



# भारत का राजपत्र The Gazette of India

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सं. 10] नई दिल्ली, मार्च 8—मार्च—14, 2020, शनिवार/फाल्गुन 18—फाल्गुन 24, 1941  
No. 10] NEW DELHI, MARCH 8—MARCH 14, 2020, SATURDAY/ PHALGUNA 18—PHALGUNA 24, 1941

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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

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

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

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विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 25 फरवरी, 2020

का.आ. 351—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, यांगोन में श्री शरद कुमार तिवारी, सहायक अनुभाग अधिकारी को दिनांक 25 फरवरी 2020 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/01/2015]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

**MINISTRY OF EXTERNAL AFFAIRS**

(CPV DIVISION)

New Delhi, the 25th February, 2020

**S.O. 351.**—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Sharad Kumar Tiwari, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Yangon to perform the Consular services with effect from 25 February, 2020.

[F. No. T. 4330/01/2015]

T. AJUNGLA JAMIR, Director (CPV)

नई दिल्ली, 25 फरवरी, 2020

**का.आ. 352**—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, रियाद में श्री पंकज कुमार, सहायक अनुभाग अधिकारी, को दिनांक 25 फरवरी 2020 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/01/2016]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

New Delhi, the 25th February, 2020

**S.O. 352.**—Statutory Order: In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Pankaj Kumar, Assistant Section Officer in the Embassy of India, Riyadh as Assistant Consular Officer to perform Consular services with effect from 25 February, 2020.

[F. No. T. 4330/01/2016]

T. AJUNGLA JAMIR, Director (CPV)

नई दिल्ली, 28 फरवरी, 2020

**का.आ. 353**—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, अबु धाबी में सुश्री सोनल गुप्ता, सहायक अनुभाग अधिकारी को दिनांक 28 फरवरी 2020 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/01/2015]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

New Delhi, the 28th February, 2020

**S.O. 353.**—Statutory Order: In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Ms. Sonal Gupta, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Abu Dhabi to perform Consular services with effect from 28 February, 2020.

[F. No. T. 4330/01/2015]

T. AJUNGLA JAMIR, Director (CPV)

नई दिल्ली, 28 फरवरी, 2020

**का.आ. 354**—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के प्रधान कौंसलावास, न्यूयॉर्क में श्री सौरभ त्रिपाठी और श्री श्रीकांत कुमावत, सहायक अनुभाग अधिकारियों को दिनांक 28 फरवरी 2020 से सहायक कौंसुलर अधिकारियों के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/01/2016]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

New Delhi, the 28th February, 2020

**S.O. 354.**—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Saurabh Tripathi and Shri Shrikant Kumawat, Assistant Section Officers as Assistant Consular Officers in the Consulate General of India, New York to perform the Consular services with effect from 28 February, 2020.

[F. No. T. 4330/01/2016]

T. AJUNGLA JAMIR, Director (CPV)

नई दिल्ली, 28 फरवरी, 2020

**का.आ. 355** —राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के उच्चायोग दूतावास, कम्पाला में श्री बिधान चन्द्र साधुखान, सहायक अनुभाग अधिकारी को दिनांक 28 फरवरी 2020 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/01/2017]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

New Delhi, the 28th February, 2020

**S.O. 355.**—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Bidhan Chandra Sadhukhan, Assistant Section Officer as Assistant Consular Officer in High Commission of India, Kampala to perform the Consular services with effect from 28 February, 2020.

[F. No. T. 4330/01/2017]

T. AJUNGLA JAMIR, Director (CPV)

नई दिल्ली, 28 फरवरी, 2020

**का.आ. 356**—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के उच्चायोग, निकोसिया में श्री वीरेन्द्र कुमार बिलोनिया, सहायक अनुभाग अधिकारी को दिनांक 28 फरवरी 2020 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/01/2015]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

New Delhi, the 28th February, 2020

**S.O. 356.**—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Virendra Kumar Bilonia, Assistant Section Officer as Assistant Consular Officer in the High Commission of India, Nicosia to perform the Consular services with effect from 28 February, 2020.

[F. No. T. 4330/01/2015]

T. AJUNGLA JAMIR, Director (CPV)

नई दिल्ली, 5 मार्च, 2020

**का.आ. 357**—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, ब्रुसेल्स में श्री धीरेन्द्र कुमार, सहायक अनुभाग अधिकारी को दिनांक 05 मार्च 2020 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/03/2020]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

New Delhi, the 5th March, 2020

**S.O. 357.**—Statutory Order: In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Dhirendra Kumar, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Brussels to perform Consular services with effect from 05 March, 2020.

[F. No. T. 4330/03/2020]

T. AJUNGLA JAMIR, Director (CPV)

### कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 9 मार्च, 2020

**का.आ. 358.**—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की अधिनियम संख्या 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उत्तर प्रदेश सरकार द्वारा जारी अधिसूचना, उत्तर प्रदेश राज्य शासन, गृह (गोपन) अनुभाग-8, सं.986/25-8-2019-17(70)/2019, लखनऊ, दिनांक 25 सितंबर, 2019, के माध्यम से प्राप्त सहमति से, सूचना प्रौद्योगिकी (संशोधन) अधिनियम, 2008 (वर्ष 2009 की अधिनियम सं. 10) द्वारा यथा-संशोधित सूचना प्रौद्योगिकी अधिनियम, 2000 (वर्ष 2000 की अधिनियम सं. 21) के अंतर्गत दण्डनीय अपराधों से संबंधित अन्वेषण तथा ऐसे एक या अधिक अपराधों से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरण और षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(धों) का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तर प्रदेश राज्य में, इस शर्त के अधीन करती है कि राज्य सरकार की पूर्व अनुमति के बिना राज्य सरकार के नियंत्रण के अधीन लोक सेवकों से जुड़े मामलों में ऐसा कोई भी अन्वेषण आरंभ नहीं किया जाएगा।

[फा. सं. 228/28/2019-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

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

New Delhi, the 9th March, 2020

**S.O. 358.**—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh issued vide its Notification, Uttar Pradesh Shasan, Grih (Gopan) Anubhag-8, No.986/25-8-2019-17(70)/2019, Lucknow dated 25<sup>th</sup> September, 2019, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole State of Uttar Pradesh for investigation of offences punishable under the Information Technology Act, 2000 (Act No. 21 of 2000), as amended by Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) and any attempt, abetment and conspiracy in relation to or in connection with one or more such offences and/or any other offence(s) committed in the course of the same transaction or arising out of the same facts, subject to the condition that without the prior permission of the State Government no such investigation shall be taken up in cases relating to the public servants, under the control of the State Government.

[F. No. 228/28/2019-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 9 मार्च, 2020

**का.आ. 359.**—केन्द्र सरकार, एतद द्वारा, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की अधिनियम संख्या 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए आंध्र प्रदेश राज्य सरकार, गृह (एससी. ए) विभाग द्वारा दिनांक 27.11.2019 को जारी अधिसूचना जी.ओ. एमएस. सं. 154 के माध्यम से प्राप्त सहमति से भ्रष्टाचार निरोधक ब्यूरो, आंध्र प्रदेश द्वारा अन्वेषित किए जा रहे निम्नलिखित छः मामलों में तथा इससे संबद्ध या इस से जुड़े ऐसे एक या अधिक अपराधों में किए गए किसी प्रयास, दुष्प्रेरणा और षड्यंत्र एवं/अथवा उसी संव्यवहार के दौरान या समान तथ्यों से उत्पन्न कोई अन्य अपराध(धों) के अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त आंध्रप्रदेश राज्य में करती है।

| क्रम सं. | भ्रष्टाचार निरोधक ब्यूरो आर.सी. सं. और पंजीकृत किए जाने की तिथि | अभियुक्त का नाम और पता                                                                      |
|----------|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| 1        | 128/आरसीटी-सीआईयू/2018 दिनांक 30.11.2018                        | श्री मुक्कु काली रमनेश्वर, अधीक्षक, सीजीएसटी रेंज कार्यालय, मछलीपट्टनम, कृष्णा जिला।        |
| 2        | 30/आरसीटी-सीआईयू/2019 दिनांक 14.03.2019                         | श्री राजशेखर गौड़, अधीक्षक, आय कर विभाग, अनंतपुर।                                           |
| 3        | 35/आरसीओ-सीआईयू/2019 दिनांक 15.04.2019                          | श्री सीएच चंद्रमौलेश्वर राव, एजीएम, सिंडीकेट बैंक, नेल्लौर एवं अन्य।                        |
| 4        | 36/आरसीओ-सीआईयू/2019 दिनांक 15.04.2019                          | श्री सी. गोपाल, जीएम, सिंडीकेट बैंक, नेल्लौर एवं अन्य।                                      |
| 5        | 39/आरसीटी-व्हीजीटी/2019 दिनांक 29.04.2019                       | श्री अवुटू शेष चंद्र शेखर रेड्डी, आय कर अधिकारी, वार्ड-1, तेनाली, गुंटुर जिला।              |
| 6        | 29/आरसीटी-डब्ल्यूव्हीपी/2019 दिनांक 15.03.2019                  | श्री प्रशान्त शिवहररे, गैरिसन इंजिनियर, आईडीएसई, ईई, नवल डॉक यार्ड, विशाखापटनम और तीन अन्य। |

[फा. सं. 228/05/2020-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 9th March, 2020

**S.O. 359.**—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Andhra Pradesh, Home (SC.A) Department, issued vide Notification G.O. MS. No. 154 dated 27.11.2019, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole State of Andhra Pradesh for investigation into the following six cases being investigated by the Anti Corruption Bureau, Andhra Pradesh and any attempt, abetment and conspiracy in relation to or in connection with one or more such offences and/or any other offence(s) committed in the course of the same transaction or arising out of the same facts.

| Sl. No. | ACB RC No. & Date of Registration | Name and address of the Accused.                                                                         |
|---------|-----------------------------------|----------------------------------------------------------------------------------------------------------|
| 1       | 128/RCT-CIU/2018 dated 30.11.2018 | Sri Mukku Kali Ramaneswar, Superintendent, CGST Range Office, Machilipatnam, Krishna District.           |
| 2       | 30/RCT-CIU/2019 dated 14.03.2019  | Sri A. Rajasekhara Goud, Superintendent, Income Tax Department, Anantapur.                               |
| 3       | 35/RCO-CIU/2019 dated 15.04.2019  | Sri. Ch. Chandramouleswara Rao, AGM, Syndicate Bank, Nellore and others.                                 |
| 4       | 36/RCO-CIU/2019 dated 15.04.2019  | Sri C. Gopal, GM, Syndicate Bank, Nellore and others.                                                    |
| 5       | 39/RCT-VGT/2019 dated 29.04.2019  | Sri Avutu Sesha Chandra Sekhara Reddy, Income Tax Officer, Ward-I, Tenali, Guntur District.              |
| 6       | 29/RCT-WVP/2019 dated 15.03.2019  | Sri Prashanth Shivaharare, Garrison Engineer, IDSE, EE, Naval Dock Yard, Visakhapatnam and three others. |

[F. No. 228/05/2020-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

## MINISTRY OF HEALTH AND FAMILY WELFARE

(DENTAL EDUCATION SECTION)

### CORRIGENDUM

New Delhi, the 4<sup>th</sup> March, 2020

**S.O. 360.**—In partial modification of this Ministry's Notification no. V.12018/4/2000–PMS dated 06<sup>th</sup> April, 2000 regarding recognition of Dental Degrees awarded by Rajiv Gandhi University of Health Sciences, Bangalore in respect of MDS students of K.L.E. Society's Institute of Dental Sciences, Belgaum, the text "if granted on or after 29<sup>th</sup> September 1999 to 1<sup>st</sup> October, 1999" shall be substituted with "if granted on or after 1<sup>st</sup> October, 1999 for Oral Medicine & Radiology and on or after 30<sup>th</sup> September, 1999 for Community Dentistry respectively."

2. The other content of the said notification shall remain unchanged.

[F. No. V.12025/63/2018-DE]

VIDYADHAR JHA, Under Secy.

**पेट्रोलियम और प्राकृतिक गैस मंत्रालय**

नई दिल्ली, 6 मार्च, 2020

**का.आ. 361.**—केंद्रीय सरकार, तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उपधारा (3) (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा श्री मनोज जैन, अध्यक्ष एवं प्रबंध निदेशक, गेल को 14.02.2020 to 13.02.2022 तक या अगले आदेश होने तक, जो भी पहले हो, तेल उद्योग विकास बोर्ड का सदस्य नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त-I]

पेरिन देवी, निदेशक

**MINISTRY OF PETROLEUM AND NATURAL GAS**

New Delhi, the 6th March, 2020

**S.O. 361.**—In exercise of the Powers conferred by Sub-Section 3(c) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri Manoj Jain, Chairman and Managing Director, GAIL as a member of the Oil Industry Development Board w.e.f. 14.02.2020 to 13.02.2022 or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-Fin.-I]

PERIN DEVI, Director

**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 28 नवम्बर, 2019

**का.आ. 362**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सैनिक अस्पताल नसीराबाद जिला अजमेर (राज.) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय - जयपुर के पंचाट (संदर्भ संख्या 10/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.11.2019 को प्राप्त हुए थे।

[सं. एल-14011/01/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 28th November, 2019

**S.O. 362.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2015) of the Central Government Industrial Tribunal cum Labour Court- Jaipur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Military Hospital Nasirabad, Ajmer Rajasthan & Others, and their workmen which were received by the Central Government on 05.11.2019.

[No. L-14011/01/2015-IR (DU)]

V. K. THAKUR, Section Officer

## अनुबंध

**केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर सी.जी.आई.टी. प्रकरण सं. 10/2015**

**पीठासीन अधिकारी :** राधामोहन चतुर्वेदी

**रेफरेन्स नं. L-14011/01/2015-IR (DU) दिनांक 16.02.2015**

सत्यनारायण पुत्र स्व. श्री मानसिंह  
निवासी रामदयाल मौहल्ला, नसीराबाद जिला अजमेर  
जरिये अजमेर जिला असंगठित श्रमिक संघ अजमेर।

v/s

1. कर्नल/मेजर वास्ते कमाण्डेन्ट व प्रभारी नियंत्रक, सैनिक अस्पताल नसीराबाद जिला अजमेर (राज.)
2. डायरेक्टर/डीप्टी डायरेक्टर एम.एस. सिविल इन्टीग्रेटेड हैड क्वार्टर्स ऑफ एम.ओ.डी. (आर्मी) एडजुटेंट जनरल ब्रांच डी.टी.आई. जनरल ऑफ मेडिकल सर्विसेज (आर्मी) "एल" ब्लॉक, नई दिल्ली - 1100011

प्रार्थी की तरफ से : कोई उपस्थित नहीं

अप्रार्थी की तरफ से : कोई उपस्थित नहीं

**: अधिनिर्णय :**

दिनांक : 04.10.2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 16.02.2015 को निम्नांकित विवाद औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 उपधारा (1) (घ) एवं 2-ए के प्रावधानों के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया।

“क्या प्रबंधन कर्नल/मेजर वास्ते कमाण्डेन्ट व प्रभारी नियंत्रक, सैनिक अस्पताल नसीराबाद जिला अजमेर (राजस्थान) व 2 — श्रीमान एडजुटेंट जनरल इन्टीग्रेटेड हैड क्वार्टर्स ऑफ एम.ओ.डी. (आर्मी), एल ब्लॉक, नई दिल्ली द्वारा कर्मकार स्व. श्रीमती शान्ति देवी के पुत्र श्री सत्यनारायण को अनुकम्पात्मक नियुक्ति से वंचित करना वैधानिक एवं न्याय संगत है, यदि नहीं तो प्रार्थी किस राहत का और कब से पाने का हकदार है ?”

2. उपर्युक्त विवाद अधिकरण में प्राप्त होने पर उभयपक्ष को सूचना पत्र जारी कर आहूत किया गया तथा प्रार्थी को अपने दावे का अभिकथन प्रस्तुत करने का निर्देश दिया गया।

3. इस निर्देश के अनुपालन में दिनांक 24.04.2015 को प्रार्थी की ओर से अजमेर जिला असंगठित श्रमिक संघ, अजमेर द्वारा दावे का अभिकथन प्रस्तुत किया गया, जो संक्षेप में इस प्रकार है। प्रार्थी सत्यनारायण की माता सैनिक अस्पताल नसीराबाद में सफाई कर्मचारी के स्थायी पद पर कार्यरत थी। जिसकी नियुक्ति 29.5.79 को हुई थी। दिनांक 4.2.2012 शान्ति देवी का निधन हो गया। श्रीमती शान्ति देवी की मृत्यु के बाद प्रार्थी को सेटलमेन्ट की समस्त धनराशि और प्रोविडेंट फण्ड की राशि भी प्राप्त हुई। प्रार्थी ने अपनी माता की मृत्यु के बाद अनुकम्पात्मक नियुक्ति पाने हेतु अप्रार्थीगण को समस्त दस्तावेजों सहित प्रार्थना-पत्र प्रेषित किया लेकिन अप्रार्थीगण ने प्रार्थना पत्र निरस्त कर दिया। इस प्रकार प्रार्थी ने सहायक क्षेत्रीय श्रमायुक्त केन्द्रीय अजमेर के समक्ष औद्योगिक विवाद प्रस्तुत किया। लेकिन दोनों पक्षों के बीच समझौता संभव नहीं हुआ। सैनिक अस्पताल नसीराबाद में अनुकम्पा के आधार पर कई कर्मचारी सेवारत है। अतः प्रार्थी को उसकी माता के निधन के बाद अनुकम्पात्मक नियुक्ति प्रदान करने का आदेश पारित करवाया जावे।

4. उक्त दावे के नोटिस विपक्षीगण को पंजीकृत डाक से प्रेषित किये गये, किन्तु विपक्षीगण ने उपस्थित होकर वादोत्तर प्रस्तुत नहीं किया। दिनांक 11.7.2019 को विपक्षीगण के विरुद्ध एकपक्षीय कार्यवाही का आदेश देते हुए यह विवाद प्रार्थी की एकपक्षीय साक्ष्य हेतु दिनांक 24.9.2019 को नियत किया गया। किन्तु दिनांक 24.9.2019 को भी उभयपक्ष की ओर से कोई उपस्थित नहीं हुआ। इस प्रकरण में दिनांक 8.8.2019 से प्रार्थी पक्ष लगातार अनुपस्थित चला आ रहा है। इस स्थिति में प्रार्थी की एकपक्षीय साक्ष्य समाप्त कर दी गई।

5. पत्रावली के अवलोकन से यह प्रकट होता है कि प्रार्थी इस विवाद के सम्बन्ध में कोई साक्ष्य प्रस्तुत नहीं करना चाहता है और इस कारण वह प्रकरण के अग्रसरण में रुचि नहीं ले रहा है।

6. प्रार्थी की साक्ष्य के अभाव में यह निर्णय नहीं किया जा सकता है कि प्रार्थी दावे के अभिकथनों में वाञ्छित अनुतोष प्राप्त करने का अधिकारी है। इसलिये इस न्यायालय को सन्दर्भित विवाद का न्यायनिर्णयन करते हुए यह अधिनिर्णय पारित किया जाता है कि प्रबंधन एवं नियंत्रक, सैनिक अस्पताल नसीराबाद जिला अजमेर एवं एडजुटेंट जनरल इन्टीग्रेटेड हैड क्वार्टर्स ऑफ एम.ओ.डी. (आर्मी), एल ब्लॉक, नई दिल्ली द्वारा स्वर्गीय श्रीमती शान्ति देवी के पुत्र

श्री सत्यनारायण को अनुकम्पात्मक नियुक्ति से वन्चित करना अवैध नहीं है और प्रार्थी साक्ष्य के अभाव में कोई अनुतोष पाने का अधिकारी नहीं है।

7. अधिनिर्णय तदनुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

8. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 3 मार्च, 2020

**का.आ. 363.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोरपोरेशन बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 04/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.03.2020 को प्राप्त हुआ था।

[सं. एल-12012/135/2005-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3rd March, 2020

**S.O. 363.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Corporation Bank, and their workmen, received by the Central Government on 03.03.2020.

[No. L-12012/135/2005-IR (B-II)]

SEEMA BANSAL, Section Officer

#### ANNEXURE

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

DATED : 18<sup>TH</sup> FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

#### CR 04/2006

#### I Party

Sh. L. Jayaram,  
900/1, Indiresha,  
3<sup>rd</sup> Main, II Cross,  
Vidyaranyaapuram,  
Mysore - 570 004.

#### II Party

The General Manager (P),  
Corporation Bank,  
Zonal Office, 45/3, Residency Cross Road,  
Bangalore - 560 025.

#### Appearance :

Advocate for I Party : Mr. Lakshmi Prasad Reddy

Advocate for II Party : Mr. Pradeep S. Sawkar

#### AWARD

The Central Government vide Order No. L-12012/135/2005-IR(B-II) dated 20.01.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

**“Whether the action of the management of Corporation Bank in passing the order of discharge from the services of the bank on the workman Shri. L. Jayaram, Typist-cum-Clerk, Corporation Bank, Main Bank, Mysore w.e.f. 16.06.2004 is legal and justified? If not, to what relief he is entitled and from which date?”**

1. The fact is, the 1<sup>st</sup> Party workman is the former employee of the 2<sup>nd</sup> Party Bank who is discharged from service as a measure of Disciplinary Action taken against him consequent on allegation of certain misconduct. Before imposing the punishment, Charge Sheet was issued and a Departmental Enquiry was conducted by appointing Enquiry Officer and Presenting Officer. The Enquiry Officer on completion of the Enquiry held that, all the charges levelled against workman are proved. The Disciplinary Authority accepted the Enquiry Report and proposed the punishment of discharge from service. After affording him an opportunity in a personal hearing, the proposed punishment was confirmed. The Appellate Authority also rejected his appeal.

2. The grievance of the 1<sup>st</sup> Party is, the Enquiry Officer relied on the sole evidence of the Investigating Officer without examining the authors of those statements and without tendering those authors for examination. He was not given sufficient opportunity for defence; the Enquiry Officer has not considered his written brief. The enquiry held against him is grossly unfair and rulings of the Enquiry Officer showed his impatience and bias against the defence. The penalty imposed by the Disciplinary Authority is extreme and is in the nature of victimization. Discrimination is practiced on him by the Bank; the order passed by the Appellate Authority has gone beyond the scope of the charge and the evidence which has come on record. The order of the Appellate Authority is passed by a closed mind and determination to victimise him. He is deprived of his livelihood due to the denial of employment.

3. The 2<sup>nd</sup> Party in their counter statement while justifying the punishment of discharge imposed on the 1<sup>st</sup> Party workman denied the allegation against the Enquiry Proceeding, findings of Enquiry Officer, punishment Order passed by Disciplinary Authority and the order passed by the Appellate Authority.

4. On the rival pleadings touching the fairness of the Domestic Enquiry a Preliminary Issue was raised, tried and adjudicated by upholding the Domestic Enquiry as fair and proper.

5. The 1<sup>st</sup> Party workman has adduced evidence about his unemployment and also regarding the Judgement of the Special Court wherein he is acquitted of the charges under Sec 120-B, 468 r/w 120-B and 420 r/w 120-B of IPC and under Sec 471 r/w 120-B of the IPC.

6. Both have submitted oral, so also written arguments.

7. Vide Charge Sheet dated 08.03.2003, the allegations were to the effect that, While working as Typist – cum-Clerk at Mysore Vontikoppal Branch of the Bank between 04.07.1994 to 18.07.2000,

One M/s. Chandana Agencies, a proprietorship concern of Sh. L. Narasimha Prasad opened a Current Account No. 1799 in the Branch who was introduced by one Sh. B. Arunachala Sharma, Officer, Inspection and Audit Division, Head Office Mangalore.

Sh. L. Narasimha Prasad is none other than his brother but the said fact was suppressed by the Account Holder and Sh. C. Jayadeva Kamath / Senior Manager.

The then Regional Manager based on the recommendation of the Branch, sanctioned credit facilities and supply bill discounting to an extent of Rs. 20,00,000/- and Rs. 10,00,000/- respectively, subject to compliance of the condition stipulated in the sanction order.

Sh. C. Jayadeva Kamath was on leave between 05.01.1999 and 10.01.1999. On 06.01.1999, the documents pertaining to the loan account were executed by the borrower and guarantor at the residence of Sh. C. Jayadeva Kamath in the presence of CSE and Sh. K. N. Vaidyanathan, the Officer of Rajajinagar Branch and Sh. G. Arunachala Sharma.

On 07.01.1999, without ensuring compliance of term of sanction, Rs. 11,20,000/- was released to purchase a D.D for Rs. 4,70,000/- in favour of M/s. Mahalakshmi Enterprises, Mysore and a pay order for Rs. 6,50,000/- in favour of M/s. Skanda Enterprises, Bangalore.

Said M/s. Mahalakshmi Enterprises is a proprietorship concern of Smt. A C Srivani, who is the wife of CSE, she had opened the Current Account No. 780 on 05.01.1999 with his introduction; after encashing the DD for Rs. 4,70,000/- the account is not operated and the firm is not in existence.

M/s. Skanda Enterprises is proprietorship concern of Sh. K. Thyagarajan and the Current Account No. 867 was opened by him on 07.01.1999; after encashing the pay order for Rs. 6,50,000/- the account was closed on 27.09.1999 and the unit is not in existence.

The operation of both Current Accounts were not satisfactory and the bill drawn by the borrower under SBD limit is still outstanding.

It is further alleged that, the Bank has suffered financial loss of Rs. 29.99 lakhs in view of the collusion of the 1<sup>st</sup> Party with his brother in perpetuating fraud on the Bank.

8. During the Domestic Enquiry two witnesses were examined for the prosecution; the first witness was the Investigating Officer and the second one was the Senior Manager at V. V. Mohalla Branch, who verified about M/s. Mahalakshmi Enterprises; he deposed to the effect that on receiving a letter from Vigilance Cell he visited the place of the address given in the Account Opening Form and he could not locate any such firm on that day; even the people available nearby could not inform him about the firm. He further stated that the CSO had introduced the Account Holder of CA 780 and he also identified that CSO had received the cash in respect of the cheque issued to M/s. Mahalakshmi Enterprises for Rs. 4,07,000/-.

9. The CSO examined his wife as his witness, her statement was that she had dealings in V. V. Mohalla Branch since 1993-94; she was told by her Brother-in-law Sh. L N Prasad that he would help her in expansion of her Business in selling consumer durables and medicines. She further stated that she had started the Business in the next room where she had her earlier Business; she received the cash of Rs. 4.70/- lakhs from the CSO, she handed over a cheque for Rs. 4,00,000/- to Sh. Padmanabha Rao for execution of the orders; her husband was receiving the cash in respect of the self-drawn cheques issued by her from the Branch. During cross examination she admits that she did not have the requirements for opening a Medical Store.

10. The CSO examined himself as DW-2 and stated that on 07.01.1999 he was not present at the residence of Sh. Kamath but was taking treatment at Mysore on that day. He was unaware about M/s Chandana Agencies applying for loan etc. However, during cross-examination he stated that he does not remember what kind of leave he had availed on 07.01.1999 and for how many days; he admits that he had deposited the DD for Rs. 4,70,000/- in the Branch.

11. The Enquiry Officer placing his reliance on the Investigation Report and the evidence of MWs submitted his Report that, *Management has established all the charges levelled against the CSO in the letter of charge dated 08.03.2003.*

12. The 1<sup>st</sup> Party has produced certified copy of the Judgment passed by the Special Court which is marked as Ex W-4; it is seen from this document that CBI charge sheeted six accused namely

- 1) Sh. Jayadeva Kamath
- 2) Sh. Arunachala Sharma
- 3) Sh. L Jayaram (1<sup>st</sup> Party herein),
- 4) Smt. A C Srivani (she is the wife of 3<sup>rd</sup> accused i.e. 1<sup>st</sup> Party workman)
- 5) Sh. L Narasimha Prasad and
- 6) Sh. P Raja Pandian

in respect of the offence punishable under Sec 120-B r/w 420, 468, 471 and 477A of IPC, 1860 and sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The fifth accused Sh. L Narasimha Prasad was discharged from the charges, by the orders of the Hon'ble High Court of Karnataka and the said order became final. After a full-fledged trial, the accused persons 1 to 4 and 6 were acquitted of all the charges.

13. The 1<sup>st</sup> Party has also produced certified copy of the order passed by the Hon'ble High Court of Karnataka in W.P No. 4526/2005(S-DES) DD 10.08.2011, the document is marked as Ex W-5. From this document it is made out that the writ petitioner/Sh. Jayadeva Kamath therein challenged the Disciplinary Action taken against him by the Disciplinary Authority after holding Domestic Enquiry. It appears that he was imposed a major penalty of reduction to a lower grade from Middle Management Grade-Scale-II with a basic pay of Rs. 13,560/- per month in time scale of pay of Rs. 9820-340-13560. One of the contentions raised by the writ petitioner was that a joint enquiry ought to have been held against all the persons involved in the alleged transaction. The Hon'ble High Court observed “...Therefore though the Regulation which contemplates a joint inquiry affords a discretion to the Disciplinary Authority to either order for such a joint inquiry or otherwise, this was a fit case, in the opinion of this Court, which entailed a joint inquiry...” However, the Writ Petition was allowed by setting aside the punishment order it was observed “...this Court deems it fit that the matter be reconsidered by the Appellate Authority to impose a lesser penalty which does not cause loss and humiliation, which the petitioner would suffer on account of the punishment now imposed..... The matter is remitted to the

*Appellate Authority for a fresh consideration as to the imposition of lesser penalty in line with the observations made hereinabove.”*

14. In the back drop of the above subsequent events, going back to the evidence placed before the Enquiry Officer regarding the charge, the facts pertaining to the loan transactions was all an admitted fact. The controversy was with regard to the presence of the 1<sup>st</sup> Party workman in the residence of Sh. C Jayadeva Kamath on 07.01.1999 wherein the then Officer of the Branch Sh. K N Vaidyanathan passed on cheque No. 205552 dated 07.01.1999 for Rs. 11,20,000/- in the Cash Credit (Hyp) A/C 3/99 for purchasing a Demand Draft of Rs. 4,70,000/- favouring M/s. Sri Mahalakshmi Enterprises, Mysore and a Pay Order for Rs. 6,50,000/- favouring M/s Skanda Enterprises, Bangalore.

The 1<sup>st</sup> Party disputes his presence at the time of the above transaction at the residence of Sh. C Jayadeva Kamath. He emphasised on the contradiction appearing between the statements of the witnesses in reference to his presence in the residence of Sh. C Jayadeva Kamath. As per the statement of Sh. K N Vaidyanathan (which was given before the Investigating Officer and was marked as Ex M-8) 1<sup>st</sup> Party was present at the time of execution of the loan papers on 07.01.1999 at the residence of Sh. C Jayadeva Kamath. According to the Senior Manager who executed the loan papers he was not present at that time when the loan papers were executed on 07.01.1999. As per the Complaint Ex M-2 loan papers were signed on 06.01.1999 and the 1<sup>st</sup> Party was present at that time. As per the Statement of Sh. G. Arunachala Sharma 1<sup>st</sup> Party was not present when the loan paper was executed at the residence of Sh. C Jayadeva Kamath.

15. The Investigating Officer in his Report did not assign specific reason while inferring that the 1<sup>st</sup> Party was present on the above said date and place. Anyway, the authors of those statements were not examined during the enquiry to facilitate the workman to cross-examine them. During the cross-examination of MW-1 it emerged that he had not met Sh. P Raja Pandian to get his clarification on his allegation that CSO was present on 06.01.1999 at the residence of Sh. C Jayadeva Kamath. Thus, the finding of the Enquiry Officer upholding the allegations that he was present at the residence of Sh. C Jayadeva Kamath on 07.01.1999 necessarily was on insufficient evidence.

16. However, now it is shown that the Bank filed a suit before the Debt Recovery Tribunal in O.A No. 568/2000 against the Borrower Sh. L N Prasad, the proprietor of M/s. Chandana Agencies; subsequently the suit was decreed and Sh. L N Prasad paid the decretal amount to the 2<sup>nd</sup> Party and the Bank issued no due certificate. Thus, no financial loss is suffered by the Bank.

17. In my considered opinion much is spent on the issue of physical presence of the 1<sup>st</sup> Party at the residence of Sh. C Jayadeva Kamath on 07.01.1999 at the time the loan was disbursed to Sh. L Narasimha Prasad who is the Brother of the 1<sup>st</sup> Party workman. Though he has made an effort to disown his knowledge about the loan transaction, things stand clear that the cheque for Rs. 4,70,000/- was issued to M/s. Mahalakshmi Enterprises and it's proprietor is his wife Smt. Srivani. He has contended that he was on leave on the said date but he is unable to prove his otherwise engagement on 07.01.1999. The evidence also suggests that after receiving the cheque he has credited the same to the Account of the M/s. Mahalakshmi Enterprises. He cannot claim ignorance about the transaction his wife was carrying on with his own brother Sh. L Narasimha Prasad. The pivotal question is, whether the 1<sup>st</sup> Party workman had conspired with the loanee to defraud the Bank and to misappropriate the Bank amount. From the subsequent developments it can be safely inferred that though there was some irregularity in availing the benefits of the Overdraft facility, finally he ended up in getting No Due Certificate from the Bank. Though it is not illegal to introduce a new customer to the Bank the complicity of the 1<sup>st</sup> Party in handling the transaction on behalf of his wife would give rise to suspicion that virtually it was he who transacted on behalf of his wife in the name of M/s. Mahalakshmi Enterprises.

18. The Hon'ble High Court in the writ petition filed by Sh. C Jayadeva Kamath (supra) in the body of its order has not ruled out the charges as false or fabricated, and it was ordered to impose a lesser punishment. On taking note of the infirmities in holding the enquiry and also the manner in which the finding was arrived, the Hon'ble High Court observed “.....Therefore, this would lead to presumption that unless the petitioner was acting in conspiracy with several other officers, who in fact, had been issued independent charge-sheets in respect of the same transaction, it was not possible to have certainly found the petitioner guilty of the misconduct and the punishment could not have been imposed without reference to the extent of involvement of the petitioner vis a vis the other persons involved and the illegal benefit, if any, which each of them had obtained..... the findings of the independent inquiries conducted against each of the officials and the findings of those inquiries are not placed on record..... the punishment imposed, does certainly shock the conscience of the Court... and punishment imposed on the petitioner does appear to be harsh and disproportionate....”

19. Whether or not the 1<sup>st</sup> Party was present at the residence of Sh. C Jayadeva Kamath on 07.01.1999 it stands clear that the beneficiary was his own Brother and the part of the amount was routed through the account of the firm for which his wife is the proprietrix. The account appears to have been opened only for the purpose of receiving the cheque amount and thereafter without further transactions the account is closed. The 1<sup>st</sup> Party who was only a Typist / Clerk at no stretch of imagination can be said to be in a dominating position to exercise his influence on his Superior Officers. However, the onus of sharing the information of the loan transaction with the 2<sup>nd</sup> Party cannot be escaped by him. In the light of the punishment suggested by the Hon'ble High Court against Sh. C Jayadeva Kamat, the punishment of discharge imposed on the 1<sup>st</sup> Party workman definitely is discriminatory, harsh and severe and cannot be sustained. By the impugned order he has lost about 14 years of his valuable service, had if the 2<sup>nd</sup> Party considered his case judiciously while quantifying his punishment things would have been different. It is not only the workman but also his dependent family suffered because of his untimely discharge from service. Since, he has crossed the age of superannuation the relief can be only by way of monetary compensation. Having regard to the extent of his complicity and indulgence in the loan transaction, I hold back wages at 80% from the date of his discharge to the date of his superannuation would be the appropriate relief that can be awarded in his favour. Hence,

### **AWARD**

#### **The reference is accepted.**

The action of the management of Corporation Bank in passing the order of discharge from the services of the bank on the workman Shri. L. Jayaram, Typist-cum-Clerk, Corporation Bank, Main Bank, Mysore w.e.f. 16.06.2004 is not legal and not justified.

2<sup>nd</sup> Party is directed to pay monetary compensation to the workman equivalent to 80% of his back wages calculated from 16.06.2004 till the date of his superannuation within 60 days from the date of publication of the Award in the Official Gazette failing which the amount shall carry future interest at 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 18<sup>th</sup> February, 2020)

JUSTICE Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 3 मार्च, 2020

**का.आ. 364.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 46/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.03.2020 को प्राप्त हुआ था।

[सं. एल-12012/121/2003-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3rd March, 2020

**S.O. 364.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 03.03.2020.

[No. L-12012/121/2003-IR (B-II)]

SEEMA BANSAL, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**DATED : 18<sup>TH</sup> FEBRUARY 2020**PRESENT** : JUSTICE SMT. RATNAKALA, Presiding Officer**CR 46/2003****I Party**

Sh. H.N. Mukunda,  
S/o Sh. H.H.N. Iyengar,  
No. 156/A, 13<sup>th</sup> Cross,  
3<sup>rd</sup> Phase, Girinagar,  
Bangalore - 560 085.

**II Party**

The Dy. General Manager,  
Union Bank of India,  
Zonal Office, Chandrakiran,  
10/A-Kasturba Rd.  
P.B. No. 5179,  
Bangalore - 560 001.

**Appearance :**

Advocate for I Party : Mr. V S Naik

Advocate for II Party : Mr. S N Murthy

**AWARD**

The Central Government vide Order No. L-12012/121/2003-IR(B-II) dated 25.07.2003 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

**“Whether the action of the management of Union Bank of India in dismissing the service of Sh. H.K. Mukunda, Computer Operator w.e.f. 10.01.2001 is legal and justified? If not, what relief the concerned workman is entitled to?”**

1. The 1<sup>st</sup> Party Workman has raised this dispute against his erstwhile Employer / Union Bank of India on his dismissal from service as a measure of punishment, after the allegations against him came to be proved in a departmental enquiry. In his claim petition he challenges the fairness of enquiry, alleges perversity of enquiry finding and illegality of the punishment order. The 2<sup>nd</sup> Party refuted all his allegations while justifying the action taken against the Workman.

2. The validity of the Domestic Enquiry is upheld by this Tribunal while adjudicating the Preliminary Issue vide Order dated 3.04.2014.

3. The 1<sup>st</sup> Party Workman thereafter adduced evidence by bringing on record that he is unemployed subsequent to his dismissal. He has produced a certified copy of the Judgement passed by the Criminal Court whereby he is acquitted of the charges U/sec 477-A, 409 and 420 of IPC (the Criminal Case was resisted on similar set of allegations which was a subject matter of Domestic Enquiry).

4. Both Parties have submitted their written brief.

5. The allegation against the 1<sup>st</sup> Party in the charge sheet of 31.07.1999 was that, while working as Computer Operator at Koramangala Branch, he committed fraud to a tune of Rs. 8,76,834.50- (as detailed in the charge sheet).

Firstly, he gave 14 fictitious credits aggregating to Rs. 1,08,670/- to his SB A/c 353 on various dates (as detailed in the charge sheet). Except two credits of Rs. 500/- on 30.01.1997 and Rs. 13,000/- on 20.02.1997, all other credits are back dated entries effected on later dates.

Secondly, he was in the habit of borrowing huge amounts from outsiders against post dated cheques. He deliberately did not debit 9 cheques (as detailed in the charge sheet) received under inward clearing and local branch transfer (home clearing). These cheques were found in the days voucher bundle at the time of reconstruction of books. He issued cheques without maintaining adequate balance in his SB account; he manipulated main cash transfer / debits to balance the day book. Clearing and total debits as reflected in the ALPM summary and main cash book for the respective days (as detailed in the charge sheet).

Thirdly, inward clearing cheques (as detailed in the charge sheet) were found missing and the SB account was not debited but same were taken to main cash book by inflating clearing / transfer debits to tally the main cash book on the respective days). The aggregate amount defrauded was Rs.1,81,415/-.

Fourthly, he collected Rs. 3,36,252/- in respect of CD A/c No. 30001 on various date (as detailed in the charge sheet) but did not remit the amount to the Bank. Cash entries were made in the Current Account Ledger and SB A/c of the party showed as Cash receipt entries in the respective passbooks. He concealed above fraudulent acts by manipulating General Ledger figures under Current / SB head and Current Deposit balancing book as on 31.03.1998. He avoided taking CD balancing for subsequent period.

Fifthly, he collected Rs. 80,000/- on 06.01.1998 and Rs. 21,000/- on 27.10.1998 to the SB A/c No.1111 of the Club by acknowledging the counter foil of SB pay-in-slip. These amounts were credited into their account without voucher as back dated entry under serial no. 9029 on 06.10.1998 and serial no. 9047 on 27.10.1998. He misappropriated Rs.1,01,000/- collected by giving fictitious credit to the account without voucher/remitting the amount.

Sixthly, he collected cash aggregating to Rs. 53,287.50 on 22.09.1998, 23.09.1998, 03.11.1998 and 14.11.1998 to the credit of CD Account No. 30001 by acknowledging cash receipt on the counter foil of CD pay in slips and the entries were not made. The Club vide letter dated 23.01.1998 informed the Bank about the same and subsequently, the branch credited the amount of Rs. 53,287.50 to Clubs account.

Seventhly, he committed a Fraud amounting to Rs.45,000/- in respect of Two SB accounts (as detailed in the charge sheet). He withdrew the cash from the accounts forging the signature of account holders and showing it as actual cash payments to the account holders. He deleted the debit entries from the account to balance the account and paid instruments are also missing.

Eighthly, he manipulated Two SB accounts of the customers and defrauded aggregate amount of Rs.15,000/- (as detailed in charge sheet).

He resorted to excessive borrowing from outsiders for the period 01.12.1996 to 24.11.1998 there was heavy transactions over Rs.8,00,000/- in his account. He had financial dealing with staff member of the Branch.

6. During the enquiry two witnesses were examined for the prosecution; the first witness was the Investigating Officer, he placed the entire investigation material and marked documents Ex M-1 to Ex M-80. The second witness was the then colleague of the 1<sup>st</sup> Party who produced cash vouchers and debit vouchers; Ex M-81 to Ex M-86 were the cash vouchers for having paid conveyance charges to CSE in respect of his travel to Koramangala Club for cash remittances and to Wipro for cash dispersal. He identified the signature of the CSE on the documents.

7. 1<sup>st</sup> Party cross examined the witnesses on his own without the assistance of any co-employee, initially he had sought for the assistance of an Advocate since the service rules did not permit, his request was refused; he did not adduce defence evidence. However, the documents produced by him were taken on record as Ex D-1 to Ex D-3. He submitted his written brief, the Enquiry Officer on appreciation of the un-rebutted evidence of MWs corroborated by documentary proofs recorded his finding that charge No. 1 to 6 are proved and Charge No. 7 and 8 are not proved.

8. The Investigation Officer was Sh. K Raj Mohan the Chief Manager, Service Branch, Bangalore appointed by Dr. J P Mishra, Chief Manager (P), Industrial Relation Department, Central Office, Mumbai. The Enquiry Officer vide Ex M-2 dated 28.08.1999 was authorised to hold enquiry and also to take action against the workman if the charges are proved. Thus, the Enquiry Officer in his enquiry finding while holding the charges 1 to 6 proved indicated the punishments in his capacity as Enquiry / Disciplinary Authority vide Circular No. 2309 dated 26.05.1981. However, he proposed to give him a personal hearing to consider whether the 1<sup>st</sup> Party has any extenuating and mitigating circumstance against the proposed punishment. The 1<sup>st</sup> Party attended the personal hearing and gave his statement that the punishment imposed on him is on higher side; he has put in 24 years of service without any complaint and with good record to his superiors and also expressed his personal and financial difficulties he was undergoing.

9. Very same Sh. K Raj Mohan in the capacity of the Disciplinary Authority in furtherance of his Enquiry Report has passed the punishment order of Dismissal from service with immediate effect for the gross misconduct proved against him at the Enquiry.

10. In his written submission the 1<sup>st</sup> Party has stated that charge sheet was issued by one Sh. J P Mishra, Chief Manager, IR Cell, Central Office, Mumbai. The Disciplinary Authority has to furnish the Report of Enquiry Officer to the delinquent employee for his reply if any, it is only after considering the reply given by the delinquent employee Disciplinary Authority can impose appropriate penalty on him. Contrarily in this case the

punishment was proposed in the Enquiry Report itself; it is only in respect of proposed punishment he was asked to appear for personal hearing, if opportunity was provided for him he would have demonstrated that the Report of the Enquiry Officer is perverse and the same is not based on material evidence. In this case Disciplinary Authority predetermined the entire issue and opportunity given to him was limited. Hence, the action of the Management is wholly illegal and the penalty imposed on him is without jurisdiction.

11. With regard to his contention that findings of enquiry is perverse he has stated that, he was required to post vouchers in the Computer and thereafter it used to be forwarded to the Officer for check, the officer was required to put a tick mark on the voucher and thereafter same would be sent to the cashier and other concerned department; unless the officer authorises the entry by using his password the transaction will not be complete. His responsibility ceased on the moment he completed the work of posting the vouchers in the computer.

12. Further with regard to the allegation of bringing the Cash from Koramangala Club he has stated that, the work used to be attended by the Officer, Clerk and sometimes by Sub-Staff in pursuance of oral instruction. After bringing the cash, same used to be handed over to the Officer; there is no complaint from the Customer for not taking into credit certain amount to the Bank Account of the Koramangala Club; none of the Officials of the Club were examined as witnesses.

13. In respect of the allegation of not accounting the cheques received for clearing he has stated that, whatever cheques were received in the Branch from the clearing house same will be recorded in the book and the same was checked by concerned Officer and only thereafter it would be posted by the Clerk. After posting of those cheques the responsibility of the Clerk ceases. It is his further submission that all the Books of Accounts during the period 1997-98 were looked into, tallied and signed by the Officers, Accountant and the Branch Manager and were certified by the Auditors as well as internal and external Auditors; there is no mention in these two Balance Sheets regarding alleged misappropriation or loss of funds of the Bank. No memo is issued to the Officer / Accountant / Branch Manager. After his dismissal his P.F and gratuity was adjusted to the financial loss of the Bank and the amount of Rs. 1,83,206.05 was paid to him. Said action of the 2<sup>nd</sup> Party is totally illegal since the charges are not proved during the enquiry.

14. The tone of argument of 2<sup>nd</sup> Party is, it is the established principles, Strict Rules of Evidence Act and the Standard of proof expected therein do not apply to Departmental proceedings or Domestic Tribunal. The role of Tribunal in interfering with the punishment order is limited, when the Domestic Enquiry is held in accordance with the rules of natural justice and the findings is reached on some evidence adduced during enquiry. The Tribunal cannot re-appreciate evidence and substitute its own findings to the Enquiry Report when the findings are based on some evidence. The Tribunal should be very slow in coming to a conclusion other than the one arrived by the Domestic Tribunal, though two views are possible.

15. It is obvious that the 1<sup>st</sup> Party was deprived of an opportunity to have his say of submitting his remark to the enquiry proceedings. Personal hearing was given to him to have his say to the proposed punishment. The Enquiry Officer and the Disciplinary Authority being one and the same no other result rather than what is expressed by way of punishment would have to been expected. However, before this Tribunal the 1<sup>st</sup> Party had an opportunity to point out how the enquiry finding was perverse. Perversity of a finding as interpreted by the Higher Courts is *a finding which is based on no evidence, a departure from the rule of procedure or where no reasonable person could arrive at such finding on the evidence on hand*.

16. What is contended by the 1<sup>st</sup> Party in his written argument is his defence which he could have presented during the enquiry itself. Though it is contended by him that the Disciplinary Authority had predetermined the entire issue he has not shown the specific findings which are not based on evidence.

17. The Enquiry Officer while appreciating the evidentiary material has also discussed the defence stand. However, recorded his findings by assigning his reasons to reach the conclusion. It is evident from his report that before recording his finding to each charge he has perused and verified each and every document produced by the Investigating Officer.

18. In that view of the matter, it is inevitable to hold that enquiry finding was neither arbitrary nor perverse. Though 1<sup>st</sup> Party was deprived of an opportunity to submit his remarks to the Enquiry Report that has not prejudiced his case and does not amount to violation of principles of natural justice. 1<sup>st</sup> Party himself does not allege of victimization for any trade union activities. He has deposed that because of the punishment order he lost his livelihood and he is not gainfully employed. He has relied on the judgment of the A.C.M.M Court whereby he is acquitted of the charges under Sec 477(A), 409 and 420 of IPC, but acquittal from a Criminal Case on similar set of allegation has no bearing on the outcome of the Domestic Enquiry. The parameter for appreciation of evidence is entirely different in both cases.

19. He has crossed the age of superannuation long back. The allegation which is proved during the enquiry is of serious nature having a large financial implication on the 2<sup>nd</sup> Party, it is also not a case of gross negligence, his wilful / intentional indulgence and complicity in the misconduct proved against him is obvious. If he was discriminated by bailing out others who were also involved in the misconduct, he ought to have placed tangible evidence in that regard before this Tribunal which he has not done.

20. In view of the above discussion, I endorse the punishment of dismissal imposed on the 1<sup>st</sup> Party workman Sh. H K Mukunda, Computer Operator as legal and justified.

### **AWARD**

**The reference is rejected.**

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 18<sup>th</sup> February, 2020)

JUSTICE Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 3 मार्च, 2020

**का.आ. 365.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 13/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.03.2020 को प्राप्त हुआ था।

[सं. एल-12012/149/2005-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3rd March, 2020

**S.O. 365.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 03.03.2020.

[No. L-12012/149/2005-IR (B-II)]

SEEMA BANSAL, Section Officer

### **ANNEXURE**

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

DATED : 18<sup>TH</sup> FEBRUARY 2020

**PRESENT :** JUSTICE SMT. RATNAKALA, Presiding Officer

### **CR 13/2006**

#### **I Party**

Sh. V.S. Basarkod,  
S/o Sh. Sabanna Basarkod,  
Netaji Street,  
Muddebihal,  
Bijapur – 586 212.

#### **II Party**

The General Manager (P),  
Canara Bank,  
Head Office (Personnel Wing),  
112, J.C. Road,  
BANGALORE – 560 002.

### **Appearance :**

Advocate for I Party : Mr. V.S. Naik

Advocate for II Party : Mr. T.R.K. Prasad

### AWARD

The Central Government vide Order No.L-12012/149/2005-IR(B-II) dated 17.04.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

**“Whether the management of Canara Bank is justified in compulsorily retiring Sh. V.S. Basarkod from the services of the Bank? If not to what relief the workman is entitled to?”**

1. The 1<sup>st</sup> Party workman / the former employee of the 2<sup>nd</sup> Party Bank is challenging the Punishment Order imposed on him whereby, he is made to retire prematurely from service. Prior to the dismissal a Departmental Enquiry was held against him, on the Enquiry Officer finding him guilty of misconduct the punishment order of Compulsory Retirement is imposed on him.

2. In his Claim Petition, the 1<sup>st</sup> Party workman questioned the fairness of the enquiry, correctness of the enquiry findings and legality of the punishment order. He alleges that, the punishment order is arbitrary and shockingly disproportionate and he is unemployed.

3. The 2<sup>nd</sup> Party in their Counter Statement while justifying their action refuted the entire allegation levelled in the Claim Statement against the procedure of enquiry, correctness of the enquiry report and legality of the punishment order

4. Vide order dated 04.01.2012, the Domestic Enquiry conducted against the 1<sup>st</sup> Party workman by the 2<sup>nd</sup> Party is held fair and proper.

The 1<sup>st</sup> Party workman thereafter adduced evidence contending that, his service records of 23 years was totally unblemished; he is not gainfully employed and has no source of income.

5. Both learned counsels have submitted their argument.

6. The allegation against the 1<sup>st</sup> Party workman in the Charge Sheet dated 26.02.1998 was,

The First Charge was, Firstly, while working as Clerk at Konnur Branch of the 2<sup>nd</sup> Party inclusion with the then Branch Manager, he misappropriated Rs. 3,166/- which was the money belonging to Sh. Gurulingaiah S Hiremath; said customer on 19.04.1994 had remitted a sum of Rs. 10,166/- towards clearance of the outstanding liability and the 1<sup>st</sup> Party had made entry in the counter foil in his handwriting but accounted Rs. 7,000/- only to the loan account AFCL 75/93 on 19.04.1994.

Secondly, he has misappropriated the amount of Rs. 5,431/- remitted by Sh. Sangana Gowda Hadalageri towards clearance of the Crop Loan. The respective paying in challans are in the handwriting of the 1<sup>st</sup> Party but said amount is not credited; the said amount is not credited in the Branch to the Loan account 54/93.

Thirdly, likewise, in respect of another Crop Loan sanctioned to Sh. G. S. Hiremath, he received the cash of Rs. 10,620/- towards clearance of the loan but remitted Rs. 10,370/- only in the Branch. The counterfoil and paying in slip are in his handwriting; he has not accounted the differential amount of Rs. 250/-

The Second Charge was, He got a cheque discounted in his favour for Rs. 8,500/- which was issued in favour of Sh. A. H. Makandar drawn on Canara Bank Basavanabagewadi Branch and drawn by Sh. M.S. Kingi having SB Account No. 1550. He struck down / cancelled the name of the payee and the account number and incorporated his own name and account number. When the cheque returned at Basavanabagewadi Branch, he received the cheque fraudulently.

The Third charge was, He got a vehicle loan of Rs. 10,000/- sanctioned on 19.10.1996 for the purpose of purchase of second hand 1996 model Suzuki Samurai Motor Cycle costing Rs. 30,000/- from Sh. A.K. Desai. When the loan proceeds were credited to his loan amount, instead of arranging DD in favour of vendor, he withdrew the amount on three occasions and misutilised the loan sanctioned to him.

The Fourth charge was, Without the permission of the Branch Manager and in contravention of the Circle Office letter dated 08.06.1990 and the memo dated 21.12.1990 and issued a cheque bearing No. 610298 favouring Siddeswara Co-operative Bank Rs. 4,000/- and the cheque was dishonoured for want of funds.

7. During the enquiry on behalf of the prosecution, six witnesses / MW-1 to MW-6 were examined. At the inception of the enquiry, 31 documents were marked. The CSE got examined himself as DW-1 and marked two documents.

The 1<sup>st</sup> witness was Sh. Shangana Gowda Beehmana Gowda Hadalgeri. He identified CSE who was present in the Court Hall and deposed in corroboration to the Charge Sheet allegations.

MW-2 was Sh. Shantha Gowda Shanganna Gowda Hadalgeri / the son of MW-1. He was examined to corroborate the statement of MW-1, since MW-1 had stated that, the loan account AFCL 54/93 stands in the name of his son and he had paid Rs. 4,000/- with interest to the CSE. The amount belongs to his son; his son was not present with him at the time of remittance.

MW-3 was the co-employee of the 1<sup>st</sup> party workman. His statement was that, he had written the folio numbers at the time of updating the records; the CSE posted the slips and the same is in his handwriting. By perusing ledger sheet of AFCL 54/93 the witness stated that, no other slip was posted on that date; he also stated that CSE had posted the slips in respect of AFCL 51, 52, 53 and 55/1993.

The Fourth witness was the Investigating Officer. He deposed that, the counterfoils pertaining to the loan accounts are in the handwriting of CSE and not signed by any Officials of the Branch or Manager of the Branch. These counter foils are affixed with cash date stamp and date of seal is not visible. CSE had signed the challans in respect of Crop Loans 51, 52, 53 and 55/1993 dated 27.05.1994 with the cash received stamp dated 27.05.1994. The then Manager has checked the shroff book and the CSE entered into the crop loan register. The challans bear polio numbers which are in the handwriting of MW3.

MW-5 was another customer Sh. G.S. Hiremath. His statement was to the effect that, the amount mentioned in the challan is Rs. 10,370/- and in the counterfoil it is mentioned as Rs. 10,620/-; when he questioned with the difference with the Manager, he got angry and told him to remit the differential amount which he followed. He further stated that, he had remitted Rs. 9,000/- with interest as per the instruction of the Manager. But when he approached the Manager for fresh Loan, he was informed that because Rs. 3,000 outstanding liability, he is not eligible for fresh loan; there was confrontation between him and the Manager at that time; however, fresh loan was granted in his name and he was not aware who paid the liability of Rs. 3,000/-.

MW-6 was the present Manager of Konnur Branch, whose statement was to the effect that, the entry at Ex M-20 / Ledger Sheet of SB A/c 19003 of CSE pertains to LHV 02/96 (of CSE) there are alterations in CDB registers in folio no. 55 in respect of CDB of 25 dated 17.07.1996 for Rs. 8,500/-. There was no cross examination to the witness.

8. The CSE gave his defence statement.

Regarding 1<sup>st</sup> Charge his defence was, since original complaint is not produced, there is possibility of fabricating counter foils; the borrowers had given statement to the Investigating Officer that, they have given money to the Manager but not the CSE; even after three years of remittance they have not cared to receive the counter foils.

Regarding 2<sup>nd</sup> charge his defence was, there was no mention in the Charge Sheet that the CSE had made the alteration in the cheque belonging to Sh. Makandar; the instrument was not made available during the enquiry; it was returned unpaid, for authentication. In respect of alteration, the Investigating Officer had not taken the statement of Sh. Makandar. There is no financial loss to the Bank.

Regarding 3<sup>rd</sup> Charge his defence was, the concerned debit and credit slips were passed for the credit of CSE by the Manager; the LHV account stands closed.

Regarding 4<sup>th</sup> Charge his defence was, there was an instruction to Basavanabagewadi Branch not to allow the employees to operate accounts, however, on his transfer to Konnur Branch he had to open the account to draw his salary.

The Enquiry Officer on a thread bear analysis of the evidence, in the light of the defence, has concluded that all the allegations are proved.

9. Before this Court, Sh. VSN for the 1<sup>st</sup> Party while strongly attacking the Punishment Order submits that, the disputed counterfoils and paying in slips were not produced during the enquiry. The Punishment order passed by Disciplinary Authority is not a speaking order. Emphasis is placed on the evidence of MW-3 and MW-4.

MW-3 during his cross-examination had admitted that, the CSE had not received the cash. He had categorically admitted that Sh. S.S. Hadalageri had informed him that, he had remitted the amount and had given to the hands of Manager but the Manager did not give him the receipts and gave him new loan.

MW-4 had admitted that, *there is a difference in the signature between Mex -27 i.e., statement of G S Hiremath and the challan*. He also confirmed that, acknowledge of date was available from the loan papers and there was liability hence, the party had executed the loan papers.

Learned counsel further points towards the admission given by MW4 / Investigating Officer. To the question during cross examination '*in the light of the different remittances from different accounts from ALCL 51-53/93 except 59/93 counter foils would have been made to write on different dates other than the date of remittance has been put by the witness during the course of Enquiry and the counter foils bears no signature / initials either by the Bank Staff or Manager and the dates are not visible clearly; it can be construed to be a fabricated counter foil*'.

10. Sh. TKRP in his counter reply would submit that, there is a long delay of 6 years in raising dispute. The submission now made by Sh. VSN in respect to the cross-examination to the MW-1 is examined by the Enquiry Officer during appreciation of evidence. Having found no merit in the said submission, he has recorded that, the charges are proved. Since the Disciplinary Authority accepted the Enquiry Report and imposed punishment, he was under no such obligation to record a lengthy Punishment Order. Furthermore, he had not submitted his remarks to the enquiry report though had acknowledged the receipt of enquiry report. Learned counsel draws my attention to the order passed by the Appellate Authority wherein, there is detailed discussion of the case and submits that Appellate Authority since superior in Office to the Disciplinary Authority, the Punishment Order merges with the order passed in the Appeal endorsing the Punishment Order.

During the enquiry, the Challans and pay in slips were marked and they were found and the entries were contrary to each other. The 1<sup>st</sup> Party himself does not dispute his handwriting in the challans and pay in slips and the handwriting is also identified by his colleague MW-3. MW-1 and MW-2 had stated to the effect that in turn the Manager had handed over the money to the 1<sup>st</sup> Party. During the cross examination (page 28 of enquiry proceedings), DW-1 has admitted writing challans twice, he also admitted receiving the cash amount from the hands of Manager after business hours which was in practice. He has also stated that he did not ask the Manager as to why he asked CSE to prepare the challans twice since he is superior. The two documents produced by the CSE as DEX 1 and 2 are the acknowledgement of dates by the customers; they were produced to establish that the customers were still due to the loan amount; but that is of no help to disprove the charge.

11. Learned Counsel Sh. TRKP has placed his reliance on the Judgments of the Apex Court reported in 2005 AIR SCW Page 4333 in the matter of *National Fertilizers Ltd and Another vs P K Khanna* and AIR 1996 SC Page 320 in the matter of *State Bank of Bikaner and Jaipur and others vs Prabhu Dayal Grover* with connected case wherein, it was held to the effect that, when the Disciplinary Authority concurs with the findings of Enquiry Officer, it need not restate the reasons for its findings.

12. Having gone through the Enquiry records. I have noticed that, the 1<sup>st</sup> Party had admitted writing two challans after receiving the cash amount. Whether it was through the customers directly or through the Manager, things stand that challans and paying in slips were in his handwriting and he had no satisfactory defence in this regard. The debit and credit slip i.e., Ex M-18 and 19 were to found to be the handwriting of CSE and he was found to have discounted the cheque. Thus, the finding of the Enquiry Officer on Charge No. 1 and 2 are founded on the evidentiary material available in the enquiry records.

With regard to the charge No.3, the 1<sup>st</sup> Party himself did not make effort to establish that, he made use of the vehicle loan of Rs. 10,000/- sanctioned in his favour to purchase the vehicle. Thus, the finding with regard to Charge No.3 can be safely endorsed.

With regard to Charge No.4, he has admitted the allegation of opening the Bank Account at Konnur Branch in contravention of the instruction contained in Staff Section (W) Circle Office letter No. BSW: 30767: EP: HS dated 08.06.1990 and memo number 44/90 dated 21.12.1990. However, genuine his compulsion to open the said account, things stand that, such opening of the account was without the prior permission of his Superior Officer and he has not disputed that cheque issued by him for Rs. 4,000/- was returned for want of funds.

Hence, conclusion of the Enquiry Officer in recording the finding of misconduct in respect of all the four charges is founded on the evidentiary material; same is proper and correct and there is no scope to find any flaws like perversity or bias.

Of course, from none of the misconducts proved against the 1<sup>st</sup> Party workman, the Bank has suffered loss. But that is not the criteria to negate the punishment Order, when the Bank has lost its trust in him. In a similar case, the Division Bench of our Hon'ble High Court in the Judgment reported in 1995(1) LLJ KAR Page 1076 in the matter of *Sh. D. Padmanabhu vs Bank of India and Another* held thus,

*“Moreover, it is now well settled that once an enquiry is properly held and the management has thought it fit to pass an order of dismissal considering the nature and gravity to the act committed by the employee, it is not for the Court including the Labour Court to interfere with such orders of the management. This being a case of misappropriation by a person who was holding the position of Accounts Clerk in a Bank it cannot be said that the Bank had taken a wrong view of matter and the punishment was unduly harsh.”*

Both on facts and Law I do not find any reason to hold that, the Punishment Order of Compulsory Retirement imposed on the workman was illegal.

### **AWARD**

#### **The reference is rejected**

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 18<sup>th</sup> February, 2020)

JUSTICE Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 4 मार्च, 2020

**का.आ. 366.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं 2 चण्डीगढ़ के पंचाट संदर्भ संख्या (447/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2020 प्राप्त हुआ था।

[सं. एल-40011/19/98-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 4th March, 2020

**S.O. 366.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 447/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 04.03.2020.

[No. L-40011/19/98-IR (B-1)]

B. S. BISHT, Under Secy.

### **ANNEXURE**

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

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

**ID No. 447/2005**

Registered on:-19.08.2005

Gurcharan Dass S/o Madho Mal, Ex-Skilled Tool Fitter-II Grade,  
T.No.542, C/o Smt. Kamlesh Kumari, Takra Kali Ram,  
Near Veterinary Hospital, Kalka, District Panchkula.

...Workman

#### **Versus**

1. The Management of Northern Railway through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Works Manager, Northern Railway Workshop, Jagadhri, District Yamuna Nagar.
3. The works Manager, Northern Railway Workshop, Kalka, District Panchkula.

...Respondents/Managements

**AWARD****Passed on:-17.12.2019**

Central Government vide Notification No. L-40011/19/98-IR(B-I) Dated 26.02.1999, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

**“Whether the action of the management of Northern Railway, Ambala Cantt. in denying the under mentioned demands of Uttar Railway Karmachari Union, Ambala Division is legal and justified ? If not, to what relief the concerned workmen are entitled?**

**Demand 1:-Payment of arrears of incentive Bonus to the employees on account of increase in the rate of incentive bonus due to revision of pay scale by the 4<sup>th</sup> Pay Commissioner.**

**Demand 2:-Benefits of promotions as Tool Fitters Grade-I to Shri Gurcharan Dass, Ex-Tool Fitter Gr-III.**

1. Both the parties were put to notice and claimant Gurcharan Dass has filed his statement of claim, alleging therein that he was working as Skilled Tool Fitter Grade-III, T.No.542, in Northern Railway, Kalka workshop at the time of his retirement on 30.06.1992 on attaining the age of superannuation. Being Union-leader and protected workman, he was harassed and victimized by the management, imposing penalty of WIT for 3 years, without any sufficient reason which was set aside by the Hon'ble Supreme Court of India on 14.09.1987. Prior to that while working as Tool Fitter Grade-III in Jagadhari workshop of Northern Railway, he had qualified the requisite test for next promotion to the post of Highly Skilled Tool Fitter, but was not promoted on the plea that a case was pending against him. During the period, his juniors were promoted even in spite of the order of the Hon'ble Supreme Court in 1987 and ending of penalty period of WIT on 01.05.1985, he was not promoted on the pretext that a charge-sheet against him was pending for investigation. By the award of the Hon'ble CGIT Court, Chandigarh on 31.01.1996 for promotion in Grade-II from the date when it was due. Management issued an Order on 17.03.1983 for his promotion in Tool Fitter Grade-II but the order kept separate in the record and not conveyed to the workman. Subsequently, in April 1996, management issued a notice whereby the workman was promoted to Grade-II H.S. Tool Fitter from 17.09.1983 for his promotion but salary was not accorded against the salary of Kailash Chand whose pay was revised to Rs.380/-. Though, the workman was promoted for Grade-II but after his superannuation by virtue of order of CGIT Chandigarh, his claim was not considered as H.S. Tool Fitter Grade I on the ground that he was not appeared in the test for next promotion for no default of workman as he was promoted in Grade II, after his retirement. Hence, his promotion to Grade-I cannot be denied as per rule. The workman approached the management vide his application dated 5.3.1988, 19.1.1989 and 14.2.1990 with prayer that he may be permitted to appear in the test required for promotion of Grade-I but management did not care and prefer to harass the claimant for his legally authorized union activities. It is therefore, prayed that reference be answered in favour of the workman by directing the management to promote him to the post of H.S. Tool Fitter Grade-I w.e.f. 01.08.1988 and consequential benefits along with interest.

2. Management Northern Railway has filed its written statement, alleging therein that reference is bad in law as the petitioner has no claim whatsoever with the respondent-management. The petitioner has held the post of Skilled Tool Fitter for which a trade test is required for the next promotion. Since no test has been cleared by the workman therefore, no relief can be awarded against the said post and that too after his retirement. The workman was never a member of any recognized union functioning in the Northern Railway. Workman was not due for promotion to the post of Skilled Tool Fitter Grade-II in March 1983 as is alleged. He has been allowed promotion from 17.09.1983 in pursuance of order of the Hon'ble Tribunal dated 31.01.1996 in reference No.2/1988. It is further alleged that by virtue of the punishment of WIT for 3 years and subsequently issuing major penalty charge-sheet dated 6.6.1984 he was lawfully not considered to the post of Skilled Tool Fitter Grade-II which was due to him as alleged. The workman was not entitled against the alleged promotion of Sant Ram of Kalka workshop because he refused to accept the promotion as such there was no necessity to inform the workman as no vacancy became available. The workman remained unfit due to undergoing his punishment and his conduct remained under investigation in major penalty of charge-sheet till his retirement as such, his promotion did not considered by the management as per rules. It is therefore stated that promotion of the workman as Highly Skilled Tool Fitter Grade-I w.e.f. 01.08.1988 vice Sh. Inder Singh T.No.3737 is untenable for all purposes hence, claim is liable to be answered in negative.

3. Parties were given opportunity to lead evidence. Workman Gurcharan Dass has submitted his affidavit Ex.WW1 along with documents filed on record. Respondent-management has examined P.K. Sharma, Assistant Personal Officer, Jagadhari workshop, who has proved his affidavit Ex.MW1 filed as evidence and proved attested copies of the circulars of the management marked as A, B, C and D.

4. I have heard the argument of the learned counsel of the workman Sh. R.S. Sharma, and counsel of the management Sh. Sahore, and have carefully gone through the written arguments filed by the workman as well as evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

5. So far as the reference regarding the demand no.1 is concerned, Railway Karamchari Union has not preferred any claim petition as such, there is no evidence on record to answer the demand no.1 under reference and liable to be answered in negative.

6. The questioned reference regarding demand no.2 relates with such a case, in which almost facts are admitted except the promotion of the claimant/workman as Tool Fitter Grade-I after his superannuation from service. The date of joining service, date of superannuation i.e. 30.06.1992, penalty by management to WIT for 3 years, subsequent quashing of the WIT punishment by Hon'ble Supreme Court vide order dated 14.09.1997 are admitted facts. There is no dispute that workman has been confirmed and promoted in Grade-II Tool Fitter from back date 17.09.1983 after his retirement by virtue of order of Central Government Industrial Tribunal dated 31.01.1996. This fact is also not disputed that workman was not permitted to appear in test of Grade-I Tool Fitter by management in spite of several representation as is admitted by the witness of the management S.P. Sharma, Assistant Personal Officer of management during the cross-examination. It is also not disputed that charge-sheet issued in the year 1984 is withdrawn after retirement of workman from service.

7. The real controversy revolves with the notional promotion of workman/claimant from Grade-II Tool Fitter for Grade-I Tool Fitter and post retiral benefits arising therein. The main contention of the learned counsel of management is that workman had retired as Grade-III Tool Fitter in the year 1992 and Grade-II Tool Fitter promotion was given by virtue of judgment of Central Government Industrial Tribunal after retirement hence, he cannot be given promotion in Grade-I as he had not qualified the test for promotion of Grade-I Tool Fitter because he was Grade-III Tool Fitter at the time of retirement.

8. Learned counsel of workman has contended that claimant is not at fault because he was not permitted to enter into test required for promotion as Grade-I Tool Fitter in spite of his best efforts and several representations in the light of the rules governing the service and promotion of the workman. There is no dispute that test for promotion from Grade-III to Grade-II and from Grade-II to Grade-I is compulsory. Workman had cleared the test for promotion from Grade-III to Grade-II but he was not given promotion because of punishment of WIT and subsequent charge-sheet submitted against him in the year 1984. The pertinent rules and procedures governing the promotions of Group-D to Group-C Railway Servants runs as follows:-

***“3.1 Such a Railway servant shall not be promoted even if already borne on a selection penal/suitability list till after the results of the proceedings or investigation against him is known. There is however, no objection to promote him if he is not under suspension or is not proposed to be suspended and the proceedings already initiated or are proposed to be initiated are for the imposition of only a minor penalty.”***

***3.2 Such a Railway servant as aforesaid, if not already borne on a selection penal/suitability list, should be called along with other eligible candidates to appear at the written/trade/suitability test before the selection committee or the selection board. His suitability for promotion as also his position in the selected penal/suitability list should be assessed as in the ordinary course.***

9. Admittedly, workman was not permitted or called upon along with other eligible candidates to appear at the written/trade/suitability test before the selection committee or Board even he had passed the Grade-II examination in the year 1983. The question which arises for consideration is that who were responsible for this mistake in spite of the specific rules of examination or test. It is not other but the management and its respective officers were responsible for not permitting to the workman to appear in Grade-I examination even that his promotion may have been withheld by virtue of administrative proceeding pending at relevant time.

10. Next question which require even greater consideration is whether workman is entitled for notional promotion even after his retirement by virtue of any rule governing the service condition. Learned counsel of workman has drawn my attention towards Railway Board Letter No.E/D&A/97/RG-6-27 Dated 01.10.1997 which runs as follows:-

***“3. In terms of the above instructions, the employees who is exonerated after finalization of the disciplinary proceedings is to be promoted in his turn. The due date of his promotion is determined with reference to his position in the panel/suitability list. If his junior has already been promoted, he should be granted notional promotion with effect from the date of promotion of the junior and granted proforma fixation of pay in the higher grade. The competent authority has also to consider***

*his case for grant of arrears for the period of notional promotion in the light of the position brought out in para-3 of the above instructions.*

**4. With reference to the point raised in the JCM(DC) meeting, Board desire to clarify that the above instructions do not make any distinction between cases of exoneration before or after retirement. An employee whose promotion was withheld on account of pending disciplinary/judicial proceedings and who has subsequently been exonerated has to be given notional promotion from the date he becomes due for such promotion even if the employee has retired from service for the period of notional promotion, his case for grant of arrears has also to be considered. While in the case of serving employee that period will be the intervening period from the date of effect of notional promotion to the date of actual promotion for a retired employee, this intervening period will be from the date of affect of notional promotion to the date of his retirement. The arrears of pay, wherever granted and the extent therein, will also count for calculation of pensionary benefits of the employees concerned.”**

11. The sole witness examined by the respondent-management S.P. Sharma had admitted that workman had passed Grade-II Tool Fitter test in the year 1983 but he was not promoted to that post since he was under punishment of WIT withholding of his annual increment for three years i.e. 01.05.1982 to 30.04.1985. This witness has further admitted that proceeding regarding charge-sheet of major penalty is issued in the year 1984 had been withdrawal after the retirement of claimant/workman. It is admitted fact that Bhopal Singh was junior to the workman who was promoted in Grade-II Tool Fitter in the year 1985. Witness examined by the management namely S.P. Sharma has expressed his inability during the course of cross-examination that he cannot tell as to when Bhopal Singh, Kailash Chand had granted Grade I become the relevant record is not with him. This witness has further stated that he cannot tell whether any trade test was held in the year 1985 to 1988 or 1990. S.P. Sharma has further stated that he cannot tell whether any person was promoted to Grade-I in the year 1985, 1988 or 1990. This witness has further states that seniority list of 1990 is not available on record today as per seniority list of 1987, Mohinder Kumar was senior and Harbans and Kailash was junior to the workman, who were working in Grade-II Tool Fitter. It is also not disputed that the entire service record of the workman is not produced by the management in spite of the application of the workman alleging therein that service record in personal file of Kailash Chand, Phool Chand, Inder Singh and Bhopal Singh along with service record and personal file of workmen are not available in the office vide objection dated 18.09.2008 which is on record. Thus, personal service records of the workman and their contemporary including Inder Singh were not produced before the Tribunal while witness examined by the management has expressed his inability to inform the Tribunal regarding the test and promotion of the juniors as well as seniors with the workman in the year 1985, 1988 ad 1990. Contrary to this, workman has submitted a list of employees dated 27.05.1984 which reveals that he had been mentioned in the column no.20 of the list while Inder Singh son of Ujagar Singh had been mentioned at serial no.26 reflecting that he was junior to applicant/workman with respect to their services rendered with the management.

12. Last but not the least, question remains to be seen in the light of the reference whether workman is entitled for the benefit of promotion of Tool Fitter Grade-I. It is pertinent to mention that workman has claimed his seniority with Inder Singh and requested that management be directed to notionally promote him in Grade-I from 01.08.1988 when Inder Singh T.N.No.3737 and many other juniors to him were promoted as Tool Fitter Grade-I with all the benefits of promotion with interest. As discussed above, it was management who did not permitted him to appear in examination of Grade I Tool Fitter in spite of the specific rule laid down in 3(2) of Service Rules even though, he had passed Tool Fitter Grade-II examination in the year 1983. Thus, there is no fault at all on the part of the workman who represented at various time for permission to enter in the trade test examination. The Railway Board letter No.E/D&A/97/RG-6-27 Dated 01.10.1997 has made specific direction to the respondent/management regarding promotion and consequential benefits to the employees exonerated after retirement on superannuation. There is no dispute that the punishment of WIT had been struck off by the Hon'ble Supreme Court vide its order dated 14.09.1987 as well as subsequent charge sheet stood withdrawn at the superannuation of the workman from service in the year 1992.

13. Having gone through the entire facts of the case and relevant rules governing service condition of workman and Railway Board Letter dated 01.10.2019, I am of the considered opinion that workman is entitled for promotion and consequential benefits from the date on which Inder Singh, Bhopal Singh, Kailash Chand and

Phool Chand had been promoted on 01.08.1988 as per claim petition or any subsequent date available with management on which they were promoted to the post of H.S. Tool Fitter Grade I from the date.

14. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 4 मार्च, 2020

**का.आ. 367.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 12/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2020 प्राप्त हुआ था।

[सं. एल-41011/09/2015-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 4th March, 2020

**S.O. 367.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 04.03.2020.

[No. L-41011/09/2015-IR (B-1)]

B. S. BISHT, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

**PRESENT :** P. K. SRIVASTAVA, PRESIDING OFFICER

**I.D. No. 12/2015**

Ref. No. L-41011/09/2015-IR(B-I) dated: 19.03.2015

#### BETWEEN :

Mandal Sangathan Mantri  
Uttar Railway Karmachari Union  
C/o Sri Parvez Alam, 283/63, KH, Gari Kannora  
(Premwati Nagar), Post Manak Nagar  
Lucknow – 11  
(Espousing case of Sri Anil Kumar & 66 others)

#### AND

1. The Divisional Railway Manager  
Northern Railway  
DRM, Hajratganj, Lucknow.

#### AWARD

1. By order No. L-41011/09/2015-IR(B-I) dated: 19.03.2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Mandal Sangathan Mantri, Uttar Railway Karmachari Union, C/o Sri Parvez Alam, 283/63, KH, Gari Kannora, (Premwati Nagar), Post Manak Nagar, Lucknow and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow for adjudication.

2. The reference under adjudication is:

*“KYA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SARV SHRI ANIL KUMAR VA 66 ANYA KO DINANK 04.09.1981 SE NAUKARI SE NIKAL DIYA JANA NYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO KAAMGAAR KIS RAAHAT KO PAANE KA HAQDAAR HAI? (SUCHI SANLAGN)”*

3. The case of the workmen’s union, in brief, is that the workman Anil Kumar and 66 others had been appointed on the regular post in the pay scale of Rs. 196-232, in the Loco Shed, Northern Railway, Lucknow as substitute worker and have worked as such for more than 240 days. The workmen’s union has submitted that the workmen were paid in accordance with the pay scale of Rs. 196-232 and admissible allowances alongwith other benefits such as Bonus, Medical, Privilege Pass and PTO facility; and also had been granted temporary status on approval of the competent authority in terms of Rule 2501, 2505, 2301 and 2304 and printed serial No. 7850, Chapter XXIII of Indian Railway Establishment Manual. It has been stated by the workmen’s union that management of the opposite party terminated the services of the workmen without giving any notice or retrenchment compensation in violation to the Rule 2511, 2514 and other printed senior no. 7850 of the Railway Establishment Manual and Section 25 B, 25 F and 25 T of the Industrial Disputes Act, 1947.

The workmen’s union has alleged that the opposite party has directed vide letter dated 12.02.88 for screening of workmen completing 120 or more days of working; but the workers who were engaged from open market and 277 other workers have been regularized sparing workmen, which is violative of the provisions of the Section 25 G & H of the act. The workmen’s union has also alleged that management through various letters, issued directions to regularize the retrenched workers, but the workmen viz. Anil Kumar & 66 others have not been regularized till date. It has also been alleged by the workmen’s union that higher authorities of the management issued the directions to regularize the retrenched workmen but the workman, Anil Kumar & 66 other has not been regularized till date; accordingly, the workmen’s union has prayed that the workmen, Anil Kumar & 66 others be reinstated with consequential benefits, including back wages and regularization of services.

4. The management of the railways has disputed the claim of the workmen’s union by filing its written statement; wherein it has disputed the maintainability of the industrial dispute on the basis of delay of 35 years from the date of alleged retrenchment. The management has submitted that the workmen under question have never been engaged/appointed by the management in any branch of the railway establishment, therefore, there arise no question regarding payment of any salary to the workmen concerned or their retrenchment at any point of time; moreover, there arise no question to their reinstatement or regularization of the workmen as there never existed any relationship of employee and employer between the workmen and the management of railways. The management has alleged that the claim raised by the workmen’s union is false and not tenable in the eye of law, in absence of corroborative documentary evidence; hence the same is liable to be rejected without any relief to the workmen’s union, being devoid of any merit.

5. The workmen’s union has filed its rejoinder wherein, reiterating the averments already made in the statement of claim, it has submitted that the written statement filed by the management before this Tribunal is not acceptable since it is not filed under signatures of the appropriate authority under Rules. The workmen’s union has submitted that the present industrial dispute has been presented in accordance with the order of the Hon’ble High Court, Lucknow Bench, Lucknow vide order dated 28.01.2010 in Writ Petition No. 8127 (SS) 2009, therefore, the provisions of limitation are not attracted in present case.

6. The parties filed documents in support of their respective case and adduced oral evidence. The workmen’s union examined workmen viz. Rajesh Kumar, Anil Kumar & Pratap Narain; whereas the management examined Sri P.K. Singh, ADME (O&F), DRM Office, Lucknow in support of its case. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments in support of their respective cases.

7. Heard learned authorized representatives of the parties at length; and perused entire evidence on record.

8. The learned authorized representative of the workmen’s union has submitted that the applicants were appointed as substitutes and worked for more than 240 days in a calendar year; but the management of the railways has terminated their services without complying with the mandatory provisions of Section 25 F of the Act; moreover, it has not any prepared any seniority list of said workmen, which was required as per instructions contained in the Railway Establishment Manual, in respect of substitute labours. The learned authorized representative of the union has also submitted that the delay is no ground to reject present reference, as the same has been referred by the appropriate Government to this Tribunal for adjudication. He has stressed that ample vacancies are still prevalent with the management and they have given appointment to the others, ignoring the workmen whose cause is espoused in the present case, which amounts to unfair labour practice;

accordingly, he has prayed that the action of the management, terminating services of the workmen, be held illegal and they be reinstated with consequential benefits, including back wages. He has relied upon:

- (i) *Union of India & others vs Sri Ram Misra & another* 2009 (120) FLR 1 (Allah. HC)
- (ii) *Kuldeep Singh vs G.M., Instrument Design Development and Facilities Centre* 2011 (128) FLR 121 (SC)
- (iii) *Ajaib Singh vs The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. & another* AIR 1999 SC 1351.
- (iv) *L. Robert D'souza vs Executive Engineer, Sourther Railway & another.* 1982 SCC (L&S) 124
- (v) *Hawkins Cookers Mazdoor Union & another vs Labour Commissioner, Kanpur & others* 2007 9115) FKR 736 (All. HC)
- (vi) *Director, Fisheries Terminal Division vs Bhikubhai Meghaji Bai Chavda* 2009 (123) FLR 875 SC.
- (vii) *Union of India & others vs Basant Lal & others* 1992 (64) 1055 SC.
- (viii) *Sonepat Co-operative Sugar Mills Ltd. vs Rakesh Kumar* 2006 (108) FLR 592 SC.
- (ix) *Union of India of India & another vs Girja Shankar & others* 2003 (96) FLR 1094 (All. HC)
- (x) *Union of India vs Presiding Officer, Central Government Industrial Tribunal –cum-Labour Court, Kanpur Nagar & another* 2008 (116) FLR 1046 (All. HC)
- (xi) *Divisional Manager, New India Assurance Co. Ltd. vs A. Sankaralingam* 2008 (119) FKR 398 SC.
- (xii) *Krishna Bahadur vs M/s Purna Theatre & others* 2004 (103) FLR 146 SC.
- (xiii) *Decision of Hon'ble High Court, Allahabad in Writ Petition No. 17910 (CM) 1987 between Senior Divisional Mechanical Engineer, NR, Lucknow vs Zonal President, Uttar Railway Karamchari Union, Lucknow & others decided on 28.05.1999.*
- (xiv) *Decision of Hon'ble Supreme Court in Civil Appeal No. 346 of 2015 between Jasmer Singh vs State of Haryana & another decided on 13.01.2015.*
- (xv) *Decision of Hon'ble High Court, Lucknow Bench, Lucknow in Review Petition No. 466 of 2013 between Ram Dhari Yadav vs FCI & others decided on 25.05.2015*

9. In rebuttal, the learned counsel of the railways has argued that the workmen, whose cause is being espoused by the workmen's union in the present case, had never been appointed by the management of the railways in any capacity, at any point time, therefore, their arise no question of termination of their services or compliance of any statutory provisions of the Act. He has vehemently argued that the workmen's union has raised the present industrial dispute with an in ordinate delay of 35 years from the alleged date of termination i.e. 04.09.1981; hence their claim is not maintainable in view of provisions contained in Section 2A (3) of the Act. The learned counsel of the management has also submitted that since there existed no relationship of employee and employer between the workmen concerned and the railways, therefore they cannot be reinstated in the services of the management at any stretch of imagination; moreover he has also submitted that the union has raised grievances of as many as 67 workmen; but only three workmen have entered the witness box to sustain their case and rest of the workmen refrained from proceedings before this Tribunal, therefore, the claim of the rest of the workmen who did not their claim through oral evidence, could not be entertained. The learned counsel has also stressed that the workmen's union failed to rely any documentary evidence to sustain their pleadings that all the 67 workmen had been appointed by the railways and that they have been terminated by the railway management; likewise the workmen's union failed to rely upon any document which goes to prove the working of the workmen with the opposite party management for alleged period of appointment; and accordingly, has prayed that the claim of the workmen's union be rejected out rightly, being devoid of any merit, without any relief to the workmen concerned.

10. I have given my thoughtful consideration to the rival contentions of the parties, in support of their respective stand, and scanned the entire evidence available on record in light thereto.

11. In nutshell, the workmen union has come up with a case that the workmen who were appointed by the railways as substitute, worked for more than 240 days in each calendar year; but the management of the railways terminated their services in an illegal manner in utter disregard to the provisions of Section 25 F of the Act. The

workmen's union has also alleged that the management in spite of directions of their superiors, for regularization of the services of the workmen, did not regularize the services of the workmen; rather terminated them, which amounts to unfair labour practice.

Per contra, the it is clear cut case of the management that firstly, the claim of the workmen's union is barred in view of the provisions of Section 2A(3) of the Act, being raised after an inordinate delay of more than 35 years from the alleged date of cause of action; and secondly, there is existed no employer and employee relationship between the management of the railways and the workmen, hence the management of railways neither appointed the workmen nor terminated their services in violation to the any statutory provisions of the Act. It is also the case of the management that pleadings are not corroborated with the cogent documentary evidence and all of the workmen have not entered the witness box to sustain their case before this Tribunal.

12. Before entering to the merits of the case, it is has to be looked into that the management of the railways has raised preliminary objection regarding maintainability of the case due to inordinate delay of more than 35 years in raising the present dispute in terms of provisions contained in Section 2A (3) of the Act. In rebuttal, the workmen's union has submitted that case has been referred to this Tribunal for adjudication by the appropriate Government and this Tribunal is duty bound to answer the same on the terms of reference; moreover, the provisions of Section 2A (3) of the Act is not applicable to the present case. The Section 2A of the Act reads as under:

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

(2) *Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

(3) *The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).*

A bare perusal of the above quoted section reveals that the limitation prescribed in the sub-section (3) of Section 2A is regarding filing of an application before the Labour Court or Tribunal with regard to the filing of an application directly before the Labour Court or Tribunal, after expiry of 45 days from the date it moved an application before the Conciliation Officer under sub-section (2) of Section 2A; and there is no bar on entertaining an industrial dispute duly referred by the appropriate Government under Section 10 of the Act.

Also, Hon'ble Apex Court in *Ajaib Singh vs. Sirhind Co-operative Marketing-cum-Processing Services Society Ltd. & another* 1999 LAB IC 1435 where there was admitted delay of seven years has held that the Court can mould relief by refusing back wages or directing payment of part of back wages. Likewise, Hon'ble Supreme Court in 2001 SCC (L&S) 105 *Gurmail Singh vs. Principal, Govt. College of Education & others*, has laid down that '*the Labour Court cannot dismiss the case of the workman merely on the ground of delay. If the order of dismissal is challenged belatedly, the dispute would still continue for adjudication, the only question would be to deprive back wages for the period of delay in raising such a dispute if on merits it is to succeed.*' Further, Hon'ble Allahabad High Court in 1994 LLR 29 *The Chief General Manager, State Bank of India, Chief Office, Lucknow vs. B.C. Verma & another*; wherein the question for consideration before the Hon'ble High Court was whether inaction or delay in raising industrial dispute by the workman can be condoned; Hon'ble High Court observed as under:

***"In the present case, Section 10(1) may be read along with Section 10 (5). Both the subsections read together lead to conclusion that 'at any time' the Reference can be made in the exercise of the administrative power by the Central Government provided there exists an industrial dispute or the same is apprehended. He use of expression "at any time' in both the sub-sections clearly indicates that legislature never intended any limitation to be imposed for making reference."***

In the present case, the Conciliation Officer on failure of ateh conciliation proceedings forwarded its 'Failure of Conciliation Report' to the appropriate Government, which after considering the Failure of Conciliation Report, referred the present industrial dispute to this Tribunal for adjudication under powers conferred under Section 10 of the Act. Hence, upon reference of an industrial dispute by the appropriate Government, it is duty casted upon the Labour Court or Industrial Tribunal to answer the terms of reference. Also, admittedly there is an inordinate delay of approximately 35 years and the workmen's union has tried to explain the same with submission that it continuously kept pursuing its case before different authorities/forums through its representations; and finally present dispute has been raised as per directions of the Hon'ble High Court, Lucknow Bench, Lucknow in Writ Petition No. 8127 (ss) 2009 vide dated 28.01.2010. Accordingly, in view of the statutory provisions, quoted above and discussions, made hereinabove, the objection of the management of the railway management regarding non-maintainability of the case due to delay in raising present industrial dispute has no merit as it is inferred from the material available on record that the workmen's union had been pursuing the cause of the workmen and different forums, though wrong; and approached the conciliation officer in view of the order dated 28.01.2010 Writ Petition No. 8127 (ss) 2009 of the Hon'ble High Court.

13. Hon'ble Apex Court in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer has observed that initial burden of proof to substantiate its pleadings through cogent evidence, lies upon the workman. Hence, when the workmen's union has come forward with the case that the services of the workmen had been terminated without following previsions of the section 25 F of the Act, then burden of proof heavily lies upon the workmen's union to prove that the workmen whose cause has been espoused in the present case had worked for 240 days in the preceding twelve months from the alleged date of his termination. For this the workmen's union has filed photocopy of various documents with its list W-9, which includes photocopy of Privilege Ticket Order (PTO)/Travel Pass in respect of many workmen, which are denied by the management. In this regard the management has specifically argued that the photocopy of the PTO and Travel Pass, submitted by the workmen's union cannot be taken into account in absence of their original; moreover, there are photocopies of PTO and pass in respect of certain employees whose case is not espoused in the present reference. However, the workmen's union has filed original of two PTO vide list W-14.

14. The management in order to check the claim of the workmen's union has taken the best recourse of denying the appointment/engagement of the workmen in any capacity at any point of time. It is worthwhile to point out that in the present case, during the conciliation proceedings before the Regional Labour Commissioner (Central), Lucknow, the Conciliation Officer vide its order dated 09.03.2011, has observed that "the representative who is present on behalf of the railways has submitted that the record, pertaining to present case are quite voluminous, therefore, the same could not be brought before him; and accordingly, parties were ordered to conduct a joint inspection of the documents". Accordingly, a joint inspection of the paid vouchers was made in the office of the opposite party and a joint inspection report dated 11.09.2012, duly signed by the authorized representative of the workmen's union, Chief Office Superintendent (Record), NR, Lucknow and DPO, NR, Lucknow was filed before the Conciliation Officer. The said joint inspection report dated 11.09.2012 contains details of paid voucher for the random months from March, 1979 to September, 1981; also there is a specific mention regarding fact that "rest of the paid voucher had been damaged by the termites, therefore, A.B. Number is not clear". Although the authorized representative of the management has denied the said joint inspection report dated 11.09.2012; but has not rebutted the same through evidence of the officer(s) who signed it.

Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda* 2010 AIR SCW 542; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service, which it did not do and simply took shelter of pleading that the case is too old and most of the documents have either got destroyed or damaged. The management at one pretext has pleaded that the workmen are totally stranger to them as the workmen had were never been appointed by the railways at any point of time; whereas on the other hand, its two responsible officers certifies the details of payment made to the workman from March, 1979 to September, 1981 in a joint inspection report, with a mention that rest of the payment details are not legible being damaged by the termites. Had the management have preserved the rest of the payment voucher, then the case of the workmen's union might would have been at better footings.

Therefore, in view of the law cited hereinabove and joint inspection report dated 11.09.2012, filed before the Conciliation Officer, regarding payment to the workmen, it was expected from the management that it should have come forward with the details of engagement and payment of the workmen; but the management

has opted to take entirely different recourse by denying the appointment/engagement of the workman altogether at any point of time, before this Tribunal. However, it was expected from the management to come forward with the clean hands by giving details of engagement of the workman on casual basis and payment made to him; but the management did not do so, leaving no option but to rely on the joint inspection report dated 11.09.2012, filed by the workmen's union in support of working/payment details of the workmen concerned.

15. In *Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai* 2005 (107) FLR 1145 (SC) Hon'ble Apex Court came to the conclusion that in order to claim the benefits of provisions of Section 25 F of the Act, the burden is on the workman to prove by cogent evidence that he was actually in employment for 240 days in twelve months preceding the date of alleged termination; and where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly in a year preceding the date of termination, he is not entitled to the protection of section 25 – F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

***“The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination.”***

The workmen's union has pleaded that the workmen, whose cause is being espoused in the present case, worked with the management of Railways and their services have been terminated w.e.f. 04.09.1981 without complying with the provisions of the Section 25 F of the Act, therefore, in view of the case law cited hereinabove, the burden was on the workmen's union to prove that the workmen had actually worked for 240 days in twelve months preceding the date of termination i.e. between 03.09.1980 to 04.09.1981. The workmen's union has filed photocopy of the joint inspection report dated 11.09.2012, which goes to prove the case of the workmen that they worked with the management of railways for more than 240 days in the year preceding to the date of their termination.

Thus, there is ample evidence to record this finding that the workmen had actually worked for more than 240 days in preceding twelve months from the date of their alleged termination i.e. 04.09.1981; and oral termination of their services, without any notice or notice pay in lieu thereof, was in violation of the section 25 F of the I.D. Act; hence the same is held illegal.

16. As per Rule 2001 of Chapter XX of the Indian Railway Establishment Manual (Vol. II), the definition of Casual Labour reads as under:

***2001. (I) Definition of Casual Labour – Casual Labour refers to labour whose employment is intermittent, sporadic or extends over short period or continued from one work to another, Labour of this kind is normally recruited from the nearest available source. They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour.***

*Casual Labour on Railway should ordinarily be employed only in the following types of cases.*

- (a) *Casual Labour (Open Line). – Casual Labour are primarily engaged to supplement the regular staff in work of seasonal or sporadic nature, which arises in the day to day working of the Railway system. This includes labor required for unloading and loading of materials, special repair and maintenance of tracks and other structures, supplying drinking water to passengers during summer months, (recoupment of man-days lost on account of absenteeism) patrolling of tracks, etc. casual labour so engaged in the operation and maintenance of railway system is referred to as open line casual labour, as distinct from project Casual Labour described in para (b) infra.*
- (b) *Casual Labour (Project) – Causal Labour are also engaged on Railways for execution of Railway projects, such as new lines, doubling, conversion, construction of building, track Renewals, Route Relay interlocking Railway Electrification, Setting up of new unites etc. Casual Labour so engaged are referred to as “Project Casual Labour”.*

***Such of those Casual Labour engaged on open line (revenue) works, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary (i.e. given “temporary status”) on completion of 120 days continuous employment.***

*Casual Labour on projects who have put in 180 days of continuous employment on works of the same type are entitled for 1/30<sup>th</sup> of the minimum of the appropriate scale of pay plus Dearness allowance."*

In the instant case the workmen had been engaged as casual labour in open line and there were entitled for grant of temporary status on completion of 120 days of working. Hon'ble Apex Court in 1992 FLR (64) 1055 *Union of India & others vs Basant Lal & others* has observed that in case the workers were employed in the construction work on the open line then they would acquired a temporary status after continuous employment of 120 days; and they would be entitled to all rights and privileges which are admissible to a temporary Railway employee. Also, Hon'ble Supreme Court in 2003 (9) FLR 1094 *the Union of India & another vs Girja Shankar & others* held as under:

"8. The relevant Rules quoted by the first appellant court, which has not been disputed by the appellant shows that, as the responded remained in service for more than 120 days in accordance with the Rule 2511 of Chapter XXV of the Indian Railways Establishment Manual, he acquired the status of temporary Government servant."

17. Hence, from the facts of the case, it would be well drawn, the workmen who were engaged as casual labourers with the railway and having worked for more than 120 days in a year were entitled for grant of temporary status under Railway Establishment Rules; but they were deprived of the same instead having worked for more than 240 days in the in preceding one year to their alleged termination without any notice or notice pay in lieu thereof of any retrenchment compensation was in clear violation to the provisions contained in the Section 25 F of the Industrial Act, 1947. Also, it is established that the workmen approached this Tribunal with long delay; but it cannot be said that they were sitting idle and were not vigilant about their legitimate rights; rather they were continuously pursuing their cause before different, though wrong, forums. Moreover, the workmen's union has neither pleaded nor proved that the workmen are not in gainful employment.

18. Accordingly, in view of the facts and circumstances of the case and law cited hereinabove, am of the considered opinion that the action of the management of northern railway in terminating the services of the workmen, whose cause is being espoused in the present dispute, is neither just nor legal; and therefore the workmen are entitled for reinstatement with consequential benefits, including continuity in services, except back wages.

19. The reference under adjudication is answered accordingly.

20. Award as above.

LUCKNOW

24<sup>th</sup> February, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 9 मार्च, 2020

**का.आ. 368.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 61/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.03.2020 को प्राप्त हुआ था।

[सं. एल-22012/20/2013-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 9th March, 2020

**S.O. 368.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C. L and their workmen, received by the Central Government on 02.03.2020.

[No. L-22012/20/2013-IR (CM-II)]

RAJENDER SINGH, Section Officer

## ANNEXURE

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

NO. CGIT/LC/R/61-2013

**Present:** P.K. Srivastava, H.J.S..( Retd)

The Secretary  
 Bhartiya Khadan Mazdoor Sangh,  
 Branch-Hasdeo Area, Qr.No.1022, Miners Colony,  
 Double Story, P.O. Bijuri,  
 District Anuppur (MP)

...Workman

Versus

The Sub Area Manager,  
 Baherabandh Sub Area of SECL,  
 P.O. Baherbandh,  
 District Anup-pur (MP)

...Management

## AWARD

(Passed on this 4<sup>th</sup> day of FEBRUARY-2020)

1. As per letter dated 9-4-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/20/2013-IR-(CM-II) The dispute under reference relates to:

***“Whether the action of the Sub Area Manager, Baherabandh of SECL, in fixing up basic wages of Shri Anil Kumar Banjare, less than that of his Junior employee is legal and justified? If not, to what relief the workman is entitled for.”***

- After registering the case on the basis of reference, notices were sent to the parties.
- The case of the workman as stated in his statement of claim is that he was initially appointed on 8-9-1992 on the basis of Mechanical Fitter, Category-V with the Management. He was given seniority on 2-1-2006 mentioning the new cadre of promotion as Category-II from 1-3-1994 Category-IV amended from 1-8-1996 Category-V amended from 1-5-2001 as co-worker namely Tomy Kuriyakose was also given seniority with this order amended from same dates. Thereafter, he was promoted at Fitter Category-VI from Category-V on 1-2-2006. His Co-worker Tomy Kuriyakose who was in the same scale up to 0 Category-V was promoted to Category-VI on 1-1-2010. He was given increased scale inspite of being Junior to the workman which is against Rules. According to the workman, he raised this anomaly before the Management but of no avail. Thereafter he raised a dispute with the Labour commissioner and after failure of conciliation the reference was made by appropriate Government to this Court for adjudication. The workman has prayed that the reference be answered in his favour and respondent/Management be directed to do away the anomaly.
- In its written statement of defence, the Management has not disputed the facts but has stated that the workman Tomy Kuriyakose got the basic pay scale of Rs.599.48 w.e.f. 1-5-2009 due to (Service Linked Upgradation) which was the next scale of Category-V Fitter corresponding to scale of Category-VI and this continued after he was promoted to Category-VI. According to the Management the anomaly is due to (Service Linked Upgradation) of the co-workman which is permissible in law. The Management has referred to I.I.No. 23 of NCWA-VIII in this respect. Accordingly the Management has prayed that the reference be answered against the workman. The workman has filed the photocopy of documents. The same documents have been filed by the Management which are Exhibits M-1 to Exhibit M-4.
- No oral evidence has been adduced by the workman. During the course of hearing the workman absented himself. The Management has filed affidavit of its witnesses in support. The workman was not available for cross-examination of Management witnesses hence the opportunity for cross-examination by workman was closed.
- At the stage of argument also the workman did not appear hence arguments of learned counsel for Management Shri A.K.Shashi was heard. The workman was given opportunity to file written argument which he did not avail. I have gone through the record.

6. **The Reference is the point in issue in the case in the hand.**

7. The settled principle is that the burden to prove his case lies with the workman. The workman has not examined any witness or himself in support of his claim. The document Exhibit M-1 is the copy of I.I.No.23 which provides for anomaly to be removed in case senior employee in the same seniority list and same designation in a cadre gets lesser wages than the person junior to him in the same cadre and same post. The rules are being reproduced as follows:-

1. **When the senior employee promoted to a higher post and draws less pay than his/her Junior in the revised pay in NCWA-VIII.**
2. **Senior employee in the same pay and covered by the same seniority list and same designation in a cadre as his junior, but due to different dates of increment the junior starts getting higher pay than his senior. The removal of such anomalies will be subject to the following conditions:**
  - a. **both the junior and senior employee should belong to the same cadre and the post/grade/category in which they have been promoted should be covered by the same seniority list and same cadre;**
  - b. **the pre-revised and revised pay of lower and higher post in which they are entitled to draw pay should be identical.**
  - c. **the anomaly should be directly as a result of application of normal rules of fixation on such promotion in the revised pay and as a result of fixation of pay in the revised pay under NCWA-VIII. The next date of increment of the senior employee will be the same as that of Junior employee.**

**If even the lower post, the junior employee was drawing more pay in the pre-revised pay than the senior by virtue of any advance increment granted to him, these provisions shall not apply in such cases.**

8. Exhibit M-2 proved by the management shows that the applicant/workman and his co-worker Tomy Kuriyakose were in the same scale and getting the same basic salary up to promotion in Fitter Category-V due to (Service Link Upgradation) the co-worker got the same basic salary inspite of being in Category-V which the applicant/workman was getting on being promoted in Category-VI. Hence this anomaly is due to granting one increment on the basis of (Service Link Upgradation) of the workman when he was in Category-V. NCWA-VIII does not provide for rectification of this anomaly. Hence on the basis of these settled factual scenario, the action of the Management in fixing of basic salary of applicant/workman lesser than that of his co-workman cannot be faulted in law and the workman is held entitled to no relief.

9. On the basis of the above discussion, following award is passed:-

- A. The action of Sub Area Manager, Baherabandh of SECL, in fixing up basic wages of Shri Anil Kumar Banjare, less than that of his Junior employee is legal and justified.**
- B. The workman is held entitled to no relief.**

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 4.2.2020

नई दिल्ली, 9 मार्च, 2020

**का.आ. 369.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 129/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.03.2020 को प्राप्त हुआ था।

[सं. एल-22012/230/2001-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 9th March, 2020

**S.O. 369.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 129/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C.L. and their workmen, received by the Central Government on 02.03.2020.

[No. L-22012/230/2001-IR (B-II)]

RAJENDER SINGH, Section Officer

# ANNEXURE

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

**NO. CGIT/LC/R/129/2002**

**Present:** P. K. Srivastava, H.J.S..( Retd)

Shri Ganga Prasad Tripathi,  
Village Dodhan Railway Station  
Post Office Rewa  
Rewa (M.P.)

...Workman

**Versus**

The Chief General Manager,  
Baikunthpur Area of SECL,  
P.O Baikunthpur,  
Korea (Chhattisgarh)

...Management

# AWARD

**(Passed on this 11th day of FEBRUARY-2020)**

1. As per letter dated 6-9-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/230/2001-IR (CM-II):The dispute under reference relates to:

***“Whether the action of the Chief General Manager, Baikunthpur Area of SECL, AT/PO, Baikunthpur, District Korea (Chhattisgarh) in terminating the services of Shri Ganga Prasad Tripathi, Clerk Grade I of Baikunthpur Area is legal and justified? If not, to what relief the concerned workman is entitled to? .”***

2. After registering the case on the basis of reference, notices were sent to the parties.

3. Both the parties appeared and filed their respective claim of defence as well as documentary and oral evidence. On the basis of evidence on record the reference was decided by my learned Predecessor by Award dated 5-2-2009. Following award was passed by him:-

**“1. The action of the Chief General Manager, Baikunthpur Area of SECL, AT/PO, Baikunthpur, District Korea (Chhattisgarh) in terminating the services of workman Shri Ganga Prasad Tripathi, Clerk Grade I of Baikunthpur Area is not legal and is unjustified.**

**2. The workman is entitled to the relief of reinstatement of service without back wages.”**

4. The award was published, thereafter the workman preferred a writ petition before Hon’ble High Court of Chhattisgarh at Bilaspur which was W.P.No.7497-2009. The said petition was decided by a Single Bench of Hon’ble High Court on 10-8-2008 with the following directions mentioned in para-5 of the order being reproduced as under:-

**Para-5:-“Since the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur has not considered the issue of back wages in its proper perspective, the order impugned is set aside. The matter is remitted to the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur for considering the question of back-wages, who shall consider and decide the said issue within a period of three months from the date of receipt/production of certified copy of this order.”**

5. After receipt of the copy of the aforesaid order of Hon'ble High Court notices were issued to parties. Advocate Nityanand Mishra appeared on behalf of workman and his arguments were heard. Arguments of learned counsel for Management Shri A.K.Shashi were also heard. The workman filed Memorandum of arguments which has been taken on record. I have gone through the memorandum of arguments and the record of the case, in the light of aforesaid order of Hon'ble High Court.

6. As the order of Hon. High Court states, the finding of my learned Predecessor in the award passed by him regarding illegality and unjustified of departmental inquiry and the finding that none of the charges were proved as well the dismissal of services of workman was unjustified in law has not been disturbed by Hon'ble High Court. Only his finding with regard to back wages has been set aside with an observation that issue of back wages has not been considered by my learned predecessor in the said award in its proper perspective and it has been directed that this question of back wages be considered and decided afresh after hearing both the parties.

7. Learned Counsel for workman has referred to Clause 28.9 of Certified Standing Orders which reads as follows:-

**“28.9 Notwithstanding the provisions contained in these standing orders, as above the management reserves the right to suspend a workman being prosecuted in a court of law for any grave criminal offence involving moral turpitude or murder until the disposal of the trial. In such cases, the workman concerned shall be entitled to 50% of wages as subsistence allowance in case the above workman is finally acquitted, he would be paid full wages for the period of suspension.”**

8. He has further referred to para 384 of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya(D.ED) and Others (2013)10 SCC 324. Learned Counsel has also referred to para 8 of case law Shiv Nandan Mahto Vs. State of Bihar & Ors. (2013)11 SCC 626. Learned counsel for Management has referred to following case Rajasthan Sate Road Transport Corporation, Jaipur Vs. Phoolchand(2019) LAB I.C.SC-36 and other case laws i.e. Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Ltd. & Ors(2016) 16 SCC 663-para 3, Rajendra Kumar Kindra Vs. Delhi Administration AIR 1984 SC 1805-para 12, Om Oil & Seeds Exchange Vs. Workman, AIR 1966 SC 1957, Union of India Vs. Babu Ram Lalla AIR 1988 SC 344, Manorama Verma (Smt. Vs. State of Bihar(1994)28 ATC 709, G.T.Lad Vs. Chemical & Fibres of India Ltd,1979 SLJ 318(SC), Shri Nanak Ram D Bhambhani Vs. Union of India 1987(3) SLJ(CAT)683, Uma Shankar Chatterjee Vs. UOI 1982(2) SLJ 368, Ram Sharan Sharma Vs. MPEB, 1996 MPLSR 489, Madhav Laxman Vaikuntha Vs. State of Mysore AIRE 1962 SC 8.

9. Following observation of Hon'ble Apex Court in case of Deepali Gundu Surwase(Supra) is being referred as follows:-

**Para-36, 37, 38:- After noticing several precedents to which reference has been made herein above, the two Judge Bench observed:J.K. Synthetics case, SCC.pp-448-50, paras).**

**“36.We may now deal with the judgment in J.K.Synthetics Ltd. V. K.P.Agarwal in detail. The facts of that case were that the respondent was dismissed from service on the basis of inquiry conducted by the competent authority. The Labour Court held that the inquiry was not fair and proper and permitted the parties to adduce evidence on the charges leveled against the respondent. After considering the evidence, the Labour Court gave benefit of doubt to the respondent and substituted the punishment of dismissal from service with that to stoppage of increments for two years. On an application filed by the respondent, the Labour Court held that the respondent was entitled to reinstatement with full back wages for the period of unemployment. The learned Single Judge dismissed the writ petition and the Division Bench declined to interfere by observing that the employer had willfully violated the order of the Labour Court. On an application made by the respondent under Section 6(6) of the U.P.Industrial Disputes Act,1947, the Labour Court amended the award but did not approve the award of full back wages.**

**37. There is also a misconception that whenever reinstatement is directed, ‘continuity of service’ and consequential benefits’ should follow, as a matter of course. The disastrous effect of granting several promotions as a “consequential benefit” to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or tribunal direct re-instatement they should apply their**

judicial mind to the facts and circumstances to decide whether ‘continuity of service’ and /or consequential benefits should also be directed....

18. Coming back to back wages, even if the court find it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in *Rudhan Singh and Uday Narain Pandey*. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

19. But the cases referred to above, where back wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimization. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry and the court confirms the finding regarding misconduct, but only interfered with the punishment being of the view that it is excessive and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the discretion to award a lesser punishment. Till such power is excised the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution or punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement: and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as natural or necessary consequences of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly in such cases even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the Court reaches a conclusion that the inquiry was held in respect of frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages etc will be the same as those applied in the cases of an illegal termination.

21. In this case, the Labour Court found that a charge against the employee in respect of serious misconduct was proved. It, however, felt that the punishment was not warranted and therefore, In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all.”

Para-38-the propositions which can be culled out from the aforementioned judgments are :

38.1-In case of wrongful termination of service, reinstatement with continuity of service and back wage is the normal rule.

38.2-the aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

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

38.4-the cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However if the Labour Court/Industrial Tribunal finds that the employee/workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5-The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and /or the principles of natural justice or is guilty of victimizing the employee or workman, then the Court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court etc. Merely because there is a possibility of forming a different opinion of the entitlement of the employee/workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior Courts interfere with the award passed by the Labour Court etc. merely there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employers obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6-In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays in the disposal of cases. For this the litigants cannot be blamed or penalized. It would amount to grave injustice to an employee or workman if he denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order or reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works(P)Ltd. Vs. Employees?

38.7- The observation made in J.K.Synthetic Ltd. Vs. K.P.Agarwal that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgment of three-judge Bench. Judgment is also against the very concept of reinstatement of any employee/workman."

10. Reference of Para-8 of the case of Shiv Nandan Mahto(Supra) has been specifically made by learned Counsel for workman which reads as follows:-

**Paragraph-8:-“The conclusion is therefore, obvious that the appellant could not have been denied when he was illegally kept out of service, in our opinion, the appellant was entitled to be paid full back wages for the period he was entitled to be paid full back wages for the period he was kept out of service”.**

11. Reference of paragraph 11, 12, 13 and 14 of the case of Rajasthan State Road Transport Corporation(supra) referred to by learned counsel for Management are being also reproduced as follows:-

**Para 11:-In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.**

**Para 12- It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is however, on the employee.**

**Para-13-In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factories to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These case are M.P.State Electricity Board Vs. Jarina Bee (2003) 6 SCC 141, AIR (2003) SC 2657, G.M. Haryana Roadways Vs. Rudhan Singh (2005) 5 SCC 591:AIR (2005) SC 3099, U.P.State Brassware Corporation Vs. Uday Narain Pandey (2006) 1 SCC 479:AIR (2006) SC 586, J. K. Synthetics Ltd. Vs. K.P. Agarwal & Anr. (2007)2 SCC 433 (2007) AIR SCW 1357, Metropolitan Transport Corporation Vs. V. Venkatesan (2009)9 SCC 601:AIR (2010) SC 206, Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr.(2009)15 SCC 327: AIR 2009 SC 3004 and Deepali Gundu Surwase Vs. Kranti Union Adhyapak Mahavidyalaya (D.Ed) & Ors. (2013)10 SCC 324(2013) AIR SCW 5330).**

**Para-14:-the Court is therefore, required to keep in consideration several factors, which are set out I the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.**

12. Perusal of the cases referred to by both the parties shows that the case of Rajasthan Road Transport Corporation(supra) is the latest on this point in which the cases referred to by learned counsel for appellant/workman has also been considered by Hon’ble the Apex Court. The settled law thus on this point is that firstly simply because the Court has set aside the dismissal order and directed the reinstatement of workman in service, he is not entitled to claim the back wages as of right. Secondly the fact that workman in such cases has to plead and prove by evidence that after dismissal from service he was not gainfully employed. The Employer is also required to prove it otherwise namely viz. that the workman was gainfully employed during the relevant period. Initially the burden is on the employee. In paragraph-37 of the judgment of Deepali Gundu Surwase(supra) also it has been observed “**that it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. He has at least to assert on oath that he was never employed nor engaged in any gainful business only then the burden will shift to the employer to prove otherwise**”.

13. Perusal of the pleadings of workman in the light of aforesaid preposition of law reveals that he has nowhere pleaded that he was not gainfully employed in any job or venture during the period of his termination. In his statement of oath also, he has nowhere stated this fact. Naturally the Management could not be saddled with the burden of proving the fact that the workman was gainfully employed . Since the fact regarding gainful employment of workman finds no place either in the pleadings or proof, the workman cannot be held entitled to back wages but keeping in view the fact that the charges were found not proved, it will be in the interest of justice to grant the workman all other service and post retiral benefits deeming him to be in continuous service of the Management till the date of his superannuation.

14. On the basis of the above discussion, following award is passed:-

- A. **The action of the management Chief General Manager, Baikunthpur Area of SECL, AT/PO, Baikunthpur, District Korea (Chhattisgarh) in terminating the services of Shri Ganga Prasad Tripathi, Clerk Grade I of Baikunthpur Area is not legal and is unjustified.**
- B. **The workman is held entitled to reinstatement from the date of his termination. He shall be deemed to be in continuous service of the Management till date of superannuation and shall be entitled to all post retiral benefits except back wages.**
- C. **He is also entitled to cost of chequered litigation quantified at Rs. 25,000/-.**

P. K. SRIVASTAVA, Presiding Officer

DATE: 11.2.2020

नई दिल्ली, 9 मार्च, 2020

**का.आ. 370—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 109/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.03.2020 को प्राप्त हुआ था।

[सं. एल-22012/110/2012-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 9th March, 2020

**S.O. 370.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 109/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C.L and their workmen, received by the Central Government on 02.03.2020.

[No. L-22012/110/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

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

NO. CGIT/LC/R/109/2012

**Present:** P. K. Srivastava, H.J.S..( Retd)

The General Secretary,  
Bhartiya Koyla Khadan Mazdoor Sangh (BMS)  
Qr.No. M/215, SECL, Navapara Colony,  
PO-Navapara, District Raigarh,  
Chhattisgarh (M.P.)

...Workman

#### Versus

The General Manager,  
SECL Raigarh Area, Behind Collectorate,  
ChhoteAtarmunda, Post Box No.27  
District Raigarh (Chhattisgarh)

...Management

#### AWARD

(Passed on this 3<sup>rd</sup> day of JANUARY-2020)

1. As per letter dated 3-10-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/110/2012-IR(CM-II). The dispute under reference relates to:

***“Whether the action of the General Manager, SECL Raigarh Area, Behind Collectorate, Chhote Ataramunda, Post Box No27, District Raigarh(CG) has neither given the promotion in higher grade within 3 years nor given the notional seniority at par with E & M Diploma Holders to Shri Sandeep Balhal in T & S Grade-B w.e.f. 18-4-1998 and in T & S Grade-A w.e.f. 18-4-2001 as given in other areas as per cadre scheme as circulated by SECL vide his letter dated 26-12-1997 was legal, proper and justified? To what relief the said workman is entitled to and from what date?”***

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that he was initially appointed as Assistant Foreman (E&T) T& S Grade-C in April-1995 and was posted as Foreman Incharge in Grade-A at the time of filing of statement of claim. According to the Cadre Scheme for E& T Disciplian Diploma Engineers in Electronics and Communication are to be promoted to the next higher grade after completion f 3years. The workman is a Diploma Engineer in (E&T) having been appointed as Assistant Foreman in Grade-C in the year 1995 was eligible to have been promoted as Foreman Grade-B in April-1998 but was actually given promotion in March-2002. He was further promoted to foreman Grade-A w.e.f March 20-2010 were as he was ought to have been promoted within three years as per the Cadre Scheme. As per the provisions of circular regarding cadre scheme one D.P.Yadav, a diploma holder of Gewra Area and one other person Mr. A.K.Singh, diploma holder who were first appointed on January-31-1991 respectively were promoted to the post of foreman Incharge vide order dated October-10-1998 having been granted notional seniority from 1993 in Grade-B and from 1996 in Grade-A. Same is the case of Diploma Holder in (E& T) cadre Shri R.K.Soni and Shri M.Mathew, who were appointed on November-22-1994 and No.ember-19-1994 respectively were promoted to Grade-B on August-2-2001 and they were granted notional seniority in Grade-C vide order dated August-22-2003 on the basis of a departmental circular dated December-26-1997(details mentioned in the statement of claim). One Shri Sandeep Dey who was a diploma holder was initially appointed on August-10-1995 i.e. four month after appointment of the present workman was promoted to Grade –A on May-30-2003. Para 9, 10 and 11 of the statement of claim is reproduced as below:-

“Pare-9:-That the seniority list also reveals that the very day on which the applicant was promoted to Grade-A i.e. on 20-3-2010, Mr. Sandeep Dey mentioned in the preceding para was promoted to GradeA-1, whereas the fact remains that Mr. Sandeep Dey was appointed in SECL, 04 months after the applicant.

Para-10:- That one Shri Pramod Kumar who was initially appointed in the SECL on 4-5-1996 i.e. more than one year after the appointment of the applicant, was promoted to Grade-B on 27-12-2001 and further promoted to Grade-A on 29-3-2006. By virtue of the said promotion to Grade-A on 29-3-2006, Shri Pramod Kumar has become 4 years senior to the applicant although he had been initially appointed in SECL more than 01 years after the applicant.

Para-11:-That, aggrieved by the said facts, the applicant sought information from SECL on 22-9-2011 under the provisions of RTI mentions that since the year 2002, the promotion of Assistant Foreman(E&T) Grade-C to GradeA-1 is being done on centralized basis. The select list is made on the basis of seniority as per rules and then the promotion is done.”

4. The workman has prayed for granting notional seniority on the post of Foreman Grade-B from the year 1998 and at the post of Foreman Grade-A from the year 2001 according to Cadre Scheme of SECL and also that his case be considered for promotion for Foreman Grade-A w.e.f. 2007-08 along with consequential monetary benefits.

5. The case of Management as put in their statement of defence is that the Scheme is barred by latches as the cause of action arose in the year 1998 whereas the dispute was raised in the year 2011. The case of the workman is covered by standing orders/circulars issued from time to time by National Coal Ways Agreement as well as Cadre Scheme. There is no separate Cadre Scheme for diploma holders. The promotion of employees working in the (E&T) cadre are given as per the Cadre Scheme. The employees who had worked satisfactorily for 3 years in (E&T) cadre are eligible for next higher post does not means that he has to be promoted as soon as he becomes eligible, rather promotion is given as per sanctioned man power, availability of vacancy, administrative requirement and recommendations of Departmental Promotion Committee, . the management has stated that the workman was initially appointed as Assistant /foreman(E & T) in Grade-C w.e.f from April-8-1998. Promoted to Foreman Grade-B w.e.f March 2-2002, further promoted to foreman incharge in Grade-A w.e.f march 20-2010. And has been given notional seniority as per sanctioned strength. Accordingly the management has requested for answering the reference against the workman.

6. At the stage of evidence the workman filed documents which have been admitted by management and marked as Exhibit W-1 to W-8 to be referred to as and when required.
7. The workman filed his affidavit but did not appear for cross-examination hence his affidavit cannot be read in evidence.
8. During the course of hearing, the workman absented himself hence the reference was ordered to be proceeded as ex-parte against him vide order dated June 24-2019.
9. Management examined its witness Shri Ashok Singh. Deputy Manager Personnel, filed and proved documents marked as Exhibit M-1 to M5.
10. Reference is the issue in the case in hand.
11. Since the opportunity of cross-examination to workman witness was not given to management due to absence of the witness, his affidavit cannot be read into evidence. ON the other hand there is evidence of management witness supporting the case of management which is uncross examined. The perusal of evidence on record reveals that the workman was promoted from time to time and was given seniority notionally. His claim is for back wages on promoted post. The Rules referred to above by workman simply mentioned that personnel shall be entitled to be considered for promotion after 3 years of service. The case of management is that for promotion is to be decided by Promotion Committee considering in mind the vacancies. The workman was promoted as and when vacancy came out on promoted posts. The workman side could not refer any rule providing back wages on promoted posts, hence the claim of the workman regarding back wages on promoted posts does not appear legal, proper and justified. Accordingly the workman is held not entitled to the relief claimed.
12. On the basis of the above discussion, following award is passed:-
- A. The action of the management in refusing the claim of the workman regarding back wages on promoted posts does appear to be legal, proper and justified.**
- B. The workman is held entitled to no relief.**
13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 3.1.2020