. 1, W.S. was filed by asserting the following facts:-

- i) The contents of paras 1, 3, 4, 5, 9, 15 and prayer clause were specifically denied. According to Party No. 1, the workman has not placed on record about the information, on the basis of which, the present claim has been lodged and also denied that, workman is the member of the said union.
- ii) The licensee porter badge No.22 was issued to the father of the applicant/workman namely, Bhimrao Ambade and he had expired on 30/9/2003. The family members of the workman have never intimated about this fact to the answering Respondent No.1 and also submitted that, the workman is not falling within the category of workman.
- iii) That, the father of the applicant/workman, had expired way back in the year 2003 and the applicant/workman is approaching this Hon'ble Tribunal almost after 12 years and this delay has not been properly explained by the applicant/workman or his union.
- iv) The applicant/workman has not produced any Medical Fitness from the competent medical authorities i.e. Medical Officer of Railway Hospital, Nagpur on the record and therefore the contents are denied specifically.

- v) It was discovered that, the applicant had been wrongly using the badge No.22 without any authority, therefore the said badge No.22 was taken out from the custody of the applicant/workman.
- vi) That, it is duty bound upon the officials of the Respondent No.1 to curb and restrict the persons working unauthorisedly in the railway platform, wearing the dresses of porters imitating that, they are licensee porter, therefore there was nothing wrong on the part of officials of the Respondent No.1 to take out the badge No.22 from the custody of the applicant/workman and to prevent him to work as licensee porter at the said railway station.
- vii) That, Ministry of Railway (Railway Board) Resolution No. 85/TG-II/1010/8/License/Badge/Policy/New Delhi dated December 9th 1988, wherein the Government of India has decided that, the license may be transferred to his son or if he has not son or his son is no alive, his nearest relative in the event of death or when he becomes very old, infirm or very sick and not able to carry out his duties properly, the son will include the adopted son.

According to Party No. 1, applicant/workman is not entitled to any relief and grievance of the applicant/workman should be rejected with heavy compensatory costs.

5. The union or applicant/workman did not file any rejoinder. On the basis of the pleadings of both parties, following Points of Determination is fixed:-

- i) Whether sudden seizure of badge is illegal?
- ii) Whether the action of the management for not to allow the applicant/workman for work after 5/12/011 is legal and justified?
- iii) Whether application for dismissal of claim (I.A. No. 4) is bonafide and accepted?
- iv) Whether workman is entitled to any relief?

6. On behalf of the union/workman, it was argued that, "Licensed porter is not entitled to any kind of old age pension or retirement benefits etc." It was also argued that, "According to the Railway Board Policy, a licensed Porter's badge may be transferred to his Son or if his son is not alive, his near relative in the event of death or when he becomes old, infirm or very sick and is not able to carry out his duties properly."

7. On the contrary, Party No. 1 argued that, the original badge no.22 was issued in the name of the deceased, Bhimrao Ambade, who had expired on 30.09.2003 and this fact was never intimated to the present Non-Applicant no. 01 and also argued that, "License Badge No.22 was being used unauthorisedly by the applicant/workman and when this fact was noticed, the said badge was seized at Gondia platform." Now I want to see the evidence part.

8. On behalf of petitioner Ashwin Bhimrao Ambade and on behalf of management they filed evidence on affidavit Smt. K. Mangamma Rao working as Chief Office Superintendent S.E.C. Railway but they do not produced in this Tribunal. So this affidavit is not verified by this court. In my humble opinion, it is not read in evidence. Petitioner witnesses Ashwin (PW-1) support the statement of claim in a chief examination. But in cross-examination he admitted that, "The Badge No.22 had been originally issued in favour of my father. I got this badge after the death of my father." He also admitted that, he did not file any document in this regard i.e. information as death of petitioner father. He also admitted that, "he did not know whether I have mentioned this fact in my statement of claim or not. I do not know about the statement of claim. I do not know about the contents mentioned in evidence on affidavit. I am Xth fail. I do not know English and Law."---- He also admitted that, "I do not apply to Railway to transfer the porter license in my favour. It is true to say that, I have not filed any document or copy of the application in this regard."

On perusal of his statement, it appears that, he has no knowledge about English and Law. He also not filed any document relating to application to the Railway for transfer of Badge and information given to the Railway regarding his father death. So he is statement appears to be true.

9. On behalf of Railway any application is filed for dismissal of claim which was opposed by the union by giving say, "the dispute the workman did not allow his work after 5/12/2011 even after allotment of license Badge No.22. The Badge No.42-----It is strongly opposed application filed previously to the misleading the Hon'ble Tribunal by an unauthorized counsel." "The case in this dispute is for returning of his old Badge No.22 and say off compensation may kindly decide the dispute on merit alongwith other three similar disputes with the same management."

10. According to the management, claimant has been given porter license as demanded in the claim petition by the applicant/claimant on 03.04.2017. So he pray that, to dismiss the claim filed an applicant. Now I want to see the factual matrix of this case.

10. According to Railway/Party No.1, Bhimrao i.e. father of the petitioner died on 03.09.2003. Badge is seized on 5.12.2011. Mother of the Petitioner applies for renewal of the Badge of his father on 18.07.2011. These facts are not denied by the union. According to the petitioner Railway issued identity card in favour of petitioner, but according to Railway it is illegal, because it is not issued by competent person i.e. according to Railway identity card issued by Parcel Supervisor, he is not competent to issue identity card.

11. Union filed an application (I.A. No. 5) by asserting that, application I.A. No.4 for dismissal of the claim are not filed by competent person because it is not signed by authorized person. So he pray that, management must be prosecuted for given false information to the Tribunal under section 195 of IPC and 340 of CRPC. This was opposed by the Party No. 1. That, "he is having associate lawyers working with him and in his absence; the associate lawyers shall take care of the matters. And also asserted that, "the applicant's representative is unnecessarily making hue and cry by moving such frivolous application, there being no merits in the application, the application deserves to be rejected with costs."

On hearing a both party. At the time argument on 16.12.2019 representative of Railway and there advocate are present. Witness, Smt. K. Mangamma Rao is present. In support of application I.A. No. 4 management filed copy of agreement dated 03.04.2017 and Railway circular dated 09.04.2017. I.A. No. 5 is not supported by affidavit on the contrary reply supported by affidavit. So it is not appear that, management had bad intention to sign the application I. A. No.4, but it appears that, his associate on this filed bonafidely. So I.A. No. 5 is rejected.

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

13. Judging the present case in hand with the touch stone of the principles as mentioned above, as I observed that, the of the workman, measure matter is settled petitioner and Party No. 1, but Railway phrase to take such a step near out two to three years. It is possible that, at the time of reconciling proceeding before RLC, matter may be solved. So in my humble opinion, petitioner/applicant entitled to compensation of Rs. 25,000. Hence, it is ordered.

ORDER

Shri. Ashwin Bhimrao Ambade, License Porter is a workman

The action of the management not to allow him to work after 05/12/2011 even after receiving the license fee up to 31/12/2011 and sudden seizure of badge without any show cause is not legal and justified, but he is not entitled to original badge of his father Bhimrao Ambade. Petitioner is entitled of Rs. 25,000/- (Rupees twenty five thousand only) as compensation in lie of harassment and pain and suffering. Management/Party No.1 should comply the order within one month from the date of publication of this award in official gazette, failing which, workman is entitled for interest of 6% per annum from the date of dues amount. The workman is not entitled for any other relief.

SHYAM SUNDAR GARG, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 225.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 39/2015-16) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-41011/66/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2015-16) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Nagpur* as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 17.02.2020.

[No. L-41011/66/2015-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

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

Case No. CGIT/NGP/39/2015-16

Date: 07.01.2020

Party No.1(a) The Divisional Railway Manager,
South Eastern Central Railways,
Bilaspur (CG)
BILASPUR

Party No.1(b) The Sr. Divisional Commercial Manager,
South East Central Railway,
Kingsway Station Road
Nagpur-440001

Party No.1(c) The Chief Parcel Supervisor,
South East Central Railway,
Parcel Office,
Gondia.

V/s

Party No.2: The General Secretary,
Parcel Porter Sanghatana,
New Mankapur, Plot No.37,
Mhada Colony ke pass,
Nagpur-440030.

AWARD

(Dated: 07th January, 2020)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of South Eastern Central Railway and their workman, Smt. Ravitabai w/o Rajkumar Badge through the union, for adjudication, as per letter **No. L-41011/66/2015-IR(B-I) dated 07.12.2015**, with the following schedule:-

"Whether Smt. Ravitabai W/o Rajkumar Badge, License Porter is a workman?"

"Whether the action of the management not to allow her to work even after receiving the license fee up to 13/07/2011 and sudden seizure of badge (Number-50) without any show cause is legal

and justified? If not, then what relief Smt. Ravitabai w/o Rajkumar Badge, License Porter is entitled to”?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to which, the workman Smt. Ravitabai W/o Rajkumar Badge (“The workman” in short) through his union (“The union” in short) filed the statement of claim and the management of SECR, (“Party No.1” in short) filed the written statement.

3. On behalf of union and workman, statement of claim was filed by asserting the following facts:-

- i) “That, the Parcel Porters Sanghatana is a registered Trade Union under the Indian Trade Unions Act, 1929 vide Registration No. NGP: 4403, dated 29/07/1997. The claimant is the member of the Union.”
- ii) “That, the Applicant obtained his Metal Badge to perform his duties as Station licensed Porter at Gondia Railway Station of South East Central Railway of Nagpur Division. The License issued to him as an authorization to perform his duty as licensed porter under Rule 3014 & 3015 of Indian Railway. Applicant undergone Medical Fitness and found it for such job. The fit certificate issued by the Medical Officer I/C Railway Hospital Nagpur.”
- iii) “There is strong relationship exist in between the workman Applicant with the Management of Senior Divisional Commercial Manager S.E.C. Railway of Nagpur Division. The workman was regularly, promptly performing his regular duties with the Station Manager S.E.C. RAILWAY Gondia, and during the Commercial Officer visit the said officer snatched the license from the Porter without valid reason.”
- iv) “That, the workman is livelihood is depending on it. He is the bread winner of his family and such rude behavior is misuse of official position. It is unfair labour means & violation of law.”

And prayed that, respondent No. 1 be ordered to return his badge to earn for his livelihood immediately & also prayed that, he is entitled to lay off compensation and other relieves.

4. Management/Party No. 1 filed reply by denying the contents of para no. 1, 4, 5, 9, 14 and 15 i.e. the material facts, which were asserted in the statement of claim, in following ways:-

- i) “That, the applicant has filed the present application through the Parcel Porter Sanghatana alleged to be registered Trade Union under the Trade Unions Act, 1929 but has miserably failed to file the certain registration on the record and it is also specifically denied that, the applicant is the member of the said union through which he has filed the present application.”
- ii) “That, the applicant has not produced any medical fitness from the competent medical authorities i.e. Medical Officer of Railway Hospital Nagpur on the record and therefore the contents are denied specifically and also submitted that, the applicant has got falsely prepared the I card to be used as license porter within the railway platform of Gondia Railway Station. As it was discovered that the applicant has wrongly using the badge No. 50 without any authority therefore the said badge No. 50 was taken out from the custody of the applicant.”
- iii) “That, it is boundent duty upon the officials of the respondent No. 1 to curve and restrict the persons working unauthorisedly on the railway platform wearing the dress of porters imitating that they are license porter therefore there was nothing wrong on the part of officials of the respondent No.1 to taken out the badge No. 50 from the custody of the applicant. The officials of the respondent No.1 have not violated any rules and regulations as per the railway manual.”
- iv) “That, It is not within the knowledge of the answering respondent as to whether the applicant is the only bread earner in his family but due to misdeed of the applicant he has to save his own guilt and for that the respondent No. 1 should not be held responsible or liable to compensate him in terms of the prayer clause as prayed for.”

And prayed that, applicant/petitioner is not entitled/relief. They also submitted that, porter license may be transfer to his son or if he has not son or his son is no alive to his nearest relative in the event of death.

- v) “Management also submitted that, affidavit produced by the license porter under the seal of the Magistrate may be taken as a proof of the dependents of the family on the license porter and the nature of relationship of the nominee and the person in whose favour the license is transfer should be physically fit to perform the duty of license porter and this should also be certified by

the Medical Officer from the Government Railway Hospital. The said provisions has not been compiled by the applicant and therefore the grievance of the applicant should be rejected and it be rejected with heavy compensatory costs.”

5. The union/workman did not file any rejoinder. On the basis of the pleadings of both parties, following **Points of Determination** is fixed:-

- i) Whether sudden seizure of badge is illegal?
- ii) Whether the action of the management/Party No. 1 for not to allow the applicant/workman for work after 13/07/2011 is legal and justified?
- iii) Whether workman is entitled to any relief?

Reason for Decisions:

6. On behalf of the management/Party No. 1, it was argued that, he obtained Metal Badge to perform his duties as Station license porter. He undergone Medical Fitness and he paid license fees and obtained metal Badge with uniform and identity card, but Commercial Officer snatched his license without valid reason. This argument was denied by management/Party No. 1 by submitting the following facts:-

- i) That, the applicant was silent all over the 9 years and this delay of 9 year has not been explained by the applicant.
- ii) That, Late Rajkumar Badge has not nominated any of his family members in the service book which would entitle the applicant to get the transfer of badge No. 50 in his name.
- iii) That, Badge No.50 was used by a fictitious person for illegal personal gain and when it was discovered by the officials of non-applicant No.1 the said Badge No.50 was seized. Therefore, there is no illegality on the party of the officials of Party No.1.

Now I want to see the evidence part.

7. Petitioner Ravitabai examined herself as a witness (PW-1) and management/Party No. 1 examined the Chief Office Superintendent, Smt. K. Mangamma. They are cross-examined by opposite party. Now I want to see the evidence of petitioner first.

Ravitabai (PW-1) supported her statement of claim in her chief examination, but in her cross examination she admitted some following facts:-

- i) “The Badge no.50 has been originally issued in favour of my husband, Rajkumar Badge. I got this badge after the death of my husband. The witness volunteers that, I worked in railway for three years after the death of my husband”.
- ii) “That, after the death of my husband, I informed the railway about the death, but I did not file any document in this regard. I do not know whether I have mentioned this fact in my statement of claim or not. I do not know about the statement of claim. I do not know about the contents mentioned in evidence on affidavit. I passed Class III. I do not know English and Law”.

On perusal of the statement of Ravitabai, it appears that, she has no knowledge of English and law. She is only three class passed. She also asserted that, she is the wife of diseased Rajkumar, who was legally holder of Badge No.50. It also appears that, she is genuine witness. Now I want to see the evidence of the Management/Party No. 1.

8. Management/Party No. 1 witness, Smt. K. Mangamma Rao (MW-1) in her examination chief, supported the defence of Party No. 1, but in her cross examination, she admitted some facts:-

- i) “I do not personally know Ravitabai w/o Rajkumar, Badge no. 50. It is not correct to say that, at present she is engaged at Gondia Railway Station as a licensed porter. I am not the authority to issue the license to the license porter”.
- ii) “There is no employee employer relation between Ravitabai and Sr. D.C.M. We have not issued any license in favour of Ravitabai”.
- iii) “Rajkumar the holder of badge no. 50 was her husband. In para 7, C to C portion of my affidavit, I have mentioned the fact on the basis of statement of claim filed by the Union on behalf of Ravitabai after discussion with my advocate”.

- iv) “Witness volunteers that, in 2011 management/Party No. 1 came to know about the death of Rajkumar, so they seized the license and badge of Rajkumar”.
- v) “Railway issued the cash receipts, which are enclosed with the statement of claim. Receipts carry on badge no.50. Railway has no knowledge about the death of Rajkumar on 20.07.2007”.

On perusal of the statement of MW-1, it appears that, she is Chief Office Superintendent in S.E.C. Railway. So it is quite possible that, she did not personally know Ravitabai (Petitioner). Party No. 1 (Railway) did not examine the Senior D.C.M. or Chief Parcel Porter Supervisor or the Station Master. They did not produce original record of Ravitabai or Rajkumar in which, they deposited renewal fees of License Porter after the death of her husband. So Party No. 1's evidence is not appearing to be genuine but it is formality. It also appears that, Party No.1 did not come in clean hand.

9. Party No. 1 took an objection on the maintainability of this petition, on the ground of (i) delay of 9 years and (ii) That Parcel Porter Sanghata is not a registered union and petitioner is not a member of this Union. On perusal of the statement of Ravitabai (PW-1), it appears that, she filed this claim on behalf of Union, but she did not file any documents regarding registration of this Union, but on perusal of the record it appears that, in statement of claim, letter head of the Union. So that, it is registered as NGP: 4403, dated 29/07/1997. This fact was denied by the Party no. 1 by filing relevant documents. On the other hand, this case firstly came before RLC for conciliation, but Party No. 1 Railway failed to conciliate the matter before RLC. It was duty of the RLC to check the genuineness of the Union. This matter was referred from Ministry of Labour and Employment. This Tribunal is duty bound to answer this reference. So in my humble opinion, on the basis of technicality, genuine claim cannot not be rejected.

10. On going the above discussion, it appears that, (On perusal of document M-1 and M-2 and para 8 and 9 of evidence on affidavit of MW-1) it appears that, Badge of License Porter may be transferred to her/his near relatives including brother's son or wife brother. In this case, she is the wife of original Badge holder. Nothing in this record appears that, she is illegible for the post of License Porter. According to her, she informed the Railway/Party No. 1, but according to Railway/Party No. 1, she did not apply. In the above discussion, I also observed that, Party no.1/Railway did not examine the concerned person. So adverse inference can be drawn against the Party No. 1 and workman, Ravitabai is entitled to transfer of badge of licensed porter of her husband Rajkumar. Hence it is ordered:

ORDER

- (i) Smt. Ravitabai w/o Rajkumar Badge, License Porter is a workman for the propose of Industrial Disputes Act, 1947.
- (ii) The action of the management not to allow her to work even after receiving the license fee up to 13/07/2011 and sudden seizure of badge (Number-50) without any show cause is not legal and justified. Smt. Ravitabai is entitled to transfer of badge of licensed porter of her husband Rajkumar, but she is not entitled to original badge of her husband Rajkumar. Petitioner is entitled of Rs. 15,000/- (Rupees fifteen thousand only) as compensation in lieu of harassment and pain and suffering. Management/Party No.1 should comply the order within one month from the date of publication of this award in official gazette, failing which, workman is entitled for interest of 6% per annum from the date of dues amount. The workman is not entitled for any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट हैदराबाद प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 47/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 प्राप्त हुआ था।

[सं. एल-12012/59/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of Hyderabad and their workmen, received by the Central Government on 17.02.2020.

[No. L-12012/59/2015-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 3rd day of January, 2020**INDUSTRIAL DISPUTE No. 47/2015****Between:**

Sri E. Srinivas,
Plot No.147,
H.No. 48-92/1,
Rami Reddy Nagar,
Near IDPL Colony,
Hyderabad -500037.

...Petitioner

AND

The Deputy General Manager(S),
State Bank of Hyderabad,
Zonal Office, R.P. Road,
Secunderabad.

...Respondent

Appearances:

For the Petitioner : M/s. K. Raghuram Reddy & M. Subrahmanya Sastry, Advocates

For the Respondent : M/s. N. Vinesh Raj, G. Pavan Kumar & Vikas Sharma, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/59/2015-IR(B.I) dated 2.6.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of State Bank of Hyderabad and their workman. The reference is,

SCHEDULE

“Whether the action of the management of State Bank of Hyderabad, Secunderabad in terminating the services of Sri E. Srinivas, Clerk is legal and justified? If not, to what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 47/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 3rd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 227.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 214/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 प्राप्त हुआ था।

[सं. एल-12011/61/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 214/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 17.02.2020.

[No. L-12011/61/2014-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 22nd day of January, 2020**INDUSTRIAL DISPUTE No. 214/2014****Between:**

The General Secretary,
All India Safai Amador Congress,
1382, Panjabgadda,
Ramavaram – 507118,
Khammam Dist.

...Petitioner

AND

1. The Chief General Manager,
State Bank of India,
Local Head Office, Koti,
Hyderabad.
2. The Asst. General Manager (Admn.)
State Bank of India, Regional Office,
Kakinada.

...Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. B.G.Ravindra Reddy & Y. Ranjeeth Reddy, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No. L-12011/61/2014-IR(B.I) dated 29.9.2014 whereunder this Tribunal is required to adjudicate the dispute i.e.,

“Whether the action of the Management of State Bank of India, Innespet Branch of East Godavari Distt. Andhra Pradesh in terminating the service of Smt. Meesala Bhagyalakshmi, Full Time Safai Karmachari/Scavenger is fair, proper and justified? If not, to what relief the workman is entitled to?”

After receiving the above said reference, it was registered as ID No. 214/2014 in this Tribunal and notices were issued to both the parties and procured their presence.

2. The case was posted for filing of counter and documents by the Respondent bank. At such stage, workwoman Smt. Meesala Bhagyalakshmi has filed a Memo to withdraw the present case stating therein that, after receipt of reference of the matter to this Tribunal, she was engaged through Contractor and presently she is working in Innespet Branch. It is also stated that, she intended to withdraw the present ID case and submitted that she has no claim to raise against the Respondent management.

3. Accordingly, the copy of the Memo was served to the Respondent. The Learned Counsel appearing for the Respondent has not raised any objection for withdrawal of the case.

3. In view of the memo filed by the workwoman and as per the consent of the Respondent, for withdrawal of the case the Memo was accepted and as such the case is allowed to be withdrawn by the Petitioner Union.

The reference is answered accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, and corrected by me on this the 22nd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 228.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 52/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-41012/20/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2014) of the 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 17.02.2020.

[No. L-41012/20/2014-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT LUCKNOW

PRESENT: P. K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 52/2014

Ref. No. L-41012/20/2014-IR(B-I) dated: 28.08.2014

BETWEEN :

Shri Rahul Vema, S/o Shir Jagdish Kumar Verma
355/136, Kandari Rakabganj
Lucknow

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.
2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/20/2014-IR(B-I) dated: 28.08.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Rahul Vema, S/o Shir Jagdish Kumar Verma, 355/136, Kandari Rakabganj, Lucknow and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

“KYA M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SHRI RAHUL VERMA PUTRA SHRI JAGDISH KUMAR VERMA KO DINANK 28.09.2009 KO NAUKARI SE NIKALA JANA NYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO VAADI KIS RAHAT KO PANE KA HAQDAAR HAI?”

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.07.2006. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 28.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 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; moreover the railway management entered into an agreement with the opposite party No. 02 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 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite party No. 1, reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 19.07.2018; and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence. Accordingly, in rebuttal, the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No.2.

9. Heard the authorized representative of the OP No. 1, Sri U.K. Bajpai, only and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others* 2008 (118) FLR 1164, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd.* 1979 (39) FLR 70 (SC), *V.K. Raj Industries v. Labour Court and others* 1979 (39) FLR 70 (SC), *Airtech Private Limited v. State of U.P. and others* 1984 (49) FLR 38 and (Alld.) *Meritech India Ltd. v. State of U.P. and others* 1996 (74) FLR 2004; wherein it was observed by the Apex Court:

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording finding that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

21st January, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 229.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 21/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था

[सं. एल-41012/54/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 229.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2013) 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 17.02.2020.

[No. L-41012/54/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 21/2013

Ref. No. L-41012/54/2012-IR(B-I) dated: 13.03.2013

BETWEEN :

Shri Brijesh S/o Shri Putti Lal,
Village & Post : Azgain
District - Unnao (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.
2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/54/2012-IR(B-I) dated: 13.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Brijesh S/o Shri Putti Lal, Village & Post : Azgain, District - Unnao (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.
2. The reference under adjudication is:
“WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI BRIJESH S/O SHRI PUTTI LAL W.E.F. 27.04.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?”
3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 16.06.2006. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.
4. The opposite party No. 01 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; moreover the railway management entered into an agreement with the opposite party No. 02 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 that the claim of the workman be rejected without any relief to him being devoid of merit.
5. The opposite party No. 2 did not file any written statement in spite of repeated notices.
6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite party No. 1, reiterating the averments already made in the statement of claim.
7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 19.07.2018; and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence.

Accordingly, in rebuttal, the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No.2.

9. Heard the authorized representative of the OP No. 1, Sri U.K. Bajpai, only and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC)*, *V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC)*, *Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38* and *(Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording finding that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

21st January, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 230.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 18/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-41012/52/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2013) 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 17.02.2020.

[No. L-41012/52/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P.K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 18/2013

Ref. No. L-41012/52/2012-IR(B-I) dated: 11.03.2013

BETWEEN :

Shri Vimlesh Kumar S/o Nand Kishor
 Vill: Sikandarpur, Post: Jetttiur
 Tehsil : Hasanganj,
 District - Unnao (UP)

AND

1. The Divisional Railway Manager
 Northern Railway
 DRM, Hajratganj, Lucknow.
2. M/s. Shahid Faizan Ahmed and Brothers
 654, Begum ka Makbara
 Janpad Faizabad.

AWARD

1. By order No. L-41012/52/2012-IR(B-I) dated: 11.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Vimlesh Kumar S/o Nand Kishor, Vill: Sikandarpur, Post: Jetttiur, Tehsil : Hasanganj, District - Unnao (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI VIMLESH KUMAR S/O SHRI NAND KISHORE W.E.F. 25.09.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 24.04.2005. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 26.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 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; moreover the railway management entered into an agreement with the opposite party No. 02 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 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite party No. 1, reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 26.10.2018; and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence. Accordingly, in rebuttal, the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No.2.

9. Heard the authorized representative of the OP No. 1, Sri U.K. Bajpai, only and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others* 2008 (118) FLR 1164, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd.* 1979 (39) FLR 70 (SC), *V.K. Raj Industries v. Labour Court and others* 1979 (39) FLR 70 (SC), *Airtech Private Limited v. State of U.P. and others* 1984 (49) FLR 38 and (Alld.) *Meritech India Ltd. v. State of U.P. and others* 1996 (74) FLR 2004; wherein it was observed by the Apex Court:

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording finding that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

21st January, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 231.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 54/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-41012/23/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2014) 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 17.02.2020.

[No. L-41012/23/2014-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT LUCKNOW

PRESENT: P. K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 54/2014

Ref. No. L-41012/23/2014-IR(B-I) dated: 04.09.2014

BETWEEN :

Shri Manoj Kumar Awasthi S/o Shri Mool Chand Awasthi
Add- 11E/23, Daboli
Kanpur (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.
2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/23/2014-IR(B-I) dated: 04.09.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Manoj Kumar Awasthi S/o Shri Mool Chand Awasthi, Add- 11E/23, Daboli, Kanpur (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

“KYA M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SHRI MANOJ KUMAR AWASTHI PUTRA SHRI MOOL CHAND AWASTHI KO DINANK 28.04.2009 KO NAUKARI SE NIKALA JANA NYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO VAADI KIS RAHAT KO PANE KA HAQDAAR HAI?”

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.07.2006. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 28.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 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; moreover the railway management entered into an agreement with the opposite party No. 02 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 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite party No. 1, reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 19.07.2018; and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence. Accordingly, in rebuttal, the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No.2.

9. Heard the authorized representative of the OP No. 1, Sri U.K. Bajpai, only and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC)*, *V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC)*, *Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38* and (Alld.) *Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording finding that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

21st January, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 232.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 20/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-41012/50/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2013) 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 17.02.2020.

[No. L-41012/50/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 20/2013

Ref. No. L-41012/50/2012-IR(B-I) dated: 13.03.2013

BETWEEN :

Shri Suresh Kumar S/o Thakur Prasad
Vill. & Post : Kakori, M. Balinagar
District - Unnao (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.
2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/50/2012-IR(B-I) dated: 13.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Suresh Kumar S/o Thakur Prasad, Vill. & Post : Kakori, M. Balinagar, District - Unnao (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI SURESH KUMAR S/O SHRI THAKUR PRASAD W.E.F. 25.09.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?”

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.09.2003. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 30.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 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; moreover the railway management entered into an agreement with the opposite party No. 02 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 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite party No. 1, reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 19.07.2018; and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence. Accordingly, in rebuttal, the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No.2.

9. Heard the authorized representative of the OP No. 1, Sri U.K. Bajpai, only and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others* 2008 (118) FLR 1164, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd.* 1979 (39) FLR 70 (SC), *V.K. Raj Industries v. Labour Court and others* 1979 (39) FLR 70 (SC), *Airtech Private Limited v. State of U.P. and others* 1984 (49) FLR 38 and (Alld.) *Meritech India Ltd. v. State of U.P. and others* 1996 (74) FLR 2004; wherein it was observed by the Apex Court:

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording finding that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

21st January, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 233.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 22/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-41012/55/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2013) 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 17.02.2020.

[No. L-41012/55/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 22/2013

Ref. No. L-41012/55/2012-IR(B-I) dated: 11.03.2013

BETWEEN :

Shri Jugal Kishor S/o Shri Chedda Lal
Village & Post : Azgain
District – Unnao (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.
2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/55/2012-IR(B-I) dated: 11.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Jugal Kishor S/o Shri Chedda Lal, Village & Post : Azgain, District – Unnao (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI JUGAL KISHOR SHRI CHEDDAR LAL W.E.F. 25.04.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?”

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.09.2003. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 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; moreover the railway management entered into an agreement with the opposite party No. 02 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 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite party No. 1, reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 19.07.2018; and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence. Accordingly, in rebuttal, the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No.2.

9. Heard the authorized representative of the OP No. 1, Sri U.K. Bajpai, only and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others* 2008 (118) FLR 1164, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd.* 1979 (39) FLR 70 (SC), *V.K. Raj Industries v. Labour Court and others* 1979 (39) FLR 70 (SC), *Airtech Private Limited v. State of U.P. and others* 1984 (49) FLR 38 and (Alld.) *Meritech India Ltd. v. State of U.P. and others* 1996 (74) FLR 2004; wherein it was observed by the Apex Court:

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording finding that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

21st January, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 234.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 19/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-41012/53/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2013) 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 17.02.2020.

[No. L-41012/53/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 19/2013

Ref. No. L-41012/53/2012-IR(B-I) dated: 11.03.2013

BETWEEN:

Shri Baldev S/o Shri Chada Lal
Village & Post : Azgain
District - Unnao (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.
2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/53/2012-IR(B-I) dated: 11.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Baldev S/o Shri Chada Lal, Village & Post : Azgain, District - Unnao (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI BALDEV S/O SHRI CHEDDAR LAL W.E.F. 25.09.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?”

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 24.04.2005. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 26.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 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; moreover the railway management entered into an agreement with the opposite party No. 02 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 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite party No. 1, reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 26.10.2018; and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence. Accordingly, in rebuttal, the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No. 2.

9. Heard the authorized representative of the OP No. 1, Sri U.K. Bajpai, only and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others* 2008 (118) FLR 1164, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd.* 1979 (39) FLR 70 (SC), *V.K. Raj Industries v. Labour Court and others* 1979 (39) FLR 70 (SC), *Airtech Private Limited v. State of U.P. and others* 1984 (49) FLR 38 and (Alld.) *Meritech India Ltd. v. State of U.P. and others* 1996 (74) FLR 2004; wherein it was observed by the Apex Court:

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording finding that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

21st January, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 235.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 17/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-41012/51/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2013) 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 17.02.2020.

[No. L-41012/51/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 17/2013

Ref. No. L-41012/51/2012-IR(B-I) dated: 11.03.2013

BETWEEN :

Shri Thakur Prasad S/o Shri Chedda Lal
Vill. & Post Azgain
Distt. Unnao (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.
2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/51/2012-IR(B-I) dated: 11.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Thakur Prasad S/o Shri Chedda Lal, Vill. & Post Azgain, Distt. Unnao (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s. Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI THAKUR PRASAD S/O SHRI CHEDDAR LAL W.E.F. 25.09.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?”

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 04.05.2005. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 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; moreover the railway management entered into an agreement with the opposite party No. 02 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 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite party No. 1, reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 19.07.2018; and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence. Accordingly, in rebuttal, the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No. 2.

9. Heard the authorized representative of the OP No. 1, Sri U.K. Bajpai, only and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC)*, *V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC)*, *Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38* and *(Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording finding that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

21st January, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 236.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार न्यू मंगलोर पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 05/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-45011/1/2009-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 17th February, 2020

S.O. 236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2010) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court*, Bangalore as shown in the Annexure, in the industrial dispute between the management of New Mangalore Port Trust and their workmen, received by the Central Government on 17.02.2020.

[No. L-45011/1/2009-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALOREDATED : 07TH FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 05/2010I Party

The Secretary,
New Mangalore Port Users Staff
Association, South Warf, Panambur,
MANGALORE – 575 010.

II Party

The Chairman,
New Mangalore Port Trust,
Panambur,
MANGALORE – 575 010.

Appearance :

Advocate for I Party : Mr. Sathyanarayana Bhat. P.V

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-45011/1/2009-IR(B-II) dated 21.01.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“1. Whether the category of Foreman/ Asst. Foreman are ‘workmen’ under Section 2(s) of the Industrial Dispute Act, 1947? 2. Whether there is employer and employee relationship between these Foremen / Asst. Foremen and the management of NMPT? 3. Whether the New Mangalore Port Users Staff Association is justified in demanding absorption of these Foremen/Asst. Foremen under the NMP Regd. Cargo Handling Workers (Regulation Of Employment) Scheme, 1990? To what relief they are entitled to?”

1. The 1st Party Union has espoused the cause of Foremen and Asst. Foremen, employed in New Mangalore Port. It is claimed by the 1st Party Union that,

Under Clause 13 of settlement dated 06.07.2009 between New Mangalore Port Users Staff Association and New Mangalore Port Stevedores Staff Managing Association under Section 12(3) of 'the Act' duty and responsibility of Foremen and Asst. Foremen is contemplated; accordingly, Foremen will be incharge of the loading and unloading of cargo in the whole ship; Foremen will be incharge of loading / unloading of operations in the hatch. They do not enjoy Administrative or Managerial functions; they are not working in supervisory capacity. They have worked in new Mangalore Port Trust since 25-30 Years continuously. They are directly involved in loading/ unloading cargo into / from the ships calling at New Mangalore Port, as incharge of loading/ unloading of cargo in the ship, at New Mangalore Port (for brevity 'Port' herein after).

The main function of the 'Port' is to provide facility for loading / unloading of cargo, storage, intra-port transportation, providing cranes and other missionary's for loading unloading work, supply of labour by Stevedores against requisition. The Port uses viz., steamer/ shipping agents' Stevedores and C & F Agents having licences under the Provisions of Major Port Trust Act, 1963. The Port Trust collects charges as provided under the said Act for rendering service. Licensed Stevedores and C & F Agents do the work of Stevedoring / C & F workers for the exports/ importers of the cargo on contract basis on payment of charges. The Stevedores and C & F agents do all works pertaining to loading / unloading on cargo on shore by dock labour.

One of the works is, dock labour by using equipment's provided by the ship loading / unloading of cargo. That can be done directly or through authorised persons Under Section 42 of MPT Act. The work performed by Authorised C & F Agents is far and behalf of the NMPT. The Stevedores / C & F Agents carryout their work through cargo handling workers of registered *cargo handling workers Administrative Wing Pool* and also from separate Private Pool.

It is further claimed that, the NMPT decasualised certain category of workers working under a Private Pool called NMP Listed Workers Managing Committee w.e.f 15.03.1990, in accordance with the discussion and conclusions arrived between the representatives of NMPL Workers Managing Committee and Karnataka Dock Workers Union. Accordingly, 1144 workers in various categories were absorbed by NMPT on 15.03.1990. It

was in accordance with a scheme called Paradip Port Cargo Handling Workers (Regulation of Employment) Scheme. Consequently, the workers became the employees of the Port and their service conditions are governed by the Provision of this Scheme and settlement arrived between Workmen Union and the Port Trust Management. The Dock Labourers are getting all benefits on par with the Employees of NMPT w.e.f 15.03.1990. There is no Dock Labour at the Port.

It is further claimed that, the member of the Union i.e. the workmen category was left out while preparing the Scheme for takeover though vide memorandum dated 10.02.1990. As per Annexure-4 of the settlement / item 15 / 15A the Cargo handling and allied categories of Port & Dock workers should be absorbed and duly employed by the Port Trust of Tuticorin, New Mangalore, Vishakhapatnam and JNPT Ports. In another All India Settlement 02.08.2000, it was agreed by the Management that the previous Settlement 06.12.1994 is binding and will be implemented within 3 months.

However, they have violated the terms of Settlement thus, they have violated Settlements arrived under Section 12(3) of 'the Act'. The 1st Party Workmen are issued Port entry Permits renewable after every six weeks. The C.I.S.F Office functioning at NMPT maintains the details of the passes from 1980 onwards. Casual and other workers entering the Port for temporary work are issued daily passes only. The services of the 1st Party Workmen is essential for safe and correct loading / unloading of the cargo. The Award passed by the CGIT Bhubaneswar in similar matter in case No.112/2001 holding that the workmen are entitled for regularisation under Paradip Port Trust is upheld by the Hon'ble Supreme Court.

Hence, prayer for regularisation / absorption under NMP Cargo handling workers (Regulation of Employment) Scheme w.e.f 15.03.1990 payment of wages at the rates prescribed by the Government of India / Ministry of Shipping till such absorption etc.,

2. The counter by the 2nd Party to the claim of the 1st Party is, the present claim is based on the Settlement dated 06.07.2009 entered into between New Mangalore Port Users Staff Association and New Mangalore Port Stevedores Staff Managing Association. Since, the 2nd Party is not a Party to the Settlement, the claim based on the said Settlement is not binding on them. The 2nd Party is a major Port within the meaning of Sec 8 of Indian Port Act, 1908 (15 of 1908). The appointments in the 2nd Party are strictly as per the sanction of the Central Government from time to time. There is no approved / sanctioned post of Foremen / Assistant Foremen in the 2nd Party. The 2nd Party has nothing to do with the New Mangalore Port Stevedores Staff Managing Association. There is no Employer-Employee relationship between the 2nd Party Management and 1st Party Union or persons claiming under the said Union. The reference is not annexed with list of names of the concerned Foremen / Assistant Foremen. Some of the members of the 1st Party Union might have been employed / engaged by the Respective Stevedores and Clearing Agents and their salary is paid by their Employer / Stevedores / Agents; the 2nd Party has no control or supervisions over the 1st Party Union. The License issued by the 2nd Party to any person for the security reason and for identification purpose will not give status of an employee of the 2nd Party; they do not discharge any of the functions of the 2nd Party; they are performing the duties and functions which is in the nature of supervisory; they do not come under the definition of 'workmen' under the ID Act. The 2nd Party does not undertake the cargo handling service but only provides berthing facility for the Ships and cargo handling facilities to the Stevedores. The Stevedores undertake and execute the work for Exporters / Importers of cargo. The 2nd Party does not require the services of Foremen / Assistant Foremen, as per the provisions contained in New Mangalore Cargo Handling Workers (Regulation of Employment) Scheme 1990 for undertaking the cargo handling operations.

It is further contended that, at the request of listed workers to take over the Management of listed workers of Managing Committee, the 2nd Party took over the Management under New Mangalore Port Cargo / Handling Worker (Regulation of employment) Scheme 1990 without any transfer of accounts / assets and liabilities of the Management Committee. But engagement of cargo handling workers by allotment to the indenting Stevedores and mode of payment of wages to the workers continued as before; the Foremen / Assistant Foremen at no point of time were the part of Cargo Handling workers or listed workers. The Stevedores and C & F Agents indent following 9 category of cargo handling workers only i.e.,

- (i) Winchmen,
- (ii) Tally Clerk
- (iii) Signalmen
- (iv) Shore Leader
- (v) Hatch Tindel
- (vi) Shore Worker

- (vii) Hatch Worker
- (viii) Female Mazdoor
- (ix) Machine Stitchers

The Foremen / Assistant Foremen are employed and paid by Stevedores / C & F Agents. Once the gang of cargo handling workers are allotted to the particular Stevedores / C & F Agents for operation in a particular Ship, they are under the control and supervision of those Stevedores and C & F Agent through their Foremen / Assistant Foremen. As per the terms of Stevedoring license, the Stevedores provide supervision of the workers employed by them to ensure maximum productivity consistent with requirements of safety. Engaging Foremen / Assistant Foremen by Stevedores is in compliance of license and not of employment. The Stevedores and C & F Agents are not given license to carry out the functions of the 2nd Party; the Stevedores are not the contractors of the 2nd Party; the 2nd Party does not undertake Cargo handling operations of the users. The service conditions of the Foremen / Assistant Foremen are governed by the Settlements between the New Mangalore Port Users Staff Association and the Union of said Foremen / Assistant Foremen; the 2nd Party is not a party to those settlements; the service of the 1st Party is not required for the 2nd Party.

3. Both parties have adduced evidence and submitted argument. Written argument is submitted by learned counsel for the 1st Party.

4. The 2nd Party adduced evidence through its Senior Officer who reiterated the stand of the 2nd Party. During the course of the cross examination, the witness admits the suggestion that the 1st party workmen are working in the Warf area and are issued passes through Stevedoring agent.

Rebuttal evidence is adduced through WW-1 to WW-3. WW-1 is the President of the 1st Party Association and also a Foreman; his evidence was to the limited extent of establishing that, the Industrial Dispute is raised after the members of the 1st Party Association unanimously passed a solution to raise the Dispute for regularization etc.

During the cross examination he admits the suggestion that, no cargo handling worker was issued letter of appointment by the 2nd Party; this Stevedores are only registered with NMPT for the purpose of import and export of cargo. He also admits the suggestion that, there are no posts of Foremen / Assistant Foremen in the 2nd Party and NMPT does not undertake the cargo handling work.

WW-2 is the Secretary of the 1st Party Union. As per his examination in chief evidence, Section 42 of the Major Port Trusts Act empowers NMPT to appoint Stevedores for handling the cargo in their premises; while handling cargo some internationally accepted norms has been followed. The chief Officer of the Ship / incharge of the ship allows the handling of the cargo in the ship only after the foremen who is specially experienced in handling the cargo reports for work. The Foreman is doing the supervisory work while loading and unloading but he is not empowered with supervisory right, he do not have any administrating power. The 1st Party comes within the definition of Section 2 of Indian Dock Labourers Act, 1934, similarly placed workers' service is regularised in the Port trust of Mumbai, Paradip, Kolkata and other major Ports.

WW-3 who has worked as Board Supervisor of V.O Chidambarnar Port Trust, Tuticorin, was examined to produce Ex W-12 / Office Order promoting him to the post of Board Supervisor.

5. The Schedule to the reference order call for finding on three issues. For convenience let me record the finding commencing from the first issue.

- (i) The elementary question is whether the Foremen / Assistant Foremen are the workmen under Sec 2(s) of 'the Act'. Infact, they are the Supervisors who supervise the cargo handling but do not enjoy supervisory right. It is nobody's case that, they exercise managerial or administrative supervision over the cargo handling workers. Nowhere it is stated that their income exceeds the limit of Rs. 10,000/- per men sum as contemplated by IV of Section 2(s). In that view of the matter it can be safely held that they fall under the category of 'workmen' contemplated by Section 2(s) of the Act.
- (ii) This issue pertains to Employer-Employee relationship. It is nobody's case that they are appointed by the 2nd Party or paid wages by the 2nd Party for the work allotted to them by Stevedoring Agency. There is no evidence establishing that, the category of Foremen / Assistant

Foremen work under the direct supervision of the 2nd Party. They are not from the pool of listed workers. No case is made out to the effect that, the 2nd Party is the Principal Employer and the Stevedoring Agency is a name sake contractor to get done the loading and unloading of the cargo from the ship / hatch. Nothing is shown by the 1st Party that, loading and unloading work is out sourced to the Stevedoring Agent / Agency. It is alleged by the 1st Party that, the 2nd Party being a principal Employer have failed to discharge its obligations under Contract Labour (Regulation and Abolition) Act, 1970. Even if that were to be so, the platform to the 1st Party to agitate their grievance is definitely under the provisions of Contract Labour (Regulation and Abolition) Act, 1970. There is no contract between the Stevedores or Stevedores Association with the 2nd Party; they are all private service providers in the berth provided by the 2nd Party. In the absence of any concrete evidence bridging the 1st Party Foremen / Assistant Foremen, the conclusion is, there is no relationship of Employee and Employer between the parties.

- (iii) The issue pertains to the justification of their demand for absorption under a Scheme “NMP Registered Cargo Handling Workers / Regulation of Employment Scheme 1990”. As shown in the pleadings, the Scheme is promulgated in pursuance of a resolution dated 30.09.1988 of NMPT Board to take up the proposal of decasualization demanded by listed workers with the Ministry of Shipping. A Scheme was evolved to take over the workers employed by NMP listed workers Managing company (Pvt) Limited and nine category of workmen were absorbed by NMPT on 15.03.1990. Though, the 1st Party workmen were working for a long time they were left out from the Scheme. Though, it is agreed by the Management in the Settlement of 02.08.2000 that they will implement the Settlement of 06.12.1994 (to settle the issue of decasualisation and absorption of cargo handling workers) so far it has not materialised. However, the 1st Party is unable to show any settlement or statute which bestows on them right to seek regularisation of service and absorption to the 2nd Party. They have produced a previous settlements Ex W-1 to Ex W-4; but in none of the settlements the NMPT is a Party. Ex W-4 is the Memorandum of Settlement dated 06.04.2009 between New Mangalore Port Users Staff Association and New Mangalore Port Stevedores Staff Managing Association. WW-1 admits that, the word “Management” referred in Ex W-4 is not in reference to the 2nd Party. Under Ex W-4 they have resolved wage structure, insurance, service compensation, National and Festival Holidays, casual leave, medical leave earned leave and minimum guaranteed wages pertaining to the Foremen / Assistant Foremen. In his written argument the 1st Party would plead that, the 2nd Party is having power to regularise the service of 1st Party workmen who were left out during the 1990 Settlement and the 2nd Party without invoking the power to regularise their service, who are left out during the 1990 Settlement has denied legitimate facilities; the work discharged by them is essential and perennial in nature; their counter parts in other Ports are getting higher pay scale and service benefits etc., are absorbed or accepted by the 2nd Party, except the 1st Party category.

6. The 2nd Party refutes the demand on the ground that, they are not in need of service of Foremen and Assistant Foremen and no such vacancy is available to them. On top of it, the reference order does not provide the list of workers who are concerned in this Industrial adjudication. The 1st Party admit in their written argument that, there is no such post in the 2nd Party Industry. The Settlements relied by them pertaining to other Ports cannot be the source to award relief as sought by them.

7. For the above reason, I find no justification in the demand of the 1st Party Union.

AWARD

The reference is rejected

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 07th February 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 237.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक आफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 23/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-12011/22/2016-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 17th February, 2020

S.O. 237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 17.02.2020.

[No. L-12011/22/2016-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT** : M. V. Deshpande, Presiding Officer**REFERENCE NO.CGIT-2/23 of 2016****EMPLOYERS IN RELATION TO THE MANAGEMENT OF CENTRAL BANK OF INDIA**

The Chairman & Managing Director,
Central Bank of India,
Central Office, Chandermukhi Bldg.,
Nariman Point,
Mumbai – 400 021.

AND**THEIR WORKMEN**

The General Secretary,
All India Central Bank Employees' Congress,
Mumbai, Central Bank of India, Bajaj Bhavan,
1st Floor, Nariman Point,
Mumbai – 400 021.

APPEARANCES:

FOR THE EMPLOYER : Mr. L.L. D'souza, Representative

FOR THE WORKMEN : Mr. Subhash Sawant, Representative

Mumbai, dated the 16th January, 2020**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-12011/22/2016 – IR (B-II) dated 05.08.2016. The terms of reference given in the schedule are as follows :

“Whether the action of the management of Central Bank of India, Central Office, Mumbai, in reorganization of regional setup and merger of 80 regions into 59 as per Board's approval dated 14.03.2015 circulated vide letter No. CO/P&D/BR-EXP/2014-15/505 dated 31.03.2015 is amounting to violation of Section 33 of I.D. Act, 1947, during the pendency of conciliation proceedings in I.D. under reference No. B.ALC-III/7(71)/2014 with reference to item No. 10 of the Charter of Demands

raised by the All India Central Bank Employees' Congress in the Strike notice dated 05.09.2014 ? If so, what action ?

2. After the receipt of the reference, both the parties were served with the notices.
3. On going through the Roznama, it appears that the union is absent since long. Many dates are given for filing statement of claim. However, the union has not filed statement of claim nor second party union has taken steps in pursuance of schedule of reference.
3. So there is no statement of claim in support of claim of the concerned workmen and therefore the reference is liable to be rejected for want of evidence. Hence order.

ORDER

Reference is rejected for want of evidence with no orders as to costs

Date: 16.01.2020

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 17 फरवरी, 2020

का.आ. 238.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इण्डियन ओवरसीज बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 6/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-12012/47/2018-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 17th February, 2020

S.O. 238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2019 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank, and their workmen, received by the Central Government on 17.02.2020.

[No. L-12012/47/2018-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

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

ID No. 6/2019

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 30.01.2020

Sri A.E. Mohammed Naijub
Srinivasa Enclave
Ground Floor, Plot No. 4
4th Cross, West Annanagar
Narayanapuram
Pallikar
Chennai-600100

:

1st Party/Petitioner

AND

The General Manager
Indian Overseas Bank
Central Office
No. 763, Anna Salai
Chennai-600002

:

2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : None
For the 2nd Party/Respondent : Advocates Mr. K K Sivasshanmugam,
K.S. Sri Giriprasath

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/47/2018-IR (B.II) dtd. 04.12.2018 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of Indian Overseas Bank, Chennai in dismissing the services of Sri Mohammed Naijub is justified? If not, to what relief Shri Mohammed Naijub is entitled to?”

2. On receipt of the above reference from the appropriate Government the dispute is registered as ID No. 6/2019 and due notices were issued to both the parties for their appearance fixing the case to 12.02.2019. Since then, the case is dragged for such a long period till 27.01.2020 intervening almost 7 adjournments in the year 2019, 1 adjournment in the year 2020 and then finally it was posted to 30.01.2020 for appearance and Claim Statement.

It reveals even if for the interest of justice the Tribunal suo-moto afforded sufficient opportunities to the Petitioner, there was no progress in the proceeding. Thus it is found that even if sufficient opportunities were made available to the Petitioner, he did not turn up on the dates posted for appearance and also failed to file his Claim Statement. Therefore, it is held that the Petitioner as referred in the reference is not interested to proceed with his Claim raised in the dispute. The non-cooperation and default in appearance of the Petitioner constrained the Tribunal not to repost the proceeding to any other date for the same purpose.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the reference is answered against the petitioner.

An Award is passed accordingly.

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 30.01.2020)

DIPTI MOHAPATRA, Presiding Officer