



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-सा.-24032020-218883
CG-DL-W-24032020-218883

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 09] नई दिल्ली, मार्च 1—मार्च—7, 2020, शनिवार/फाल्गुन 11—फाल्गुन 17, 1941
No. 09] NEW DELHI, MARCH 1—MARCH 7, 2020, SATURDAY/PHALGUNA 11—PHALGUNA 17, 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)

कृषि एवं किसान कल्याण मंत्रालय
(कृषि अनुसंधान एवं शिक्षा विभाग)
नई दिल्ली, 27 फरवरी, 2020

का.आ. 338—केन्द्रीय सरकार, कृषि एवं किसान कल्याण मंत्रालय, कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली 1976 के नियम 10 के उपनियम (4) के अनुसरण में भा.कृ.अ.प.-केन्द्रीय मात्स्यिकी प्रौद्योगिकी संस्थान के विशाखापत्तनम अनुसंधान केन्द्र, विशाखापत्तन को, जिसमें 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है।

[फा. सं. 13-10/2009-हिंदी (पार्ट)/43-85]

राजेश कुमार, अवर सचिव

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

New Delhi, the 27th February, 2020

S.O. 338.—In pursuance of sub-Rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules 1976, the Central Government, Ministry of Agriculture & Farmer Welfare, Department of Agricultural Research & Education hereby notifies the ICAR-Central Institute of Fisheries Technology, Visakhapatnam Research Centre, Visakhapatnam where more than 80% of staff have acquired the working knowledge of Hindi.

[F. No. 13-10/2009-Hindi(Part)/43-85]

RAJESH KUMAR, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 24 फरवरी, 2020

का.आ. 339.—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. गेल गैस लिमिटेड
गेल, जुबली टॉवर, 5वीं मंजिल,
बी-35-36, सेक्टर -1,
नोएडा,
उत्तर प्रदेश – 201301
2. गेल गैस लिमिटेड
एम.एस. कॉम्प्लेक्स, एस-44,
नई बी ई एल रोड,
बेंगलुरु,
कर्नाटक-560054

[सं. 11011/1/2017 (हिन्दी)]

ऊषा बिन्जोला, संयुक्त निदेशक (राजभाषा)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 24th February, 2020

S.O. 339.—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. Gail Gas Limited,
Gail, Jubli Tower, 5th Floor,
B-35-36, Sector -1,
NOIDA,
Uttar Pradesh – 201301

2. Gail Gas Limited
M.S. Complex, S-44,
New B E L Road,
Bengluru,
Karnatak-560054

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

USHA BINJOLA, Jt. Director (OL)

नई दिल्ली, 3 मार्च, 2020

का.आ. 340.—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 :-

इंडियन ऑयल कॉर्पोरेशन लिमिटेड,
हल्दिया रिफाइनरी,
हल्दिया,
पश्चिम बंगाल – 721606

[सं. 11011/1/2017 (हिन्दी)]

ऊषा बिन्जोला, संयुक्त निदेशक (राजभाषा)

New Delhi, the 3rd March, 2020

S.O. 340.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Unoin) Rules, 1976, the Central Government hereby notifies the following offices of the Public Sector Undertakings under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more percent of the staff have acquired working Knowledge of Hindi :—

Indian Oil Corporation Limited
Haldia Refinery,
Haldia,
West Bengal- 721606

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

USHA BINJOLA, Jt. Director (OL)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 27 फरवरी, 2020

का.आ. 341.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 49/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.02.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th February, 2020

S.O. 341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 27.02.2020.

[No. L-39025/01/2020-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
CHENNAI****Present :** DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER**I.D. No. 49/2017****Dtd: 17.02.2020**

Sri D. Harikrishnan
No. 27, Kaveri Nagar
Kondur Post
Cuddalore-607002

: 1st Party/Petitioner**AND**

1. The Deputy General Manager
UCO Bank, Zonal Office
Chennai-600001

: 2nd Party/1st Management

2. The Chief Manager
UCO Bank, Zonal Office
Chennai-600001

: 2nd Party/2nd Management**Appearance:**For the 1st Party/Petitioner : Advocate, M/s. Balan HaridasFor the 1st & 2nd Management : Advocate, M/s. Srinath Sridevan & Associates**AWARD**

This is an Application under 2A(2) of the Industrial Dispute Act wherein the order of Compulsory Retirement of the Petitioner issued by the Respondent is under challenge on the ground as illegal, arbitrary and contrary to law. The Applicant-Petitioner sought for the relief of his reinstatement with full backwages, continuity of services and other consequential benefits.

1. The Applicant's case in brief is that he joined the Respondent Bank as a Sub-Staff in the year 1985 and promoted to the cadre of Clerk. While he was working at Cuddalore Branch of the Respondent Bank as Head Cashier, placed under suspension vide order dtd. 14.09.2015 on the charge of various act such as (i) misbehaviour towards superior authority and mis-appropriation of public money on several occasions for the period 12.04.2012 to 14.09.2015. Such commission of acts since attracted misconduct on the part of Applicant-Petitioner he was served with Show-Cause Notice by the Respondent. The explanation to the Show Cause Notice though furnished by the Applicant-Petitioner was found not satisfied by the Respondent and he was charge-sheeted. A domestic enquiry was initiated. He was issued with the order of Compulsory Retirement with superannuation benefits by the Respondent following the domestic enquiry.

2. The Respondent entered appearance justifying the issuance of the order of Compulsory Retirement against the petitioner. It is further contended that since the charges of misappropriation of the public fund and the misconduct since held grievous in nature the punishment imposed on the Petitioner-Applicant is appropriate and not liable for any lenient consideration.

3. During the course of proceeding both parties filed their relevant documents. The Petitioner filed his Affidavit-Evidence, examined in Chief on 17.09.2019 and vividly cross-examined on the same day and on 30.10.2019 by the Counsel for the Respondent. The Applicant-Petitioner was examined as WW1 and a bunch

of documents (14 in number) are marked as Ext.W1 to Ext.W14. Thereafter, he declines to adduce any more oral evidence through any witness and closed his case. The Respondent was directed to file Affidavit-Evidence on 03.01.2020.

4. On 03.01.2020 the Counsel for the Respondent appears and files the Affidavit-Evidence of the Witness. The Petitioner, Sri Harikrishnan was present and moves a petition not to proceed with the case on the ground that presently he has no grievance against the Management. Accordingly, the Petitioner expresses not to proceed with the case. Since none appeared on behalf of the Respondent the case was posted to 07.02.2020 for hearing on the petition dtd. 03.01.2020. The petitioner along with the Counsels of both parties were present on the date fixed. On askance, the petitioner submits that he himself suo-moto filed the petition. His statement to the effect was recorded in the open court. He categorically stated that he was never been coerced or influenced by the Management to file petition dtd. 03.01.2020. But he himself has filed this petition as not willing to proceed with the case further. He also emphatically states that he has no grievance against the Management. The petition dtd. 03.01.2020 and his signature thereon are marked as Ext.W15 and Ext.W15/1. He further prays the Tribunal to pass necessary orders as deemed fit.

5. Taking into consideration the submission of the Petitioner, it was found that the petition dtd. 03.01.2020 has got sufficient force for consideration and the petitioner will not be prejudiced in any manner as the petitioner himself is not willing to proceed with the case. In the premises in view of the discussion held in preceding paragraphs it is held that there exists no dispute for adjudication as per the reference in the instant Industrial Dispute.

The reference is answered accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 17.02.2020)

Witnesses Examined:

For the 1st Party/Petitioner : Sri D. Harikrishnan
For the 1st & 2nd Respondent : None

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
Ext.W1	14.09.2015	Order of Suspension
Ext.W2	24.11.2015	Show Cause Notice
Ext.W3	13.12.2015	Letter to the Petitioner
Ext.W4	06.05.2016	Charge Sheet
Ext.W5	17.05.2016	Reply to the Charge Sheet
Ext.W6	27.05.2016	Enquiry Notice
Ext.W7	01.06.2016	Letter of the Bank
Ext.W8	07.06.2016	Letter of the Respondent enclosing charge sheet, enquiry proceedings, letter obtained from me and the enquiry report
Ext.W9	09.06.2019	Letter of the Respondent enclosing enquiry report
Ext.W10	17.06.2018	Letter of the petitioner
Ext.W11	05.07.2016	Letter of the Respondent calling the petitioner for personal hearing
Ext.W12	06.07.2016	Order imposing the punishment
Ext.W13	18.07.2016	Appeal
Ext.W14	02.09.2016	Order rejecting the Appeal

On the Management's side

Ex. No.	Date	Description
Ext.M1	04.10.2013	Complaint given by S. Murugesan
Ext.M2	14.09.2015	Suspension Order issued to Petitioner
Ext.M3	13.10.2015	Complaint given by P. Girija
Ext.M4	19.10.2015	Complaint given by U. Vijayalakshmi
Ext.M5	29.10.2015	Letter given by K. Kaliaperumal
Ext.M6	24.11.2015	Show Cause Notice issued to Petitioner by the Bank
Ext.M7	13.12.2015	Explanation given by Petitioner to the Show Cause Notice
Ext.M8	06.05.2016	Charge Sheet issued to the Petitioner
Ext.M9	17.05.2016	Explanation given by Petitioner to the Charge Sheet
Ext.M10	07.06.2016	Enquiry Proceedings
Ext.M10A	07.06.2016	Letter from Petitioner to the Enquiry Officer
Ext.M11	07.06.2016	Enquiry Report holding that the charges are proved as the Petitioner had admitted the charges
Ext.M12	09.06.2016	Second Respondent's letter
Ext.M13	17.06.2016	Petitioner's comments to Enquiry Report
Ext.M14	05.07.2016	Second Show Cause Notice issued to petitioner
Ext.M15	06.07.2016	Final Order passed by the 2 nd Respondent
Ext.M16	18.07.2016	Appeal preferred by the Petitioner to the 1 st Respondent
Ext.M17	02.09.2016	Order passed by the Appellate Authority

नई दिल्ली, 27 फरवरी, 2020

का.आ. 342.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 08/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.02.2020 को प्राप्त हुआ था।

[सं. एल-12012/184/2002-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 27th February, 2020

S.O. 342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneshwar as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 27.02.2020.

[No. L-12012/184/2002-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWARINDUSTRIAL DISPUTE CASE NO. 8 OF 2003Dated Bhubaneswar, the 10th January, 2020**Present:** Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar**Between:**The Regional Manager,
UCO Bank, Ashok Nagar, Unit-2,
Bhubaneswar (Orissa) – 751009.

...First party management

AND

Sh. Benudhar Behera
At : Krushnakumarpur,
P.O: Kaimati, Dhenkanal. (Orissa).

...Second party workman

Appearances:

Shri Subrat Mishra, Advocate : For first party management

Shri S.N.Panda, Advocate. : For second party workman

AWARD

The Award is directed against a reference made by the Government of India, Ministry of Labour in exercise of its authority 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) (herein after referred as 'the Act') vide its Order No. L-12012/184/2002-IR(B-II) dated 17.03.2003 for adjudication of a dispute between the management of UCO Bank and their workman Shri Benudhar Behera and the terms of reference is :

“Whether the action of the management of UCO Bank, in relation to their Rasol Branch, Dhenkanal in imposing the punishment of dismissal from services of Shri Benudhar Behera, Clerk-cum-Cashier w.e.f. 4.6.1999 is legal and justified ? If not, what relief the workman is entitled to ?”

2. Briefly stated the undisputed facts relevant for appreciation of the contention raised by the parties in the dispute and relevant for its adjudication are that the disputant workman was working as Clerk-cum-Cashier in the Rasol Branch, Dhenkanal of the management Bank when he was dismissed from service on 4.6.1999 after being found guilty of misconduct in a departmental proceeding in which he was charge-sheeted for misappropriating public money i.e., money deposited by the customers of the Bank. In the departmental proceeding, it was his stand that the deposit amount of the customers was misappropriated by the then Branch Manager, Late Sankar Moharana and he being a mere Clerk was working under his instruction. He had no involvement in the alleged misappropriation.

The disputant workman has filed his statement of claim pleaded ineralia that he was charge-sheeted on 9 counts in the departmental proceeding for allegedly responsible for non-accountable deposits to the tune of Rs.68,000/- in 9 numbers of accounts. HE submitted his show-cause in the departmental proceeding pleading innocence and filed a photo copy of a letter of Late Moharana wherein he confessed to have misappropriated the above deposited amount. Despite such a confessional statement of Late Moharana and statements of witnesses to the enquiry that Late Moharana had misappropriated the deposit money of customers and he being innocent, the Enquiry Officer failed to appreciate the facts and circumstances emerging in the domestic enquiry and gave a perverse finding of his involvement in the misappropriation without taking such admission of Late Moharana and statements given by the witnesses in the enquiry. It is his stand also that the statement of successor Branch Manager, Shri Dibakar Jena was not taken into consideration and material evidence available in support of his plea was ignored while holding him guilty of misconduct of misappropriation and dismissed him from service. There was no adverse remark as to his career in service before alleged charge of misappropriation. He had a clean service record. As such, the punishment of dismissal is shockingly disproportionate to the gravity of allegations raised against him in the departmental proceeding. In spite of an appeal in this regard to his Appellate Authority, he was not given any relief and his appeal was rejected. Therefore, he raised a dispute before the labour machinery. Consequently, the dispute before the labour machinery resulted in the reference

when the attempt of conciliation failed due to refusal of the management to reconsider the claim of the disputant workman.

3. The management Bank has resisted the claim refuting all allegations raised by the disputant workman and taking a stand that when allegations of non-accounting of customer's deposit was received, a preliminary enquiry was made. As the disputant workman and the then Branch Manager were found involved in misappropriation of money deposited by the customers and in the act of prejudicial to the interest of the management Bank, they were charge-sheeted separately. Charge-sheet was issued to the disputant workman on 20.7.1999 and in his explanation dated 13.8.1999 he admitted to have involved for non-accountable of the customer's deposit. In this regard, a departmental enquiry was held in utmost fair and proper manner. The disputant workman was provided all opportunities to defend himself in the said departmental enquiry. The enquiry was conducted in conformity to the principles of natural justice and provisions of the Standing Order of the Bank, copy of the enquiry report and second show-cause notice were issued to the disputant workman before imposition of the punishment of dismissal. Since disputant workman was held guilty of misconduct of misappropriation of public money and acted prejudicial to the interest of the Bank and there was loss of faith/trust, the punishment of dismissal was passed by the disciplinary authority. The disputant workman had preferred an appeal as provided under Service Rules and Regulations which was duly considered and dismissed by the appellate authority. The finding of the Enquiry Officer was not perverse and it was in conformity to the materials led before him. The punishment of dismissal is proportionate to the gravity of mis-conduct proved against the disputant workman. Hence, there is no scope of interference by the Tribunal in the finding of the departmental enquiry as well as punishment imposed on the disputant workman. Therefore, prayer has been made for rejection of the statement of claim of the disputant workman.

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

1. Whether the reference is maintainable ?
2. Whether the domestic enquiry held by the management against the second-party workman was fair and proper ?
3. Whether the action of the management dismissing the workman Shri Benudhar Behera is justified?
4. If not, to what relief the workman is entitled ?

5. The management has examined its Dy. Chief Officer, Arun Kumar Mishra, who was the Presenting Officer in the departmental proceeding against the workman, as M.W.1 and Sri Trilochan Kanhar, Sr. Manager (HRM) as M.W.2 and relied upon the papers and documents connecting to the departmental proceeding like, copy of charge sheet dated 20.7.1999, copy of reply of the workman dated 13.8.1999, copy of Notification dated 14.10.1999, copy of proceeding file, copy of enquiry report dated 28.8.2000, copy of forwarding letter dated 29.8.2000, copy of final order dated 29.9.2000, copy of order dated 16.3.2001 and copy of appeal Memorandum dated 21.11.2000, which are marked as Ext.1 to Ext.9, in support of its action of dismissing the workman and to prove his misconduct. The disputant workman has examined himself and one Sri Santosh Kumar Sahoo as W.W.1 and W.W.2 respectively and filed an affidavit of one Sri Rabindra Kumar Pattnaik as Ext.A to refute the allegations made by the management.

6. It is pertinent to mention here that the Tribunal passed its Award dated 9.1.2015 taking into consideration of the evidence and materials laid by the parties in which it was held that the departmental enquiry was conducted in a fair and proper manner. Simultaneously it has also held that since the Enquiry Officer as well as the disciplinary authority have over-looked the statements of the management witnesses and customers in the departmental enquiry in regard to innocence of the disputant workman and actual misappropriation by Ex-Branch Manager, Late Moharana, the domestic enquiry conducted was not fair and proper. In that view of the matter, the Tribunal set aside the order of dismissal passed by the disciplinary authority and reinstated the disputant workman with back wages and all consequential service benefits. The management preferred a Writ before the Hon'ble High Court vide W.P(C) No. 14697 of 2015 and challenged the Award. The Hon'ble High Court in its Order dated 9.1.2019 set aside the Award of this Tribunal and remitted back the matter for its fresh disposal after giving opportunities to the parties to adduce further evidence keeping in view the principles laid down by the Hon'ble Apex Court in the case of Karnataka State Road Transport Corporation (reported in A.I.R. 2001 S.C. 2090) and Sambu Nath Goyal (reported in A.I.R 1984 SC 289). On remand of the matter, the management Bank has adduced further evidence and examined its Officer (Shri Trilochan Kanhar) as M.W.2. The disputant workman has also adduced further evidence and examined one Santosh Kumar Sahoo as W.W.2.

FINDINGS

7. It is seen from the pleadings and evidence of the parties that no serious dispute was raised in regard to the maintainability of the reference in the adjudication though, an issue has been framed in this regard. Hence, no detailed discussion or analysis is required except to hold that the dispute being related to the service condition of the disputant workman is maintainable in the eye of law.

Coming to the vital issue of fairness of the departmental proceeding, it may be stated here that the disputant workman has not taken either any specific stand in his statement of claim or in his oral testimony that he was not furnished with required documents to defend himself in the departmental proceeding or he was not given any opportunity to defend himself properly in the proceeding. There is also not a word in his statement of claim or evidence that principles of natural justice was violated in the departmental proceeding and the same was not conducted in conformity to the provisions of the Standing Order of the management Bank. On the other hand, it is emerging from the evidence of the parties before this Tribunal as well as in the departmental proceeding file, whose copies are relied upon by the management, that the disputant workman was called for show-cause on the charges levelled against him, he was informed about the place and schedule time of the departmental enquiry, he was furnished with copies of documents and list of witnesses to be examined by the Enquiry Officer, he attended the enquiry, cross-examined the witnesses and adduced evidence in support of his defence. Law is well settled that an enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine the witnesses, (iv) he is given a fair opportunity to cross-examine the witnesses including himself in his defence if so wishes on any relevant matter, and (v) the Enquiry Officer records his findings with reasons for the same in his report. Keeping in view the above discussion and the settled principles, it can safely be concluded that the disputant workman was clearly informed of the charges levelled against him and he was given due opportunity to defend himself in the departmental proceeding.

8. Coming to the issue raised before this Tribunal by the disputant workman that the Enquiry Officer could not record his finding on the basis of legal evidence advanced before him in the departmental enquiry, it is the contention of the learned counsel for the workman that witnesses to the departmental enquiry had supported the cause of the disputant workman as emerged from their cross-examination in the departmental proceeding. A confessional statement of the Ex-Branch Manager Late Moharana was presented before the Enquiry Officer in which Late Moharana admitted to have misappropriated the deposits of the customers. It was also emerging in the enquiry that Late Moharana was charge-sheeted by the C.B.I. in case of misappropriation registered against him in relating to the Bank transaction for which the disputant workman was proceeded with the departmentally. It is in the evidence that the disputant workman was a witness in the C.B.I. case against Late Moharana. Had he been involved in the misappropriation, he could have been charge-sheeted in the misappropriation case along with Late Moharana and C.B.I. could not cite him as a witness. In spite of such fact before the Enquiry Officer, the disputant workman was held guilty for misappropriation in the departmental proceeding. Such finding of the Enquiry Officer is not consistent to the statement of the witnesses examined in the departmental enquiry. Therefore, the enquiry report is not based on any legal evidence and it is to be treated perverse. The finding of the Enquiry Officer without any evidence on the involvement of the workman in the alleged misappropriation is to be treated as a report without reasons to hold the workman guilty of any misconduct. According to him, the enquiry cannot be said to be fair and proper.

On a mere reading of the enquiry report Ext.5 and the papers relating to the departmental proceeding including statements made by the witnesses, it is found that most of the witnesses in the departmental enquiry have categorically and specifically stated that the disputant workman being Cashier of the Branch had received the cash from the customers and such cash transaction were not accounted for in the Book of Bank, though counter deposit slips and pass book of the account holders acknowledged the deposits. Admittedly the workman being a Cashier received the deposits from the customers as revealed from the statement of witnesses to the enquiry. The workman did not dispute the same except denying his involvement in the misappropriation. He has alleged in the departmental proceeding as well as in the present proceeding that the deposits were misappropriated by the Branch Manager, Late Moharana. He was compelled to hand over the deposited money to the Branch Manager. When it is emerging that the deposits were received by him and counter slips of the deposits were signed by him and S.B.Accounts were signed by him, he was required to enter those transactions in the Book of the Bank. Having received the deposits he had responsibility and accountability to the customers of the Bank as well as to his employer Bank. Having received the deposits, he became custodian of the deposits for the customers as well as his employer Bank. Having failed to discharge his responsibility in that aspect and having allowed his Branch Manager to take the deposit money, he had failed to discharge his duty with all

responsibility with diligent. When the above facts are emerging from the evidence led before the Enquiry Officer, it cannot be said that the Enquiry Officer recording/ findings is without any legal evidence.

9. It is the settled position of law that strict rules of the Evidence Act and the standard of proof envisaged therein do not apply to the departmental proceeding. The standard of proof in a departmental proceeding is not required to prove beyond reasonable doubt 'but' on the pre-ponderance of probabilities tending to draw an inference that the fact must be more probable. It cannot also be over sighted that as per the settled principles, the jurisdiction of the Tribunal while examining the finding recorded by the Enquiry Officer is not equivalent to the jurisdiction conferred on an Appellate Court. Though, power has been conferred on the Tribunal by inserting the provisions of Section 11-A of the Act to reappraise the evidence adduced in the domestic enquiry and to grant proper relief to the workman, the Tribunal cannot act as a Court of appeal to interfere in the finding and substitute its own judgment for that of the management. It is only duty of the Tribunal in such matter is to see whether a prima facie case is made out in respect to the alleged misconduct of the delinquent workman from the materials/evidence led before the Enquiry Officer and to examine if the finding recorded by the Enquiry Officer is based on legal evidence. Undoubtedly perversity in the finding vitiate the disciplinary proceeding. Two fold test is applicable to arrive at a conclusion in regard to perversity of a finding. The first test is that the finding is not supported by any legal evidence at all and the second is that no reasonable person could have arrived at the finding complained of on the basis of materials on the record of the enquiry proceeding. In other words, a finding of the Enquiry Officer can be characterized as perverse only if it is shown that such a finding is not supported by any evidence at all or it is entirely opposed to the whole evidence adduced in the enquiry that no reasonable person could have come to the finding on the basis of such evidence on the record. If there is evidence on record, compendious it may be, if it is acceptable and reliable then a conclusion arrived at in such a situation cannot be turned as a perverse. It is well settled that once a conclusion is deducible from the evidence in the departmental enquiry, it is not permissible to assail that conclusion even though it is possible for the Tribunal to arrive at a different conclusion on the same evidence. The Tribunal has no authority to substitute its own conclusion unless the finding of the Enquiry Officer is a perverse. Taking the above settled principles into consideration, if the materials/evidence led before the Enquiry Officer i.e., statement of witnesses to the enquiry and relevant papers produced in the inquiry including the confessional statement of the Branch Manager are examined or scrutinized, it is difficult to say that the finding of the Enquiry Officer was perverse or it was not based on legal evidence or a reasonable person cannot arrive at such conclusion on the basis of the materials led before the enquiry.

10. There may be a confession of Ex-Branch Manager that he was solely responsible for misappropriation of entire amount of deposits but, the disputant workman being Cashier of the Bank and having received the deposits cannot shun his responsibility on the basis of such confession of the Branch Manager. He was expected to oppose the illegal action of the Branch Manager or he could have brought the matter to the notice of his higher authority immediately in stead of surrounding his conscience to the Branch Manager. He may not be a financial beneficiary in the alleged misappropriation but, his act of omission and commission for non-accounting the deposits in the Book of Bank, is un-doubtedly helped the Branch Manager to misappropriate the deposit money irrespective of the fact that the same was a small amount or higher amount. In that view of the matter, the finding in the departmental enquiry that the workman acted in a manner prejudicial to the interest of the Bank cannot be assailed or interfered with. For the reasons and discussion made above, the departmental proceeding has been conducted in a proper and fair manner or inconformity to the principles of natural justice.

11. The next question for consideration as raised by the learned counsel for the workman is whether the charges levelled against the workman in the charge-sheet and the finding of the Enquiry Officer as well as the punishment imposed on the workman is not in conformity to the provisions envisaged under Clause No.19.5 (j) of the first bi-partite settlement in the Bank Industry for which the departmental enquiry as well as the punishment of dismissal should be vitiated. It is the contention of the learned counsel for the workman that the disputant workman was not the person to have misappropriated the money and he was not charge-sheeted in the Criminal Case registered for mis-appropriation. Rather, he was a witness in the criminal proceeding against the Branch Manager and there was evidence/materials like confessional statement of the Branch Manager Late Moharana. Hence, the charges of misappropriation as described in the charge-sheet were not true. As such, the

punishment of dismissal is extremely harassed one and it was not proportionate to the mis-conduct brought against the workman. On a close reading of the charge-sheet, it is found that the workman was charged for fraud and mis-appropriation in regard to 9 deposits received by him as a Cashier as well as for loss to the Bank and for loosing confidence of the customers of the Bank. It was alleged in the charge-sheet that non-deposits/misappropriation in respect of 9 deposits constitute the mis-conduct as defined under Clause No. 19.5 (j) of the bi-partite settlement dated 19.10.1966. It is already discussed in previous paragraphs that by the act of omission and commission on the part of the workman scope of misappropriation arose and the same helped the Branch Manager to misappropriate the deposits. The act of non-accounting the deposits in Book of Account and allowing the Branch Manager to take the deposit money is undoubtedly an act prejudicial to the interest of the Bank and it also caused financial loss though, the amount may be small or high.

12. Now coming to the issue/point of punishment, it is to be examined whether the punishment of dismissal is shockingly dis-proportionate to the gravity of mis-conduct proved against the workman and whether the Tribunal can interfere with the same. In view of the provisions under Section 11-A of the Act, it is well settled that the Tribunal can reappraise the evidence for itself and may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment imposed on the workman. The jurisdiction to interfere with the punishment is also not confined only to the cases where the punishment is shockingly dis-proportionate to the act of mis-conduct. The Tribunal has to see whether the punishment imposed is commensurate with the gravity of the act of mis-conduct committed by the delinquent workman. In either case, where necessary, the Tribunal may set aside the order of dismissal and give appropriate relief including award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case may warrant. The Tribunal has the jurisdiction and power of substituting its own major of punishment in place of managerial wisdom, once it is satisfied that the order of dismissal is not justified on facts of circumstances of the case. Keeping in view the above settled principles, if the materials/evidence emerging in the departmental enquiry as well as in the Tribunal are examined, it is found that there was a misappropriation to the tune of Rs.68,000/- due to non-accounting of the deposit money whereas, there was financial loss of around Rs.26,000/- to the Bank as some amount was recovered. Further it can be over looked that the then Branch Manager, Late Moharana was directly accused of misappropriating the amount on being charge-sheeted in C.B.I. Case. The workman was not charge-sheeted and there was no evidence to the effect that he had also mis-appropriated any amount. But, he was found guilty of non-accounting the deposit money in the Book of Bank and for aiding the Branch Manager to avail the deposits received by him. Undoubtedly his action in this regard was against the interest of the Bank and it's customers. Clause No.19.5 (J) does not prescribe that any action prejudicial to the interest of the Bank has to be dealt with punishment of dismissal or discharge. It cannot also be over sighted that the workman was a subordinate staff to the Branch Manager who faced the criminal charge for misappropriation. Further more, no evidence is coming forth to say that the workman had any adverse entry/remark in his service. Be that as it may, the punishment of dismissal appears to be highly dis-proportionate to the mis-conduct/allegation proved against the disputant workman. In my considered view, compulsory retirement instead of dismissal would be just and proper punishment which can be imposed on the workman in the departmental proceeding.

13. In the above facts and circumstances, the management Bank is directed to treat the punishment of dismissal to punishment of compulsory retirement which is to be effective from the date of dismissal. Consequently the workman is entitled to get the service benefits, if any, being superannuated compulsorily as due and admissible to him in accordance with law. Further, the management Bank is directed to pay his dues, if any, by virtue of conversion of the punishment of dismissal to the punishment of compulsory retirement within two months of this Award being notified failing which, the workman is entitled to interest at the rate of 7% (seven per cent) per annum on the benefits, if any, from the date of the Award.

Accordingly the reference is answered and the Award is passed.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 27 फरवरी, 2020

का.आ. 343.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मजगांव डोक लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ सं. 40/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.02.2020 को प्राप्त हुआ था।

[सं. एल-31011/16/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 27th February, 2020

S.O. 343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of Mazagaon Dock Limited and their workmen, received by the Central Government on 27.02.2020.

[No. L-31011/16/2011-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI

Present : JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

REFERENCE NO.CGIT-1/40 OF 2012

Parties: Employers in relation to the management of Mazagaon Dock Ltd, Mumbai

AND Their workmen

Appearances:

For the Management	: Mr. R.S .Pai, Adv.
For the Union	: Shri Vilas Chikhale
	: Shri V.B. Sawant Bhosale
	: Shri Satish Tambe
State	: Maharashtra

Mumbai, dated the 27th day of January 2020

AWARD

1. The present reference has been made by the Central Government by its order dated 12.09.2012 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947. The terms of reference as per the schedule to the said order are as under:

“Whether the action of the management of Mazgaon Docks Ltd. Mumbai in fixing the rate of idli and Dhokla @ Rs.3/- per plate whereas the rice plate charges are Rs.1/- per plate is legal and justified? What relief the workmen concerned are entitled to?”

2. A perusal of the order sheet reveals that the statement of claim was filed by the Union on 22.1.2013. Written statement was filed by the first party management on 21.3.2013. Thereafter the case was adjourned for filing documents of the parties. On 06.6.2014, learned counsel for the parties stated that the documents have already been filed alongwith their respective pleadings and no further documents are to be filed by them and thereafter the case was adjourned for filing draft issues on 08.8.2014. On 26.11.2014, draft issues were submitted on behalf of the second party/Union, and the following issues were framed.

- (1) Whether the action of the first party/Management in introducing idli and Dhokla in the Canteen is legal and justified?
- (2) Whether keeping in view the rice plate charges being Rs.1 per plate, fixation of the rate of idli and dhokla @ Rs.3/- per plate is legal and justified?

- (3) Whether the introduction of idli and dhokla in the canteen and fixation of rate in respect thereof were covered under the Settlement dated 17.9.1998, Settlement dated 20.10.2005, and Settlement dated 30.6.2009, and if yes, whether the requirements laid down in the Settlements were complied with?
- (4) To what relief, if any, the second party/Union is entitled ?
3. Today, when the matter was taken up for hearing, Mr.R.S.Pai, learned counsel for the management and the representatives of the Unions filed a joint application for disposal of the Reference as the dispute is settled out of Court and also filed the settlement dated 16.11.2018.
4. The learned counsel for the first party/Management submits that he has forwarded a copy of the settlement to the Ministry of Labour, New Delhi in compliance.
5. In view of the above Settlement this reference is decided in terms of the settlement which shall form a part of this Award.
6. Award is passed accordingly.

JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

नई दिल्ली, 27 फरवरी, 2020

का.आ. 344.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 24/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.02.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 27th February, 2020

S.O. 344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 27.02.2020.

[No. L-39025/01/2020-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT, LUCKNOW

PRESENT : P.K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 24/2016

BETWEEN :

Sri Devi Prasad, S/o Awadh Bihari
R/o 422/103, Top Darwaja, Chaupatiya Road
Sahadatganj, Lucknow

AND

1. Managing Director
UCO Bank, Head Office, 10, V.T.M. Sarni Breborn Road
Kolkata – 700001.
2. Divisional Manager
UCO Bank, Divisional Office, Kapoorthala Complex
Aliganj, Lucknow 226025.

3. Manager
UCO Bank, Branch Office
Mahona, Lucknow.

ORDER

1. The workman, Devi Prasad, S/o Awadh Bihari, R/o 422/103, Top Darwaja, Chaupatiya Road, Sahadatganj, Lucknow has filed the present industrial disputes under provisions of the Section 2A (iii) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'), against the alleged injustice done to him by the management of the UCO Bank for adjudication before this Central Government Industrial Tribunal –cum- Labour Court, Lucknow with following prayer:

- “(i) To quash order dated 12.04.1996 issued by the employers with cost and he be reinstated in service.*
(ii) The workman may be awarded back wages.
(iii) The workman may be awarded expenses of the case.

2. It is admitted case of the parties that the workman, Devi Prasad was working as Daftary cum Peon, in the Mohna branch of the Bank when he was placed under suspension vide order dated 06.05.1995; and subsequently, was issued a major penalty charge-sheet dated 11.07.1995 for gross misconduct, which was duly replied by the workman vide his reply dated 24.07.1995. Sri R.S. Bansal, Dy. Chief Officer, Zonal Officer, Lucknow was appointed as Enquiry Officer, who submitted his enquiry report vide letter dated 16.12.1995 before the disciplinary authority. The Disciplinary Authority, on the basis of findings of the Enquiry Officer, issued show cause dated 07.02.1996; whereby the workman was proposed of the punishment of compulsory removal from service with superannuation benefits without disqualification for future employment. Thereafter, the appellatant authority after considering reply dated 29.03.1996 of the workman, passed punishment order dated 12.04.1996; which was subsequently confirmed by the Appellate Authority vide order dated 20.11.1996.

3. It has been alleged by the workman that the Inquiry Officer during the inquiry did not summon any account holder from whom the workman allegedly received any money. Accordingly, the workman has prayed that the Departmental proceedings which were conducted in violation to the principles of natural justice is liable to be set aside.

4. The management of the Bank in its written statement has denied the allegations of the workman and has defended its domestic proceedings with submission that the workman had been afforded all opportunity given under rules the principles of natural justice were fully complied with; hence, there is no anomaly with it; and accordingly, has prayed that domestic enquiry proceedings conducted by it may be upheld and the action of the Bank vide order dated 12.04.1996 be declared just, fair and legal without any benefit to the workman concerned.

5. The workman has filed rejoinder reiterating the averments already made in the statement of claim.

6. The parties filed documents in support of their respective case. Following preliminary issues were framed in the presence of the parties vide order dated 01.02.2019:

- (i) Whether the domestic inquiry conducted by the management is fair and proper; and***
(ii) Whether the findings of inquiry officer are perverse

After framing of preliminary issues, since the workman's evidence on affidavit was already on record, therefore, the workman was cross-examined by the authorized representative of the management on the same day and next date was fixed for filing management's evidence in shape of affidavit, in support of preliminary issues.

7. The management, during pendency of present industrial dispute, filed a Writ Petition No. 22769 (MS) of 2019 UCO Bank vs UoI & others before Hon'ble High Court, Lucknow Bench, Lucknow; wherein the Hon'ble High Court, Lucknow Bench, Lucknow pleased to dispose of said Writ Petition vide order dated 26.08.2019. The relevant portion of the orders is reproduced hereunder:

“5. In view thereof, opposite party no. 2 Presiding Officer Central Government Industrial Tribunal and Labour Court (Central) Kendriya Bhawan, Lucknow is directed to proceed with the case and decide the same in accordance with law, by a reasoned and speaking order, within a period of two months from the date a certified copy of this order is placed before him.”

8. Accordingly, the management was called upon to file its evidence on affidavit but it failed to file any, inspite of several opportunities had been availed to it, leading to fixing of date for argument on preliminary issue

No. 1, closing opportunity of the management for evidence. The authorized representative of the management did not turn up for arguments; accordingly, heard oral submissions of the authorized representative of the workman only and after perusal of the entire evidence available on record, the issue No. 1 was decided in favour of the management with following order:

“Thus, from the facts & circumstances of the case and discussions made hereinabove, I am of the considered opinion that the disciplinary enquiry, against the workman, was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself. As such, the issue No. 01 is decided in favour of the management.”

9. After deciding issue No. 1 in favour of the management, an additional issue was framed as follows:

(iii) Whether the punishment imposed is proportionate to the charges or not?”

Further, keeping in view of the directions of the Hon’ble High Court vide order dated 26.08.2019 in the Writ Petition No. 22769 (MS) of 2019, the parties were called upon to submit their submissions on issue No. 2 & 3.

10. On the date fixed, none turned up from the management, resultantly the submissions of the learned authorized representative of the workman has been heard and records have been perused thoroughly.

11. It has been contended by the authorized representative of the workman that the findings of the inquiry officer is perverse and is based on no evidence as the prosecution failed to produce relevant witnesses to substantiate the charges against the workman. The authorized representative of the workman has submitted that the Inquiry Officer did not summon any of the account holders before the inquiry and without their evidence before the inquiry, the Inquiry Officer found the charges to be proved, makes his findings perverse; and accordingly, the same is liable to be set aside. The learned authorized representative of the workman has further submitted that the Labour has ample power under section 11-A of the I.D. Act to substitute a lesser punishment, taking into consideration the facts and circumstances of the case. It was submitted that principle of proportionality calls for interference of this Court into the punishment imposed by the management as the punishment imposed by the management of the Bank vide order dated 12.04.1996 was harsh and disproportionate to the misconduct of the workman, which was not even proved by the cogent evidence.

12. In rebuttal, the management refrained from proceedings for the last many dates and even did not turn up to put forward its submissions at this stage.

13. In the instant case, the workman had been charge sheeted with the allegation of ‘doing acts prejudicial to the interest of bank vide clause No. 19.5 (d) and 19.5 (j) of Bipartite Settlement; and during Disciplinary Proceedings, it has come out that the workman misappropriated an amount of Rs. 10,500/-. The inquiry and its findings were upheld by this Tribunal vide order dated 17.12.2019, holding that the disciplinary enquiry was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself. Moreover, from perusal of the inquiry proceedings available on record it is evident from application dated 03.05.1995 of the workman himself, addressed to the Branch Manager, Mahona Branch, Lucknow; wherein he had admitted that alleged misappropriation had been committed by him and sought apology for his misconduct, with an assurance not to repeat the same in future. This fact is corroborated by the punishment order dated 12.04.1996, which reads as under:

“9. यह कि यहाँ यह कहना अन्योचित नहीं होगा कि पहले आरोपी कर्मचारी ने अपने पत्र दिनांक 3.5.95 {एमई-III} व बाद में उसके बचाव प्रतिनिधि ने दिनांक 15.12.95 की जांच कार्यवाही के दौरान यह कहा कि उसे { आरोपी कर्मचारी} उक्त गलतियों के लिए क्षमा किया जाय और यह आश्वासन देता है कि वह भविष्य में ऐसी कोई गलती नहीं करेगा।”

Further, the Disciplinary Authority in the punishment order dated 12.04.1996, underlining the personal hearing, before him, has observed as under:

“अधोहस्ताक्षरी के यह पूछने पर कि क्या उन्हें इस प्रस्तावित दण्ड के विषय में कुछ कहना है, श्री देवी प्रसाद ने कहा कि उनसे गलती हो गई है तथा उन्हें एक मौका और दिया जाय..... गलती हो गई है, गलती का बहुत अफसोस है तथा भविष्य में ऐसी गलती नहीं होगी अन्यथा आप जो सजा देना चाहें दे दें।”

Thus, from perusal of the above, quoted admission of the workman, it goes to show that the Inquiry Officer had rightly held the charges proved and there was no perversity in the findings of the Inquiry Officer; and accordingly, the issue no. 02 is decided in the favour of the management.

14. Now, after decision of the preliminary issue no. 02, in the favour of the management, the submissions of the workman that the punishment imposed upon him is disproportionate and this Tribunal should interfere into it within the provisions providing under Section 11 A of the Industrial Disputes Act, 1947 is taken into account.

15. It is admitted proposition of law that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment; however, the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is harsh. Admittedly, in the instant case the workman was given charge-sheet for committing misconduct of ‘doing acts prejudicial to the interest of the bank’ i.e. misappropriation of the Bank’s money; and was penalized with punishment of compulsory removal from the Bank’s service with superannuation benefits and without disqualification for future employment. Moreover, this Tribunal vide its order dated 17.12.2019 has found that “the disciplinary enquiry was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself; and also it is held, in the preceding para, that the findings of the Enquiry Officer do not suffer with the vice of perversity.

16. Hon’ble Apex Court in *B.C. Chayurvedi v. Union of India*, (1995) 6 SCC 749 while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

“The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof.”

In *DG, RPF vs. Sai Babu* (2003) 4 SCC 331, Hon’ble Apex Court has observed that:

“6..... Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works.”

In *United Commercial Bank vs. P.C. Kakkar* (2003) 4 SCC 364 Hon’ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

“11. The common thread running through in all these decisions is that the court should not interfere with the administrators’ decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.”

In *Union of India vs. S.S. Ahluwalia* (2007) 7 SCC 257 Hon’ble Supreme Court reiterated the legal position as follows:

“8. The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved.”

In *State of Meghalaya v. Mecken Singh N. Marak* (2008) 7 SCC 580 Hon'ble Supreme Court stated that:

“The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

17. Hon'ble Apex Court in *Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad* (2010) 2 SCC (L&S) 101 has observed that

“The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

18. In the instant case the workman, unauthorizedly received money from the accounts holders to deposit the same into their respective account but instead of depositing he misappropriate the same and further in order to manipulate his misconduct he made false entries in the registers. This act of the workman was prejudicial to the interests of the Bank.

Needless to point out that the misappropriation of the Bank's money speaks ill of the honesty and integrity of the workman concerned. This is definitely an act prejudicial to the interest of the Bank, which leads to loss of faith in the workman. In *Air India Corporation Bombay vs. V.A. Ravellow* 1972 (25) FLR 319 (SC) it has been observed that:

“Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.”

In *Knhaiyalal Agarwal and others vs. Factory Manager, Gwalior Sugar Co. Ltd.* AIR 2001 SC 3645 Hon'ble Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

“(i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing the inconvenient to the employee, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved.”

In *State Bank of India and another v. Bela Bagchi and others* AIR 2005 SC 3272, repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence.

19. Thus, the Bank being a financial institution dealing with the public money, the employees of the Bank are required to exhibit utmost honesty and integrity in day to day transaction/functioning. The act of dishonesty or fraud or misappropriation lowers down the reputation of Bank in public. The public lose their confidence in Bank, which affects Bank's business and finally the national economy.

20. Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see

whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

21. In the instant case the charge of misappropriation of the Bank's money was found to be proved and principles of natural justice were properly observed while conducting the departmental inquiry; and also the findings of the Inquiry Officer were not found to be perverse; however, the workman, taking a lenient view, had been awarded punishment of compulsory removal from the Bank's service with superannuation benefits and without disqualification for future employment, which cannot be said to be disproportionate or harsh to the proved misconduct, at any stretch of imagination.

Therefore, in of the facts and the circumstances of the case; and law cited hereinabove, there is no justification in interfering with the punishment imposed upon the workman by the Disciplinary Authority for proved gross misconduct of 'misappropriation'. Accordingly, I am of the considered opinion that the workman is not entitled for any relief.

22. Award as above.

LUCKNOW

20th January, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 मार्च, 2020

का.आ. 345.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 45/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.03.2020 को प्राप्त हुआ था।

[सं. एल-12012/5/2009-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 5th March, 2020

S.O. 345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank, and their workmen, received by the Central Government on 05.03.2020.

[No. L-12012/5/2009-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

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

Reference: No. 45/2009

Employer in relation to the management of Allahabad Bank, Division Office

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri N.M. Mishra. Junior of Sri Manoj Kumar, Adv..

For the workman. : None

State : Jharkhand.

Industry:- Banking

Dated : 29.01.2020

AWARD

By Order No.L-12012/5/2009-IR(B-II)) dated 28.07.2009 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the claim of the workman that he has completed 240 days of services in a calendar year and that his services were terminated w.e.f. 14.11.2005 by the management of Allahabad Bank without following the procedure of Industrial Disputes Act, 1947 is legal and justified? What relief the workman concerned is entitled to?”

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workman left appearing before the Tribunal. Thereafter again regd. notices were issued to both the parties but even then no one appeared on behalf of the workman/union. Now the Case is pending since 12.08.2009 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 मार्च, 2020

का.आ. 346.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस0 जी0 एस0 इण्डिया प्रा0 लि0 के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ सं. 10/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.03.2020 को प्राप्त हुआ था।

[सं. एल-36012/1/2016-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 5th March, 2020

S.O. 346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of SGS India Pvt. Ltd., and their workmen, received by the Central Government on 05.03.2020.

[No. L-36012/1/2016-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 GOA CAMP**

Present : JUSTICE RAVINDRATA NATH KAKKAR, Presiding Officer

REFERENCE NO. CGIT-1/10 OF 2016

Parties: Employers in relation to the management of SGS India Pvt. Ltd.

AND**Their workmen****Appearances:**

For the first party Management	:	Absent
For the second party / Union	:	Mr. F.X. Rodrigues General Secretary
State	:	Goa

Goa, dated the 14th day of February, 2020

AWARD

1. The present reference has been made by the Central Government by its order dated 26.08.2016 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

“Whether the action of the Management of SGS India Pvt. Ltd., Vasco-da-Gama, Goa in alleged premature retirement of Smt. Sumitra Reddy, Sampling Assistant from service is legal, justified and proper? If not, what relief she is entitled to?”

2. Notice issued to the first party Management was returned back with an endorsement ‘Party Left’. Notice sent to the second party Union was duly served and acknowledgement card received back. When the matter was taken up on 14.2.2020 in Goa Court Camp, which was the date fixed in the notice, Mr. F.X. Rodrigues, General Secretary of the Union was present. None was present on behalf of the first party management.

3. A perusal of the record shows that no Statement of Claim has been filed by the second party workman in this case.

4. Today, i.e. 14.2.2020, when the case was taken up for hearing Mr. F.X. Rodrigues, General Secretary of the Union filed an application for withdrawal from the Reference. Further it has been stated in the application that the workman Smt. Sumitra Reddy has settled her dispute and taken her final dues from the management.

5. In view of the withdrawal application filed by the General Secretary of the Union that the dispute has already been settled by the workman and the workman had taken all her dues from the management, no relief can be granted to the second party workman.

6. Reference is consequently answered by stating that no relief can be granted to the second party workman. The withdrawal application shall form a part of this Award.

7. Award is passed accordingly.

JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

नई दिल्ली, 5 मार्च, 2020

का.आ. 347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 69/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.03.2020 को प्राप्त हुआ था।

[सं. एल-12012/61/2013-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 5th March, 2020

S.O. 347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneswar 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 05.03.2020.

[No. L-12012/61/2013-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Industrial Dispute Case No. 69 of 2013Dated this the 12th day of February, 2020

Present: Shri B.C. Rath, LL.B., Presiding Officer,
Central Government Industrial Tribunal, Bhubaneswar

Between:-

The Chief Manager,
Indian Overseas Bank, Regional Office,
B-2 West Saheednagar, Bhubaneswar,
(Orissa)-751007.

...First Party-Management

-Versus-

Latifur Rahaman Khan,
Meher Palli Plot No.30/23-22,Near Jharna,
Jharpada, P.O. Budheswari Colony,
Bhubaneswar, (Orissa).

...2nd. Party Workman**Appearances:-**

For the First Party Management : Sri A. Sahu

For the 2nd Party workman : Sri S. Mishra**AWARD**

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No L-12012/61/2013-IR(B-II)dated.13.9.2013 under clause (d) of sub-section(1) and sub-section(2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:-

- (i) Whether the action on the part of Enquiry Officer simultaneously acting as the Disciplinary Authority for dismissing Shri L.R.Khan, employee of Indian Overseas Bank from service without following the principles of natural justice is legal and justified ?If not what relief the workman is entitled to ?
- (ii) Whether the suspension in case of Shri L.R.Khan, Employee of Indian Overseas Bank without paying subsistence allowance and later on dismissing from service in the extreme form of disciplinary action in the decision making process is legal and justified? If not what relief the workman is entitled to ?”

2. Briefly stated the contentions raised by the parties in the dispute are that the disputed workman was working as a Clerk-cum-Cashier in the Management Bank in its Branch at Saheednagar, when he was placed under suspension on 20.4.2011. A departmental proceeding was initiated against him on the charge that he received a cash of Rs.20,000/- from one M/s. Subhalaxmi Mohapatra on 15.4.2011 towards deposit against Savings Bank Account No.2294 while he was attending the duty of Cashier in Cash Counter of the Branch. But, he did not account for the same in the Books of the Bank and misappropriated the amount. When non-deposit of the amount was reported, the workman withdrew Rs.20,000/- from his Savings Bank Account No.15543 maintained in another Branch and deposited the said cash amount in the Saving Bank Account of the depositor. In the departmental proceeding he was held guilty of the said misappropriation and found to have acted prejudicially to the interest of the Bank and caused damage to the property of the Bank as well as its customer as defined in Clause-5(j) & 5(b) of the bi-party settlement dated.10.4.2002 between the Bank and its Employees Federation. Being found guilty of misconduct of serious nature, he was dismissed from service after being called upon to submit his show cause on the enquiry report. Consequently, he preferred an appeal to his appropriate authority against such dismissal and the appeal having been dismissed a dispute was raised before the labour machinery. A conciliation proceeding having been failed the reference was made as stated earlier.

The disputant has submitted his statement of claim challenging the dismissal on a contention that he did not receive any cash from the Account Holder on 15.4.2011 and he did not make deposit of any cash in the Saving Account of the depositor on 20.4.2011. The departmental enquiry and the order of his dismissal

were not passed by a competent officer of the equivalent rank as mentioned in the certified standing order. He also challenged the fairness of the departmental enquiry as well as its finding contending that the departmental enquiry was not held in conformity to the principles of natural justice. He was not furnished with the copies of the relevant documents and footage of C.C. T.V on the basis on which he was held to have received the cash on 15.4.2011 from the depositor and accounted in the cash on 20.4.2011. The complainant Subhalaxmi Mohapatra was not examined in the enquiry. It was alleged by him that the Enquiry Officer played a triple role in the domestic enquiry since he had initiated the departmental proceeding, conducted the enquiry and imposed punishment of dismissal which is gross violation of the principle of natural justice. The finding of the Enquiry Officer was perverse and it was not based on any material evidence led before the domestic enquiry. According to him he had a clean record during his service career and he was issued with commendation by his employer on different occasions for his sincerity and honesty. He has also challenged the quantum of punishment as there was no financial loss to the Management.

3. The Management has contested the claim pleading that the departmental enquiry was held in utmost fair and proper manner with conformity to the principle of natural justice and provisions of the standing order of the Bank. The workman was furnished with all relevant papers on the basis of which the charge was sustained and he was invited show cause on the finding of the enquiry. There is no prohibition to the charging officer /disciplinary authority to act as an Enquiry Officer and to impose punishment in case of the delinquent being found guilty of misconduct. The punishment of dismissal was just and proportionate keeping in view the gravity of misconduct proved against the disputant. Hence, there was no scope to interfere in the order of dismissal of the disputant workman.

4. On the pleadings of the parties the following issues were settled for adjudication of the dispute.

Issues

- 1) Whether the reference is maintainable?
- 2) Whether the departmental enquiry was conducted against the disputant workman fairly and properly?
- 3) Whether the action of the Management in dismissing the disputant workman from service without paying him the subsistence allowance for the period of his suspension is legal and justified ?
- 4) If not, what relief the workman is entitled to ?

5. It is to be mentioned that the Management has examined Amar Padhi as M.W.1, Rama Chandra Rout M.W.2 and relied upon the documents such as copy of suspension order dated.20.4.2011, Xerox copy of Charge-Sheet dated.16.8.2011, copy of reply of the workman dated.28.9.2011, copy of letter dated.3.10.2011, copy of letter dated.3.10.2011 of the Management issued to the workman, copy of letter dated.8.12.2011 of the Management issued to the workman, copy of list of witnesses and documents relied upon in the enquiry by the Management, copy of enquiry proceedings dated.10.1.2012, copy of letter dated.20.1.2012 given by the enquiry Officer to the workman, copy of letter dated.17.2.2012 given by the disciplinary authority along with findings, copy of defence representatives comments dated. 24.3.2012 on the finding of the Enquiry Officer, copy of notice dated.20.4.2012 for personal hearing on 19.5.2012, copy of order dated.23.5.2012 issued to the workman, copy of the appeal dated 16.7.2012 made by the workman, copy of the proceedings dt.16.7.2012, copy of order dated.31.8.2012 issued by the Appellate Authority to the workman, copy of letter dated.3.5.2011 issued by the Chief Manager, Regional Office of the Management, Copy of details of the subsistence allowance paid to the workman, copy of C.D. And CCTV Camera footage dt.15.4.2011, Xerox copy of the fact finding enquiry report appended with signature of M.W.2 Sri R.C.Rout, Original written complaint letter dated.18.4.2011 of Miss. S.Mohapatra, original written complaint letter dt.20.4.2011 of Miss.S.Mohapatra to Regional Manager, computerised statement of S.B. A/c No.2294 of S.Mohapatra, computerised statement of S.B A/c.No.15543 of L.R. Khan, computerised statement of S.B Staff A/c.No.15566 of S.Khan, Computerised statement of C.C. staff A/c. No.6000 of L.R. Khan, computerised Statement of S.B. Staff A/c. No.10340 of L.R. Khan, copy of letter dt. 24.8.2010 of the Management, Copy of letter dated.31.8.2010 of the Management, copy of the investigation report dated.16.9.2010 by Sri R.C.Rout, Copy of letter dated.19.10.2010 of the Management, copy of letter dated. 26.10.2010 of the Management, copy of reply dt.10.12.2010 of the workman, copy of letter dt. 20.4.2011 containing complaint dt. 18.4.2011 of Smt. S. Mohapatra, copy of written statement dt. 25.4.2011 of R. Hque, Chief Manager to Sri R.C.Rout the fact finding enquiry officer, written complaint of Subhalaxmi Mohapatra which are marked as Exts.1 to Ext.34 at the time of hearing on preliminary issue whereas the workman has examined himself as W.W.1 and relied upon the documents such as copy of the letter dated 29.11.2012 of DGM and CPIO of the Management to the workman, copy of letter dated 7.7.2011 issued by the Chief Manager to the workman, Copy of letter

dt.8.12.2011 of Sr. Manager-cum-Enquiry Officer to the witness S.Dhal, copy of the letter dt.8.12.20.4.2011 of the Chief Regional Manager, copy of appreciation letter of AGM dt.8.9.2008, copy of the appreciation letter issued by the Chief Manager of the Bank, copy of the suspension order dt.20.4.2011, copy of explanation of the workman dt.16.8.2011, copy of the charge sheet, copy of the reply of the workman dated.28.9.2011, copy of the letter dated.3.10.2011, copy of the letter dated.8.12.2011, copy of the letter dated.23.5.2012, copy of the appeal of the workman dated.11. 6.2012, copy of the proceeding of personal hearing of the appeal dated.16.7.2012, copy of rejection of appeal dated.31.8.2012, copy of the letter of P.S. Sarangi dt.12..7.2008, copy of the memorandum of settlement, copy of statement of Smt. Subhalaxmi Mohapatra at the Bank on.21.4.2011 which are marked as Ext.A to Ext.U at the time of hearing on preliminary issue on fairness of departmental enquiry.

6. The issue of departmental enquiry was decided preliminarily vide this Tribunal order dated.12.1.2018 and the same is to be treated as part of this award. In the said preliminary issue the enquiry was found to have not been conducted in a fair and proper manner in conformity with the principles of natural justice. The said preliminary issue being answered against the interest of the Management Bank, opportunity was given to the Management Bank to lead evidence to establish the misconduct. Accordingly, the Management has examined two witnesses namely Sri Riyzual Hoque as M.W.3 and Subhalaxmi Mohapatra being summoned through the Tribunal as M.W.4. Besides, it has filed the Written Complaint dated.18.4.2011 of Subhalaxmi Mohapatra M.W.4, marked as Ext.19, the written statement of M.W.3 before the fact finding Enquiry Officer marked as Ext.33 and CC TV footage of the Bank on 15.4.2011.

FINDINGS

7. Issue of fairness of departmental proceeding has already been decided and the finding of the said issue being in favour of the workman the next question to be decided is whether the Management has established the misconduct of the disputed workman as alleged in the Charge Sheet by the evidence recorded and adduced before the Tribunal after the preliminary issue being answered that the departmental proceeding was not conducted in a fair and proper manner in conformity to the principle of natural justice. It is not out of place to mention that the legal position as emerges from the settled principles set out by the Hon'ble Supreme Court in a catena of decisions including in the case between Neeta Kapilesh –Versus- Presiding Officer Labour Court and another AIR 1999 SC 698 is that in all cases where the enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the Management or the employer to justify the action taken against the workman to show by fresh evidence, that the termination or dismissal order was proper. If the Management does not lead any evidence by availing of this opportunity it cannot raise any ground at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstance, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the Management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.

8. In the above noted case the Hon'ble Supreme Court have further held that the record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found defective by the Tribunal. Such record is also not constitute "material on record" within the meaning of Sec.11-A as the enquiry proceeding, on being found to be bad, have to be ignored altogether. The proceeding of the domestic enquiry relied upon by the Management could be for limited purpose of showing at the preliminary stage that the action taken against the workman was just and proper and that full opportunity of hearing was given to him in consonance with the principles of natural justice. Keeping in view the above settled position of law it can be safely said that the finding of the preliminary issue against the Management on account of the departmental enquiry has been held to be bad, the record of enquiry held by the Management ceased to be "material on record", within the meaning of Sec.11-A of the Act. The only course open to the Management is to justify its action of dismissing the disputed workman by leading fresh evidence as required by the Tribunal after the preliminary issue was decided. In the above back drop of the settled principle now it is to be seen whether the evidence of the Management recorded and adduced after the preliminary issue justified the dismissal of the disputant workman.

9. Coming to the testimony of M.W.3 it is seen that he was the Chief Manager, Indian Overseas Bank Saheednagar Branch, Bhubaneswar at the relevant time of alleged misappropriation of the deposit of Smt. Subhalaxmi Mohapatra. According to him on 18.4.2011 his Senior Manager briefed him that Subhalaxmi Mohapatra (M.W.4) raised a complaint for non-credit of Rs.20,000/- in her S.B. Account No.2294. The alleged deposit made on 15.4.2011 by Smt. Subhalaxmi Mohapatra was not reflected in the Account No.294. The Senior Manager further disclosed him that on verification and search of the vouchers S.B Supplementary and Log Entries of dt.15.4.2011 he found that no excess or short of cash was reported on that day by the Cash Department. It is the further testimony of M.W.3 that on 19.4.2011 M.W.4 came to

him with her family members and handed over the complaint Ext.32 wherein it is alleged that he deposited Rs.20000/- of denomination (9 x 1000), (22 x 500) on 15.4.2011 against her Account No.294 on the same day and up dating of the Pass Book reflecting the deposit could not be made. The man in the Receipt Counter had not given her the counter foil. According to him after receiving the complaint when he and other staff verified the transaction log and S.B Supplementary they did not found any excess related voucher. As the complainant told that she did not obtain the deposit receipt of Rs.20,000/-, the CC TV installed in the branch was verified after receipt of written complaint from M.W.4. On running of CC TV footage he observed that M.W.4 entered the branch premises on 15.4.2011 and went straight to the payment cashier counter and from there she was directed to go to the Receipt Counter. At Receipt Counter she tendered cash and cheque directly to the cashier and the cashier returned back both cash and cheque and directed her to fill up the Pay-in-Slip. The Complainant Subhalalaxmi Mohapatra after filing the Pay-in-slip seemed to have deposited both cash and cheque to the Receipt Counter Cashier and after some time, she received back the cheque with pay in slip from the Receipt Cashier and went to clearing section for deposit of the same.

It is his further evidence that after verifying the CCTV footage he called the disputed workman and demonstrated the CCTV footage before him. At that time he told that he was not in position to recall the incident, however he would deposit the amount. On the following day i.e. on 20.4.2011 he told him that amount was deposited in S.B. Account No.2294 and he handed over the counter foil to him. On the basis of his report about the entire episode an enquiry was conducted by the Fact Finding Officer and thereafter the departmental proceeding was initiated. M.W.4 has deposed before the Tribunal that she had lodged the complaint before the Branch Manager on 18.4.2011 regarding non-deposit of Rs.20,000/- on 15.4.2011 against her S.B A/c.No.2294. After her complaint on 18.4.2011 an amount of Rs.20,000/- was credited to her account.

10. The Management Bank has mainly relied upon the above version of the witnesses advanced in their examination in chief and the CCTV footage dated 15.4.2011 and the fact that Rs.20,000/- was credited to the account of M.W.4 on 20.4.2011 to establish the misconduct on the part of the disputed workman. It is not seriously disputed that the disputant was on duty at Receipt Counter as the regular cashier was on leave on that day which is emerging from the evidence of the parties. The version of M.W.4 clearly indicates that he was no way a direct witness to the deposit either made on 15.4.2011 or on 20.4.2011. His knowledge about the non-deposit of the amount in the Bank transaction and its alleged misappropriation by the disputant is based on CCTV footage and the complaint made by M.W.4. Admittedly, no counter foil of pay-in-slip was produced by the complainant before M.W.3 when she raised allegation about the non-deposit. As per M.W.3 the CCTV footage reveals that the Complainant after filing Pay-in-slip seemed to have deposited both the cash and the cheque in the Receipt Counter. The Cashier received the same and after some time she received back the cheque with pay-in-slip from the Cashier. Had it been the visual of CCTV footage, the counter foil/Pay-in-slip should have been produced by the complainant for such non-deposit as M.W.3 claims that Pay-in-slip was handed over to her. The Complainant being an Engineering Graduate was also expected to collect the Pay-in-Slip /Counter foil for proof towards the deposit of Rs.20,000/-. She was not expected to have handed over the cash simply and returned home. The oral evidence of the complainant and her written complaint dt.18.4.2011 vide Ext.19 does not suggest that she had been to the Receipt Counter twice for making the deposit of the Cash as it is claimed by M.W.3 that on first occasion she presented the cash without filling the pay-in-slip. Neither the written complaint Ext.19 nor her testimony reveals that after filling up the Pay-in-slip she again approached the Receipt Counter for making the cash deposit. In Ext.19 she has alleged that she did not receive the counter foil whereas in her evidence she expressed her inability to say if she had received any counter foil on that day or not. The counter foil being very vital for a deposit would have established the fact that cash of Rs.20,000/- was deposited on 15.4.2011. M.W.3 has specifically stated that as per CCTV footage cash and cheque were directly tendered to the cashier and the cashier returned back both the cash and cheques directing to fill-up the pay in slip. Had the Cashier in the Receipt Counter any intention to misappropriate the amount, he could have received the amount instead of returning the same to be deposited along with Pay-in-slip. The CCTV footage being accepted in the departmental enquiry and relied upon by the Management in his evidence after the preliminary issue being answered. On visual of the same in presence of the learned Counsels for the parties it is observed that recording of the footage is not so clear to hold that the cash was received by the Cashier on the 2nd occasion and the Complainant M.W.4 was handed over the Pay-in-Slip and Cheque as claimed by M.W.3 in his oral testimony. The visual just gives an impression that the Complainant approached the Counter twice. On first occasion papers/materials as visible from the footage were returned to her and she left the counter. On second occasion she tendered some thing and she was handed over some thing. There is no clear visual on both occasions to establish that cash were tendered or pay-in-slip or any cheque was returned to the Complainant. Hence, on the basis of such poor visibility in CCTV footage it is difficult to

speak beyond doubt that the disputed workman received the cash and misappropriated the same without issuing the counter foil and reflecting the deposit in the Books of Account etc. M.W.3 speaks that Pay-in-Slip was returned to the Complainant on 2nd occasion. Had the Pay-in-Slip was returned to the Complainant, she could have produced the same or it would be available with the person dealing with Cheques as the Cheque amount was reflected in the S.B. Account of M.W.4. Therefore, the material/evidence is not sufficient to accept that the Complainant M.W.4 tendered Rs.20,000/- to the disputant workman in receipt counter on 15.4.2011 and he received the same and misappropriated without reflecting in bank transaction.

The other circumstance by which the Management desires to prove the misconduct of the disputant in this Tribunal is that of deposit of Rs.20,000/- by the workman on 20.4.2011. It is the claim of M.W.3 in his sworn affidavit that on 20.4.2011 first hour the delinquent workman came to him and handed over counter foil of Pay-in-Slip towards deposit of Rs.20,000/- in credit of S.B. Account of Smt.Subhalaxmi Mohapatra. On verification of the transaction in the Bank records it was found that Rs.20,000/- was credited to the deposit of the said account holder on that day by such deposit. It is also stated by him that the disputed workman had withdrawn such amount from his Savings Account maintained in another branch. In his cross examination it is elicited that the pay-in-slip was not in the hand writing of the disputed workman. He did not explain in his cross examination the reason of non-reporting the matter to the police even Rs.20,000/- was not credited to the Account of the Complainant. Except such oral claim of M.W.3 no other material is there to suggest or to show that Rs.20,000/- was credited to the account of the Complainant by a deposit made by the disputant. For sake of argument even such deposit allegedly made by the disputant is accepted it cannot establish the misconduct of misappropriation by the disputant. At the same time it cannot be overlooked that when an employee is charged and confronted with an ultimatum of an action on allegation of misappropriation it may be expected from such an employee to make good of the loss to avoid unnecessary harassment.

Making of deposit by the disputant by itself does not prove the conduct of misappropriation when there is no credible evidence to suggest that the Complainant handed over Rs.20,000/- to the disputant in payment counter. The CCTV footage is not clear on the second occasion to suggest that the account holder tendered the money to the disputant which he received and handed over the cheque to the account holder for its deposit in proper place. Had it been so the Pay-in-Slip submitted by the account holder towards deposit of cheque and the cash should have been reflected in the Pay-in-slip. The amount of cheque is stated to have been credited in the account. The Pay-in-Slip for the cheque is not brought to the record to establish that cash of Rs.20,000/- was also deposited simultaneously on that day for its credit to the account. Thus, the main charge/allegation that the disputant received /accepted Rs.20,000/- from the Complainant M.W.4 is not proved it is hard to believe that he misappropriated the amount without crediting the same to the account of the complainant for which he deposited the lost amount.

Further, it is emerging from the cross examination of the witnesses of the Management Bank that the disputant workman was a dedicated worker. His efficiency and integrity could not be doubted. He was appreciated for his work by the Chief Manager of Bhubaneswar Main Branch vide Ext. F. He was also appreciated by the Main Branch as he returned the Wallet containing Rs.100,000/- to its owner while the wallet was left in the branch. The appreciation was made for such conduct of the workman vide a Certificate Ext. E. It is emerging from the cross examination of Management witness supported by Ext. E and F that the workman had no adverse past record in regard to transaction of the Bank. More over, he is stated to be appreciated for returning a wallet containing Rs.100,000/- to its owner. Had the disputant any ill-intention or he was interested to grab the money belonging to others, he was not expected to refund Rs.100,000/- to its rightful holder.

11. Admittedly, law is well settled that strict rule of law of evidence is not applicable in a departmental enquiry. But, the misconduct of the disputant workman is required to be proved before the Tribunal in the event of the preliminary issue of fairness of departmental enquiry being held defective by the Tribunal. When such misconduct of a workman is going to be established in the Tribunal in an industrial dispute, the onus lies on the Management to prove the same by credible evidence. There is no Pay-in-Slip or counter foil of such Pay-in-Slip to establish that Rs.20,000/- was tendered in the Receipt Counter of the Bank. The employer has made an attempt to establish such tender of money by examining the account holder and the CCTV footage. The version of the Complainant before the Tribunal is not in conformity to the view as recorded in the CCTV footage. As per the Complainant she had approached the receipt counter once whereas the CCTV footage reveals that she approached the receipt counter twice. She has not denied or claimed that the disputant did not issue her the counter foil of the Pay-in-Slip after making deposit of the amount either on first occasion or on the second occasion. On the other hand the CCTV footage has given a visual that on both the occasions the Complainant was handed over some substance like paper. On the other hand the

integrity, honesty and sincerity of the disputant was never doubted prior to the alleged complaint. He has stated to have refunded a Wallet containing Rs.100,000/- to its owner. In the above back drops it is to be held that the Management has also failed to prove the misconduct of the disputant workman before this Tribunal by cogent and credible evidence.

12. Having regard to the entire circumstances led before this Tribunal it is to be held that the departmental enquiry was not fairly and properly conducted so also the Management fails to prove the alleged misconduct of the disputed workman by sufficient credible and cogent evidence in the Tribunal. Be that as it may, the order of dismissal or the action of the Management dismissing the 2nd Party Workman from service pursuant to such defective departmental enquiry cannot be sustainable in the eye of law. Accordingly the action of the Management dismissing the 2nd Party Workman is not valid and legal.

13. Coming to the relief to which the workman is entitled it is not claimed by the Management or in its evidence that the workman was in any gainful employment either during his suspension period or after his dismissal. In the mean while he has attained the age of superannuation which cannot be over sighted. Therefore, the order of reinstatement cannot be issued in the case at hand. However, the misconduct having not been proved and the alleged dismissal being found illegal, the 2nd Party Workman is entitled to his wages and service benefits being deemed to be continuing in service till the age of his superannuation. His service benefits including his arrear wages from the date of his suspension shall be paid to him within two months from the date of award notified failing which the workman is entitled to 7.5% interest per annum on his arrear wages and service benefits from the date of enforcement of the award i.e. the date of notification of the award.

The reference is answered and award is passed accordingly.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 मार्च, 2020

का.आ. 348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्ट कोस्ट रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 44/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.03.2020 प्राप्त हुआ था।

[सं. एल-41011/03/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 5th March, 2020

S.O. 348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of East Coast Railway and their workmen, received by the Central Government on 05.03.2020.

[No. L-41011/03/2012-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 44 OF 2012

Dated Bhubaneswar the, 13th December, 2019

Present: Shri B.C. RATH Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar

Between:

The Sr. Divisional Operating Manager,
East Coast Railway, Khurda Road,
At/P.O. Jatni, Dist. Khurda (Odisha).

...First party management

AND

The Dist. Secretary,
Bharatiya Mazdoor Sanga,
Khurda District, VA/23/3, Ashok Nagar,
Bhubaneswar (Odisha).

...Second party workman

Appearances:

Shri C.R. Nayak. : For First-party management

Shri S.K.Sarangi. : For Second party workman

AWARD

The Government of India, Ministry of Labour and Employment have referred the industrial dispute for adjudication vide its Order No. L-41011/03/2012-IR(B-I) dated 19.4.2012 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) (herein after referred to as "the Act") and the term of reference reads as follows:

"Whether the action of the management of Divisional Operating Manager, East Coast Railway, Khurda Road in imposing punishment of dismissal from service upon Shri S.Venkateswar Rao, Ex-Assistant Guard vide their dated 28.04.2011, is legal and justified ? To, what relief the workman is entitled ?"

2. The case of the second party workman as revealed from his statement of claim is that he was working as Assistant Guard of East Coast Railway, Khurda Road, when he was dismissed from service on 28.4.2011. He joined in the regular service of the management on 1.1.1986. His dismissal was preceded by a departmental enquiry initiated for the charge of his alleged unauthorized absence from duty of Junior T.N.C. with effect from 26.3.2010. It is the claim of the second-party workman that charge was frivolous and not correct as he was never posted as Junior T.N.C. The post of Assistant Guard being superior, he can not be transferred from the post of Assistant Guard to Jr.T.N.C. He was also not communicated about his transfer and posting of Jr. T.N.C. On the other hand, it is his claim that he was attending his duty as Assistant Guard at Khurda during the relevant period and he was not assigned any work there. Even, he was not allowed to sign the attendance register. According to him, the departmental proceeding was not conducted in conformity to the principles of natural justice as well as to the rules of Standing Orders of the management. He was not provided with the copies of documents relied upon by the department to prove his alleged misconduct. He was not given opportunity to defend himself in the departmental proceeding, to cross-examine the witnesses of the department and to adduce his defence. The enquiry report was perverse and the Enquiry Officer was biased. His appeal in this regard was not taken into consideration by his authority. The finding of the enquiry report as well as the punishment are not in accordance to the materials emerging in the departmental enquiry. Hence it has been prayed for his reinstatement in service with all service benefits.

3. The management has resisted the statement of claim of the workman refuting the allegations raised by him and taking a stand that there was surplus staff in the post of Assistant Guards at Khurda Road Division for which there was necessity of redeployment of such surplus staff of Assistant Guards. The post of Junior T.N.C. is equivalent to the post of Assistant Guard. The disputed workman was sent for periodical medical examination to the Chief Medical Superintend, East Coast Railway, Khurda Road on 22.3.2020 for a routine medical examination. But, the workman did not report to his office after his medical examination on 22.3.2010 and he remained absent with effect from 23.3.2010. On verification, it was found that he had attended the periodical medical examination on 22.3.2010 and, thereafter he was asked to join at his working unit on 25.3.2010 vide medical fitness certificate No. A/2/512 Dated 23/25.3.2010. After remaining absent from duty, he challenged the order of his transfer and posting as Junior T.N.C in the Central Administrative Tribunal, Cuttack vide O.A. No.461/2010. But, the learned Tribunal directed the workman to join in the post of Junior T.N.C. with the pay band of Assistant Guard. In spite of such a order, when he did not report to his duty, a departmental proceeding was initiated for misconduct of unauthorized absence. Article of charges was issued to him along with copies of documents by which the misconduct was to be sustained. According to the management the disputed workman attended the enquiry, filed his show-cause and participated in the proceeding. He was allowed to defend himself taking assistance of a co-employee. He was allowed to cross-examine the witnesses in the departmental enquiry as well as to adduce his defence. Copy of the enquiry report was also furnished to him so also second show cause notice before order of dismissal was imposed on the basis of the findings of the enquiry report. Since the disputant workman was absent unauthorisedly for a long period even after initiation of the departmental proceeding, the punishment of dismissal was just and appropriate to the gravity of his misconduct. Therefore, prayer is made by the management for rejection of the claim of the disputed workman.

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

- i) Whether the action of the management of Divisional Operating Manager, East Coast Railway, Khurda Road in imposing punishment of dismissal from service upon Shri S.Venkateswar Rao, Ex-Assistant Guard vide their 28.4.2011 is legal and justified ?
- ii) To what relief the workman is entitled ?

5. Both the parties have adduced oral as well as documentary evidence in support of their respective claim. The disputed workman has examined himself as W.W.1 and filed the copy of periodical medical examination report, Copy of advertisement for the post of Guard, Copy of application for the post of Guard, copy of application of Railway privilege pass. Copy of pass, copy of charge sheet, copy of reply to the charge-sheet, copy of first sitting of enquiry, copy of final sitting of the enquiry, copy of major penalty proceeding, copy of letter dated 25.3.2011 issued to the workman on D. & A. enquiry on major penalty charges, copy of submissions of defence, copy of punishment notice, copy of submissions of appeal memo, copy of letter dated 11.8.2011 on disposal of the appeal dated 10.5.2011, copy of R.T.I reply for issue of transfer order to the workman, copy of prayer to A.D.R.M. for reinstatement, copy of disposal of Sr. D.O.M. on major penalty charge-sheet, copy of attendance register and copy of R.T.I. reply dated 6.11.2010 of S.M.R., Bhubaneswar, which are marked as Ext.1 to Ext.22 respectively, to establish his allegation raised against the management, whereas, the management has examined Station Director, East Coast Railway, Bhubaneswar as M.W.1 only to refute the allegation of the disputed workman. It is pertinent to mention here that as per the charge, the disputed workman was departmentally proceeded for alleged long unauthorized absence from duty. On being held guilty of misconduct for such long unauthorized absence, he was dismissed from service with effect from 28.4.2011. But, neither the management nor the disputed workman had either prayed or raised a contention for an issue on fairness of departmental proceeding and hearing the same as preliminary issue. The management has not either pleaded or advanced any argument/submission at the time of settlement of issue that the fairness of departmental enquiry should be an issue and decided preliminarily before considering other issues involved in the dismissal of the disputed workman. It is not also pleaded or submitted that in case the issue of fairness of departmental enquiry is answered against the management, an opportunity should be given to it to adduce evidence directly to prove the misconduct of the workman. Having regard to the above facts and the submission of the parties that all the issues should be taken up simultaneously for adjudicating the dispute, all the issues involved in the dispute are heard simultaneously and decided/adjudicated in the Award. For the sake of convenience as well as due to interlink of the findings of both the issues, they are taken up into consideration analogously.

6. As per the pleading and the evidence of the disputed workman in his examination-in-chief, he was not given due opportunities to defend his case in the departmental proceeding. The proceeding was not conducted in conformity to the principles of natural justice and provisions of the Standing Orders of the management. It is also his claim that the documents/materials relied upon by the department in the domestic enquiry were not furnished to him. But, it is admitted by him in his cross-examination that he was sent for periodical medical examination on 22.3.2010 and he had undergone such medical examination. Medical certificate issued in such periodical medical examination was submitted in the Superintendent Office. It is elicited from his cross-examination that he has no document to show that he had submitted the medical certificate before the office of the Superintendent on 26.3.2010. He admitted to have received a charge-sheet for his unauthorized absence from 26.3.2010 to 1.11.2010 vide Ext.6. It is also admitted by him that he was given opportunity to defend himself in the departmental enquiry. The Enquiry Officer allowed him to engage a co-worker to defend him. But, he defended himself in the proceeding. He has also admitted in his cross-examination that copies of relevant documents and papers, which were produced and exhibited in the enquiry, were supplied to him along with charge-sheet. He was asked to submit his show-cause after issue of charge-sheet and he had also filed his explanation in the departmental proceeding. He has admitted of being intimated about the place and date of holding the enquiry. Witnesses were examined and documents were exhibited in his presence in the enquiry and he was offered to cross-examine the witnesses. He was also given opportunity to adduce his defence evidence. He was heard after closure of the evidence and copy of enquiry report was furnished to him for his comment. It is elicited from his cross-examination that second show-cause notice inviting his explanation to the finding of the enquiry report was received by him before he was dismissed from service on being held guilty of misconduct for such unauthorized absent. He has stated that he made an appeal to his Appellate Authority. In view of the above admission and elicitation from his cross-examination, it can be safely said that departmental enquiry on the charge of unauthorized absence was held properly. The disputed workman was duly and clearly informed about the charges levelled against him, the witness/witnesses were examined in his presence in respect

of the charge, the disputed workman was given a fair opportunity to cross-examination the departmental witnesses, he was given an opportunity to adduce evidence in support of his defence. Hence it is difficult to accept the plea of the disputed workman that the enquiry was not conducted fairly.

7. The other plea of the workman is that the departmental enquiry and finding is not sustainable in the eye of law keeping in view the evidence/materials emerging in the domestic enquiry and stand taken by him that he was posted and working as Assistant Guard of East Coast Railway, at Khurda under the control and supervision of Chief Controller of Senior Division Operation Manager of East Coast Railway by the relevant time of alleged unauthorized absent. He was attending his office at Khurda during the alleged period of unauthorized absence. Since he was not allowed to sign the attendance register, he was shown and charged as an unauthorized absentee. It is also emerging from his pleading and evidence that he did not receive any order towards his posting as Junior T.N.C. and the post of Junior T.N.C. is not equivalent to the post of Assistant Guard. Therefore, his posting as Junior T.N.C. at Bhubaneswar under S.N.R. of Bhubaneswar was not workable. It is coming forth from the oral testimony of M.W.1 that disputed workman was Junior T.N.C. on being transferred and posted at Bhubaneswar by the relevant time of his unauthorized absence. He had challenged the order of his posting as Junior T.N.C. by filing the O.A. No. 461/2010 in Central Administrative Tribunal, Cuttack Bench. The management was directed to allow the disputed workman to join in the post of Junior T.N.C. with equivalent pay and allowance attached to his earlier post vide Order dated 28.10.2010. In spite of such order of the Hon'ble Tribunal, the disputed workman did not join in his new assignment and he remained absent for which charge-sheet was issued on 17.11.2010 for his unauthorized absent with effect from 26.3.2010. The evidence of the management in regard to the dispute raised in the Central Administrative Tribunal is not seriously challenged by the disputed workman. Thus, it is apparent from the evidence of the disputed workman and the management witness that the disputed workman was transferred from the post of Assistant Guard of East Coast Railway, Khurda to the post of Junior T.N.C. at Bhubaneswar. It is also emerging from the evidence that the post of Junior T.N.C. is equivalent rank to the post of Assistant Guard. Since the employees as Assistant Guard were surplus, the disputed workman and some other employees were transferred and posted as Junior T.N.C. Though, the disputed workman challenged his posting as Junior T.N.C., he was duty bound to report himself in his new posting. After joining he could have raised the dispute on his new assignment. On the other hand, the Central Administrative Tribunal is stated to have directed the disputed workman to join in his new assignment and the management was directed to accommodate him. Despite such order, he did not report himself in his new assignment. That being the position, it cannot be said that the finding of the Enquiry Officer in regard to his transfer and posting as Junior T.N.C. is not in conformity to the materials laid in the domestic enquiry. On the other hand, the finding of the Enquiry Officer appears to be in conformity to the materials laid before him. In no way the same can be held perverse.

8. Law is well settled that an enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges leveled against him, (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. Keeping in view of the above principles it, the evidence and materials as adduced before this Tribunal as well as in the domestic enquiry are examined and taken into consideration, it can be safely said that the disputed workman was clearly informed of the charges, he was furnished with required documents on the basis of which charge was to be sustained against him, evidence in the domestic enquiry was recorded in his presence and he availed opportunity to cross-examine the departmental witnesses, he was given an opportunity to adduce evidence in his defence, he was heard and he was furnished with copy of enquiry report and issued with second show-cause notice before imposition of punishment. The finding of the Enquiry Officer seems to be not perverse. Be that as it may, there is no scope for this Tribunal to interfere in the finding of the domestic enquiry on a simply allegation of disputed workman that the enquiry was not held in accordance to the rules of natural justice.

9. Now coming to the issue of punishment as imposed on the disputed workman on account of misconduct of his unauthorized absence being proved in the departmental proceeding, it is to be stated that the jurisdiction of the Tribunal to interfere in the disciplinary matter or punishment can not be equated with an appellate jurisdiction. The Tribunal can not interfere with the findings of the Inquiry Officer or Competent Authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent officer either by an Act of Legislature or else made under the proviso to Article 309 of the Constitution. If there had been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the Competent Authority. If the penalty can lawfully be imposed

and is imposed on the proved misconduct the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the Competent Authority is based on evidence. It is held by the Apex Court consistently that Tribunal/Court cannot substitute its punishment in the place of punishment given by the disciplinary authority unless the said punishment apparently is vindictive or unduly harsh in comparison to the misconduct allegedly committed by the employee i.e., punishment is shockingly disproportionate to the gravity of misconduct committed by the workman. Coming to the case of the disputed workman, it is seen that there is no serious dispute to the fact that he joined in the establishment of the management on 1.1.1986 and he remained absent unauthorisedly from 23/26.3.2010 on wards till he was dismissed. There is nothing either in the departmental proceeding or in the pleading of the management that the disputed workman had ever committed or held guilty of misconduct during the period from 1.1.86 to 26.3.86. There is also nothing in the pleading and evidence of the management to suggest that he was a habitual unauthorized absentee prior to the departmental proceeding. He has found to have served the management for about more than 25 years. In the above back drops, the punishment of dismissal without any service benefits seems to be harsh or vindictive and it is shockingly disproportionate to the gravity of misconduct committed by the disputed workman. Therefore, this Tribunal finds it just and appropriate to interfere with the punishment imposed on the disputed workman. Instead of remitting the matter to the management to reconsider the punishment imposed on the disputed workman, it is felt for the interest of justice to reduce and modify the punishment of dismissal to the punishment of compulsory retirement so as to enable the disputed workman to avail superannuation benefits on account of he having served the employer for 25 years.

10. Accordingly, in the facts and circumstances of the case, the punishment of dismissal is modified to the punishment of compulsory retirement.

11. For the reasons and discussion made above, the statement of claim of the disputed workman is allowed in part. The management is directed to treat the dismissal of the workman as compulsory retirement and do the needful within three months of the Award notified in the Official Gazette, failing which the disputed workman is entitled to interest at the rate of 6.5% (six and half percent) per annum on the service benefits accrued to him by this Award and the interest is to be paid from the date of this Award.

The Award is passed and the reference is disposed of accordingly.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 मार्च, 2020

का.आ. 349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मराठवाडा ग्रामीण बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 मुम्बई के पंचाट (संदर्भ संख्या 11/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.03.2020 प्राप्त हुआ था।

[सं. एल-12025/01/2020-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 5th March, 2020

S.O. 349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2017) 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 Marathwada Gramin Bank and their workmen, received by the Central Government on 05.03.2020.

[No. L-12025/01/2020-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT** : M. V. Deshpande, Presiding Officer**Appln. (Ref) No. CGIT-2/11 of 2017****[OLD APPLN. NO. CGIT – 1 OF 2015]****EMPLOYERS IN RELATION TO THE MANAGEMENT OF MARATHWADA GRAMIN BANK**

The Chairman,
Marathwada Gramin Bank,
Head Office at Shivajinagar,
Nanded, Dist. Nanded.

The General Manager,
Marashtra Gramin Bank,
Head Office at Shivajinagar,
Nanded, Dist. Nanded

AND**THEIR WORKMEN**

Shri Chandrakant Tukaram Shinde,
C/o. P.J. Deshpande,
“Jeevan Kamal”, Pragatinagar,
Vasantnaik Chowk, Ring Road,
LATUR – 413 531.

APPEARANCES:

FOR THE EMPLOYER : Mr. D. J. Bhanage, Advocate

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

Mumbai, dated the 22nd January, 2020

AWARD PART – I

1. This is a reference filed under Section 2-A sub-section (2) of the Industrial Disputes Act, 1947 in view of the amendment in the Act No. 24 of 2010.

2. The concerned workman has filed statement of claim Ex.1 According to concerned workman, he was employed in Marathwada Gramin Bank and joined as a clerk on 27.4.82. As such he was employed in first party NO.1 for almost 30 years till the date of his dismissal. He has been issued the charge-sheet dt. 30.10.10 under Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009]. The said Service Regulation rules have not been registered as well as notified with the mandatory provisions of industrial employment [Standing Orders Act, 1946 and the rules thereunder]. As such this entire charge sheet dt. 30.10.10 lacks the legal sanctity.

3. It is then case of the concerned workman that he was issued the suspension order and the charge sheet. Thus entire action against him was initiated against him under Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009]. But since the first party bank has not followed the procedure laid down under the [Standing Orders Act, 1946] from the beginning till passing of the order of dismissal against the concerned workman, the entire disciplinary action is vitiated.

4. According to concerned workman he has been victimized by the management. He became the Managing Committee member of Marathwada Regional Rural Bank Employees Union Nanded in 1986. He became the Vice president of the said union in 1988. He became the Working President of the said union and also became Honorary member of Marathwada Regional Rural Bank Officers' Association in 1995. At present he is Organising Secretary of Marathwada Regional Rural Bank Officers' Association from 25.12.14. In various capacities as Committee Member office bearers of the unions he has interacted with the management on various issues. He has also signed various settlements with the management of first party bank for last about 3 years. He worked as a Defence Representative in around 20 enquiries and also discussed with the management in the

disciplinary matters. However, selection of the employees employed in the bank had floated another unions by name MGB Krantikari Employees Union and MGB Krantikari Officers Association. These two unions were patronized by management of the bank. The other union was not having any membership worth in its name and subsequently that union got dissolved and majority of the members of the said union became the members of Marathwada Regional Rural Bank Employees Union and Officers' Association. Since he had opposed the shifting of Head office from Nanded to Aurangabad under the banner of unions and he had made correspondence on this issue with the State Govt. authorities as also the management of sponsoring bank i.e. bank of Marathwada were having grudge ill-will against him. As such the management of the first party bank in collusion with sponsoring bank fished out imaginary allegations against him and subjected him to disciplinary action which ultimately cultivated his dismissal.

5. It is then case of the concerned workman that the perusal of charge sheet would show that the allegations contained therein are false and the same would never amount to employment misconduct because none of the allegations had any proximate nexus whatsoever with the work of concerned workman as a clerk in the bank. In the enquiry proceedings dt. 30.11.10, EO. had made it clear in the words "regarding points raised by CSE in respect of being Working President of MRRBEU and member of MRRBOU the plea of PO in respect of points is acceptable to EO as charge No.1 is related to Working President.". As such the EO has accepted with the charge No.1, 2 & 3 are acts of Working President of the union but the EO has given report of the enquiry findings as all the charges have been proved.

6. It is then case of the concerned workman that the charge sheet is vague and bad in law. When the management was aware of the fact of unions decision of collecting donations it means to management sanction unless immediately it was countermanded by the banks authority immediately after knowledge of such decision.

7. As regards the second charge the management should have written to the concerned depositors in respect of allegations keeping deposits since 2004 – 09. As regards the third charge which relates to LIC agencies of his brother and other relations the management was aware of all the facts since the said relations opened their respective a/cs. with the bank. The management should have atleast tried to explain what they precisely mean by canvassing LIC policy. In this view the contention of the concerned workman is that he has not committed any act of omission and / or commission detrimental to the interest of the bank and as such the enquiry conducted by the bank by appointing Shri S.G. Kulkarni, Bank Manager of Nanded Branch was not legal, fair & proper.

8. It is then case of the concerned workman that along with charge sheet list of witnesses and list of documents were not furnished to him and thus it has caused prejudiced to him. Besides, the material witnesses were not examined in the enquiry and as such the enquiry is monitored and influenced by the disciplinary authority.

9. According to concerned workman material documents such as report of investigating team was never disclosed or produced. List of membership of rival unions were not furnished in the enquiry inspite of request made during the enquiry on 29.7.11. The order of examination of the witnesses was totally against the principles of natural justice and as such the entire evidence recorded in the enquiry was concocted and it was never trustworthy testimony against the workman. The EO has never explained the contents of the enquiry proceedings and the depositions to the workman and his defence counsel. The EO was biased person and acted in favour of the management.

10. According to him recording of the enquiry were totally improper. His request that he should be permitted to be defended by D.R. Tuljapurkar was also not considered. The charge sheet was not given to him in Marathi and his request for the same was rejected and the EO relied upon the deposition of the staff member in the absence of documents.

11. According to him the D.R. could not cross-examine the material witnesses and as such the findings of the EO vide his report and finding dt. 27.1.12 are perverse and not based on legally admissible evidence.

12. According to concerned workman, findings of the EO has not reached to any definite conclusion about his guilt. Findings are cryptic and showing non-application of mind. Even punishment awarded to him is not legal, fair & proper. His services were terminated by G.M. who was not competent to sign the dismissal order.

13. It is then contention of the concerned workman that he had preferred writ petition bearing WP No. 3576 / 2013 before Hon'ble Bombay H.C., Aurangabad Bench against the Chairman of the bank. The said writ petition was disposed of with certain directions. He then preferred civil application bearing CA No. 10125 / 2015 in WP No. 3576 / 2013. The Hon'ble Bombay H.C. was pleased to pass the order on 21.8.15 mentioning that in the event appropriate govt. passes order to refer the dispute to the tribunal the said reference would be

made pursuant to the order passed by Hon'ble Bombay H.C., the present application is made for adjudication. He is thus asking for quashing & setting aside the dismissal order dt. 30.5.12 and suspension order dt. 12.8.10 of the management of the first party bank and to direct the first party bank to reinstate him with full back wages, continuity of service w.e.f. 30.5.12 and to pay his back wages with 18% compounded interest therein.

14. The first party bank opposed the application by filing written statement Ex. 5 contending therein that no conciliation proceeding was held by the ALC on admission dt. 30.7.15. No failure report was submitted to the appropriate govt. and therefore the appropriate govt. was not at all involved in the process and could not decide on the basis of material record whether the dispute ought to be referred for adjudication or not? As such the concerned workman was not entitled to invoke provisions of section 2A (2) by discontinuing the conciliation proceedings and further process at the level of a appropriate govt. or decision about making reference. The present reference application u/s. 2A (2) is not maintainable.

15. It is then case of the first party bank that allegations made in the charge sheet are directly related to and affect adversely the employee employer relationship. The concerned workman has indulged into purportedly for collection of donations from employees of the bank by pressuring them as well as by coercion. He has indulged into coercive collection from clients and borrowers of bank under the pretext of collecting donations in the capacity of Working President of employees union called Marathwada Regional Rural Bank Employees Union and Honorary member of Officers Union called Marathwada Regional Rural Bank Officers' Union. The concerned workman collected huge donations from employees as well as borrowers and customers of the bank under pressure and other means of using his position as an employee of the bank. He had managed to have huge collections more than 55 lakhs in his own private S.B. A/c. and the accounts of his family members. He had actually engaged himself in promoting LIC business in the name of his family member. All these acts of commission on the part of concerned workman were directly in violation and amounts to misconduct under Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009] and hence specified charges were leveled against the concerned workman under Regulation 17, 19, 21, 35 & 38 of the said Regulations. These misconducts have been committed by the concerned workman in the capacity of as an employee and all these misconduct directly affect the employer employee relationship between him and the bank.

16. According to the first party, the concerned workman has been dismissed vide order dt. 30.5.12 passed by the disciplinary authority and the bank. The said order has been passed on the basis of findings of the EO dt. 27.1.12 in the departmental enquiry held against him. The departmental appeal filed by the concerned workman under the provisions of service regulations of the bank has been dismissed by order dt. 29.9.12 by the appellate authority. He was found guilty of grave and serious misconducts of using the machinery of the bank for manipulation, transmission and private investment of the huge fund of Rs.5562700/- during the period 2005 to 2010. The amount of cash receipt reflected in the private SB A/c. of the concerned workman and his family between the year 2005 to 2010 was thus Rs.55.62 lakhs and the said cash was withdrawn by him. Act of fund raising on his part amounted to misconduct under clause 35 of Regulation 2009 of the bank.

17. It is then the case of the first party that the concerned workman is a clerk ranging between 1.30 lakhs to 1.75 lakhs. The entire cash withdrawn by him from the bank from his own accounts fully by the end of year 2010. The period of collection of the donations by the union and the huge cash movement in his own personal account and the accounts of the family coincide.

18. It is then the case of the first party bank that apart from aforesaid clear misconduct committed by the concerned workman directly as an employee of the bank, the concerned workman had led on extensive movement of collection of fund along with instigated members of the union led by him indulge in investing and pressuring not only the employees of the bank to contribute the said fund but also by coercing borrowers of the bank and disbursing the loans granted to them and in some cases even from the disbursed loan amounts of the concerned borrowers. This matter was returned to CBI in May 2011 and therefore he has been dismissed for grave misconduct on his part as an employee of the bank.

19. It is then the case of the first party bank that the charge sheet was issued by G.M. who was disciplinary authority, competent to issue charge sheet. Shri S.G. Kulkarni was appointed as E.O. to conduct the departmental enquiry in respect of aforesaid charge sheet. Departmental enquiry was conducted with the principles of natural justice. The concerned workman has participated in the said proceedings and defended himself fully and effectively. Various documents and oral evidence was led by both the parties. The concerned workman has availed the opportunity of cross-examination of the management witnesses. E.O. vide his findings held that the charges leveled against him are proved. The findings of the E.O. were entirely based on documentary & oral evidence led by both the parties. The concerned workman was given opportunity of hearing on proposed punishment by the disciplinary authority. He also gave written statement in respect of proposed

punishment but disciplinary authority ultimately awarded punishment of dismissal vide his order dt. 30.5.12. There is no violation of principles of natural justice at any stage of the enquiry and at no point of time any prejudice is said to have been caused to the concerned workman in the conduct of enquiry. Punishment of dismissal is based on the findings of the enquiry recorded by the E.O. as such punishment of dismissal awarded is just & proper.

20. It is thus denied by the first party bank that regulations are not registered or notified under the Industrial Employment Standing Orders Act and the Rules thereunder. It is submitted that the regulations of 2001 & 2009 and subsequent Marathwada Gramin Bank [officers' & employees Service Regulation 2010] have been brought into force as per the provisions and in exercise of the powers conferred by section 30 of the Regional Rural Bank Act 1976. The said service regulations are statutory regulations and are binding on the employees of the bank. Provisions of Industrial Employment Standing Orders 1946 and the rules thereunder are applicable to the employees of the bank. Since the Model Standing Orders formed under the act were not applicable to all and hence the question of enumerating any clauses of misconduct under the Standing Orders does not arise. As such the Model Standing Orders were not applicable.

21. It is then denied by the first party bank that there was grudge against the concerned workman on account of union activities. On these premise the first party has sought rejection of the reference.

22. By way of rejoinder Ex.6, the concerned workman reiterated that there is no iota of evidence either documentary or oral in the departmental enquiry conducted against the concerned workman and as such the written statement submitted by the G.M. is having no legal status because the G.M. is not the Opp. No.2.

23. It is then contended that the concerned workman had followed due procedure in conciliation and ALC has issued a certificate enabling the concerned workman to move this application u/s. 2A (2) of I.D. Act. According to the concerned workman the first party has leveled new charge against the concerned workman on page 6 stating that he has managed to have huge collections more than Rs.55 lakhs in his own private saving bank a/c. and the amounts of his family members and this has link to the collection of donations to the union made by the union members. It has been mentioned that under the pretext of collecting donations in the capacity of Working President of the employees union called Marathwada Regional Rural Bank Employees' Union and Honorary member of officers union called Marathwada Regional Rural Bank Officers' union, the concerned workman has collected huge donations from the employees as well as borrowers and customers of the bank under pressure, coercion and other means by using his position as employee of the bank but this is not an allegation in the charge-sheet even otherwise there is no complaint against the concerned workman before issuing him the charge-sheet.

24. It is then contended that he has no concern with LIC business. The charge in that respect is not proved but the EO has not taken any cognizance of deposition of this policy holders. Therefore the finding that the aforesaid acts were done by him in his capacity as office bearer of the union is without any merit. As such the first party bank cannot level any new charge and the charges leveled against the concerned workman are defamatory.

25. According to the concerned workman he has not given the relevant papers on which the charge sheet was based along with charge-sheet and also the list of witnesses along with charge-sheet. He has not been given demanded papers which were relevant to defend the case during the course of departmental enquiry and the EO has not even considered the evidence of C.A. Shri Prasad Patil.

26. As regards the charge 2A, 2B, 2C & 2D, the concerned workman in written statement has stated that these charges have not been proved when infact the employer who leveled the charges against the employee is under obligation to prove the said charges. He has thus reiterated that the EO, disciplinary authority & Appellate authority have not considered the facts narrated in the different arguments wherein it is described that the concerned workman was being deprived by getting legitimate right to put his say at a very important stage before beginning his side of defence in the departmental enquiry and therefore there is utter disregard of principles of natural justice in the conduct of domestic enquiry. It is nothing but a victimization of an applicant. As such there is violation of section 33 of I.D. Act.

27. It is also contended that the Marathwada Gramin Bank [officers' & employees Service Regulation 2009] are not applicable to the employees employed in the first party bank including the concerned workman because the same have never been registered as well as notified under the mandatory provisions of Industrial Employment Standing Orders Act 1946 and rules thereunder. As such the entire action taken by the first party against the concerned workman is entirely erroneous in law.

28. It is then contended that the witness namely S.E. Kerure has submitted 162 documents in the enquiry of which neither he is a maker or the receiver of the documents but the EO accepted the documents and

exhibited those documents even though the D.R. raised objection at the very stage and demanded that the piece of paper which was told to be a letter from the Chairman to Mr. Kerure to act in his capacity as a team member of investigation team.

29. Lastly, it is contended that the concerned workman has been victimized.

30. Following issues are framed which are treated as preliminary issues. I reproduce the Issues along with my findings thereon for the reasons to follow:

Sr. No.	Issue	Findings
1.	Whether the applicant proves that the allegations leveled against him by the Opponent Bank in the charge sheet dated 30.10.2010 do not amount to employment misconduct ?	No
2.	Whether the provisions of The Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 supersede the Marathwada Gramin Bank (Officers & Employees) Service Regulations, 201, 2009, 2010 ?	No
3.	Whether the enquiry conducted by the Opponent Bank against the Applicant pursuant to Chargesheet dated 30.10.2010 is legal, fair and proper and in conformity of the principles of natural justice ?	Yes
4.	Whether the findings recorded by the Enquiry Officer Shri S.G. Kulkarni are perverse ?	No
5.	Whether the findings recorded by the Enquiry Officer Shri S.G. Kulkarni are based on legally admissible evidence ?	Yes

REASONS

Issue No. 1.

31. So far this issue is concerned, it is necessary to see the allegations leveled against the concerned workman by the bank in the charge sheet dt. 30.10.10. The charge-sheet contents 3 allegations which in brief are as under:

- [I] You were working as a Clerk at your area office Latur, Osmanabad and at present posted at Regional office Latur, you have also been working as Working President of the employees union viz. MMRBEU and as a Honorary member of officers union viz. MMRBOU for years together.
- [II] Being the Working President of the employees union viz. MMRBEU and as a Honorary member of officers union viz. MMRBOU, you had been collecting donations through totally unauthorized & illegally campaign under the pretext of advertisement for unions publication viz. Mitra Patra also for the bi-annual union conference scheduled at Parbhani.
- [III] Being the Working President of the employees union viz. MMRBEU and as a Honorary member of officers union viz. MMRBOU, you have been monitoring and supervising the said campaign of collections of advertisements and donations. You have instigated and pressurized the employees of the bank / members of the union more particularly from Osmanabad & Latur Dist. for collecting advertisements / donations on large scale. This has resulted in collections of huge amount from these 2 districts.
- [IV] You have actually led and associated yourself with raising unauthorized funds in cash from customers / borrowers of the bank that to pay exerting pressure thereby tarnishing / lower down the overall image of the bank. The said acts on your part were certainly detrimental to the interest of the bank. You have thus violated Regulation 35 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009].

32. Second allegation against the concerned workman is that while working as a clerk at his office Osmanabad on 21.11.08 he had delivered his own cash of Rs.4 lakhs to Shri T.J. Shinde, Officer, area office Osmanabad who was then on deputation at Shiradhon branch for opening 5 CTDR a/cs. at Shiradhon in the names of his family members, 3 of which are in the joint name of him. As such the concerned workman had

deposited the large sums of moneys in various branches without reporting the same to the bank and misused the position as Working President of the union. These acts on his part amounts to dishonesty towards the bank and also these acts amounts to unbecoming of bank employee. The concerned workman had thus violated Regulation 19 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009].

33. The allegations against the concerned workman is also to the effect that he is actively engaged in promoting LIC business in the name of his brother and his wife and thus violated Regulation 17, 19, 21 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009].

34. According to the Learned counsel for the concerned workman, these allegations have no nexus whatsoever with the work of the workman who was working as a clerk in the bank. Hence the allegations do not amount to employment misconduct as per well settled law. Submission is to the effect that the union is independent legal entity under the provisions of Trade Union Act, 1926. Even there is no rule or regulation that amounts can be deposited only after informing the bank and as such there is no evidence whatsoever to the effect that he [concerned workman] promoted any business of LIC.

35. At the first blush, I would observe that the concerned workman in his cross examination has admitted that the rules & regulations called Marathwada Gramin Bank [officers' & employees Service Regulation 2001] are applicable in his case. These service rules came to be amended in 2009 and 2010. He even admits that he preferred the appeal before the appellate authority under regulation 49 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009] and the clauses leveled in the charge-sheet were the clauses under these rules i.e. Marathwada Gramin Bank [officers' & employees Service Regulation 2001]. As such these rules are made applicable since 2001. It can be seen that the charge-sheet specifically refers to Regulation 17, 19, 21 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009]. The enquiry was conducted under these rules with the specific allegations against the concerned workman that he has violated Regulation 35 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009]. So far as allegations against him are in respect of collecting of donations and large scale by instigating and pressurizing the employees of the bank and members of the union.

36. Admittedly, the Trade union is the separate entity but it is also the settled law that office bearer of the trade union is first employee and then office bearer. He is required to perform his duty and maintain his conduct as per the contract of employment and service regulations. In this respect reliance is placed on the decision in case of Laxmidevi Sugar Mills Ltd. V/s. Nandkishore Singh – AIR – 1957 – SC – 7 to submit that even though employee happened to occupy what he considered to be august position of the Vice President of the union, he does not cease to be an employee of the employer. He was first & foremost an employee of the employer and owned to the duty to him to answer all G.M. In that case conduct of the employee in the course of correspondence took place between him and G.M. was subject-matter of the charges whether amounts to insubordination or breach of discipline or not ?

37. In this case the issue as to whether the collection of funds was for a trade union or for any other party or for any other purpose has no relevance at all. It is alleged that the collection of the funds by the employee from other employees or from the customers of the bank by exerting pressure on them is in itself a misconduct. It cannot be said therefore that the collection of the funds by the concerned workman had no nexus whatsoever with the concerned workman and therefore that allegation does not amount to misconduct.

38. Even Learned counsel for the concerned workman submitted that to constitute the misconduct it must arise from relationship of employment as an employee and the workman and must have co-relative to his duty as an employee or atleast must be incidentally concerned with his duties as an employee and his obligations to the employer. In this respect he seeks to rely on the decision in case of Agnani V/s. Badridas & Ors. – 1963 – I – LLJ – 684. In that case it was finding of the fact that existence of quarrel with provision storekeeper in regard to a private matter between another employee and the shopkeeper was beyond disciplinary jurisdiction of the employer.

39. Reliance is also placed on the decision in case of Indian Express & Chronicle Press V/s. M.C. Kappor – 1974 – II – LLJ – 240. In that case it was finding of the fact that the charges as regards misappropriation of funds of the society and falsification of the a/cs. of the society by the employee would not be regarded as affecting in any manner the smooth efficient and working of the press where he was employed because the employees cooperative society was all together and independent concerned or organization and company had no

financial or other interest in it nor it did have any control over his management functioning or finance and therefore it was considered that the charges which were preferred against the employee did not seem to relate in any manner to the question of discipline.

40. In the decision in case of Ramesh Chavan V/s. Bank of India – 2005 – III – LLJ – 989. The alleged misconduct was in respect of giving false information to his wife about salary and during the period of enquiry it was found that the substantial recovery must have been made and the petitioner was allowed to continue the service without being suspended. In the circumstances it was observed that this is circumstance that he being continued in service was not prejudicing the interest of the bank.

41. Here in the instant case the rules under which the enquiry was conducted specifically define the misconduct whereby it is alleged that the concerned workman had collected huge donations from the customers of the bank as well as employees of the bank by exerting pressure on them. He had concerned the borrowers at the time of sanctioning and disbursing the loans granted to them and even in some cases even from the disbursed loan amounts of the borrowers of the bank, he collected the funds. Some borrowers made complaint. Matter had been referred to CBI and therefore it can be said that by doing such activities such as collecting the funds by exerting pressure on the employees of the bank and then collected the huge amount of Rs.55 lakhs which he had deposited in his private bank a/c. and a/cs. of his family members, he had committed misconduct connected with employer employee relationship.

42. Apart from this the allegations made against him were specifically covered by Regulation 17, 19, 21, 35 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009] under which the enquiry was conducted.

43. Learned counsel for the first party submitted that regulation 35 specifically covers the collections of funds as misconduct since clause – 35 provides that no officer or employee shall accept without the previous sanction of competent authority ask for or accept contributions or otherwise associate himself with raising any funds or collection in cash or kind from constituencies or customers in pursuance of any object whatsoever.

44. In view of this legal position cited supra I find that the allegations leveled against the concerned workman in the charge sheet dt. 30.10.10 amount to employment misconduct. The applicant had not proved that the allegations against him do not amount to misconduct. Hence this issue is answered in negative.

Issue No. 2.

45. So for this issue is concerned, it is the contention of the concerned workman that the Model Standing Orders framed under the act are applicable to him and the enquiry was not conducted under Model Standing Orders.

46. Learned counsel for the concerned workman submitted that the provisions of Model Standing Orders framed under the Industrial Employment Standing Orders 1946 superseded Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009 & 2010]. Mainly it is submitted that Marathwada Gramin Bank [officers' & employees Service Regulation 2001] have not been notified by the government under the provisions of section 13 (b). The regulations framed by the Marathwada Gramin Bank are not notified by the Government under the provisions of section 13 (b) of Industrial Employment Standing Orders 1946 hence Model Standing Orders are applicable.

47. In the context, reliance is placed on the decision in case of U.P. State Electricity Board & Anr. V/s. Harishankar Jain & Ors. – 1978 – LAB – IC – 1657 wherein it is held that Industrial Employment Standing Orders 1946 is a special law in regard to the manners enumerated in the schedule and regulations made by the Electricity Board under the electricity supply act with respect to any of those matters are of no effect unless such regulations are either notified by the Government u/s. 13 (b) or certified by the certifying officer u/s. 5 of Industrial Employment Standing Orders 1946. In regard to matters in respect of which regulations made by the board have not been notified by the Governor or in respect of which no regulations have been made by the board, Industrial Employment Standing Orders 1946 continues to apply.

48. In this respect, it can be seen that Marathwada Gramin Bank [officers' & employees Service Regulation 2001] have been brought into force as per the provisions of and in exercise of powers conferred by the Board of Directors of the bank u/s. 30 of Regional Rural Bank Act 1976 and published in the gazette of India.

49. On going through section 30 (b) of Industrial Employment Standing Orders 1946 reads as under.

“Nothing in this act that Industrial Employment Standing Orders 1946 shall apply to the industrial estt. in so far as workmen employed therein are persons to whom fundamental and supplementary rules, civil service rules, civil service [temporary services] rules, revised new rules, civil regulations, civilian in defence service rules or Indian Railway estt. code or any other rules or regulations that may be notified in this behalf by the appropriate government in the official gazette apply.”

So if the rules and regulations called Marathwada Gramin Bank [officers’ & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers’ & employees Service Regulation 2009 & 2010] have been brought into force as per the provisions and in exercise of the powers conferred u/s. 30 of Regional Rural Bank Act 1976 shall apply.

50. Learned counsel for the first party in this respect has relied on the observations in para – 14 of the decision in case of U.P. State Electricity Board & Anr. cited supra to submit that the words ‘rules & regulations’ have come to acquire a special meaning when used in statutes. They are used to describe subordinate legislation made by the authority to whom statue delegation and hence the regulations framed and notified under RRB Act are covered u/s. 13 (b), hence Model Standing Orders are not applicable in the present case. Submission is also to the effect that RRB Act, 1946 is also a special law which is subsequent in time and therefore subsequent special law prevails over the special law since RRB Act, 1946 is providing for separate and independent set of service conditions to be framed by the bank with approval from the Central Govt. and to be brought in with parliament’s approval.

51. In this respect, the submission is also to the effect that Marathwada Gramin Bank [officers’ & employees Service Regulation 2001] were made by the Board of Directors u/s. 30 of Regional Rural Bank Act 1976 after consultation with sponsored bank i.e. bank of Maharashtra & National bank i.e. National Agriculture Rural Development and previous sanction of Central Govt. Said regulations were published in gazette of India on 2.5.01. Section 30 specifically contemplated a special set of service conditions for RRB employees and the rules framed by RRB is to be placed before the houses of Parliament and passed before they are brought into force. These regulations are therefore statutory regulations and they cannot be further certified under the Industrial Employment Standing Orders 1946. No such certification is therefore required under Industrial Employment Standing Orders 1946 to said regulations.

52. Learned counsel for the first party refers to section 31 of RRB Act 1976 which reads as under:

“Act to override the provisions of other laws. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, express or implied, or in any instrument having effect by virtue of any law other than this Act, and notwithstanding any custom or usage to the contrary.”

53. With this the submission is that section 31 of RRB Act 1976 shall prevail over all other enactments and even agreements and contracts. The RRB Act 1976 therefore supersedes and prevails over Industrial Employment Standing Orders 1946 prescribed thereunder.

54. It is in these circumstances even it appears that the concerned workman in his cross examination has admitted that the rules & regulations called Marathwada Gramin Bank [officers’ & employees Service Regulation 2001] are applicable to his case. He even admits that when he acted as D.R. in some other enquiries, those enquiries were conducted under these rules i.e. Marathwada Gramin Bank [officers’ & employees Service Regulation 2001]. These regulations contained leave, retirement and other benefits. These rules are made applicable since 2001. Even from these admissions given by the concerned workman in his cross-examination, it can be seen that regulations framed under RRB Act 1976 have been accepted by the employees of the bank ever since 2001 and benefits thereunder have been taken by the employees since 2001. As such it is not possible to accept the contentions of the concerned workman that entire enquiry is vitiated since the enquiry against the concerned workman was not conducted under the provisions of Model Standing Orders. This issue is therefore answered accordingly in negative.

Issue Nos. 3, 4 & 5.

55. So far as these issues are concerned, at the first blush I would observe that the concerned workman in his cross examination has admitted that he received copy of findings of the EO and also filed say on that. He even admits that he received the charge sheet on 30.10.10. The enquiry was commenced on 21.11.10 and concluded on 11.11.11. Admittedly Mr. S.G. Kulkarni was the E.O. He even preferred appeal against the findings of EO that came to be rejected on 31.12.12.

56. As per his own admission, EO asked him to appoint the D.R. and as such Mr. Kulkarni was appointed as his D.R. Admittedly along with charge sheet he received the list of witnesses and list of documents. After

receiving the documents he sought time for perusing the documents and the EO granted time in that respect. Admittedly, even original documents were produced for verification. As per his glaring admission when MW-1 Mr. Kerure started giving evidence in Marathi, he told him to give evidence in English. So as regards the first objection of the concerned workman that the enquiry was not fair because it was conducted in English language is not acceptable since he himself wanted that the witnesses should give evidence in English and his D.R. also cross-examined them. Admittedly, the management has examined MW-2 to MW-23 during the enquiry proceedings and they were cross examined by D.R. Then concerned workman examined himself and his witnesses. He examined 26 witnesses. At this stage it was tried to point out that the concerned workman wanted to examine 78 witnesses but EO has not permitted to examine other witnesses and in respect of that EO has given explanation in his proceedings dt. 18.11.11 and then the enquiry was concluded.

57. The fact remains therefore that in his statement itself concerned workman has admitted that the opportunity was given to him to defend himself during the course of enquiry and he has not stated anywhere during the course of enquiry that he was not given opportunity to defend himself. In view of these admissions of the concerned workman in his cross-examination it can be said that sufficient opportunity was given to him to defend himself during the course of enquiry.

58. Even then Learned counsel for the concerned workman submitted that the charge sheet which was given to the concerned workman is entirely vague since the names of the employees of the bank have not been mentioned in detail and no details has been given as to what was the rate actually charged and what was the normal rate.

59. In this respect the enquiry cannot be said to be against the principles of natural justice especially when throughout the enquiry proceedings by cross examining the management witness and by examining the D.R. the concerned workman did understand the charges leveled against him and defended himself effectively. Therefore the allegations of the concerned workman do not affect the validity of the enquiry.

60. Learned counsel for the concerned workman reiterated that even during the enquiry proceedings it is necessary to prove the documents, but then the EO has not considered the documents in proper perspective. Submission is to the effect that the production of CTDR is not sufficient to prove the genuineness of the transaction. It is because Mr. M.T. Mule, MW-5, Shri S.V. Daithankar, MW-6 have stated that the amount was given to concerned workman but he has not taken the signature of the concerned workman on the voucher. Similarly, in respect of transactions, concerned workman has explained the source of income, source of each deposits inflow of the amount in cash, some deposits of the concerned workman in cash and details in respect of these transactions which has not been taken into consideration by the EO. It is then submission of the concerned workman that he has submitted the declaration of assets & liability in the year 1988 – 89 and he handled and used the funds of family members in the capacity of Karta for the benefits of his family and therefore utilization of the amount was for the benefit of joint Hindu family. This aspect was also not taken into consideration by the EO when infact the concerned workman in his written statement has categorically stated that to relate his assets with anything is perversity.

61. On going through the enquiry report, EO has considered that provisions of Indian Evidence Act does not apply to domestic enquiries and hence the enquiry was conducted according to the rules of natural justice. It was impartial, fair, just & proper. EO also considered the evidence of Shri Kerure, MW-1, Shri V.V. Digikar, MW-3, Shri S.T. Lakade, MW-18, Shri S.M. Jori, MW-19 along with documentary evidence marked as Exm.2 to Exm.18 and Exm.153 to Exm.155, Exm.160 to Exm.162 to come to the conclusion that unions namely MRRBEU & MRRBOU have implemented their own campaign of collection of donation and the concerned workman holding the post of Working President of MRRBEU and also he was Honorary member of MRRBOU. Concerned workman had monitored and supervised the entire campaign the collection of funds for union conference, advertisement in 'Mitra Patra' were made by the members of the union and the resolution and call for such type of collection was taken under the leadership of concerned workman who was Working President. As such he has violated service regulations 35 & 38. It cannot be said therefore that EO has not considered the documents in proper perspective.

62. Regarding charge No.2 (a) (b) (c), he has considered documents Ex.19 to Ex.39 and the evidence of MW-1, MW-5, MW-6, MW-7, MW-10, MW-11, MW-15 & MW-21 to come to the conclusion that the concerned workman has deposited his personal cash amount by taking full care that his name or names of the family members should not appear as cash deposit. No separate a/cs. were opened in the name of HUF. No agricultural land or properties and no such types of evidence was brought by him before EO.

63. On going through the enquiry report, EO while considering the charge No.3 i.e. act of actively engaging and promoting LIC business in the name of Mr. Ganesh Tukaram Shinde & Mrs. Kavita Kundle Shinghare. Documents Ex.121 to Ex.152, Ex.157 to Ex.160, Ex.168 to Ex.199 along with evidence of

Mr. Kerure, Mr. Dixit, Mr. Kulkarni, Mr. Shivande, Ms. Prabhavati, Mr. SV Kulkarni, Mr. M.K. Shiden, Mr. Kbragade and Mr. Shashtri are being considered by the EO to come to conclusion that concerned workman had misused his position of being Working President of the union in soliciting business of LIC.

64. As such on going through the enquiry report, it appears that findings of the EO are based on evidence.

65. Even then the Learned counsel for concerned workman submitted that the names of employees of the bank / members of the union from Osmanabad or Latur Dist. have not been stated during the course of enquiry who were allegedly pressurized by workman and no particulars are given as to the manner in which the workman led and associated himself with raising of funds or names of the customers / borrowers of the bank who were pressurized, have been given. Submission is to the effect that the allegations are vague and enquiry as such was vague.

66. However, on going through the enquiry report I am of the considered view that the EO has considered documentary & oral evidence and has come to the conclusion that the charges leveled against the concerned workman are proved. Even it appears that during enquiry sufficient opportunity was given to the concerned workman and the concerned workman at no point of time has taken any objection or asked for furnishing with the particulars of the names of the workmen to whom he allegedly instigated for collecting the donations and advertisement on large scale. Similarly saying that the charges leveled against the concerned workman were vague is not acceptable especially when on going through the enquiry report it clearly appears that enquiry was conducted fairly and full opportunity was given to the concerned workman. In the judgment cited by Learned counsel for concerned workman in case of Anil Gilurkar Vs. Bilaspur Raipur Kshetria Gramin Bank & Anr. – 2000 – (II) – LLJ – 20, it was finding of the fact that disciplinary authority was in disagreement with finding of the enquiry report. Here in the instant case even the disciplinary authority has rejected the appeal filed by the concerned workman holding that the findings are based on evidence.

67. Considering all these facts I find that the enquiry conducted against the concerned workman is legal, fair & proper and in conformity with the principles of natural justice. As such the findings of the EO are not perverse. The findings of the EO are based on evidence. Issue No. 3 to 5 are therefore answered accordingly as indicated against each of them in terms of above observations.

68. In the result, I pass the following order.

ORDER

1. **Enquiry conducted against the concerned workman is fair & proper.**
2. **Findings of the Enquiry Officer are not perverse.**
3. **Parties are directed to argue and lead evidence on the point of quantum of punishment.**

Date: 22.01.2020

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 5 मार्च, 2020

का.आ. 350.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्ट कोस्ट रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 57/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.03.2020 को प्राप्त हुआ था।

[सं. एल-41011/23/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 5th March, 2020

S.O. 350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of East Coast Railway and their workmen, received by the Central Government on 05.03.2020.

[No. L-41011/23/2012-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWARINDUSTRIAL DISPUTE CASE NO. 57 OF 2012Dated Bhubaneswar, the 20th January, 2020**Present:** Shri B. C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar**Between:**The Sr. Divisional Operating Manager,
East Coast Railway, Khurda Road,
At/PO – Jatni, Dt. Khurda (Orissa).

...First party management

ANDThe Dist. Secretary,
Bharatiya Nazdoor Sangha, Khurda District,
VA/23/3, Ashok Nagar, Bhubaneswar (Orissa)

...Second party workman

Appearances:

Shri C.R. Nayak. : For first party management

Shri S.K.Mangaraj : For second party Union

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No.L-41011/23/2012-IR(B-I) dated 7.5.2012 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) (here in after referred to as 'the Act') and the terms of reference reads as follows:

“Whether the action of the mgt of Sr. Divisional Operating Manager, East Coast Railway, Khurda Road in not paying the higher rate of subsistence allowance i.e. above 50% beyond the period of three months of suspension to Shri S.V.Rao, Ex-Assistant Guard is legal and justified ? To what relief Shri S.V. Rao, Ex-Asst. Guard is entitled ?”

2. Sworn of unnecessary detail the facts relevant for disposal of the reference are that the disputant workman was working as Assistant Guard in the relevant period when he was placed under suspension by the first party management on 23.6.2002. His suspension continued till 13.3.2006. It is the claim of the union that as per the service condition of the Railway employee, Railway servant under suspension shall be entitled to subsistence allowance of 50% of his salary for first three months and where the period of suspension exceeds three months, the amount of subsistence allowance is to be increased to an extent of 75% of the salary. Though, the disputant workman was continued under suspension for a period of more than three years, he was given subsistence allowance of 50% for his no fault. The disputant workman has also claimed running allowance during the period of his suspension since it was denied to him by his employer. He made a prayer to his authority in this regard but his grievance was not considered for which he raised a dispute before the labour machinery. Consequently the reference is made when a conciliation was failed before the labour machinery.

3. The first party management has contested the claim taking a stand that the disputant workman was placed under suspension when he was arrested and remanded to jail custody for more than 48 hours being enlarged in a criminal case of theft of railway properties. In course of investigation in that criminal case railway parcels were recovered from his quarter. Hence a departmental proceeding was initiated against him. He was reinstated on 14.3.2006. According to the management increase of subsistence allowance after three months of suspension is a discretion of the employer. Since the disputant workman was placed under suspension being allegedly involved in theft of properties belonging to his employer, the management did not find it just and proper to enhance the subsistence allowance. Running allowance is provided to an employee who makes a journey of 160 Km. per day as per the railway rules. The disputant workman being under suspension and making no journey was not entitled to any running allowance during the period of his suspension. It has been further pleaded that the disputant workman filed cases before the Hon'ble Central Administrative Tribunal (CAT) Cuttack Bench vide case No. M.A No.833/05 (A/O OA No.342/04) and OA No.941/05 for the above claim and the Hon'ble CAT disposed of his application with a direction to the disputant to make representation

to his authority and his authority should dispose of his application with reasoned order. Both the representations were accordingly taken into consideration and rejected with speaking order. Therefore, the claim put forth by the disputant workman has no merit for consideration in the reference.

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

- i) Whether the action of the management of Sr. Divisional Operating Manager, East Coast Railway, Khurda road in not paying the higher rate of subsistence allowance i.e. above 50% beyond the period of three months of suspension to Shri S.V.Rao, Ex-Assistant Guard is legal and justified ?
- ii) To what relief Shri S.V.Rao, Ex-Asst. Guard is entitled ?

5. In order to substantiate his case, the second party union has examined the disputant workman as W.W.1 where as, the management has examined its Station Director as M.W.1 to refute the claim of the disputant workman.

FINDING

6. All the issues are taken into consideration simultaneously as they are interlinked to each other.

It is emerging from the pleadings and evidence of the parties that the disputant workman was under suspension from 23.6.2002 to 13.3.2006 for a period of 3 years 8 months and 20 days. He was allowed to draw subsistence allowance which amounted to 50% of his salary. There is also no serious dispute between the parties that Service Rules of the Railway provide that where the period of suspension exceeds three months, the authority which may or it deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of first three months. The amount of subsistence allowance may be increased by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of first three months, if the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing not directly attributable to the Railway servant. Be that as it may, the authority has discretion to increase the allowance, if reasons of prolonging of suspension is not attributable to the employee. In the case at hand, the disputant workman was stated to have been placed under suspension being allegedly involved in a theft of Railway parcels and recovery of Railway parcels from his quarter. Increase of subsistence allowance does not seem to be a matter of right. In the above back drops, the disputant workman is not automatically entitled to 75% allowance. Further, running allowance is provided to an employee who makes a journey of 160 Km. a day. Being under suspension, the disputant workman was not allotted any work and there is no claim on his behalf that he was making any journey during the period of his suspension. The Rules provide that other compensatory allowances admissible from time to time is to be provided to a suspended employee subject to fulfillment of other conditions laid down for drawl of such allowance. Be that as it may, making a journey of 160 Km. is a precondition for entitling to such running allowance. The disputant workman is not entitled to draw such running allowance as he did not make any journey during the period of his suspension.

7. That apart, it cannot be over sighted that the management has asserted that the disputant workman had approached the Hon'ble CAT, Cuttack Bench for the self and same cause and the matter having been taken into consideration by a competent Tribunal/Court cannot be reagitated and adjudicated by this Tribunal. For the reasons mentioned above, the statement of claim put forth by the second party union has no merit for consideration. Hence, the same stands rejected.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer