



भारत का राजपत्र The Gazette of India

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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

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

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

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 23 नवम्बर, 2020

का.आ. 1026.—बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, सुश्री एस. एन. राजेश्वरी, अध्यक्ष एवं प्रबंध निदेशक, ओरिएण्टल इंश्योरेंस कंपनी लिमिटेड को पद का कार्यभार ग्रहण करने की तारीख से आरंभ में तीन वर्ष की अवधि के लिए अथवा बासठ वर्ष की आयु प्राप्त करने तक अथवा अगले आदेशों तक, जो भी पहले हो, चार लाख रुपए प्रतिमाह (आवास और कार की सुविधा के बिना) के समेकित वेतन पैकेज पर भारतीय बीमा विनियामक और विकास प्राधिकरण में पूर्णकालिक निदेशक (वितरण) के पद पर नियुक्त करती है।

[फा. सं. आर-16011/01/2019-बीमा-I]

अंशुमन शर्मा, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 23rd November, 2020

S.O. 1026.—In exercise of the powers conferred by section 4 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Central Government hereby appoints Ms S. N. Rajeswari, Chairman and Managing Director, Oriental Insurance Company Limited as Whole-Time Member (Distribution) in the Insurance Regulatory and Development Authority of India, on a consolidated pay package of four lakh rupees per month (without facility of house and car), initially for a period of three years, with effect from the date of assumption of charge of the post, or till attaining the age of sixty-two years, or until further orders, whichever is the earliest.

[F. No. R-16011/01/2019-Ins.I]

ANSHUMAN SHARMA, Director

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 17 नवम्बर, 2020

का.आ. 1027.—केंद्र सरकार, राजभाषा [संघ के शासकीय प्रयोजनों के लिए प्रयोग] नियमावली, 1976 (यथा संशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में कार्मिक और प्रशिक्षण विभाग के अधीनस्थ कार्यालय केंद्रीय अन्वेषण ब्यूरो के अधीन निम्नलिखित कार्यालयों, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी भाषा का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:-

1. भ्रष्टाचार निरोधक शाखा, जम्मू
2. भ्रष्टाचार निरोधक शाखा, भोपाल
3. भ्रष्टाचार निरोधक शाखा, पुणे

[फा. सं. ई-15023/1/2020-हिंदी]

सुजाता चतुर्वेदी, अपर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 17th November, 2020

S.O. 1027.—Central Government in pursuance of Sub-Rule (4) of Rule 10 of official languages [Use for official purpose of union] Rules, 1976 (as amended in 1987, 2007 and 2011) hereby notifies the following offices under the Central Bureau of Investigation, a subordinate office of Department of Personnel and Training whose more than 80 percent staff has acquired working knowledge of Hindi language:-

1. Anti Corruption Branch, Jammu
2. Anti Corruption Branch, Bhopal
3. Anti Corruption Branch, Pune

[F. No. E-15023/1/2020-Hindi]

SUJATA CHATURVEDI, Addl. Secy.

नई दिल्ली, 26 नवम्बर, 2020

का.आ. 1028.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार (कार्योत्तर प्रभाव से दिनांक 31.10.2020 से), के उत्तर प्रदेश गृह (पुलिस) अनुभाग-4, लखनऊ के आदेश सं. 4सीबीआई/VI-पी-4-2020-12(116)बी/2020, दिनांक 21 नवंबर, 2020 के माध्यम से जारी सहमति से, उत्तर प्रदेश के बांदा जिला, चित्रकूट एवं निकटस्थ क्षेत्रों में अज्ञात व्यक्ति(यों) के साथ उत्तर प्रदेश सरकार के सिंचाई विभाग में कनिष्ठ अभियंता के रूप में कार्यरत, श्री रामभवन पुत्र स्व. चुन्ना प्रसाद निवासी जवाहर नगर, नारैनी, जिला बांदा (उ.प्र.) द्वारा बच्चों/नाबालिगों के साथ यौन शोषण के अनैतिक कार्यों में संलिप्त होने, ऐसे अश्लील/आपत्तिजनक कार्यों के दौरान बच्चों के फोटोग्राफी करने और विडियोग्राफी करने में संलिप्त होने साथ ही इंटरनेट पर इलेक्ट्रॉनिक रूप में यौन संबंधी व्यवहारों में बच्चों को चित्रित करने वाली सामग्री सहित अश्लील सामग्री प्रकाशित/पारेषित करने के द्वारा भी बच्चों/नाबालिगों के साथ यौन शोषण के अनैतिक कार्यों में संलिप्त होने के संबंध में सीबीआई, एससी-III, नई दिल्ली में सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का 21) की धारा 67-बी, और लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (2012 का 32) की धारा 14 और भारतीय दंड संहिता (1860 का 45) की धारा 377 के तहत दर्ज सीबीआई मामला आरसी-10(एस)/2020/सीबीआई/एससी-III/एनडी दिनांक 31.10.2020 का अन्वेषण तथा ऐसे अपराधों से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (कार्योत्तर प्रभाव से दिनांक 31.10.2020 से) समस्त उत्तर प्रदेश राज्य में करती है।

[फा. सं. 228/35/2020—एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 26th November, 2020

S.O. 1028.—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 (25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh (ex post facto w.e.f. 31.10.2020), issued vide Order No. 4CBI/VI-P-4-2020-12(116)B/2020 dated 21 November, 2020 of Uttar Pradesh Home (Police) Section -4, Lucknow, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 31.10.2020) to the whole State of Uttar Pradesh for investigation into the offence(s) relating to CBI Case RC-10(S)/2020/CBI/SC-III/ND dated 31.10.2020, under section 67-B of Information Technology Act 2000 (21 of 2000), Section 14 of Protection of Children from Sexual Offences Act, 2012 (32 of 2012) and section 377 of the Indian Penal Code (45 of 1860) registered at CBI, SC-III, New Delhi pertaining to involvement of Sh. Rambhawan S/o Late Chunna Prasad r/o Jawahar Nagar, Naraini, District Banda (U.P) working as Junior Engineer in Irrigation Department of Government of Uttar Pradesh alongwith unknown person(s) in immoral practices of sexually abusing children/minors in the Districts of Banda, Chitrakoot and nearby areas in Uttar Pradesh, involving in photographing and video graphing of children during such obscene/objectionable acts and also by publishing/transmitting obscene material including the material depicting children in sexual acts in electronic form over the internet and using children for pornography purposes as well as indulging minors in unnatural offences, and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/35/2020-AVD-II]

S. P. R. TRIPATHI, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय**(वाणिज्य विभाग)**

नई दिल्ली, 24 नवम्बर, 2020

का.आ. 1029.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) के साथ पठित निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स इन्स्पेक्टोरेट ग्रीफिथ इंडिया प्राइवेट लिमिटेड, एचआईजी -34, गौरव बिहार, मधुबन, पारादीप, ओडिशा -754142 (जिसे एतदपश्चात् उक्त अभिकरण माना जाएगा) को इस अधिसूचना के शासकीय राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए, वाणिज्य मंत्रालय की शासकीय राजपत्र में प्रकाशित भारत सरकार की अधिसूचना के साथ अनुसूची में निर्दिष्ट दिनांक 20 दिसम्बर, 1965 की अधिसूचना की संख्या का.आ. 3975 तथा दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं. का.आ. 3978 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क – समूह-I अर्थात्, लौह अयस्क, और समूह-II अर्थात्, क्रोम अयस्क, के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन पारादीप पत्तन, गोपालपुर पत्तन और धामरा पत्तन में उक्त खनिज एवं अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

- (i) यह अभिकरण, खनिज और अयस्क समूह-I के निर्यात (निरीक्षण) नियम, 1965 खनिज और अयस्क समूह-II के निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) यह अभिकरण, इस अधिसूचना में यथा विनिर्दिष्ट अपने कार्यों का निष्पादन करने के लिए, निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर, लिखित रूप में, दिए गए निर्देशों से आबद्ध होंगी।

[फा. सं. के-16014/11/2020-निर्यात निरीक्षण]

दिवाकर नाथ मिसरा, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY**(DEPARTMENT OF COMMERCE)**

New Delhi, the 24th November, 2020

S.O. 1029.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s Inspectorate Griffith India Pvt. Ltd., HIG-34, Gourav Bihar, Madhuban, Paradip, Odisha-754142, as an agency for a period of three years with effect from the date of publication of this notification in the Official Gazette, for the inspection of Minerals & Ores, Group-I, namely, Iron Ore and Group-II namely, Chrome Ore as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the official Gazette vide number S.O. 3975, dated the 20th December, 1965, and S.O. 3978 dated the 20th December, 1965 respectively, prior to export of the said Minerals and Ores at Paradip Port, Gopalpur Port and Dhamra Port, subject to the following conditions, namely: -

- (i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965 and the Export of Minerals and Ores - Group II (Inspection) Rules, 1965; and

- (ii) the said agency, in performance of their function as specified in this notification shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F. No. K-16014/11/2020-Export Inspection]

DIWAKAR NATH MISRA, Jt. Secy.

खाद्य प्रसंस्करण उद्योग मंत्रालय

नई दिल्ली, 24 नवम्बर, 2020

का.आ. 1030.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, खाद्य प्रसंस्करण उद्योग मंत्रालय के निम्नलिखित कार्यालय में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप खाद्य प्रसंस्करण उद्योग मंत्रालय के इन कार्यालयों को एतद्वारा अधिसूचित करती है:—

1. राष्ट्रीय खाद्य प्रौद्योगिकी उद्यमशीलता एवं प्रबन्ध संस्थान प्लॉट संख्या 97, एचएसआई आईडीसी औद्योगिक क्षेत्र, कुडली – 131028 जिला सोनीपत (हरियाणा)

[फा. सं. 1/1/2020-हिंदी]

अशोक कुमार, संयुक्त सचिव

MINISTRY OF FOOD PROCESSING AND INDUSTRIES

New Delhi, the 24th November, 2020

S. O. 1030.—In pursuance of sub rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following office of the Ministry of Food Processing & Industries, wherein the percentage of the staff, having working knowledge of Hindi has gone above 80% :-

1. National institute Food Technology entrepreneurship Management Plot No. 97, HSIIDC Industrial Area, Kundli - 131028 District Sonipat (Haryana)

[F. No. 1/1/2020-Hindi]

ASHOK KUMAR, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 18 नवम्बर, 2020

का.आ. 1031.—राष्ट्रपति, न्यायधीश (सेवानिवृत्त) रविन्द्र नाथ कक्कड़, पीठासीन अधिकारी, केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, सं. 1/राष्ट्रीय औद्योगिक अधिकरण, मुंबई को दिनांक 06.11.2020 से छः माह तक की अवधि अथवा नियमित पदाधिकारी के पदभार ग्रहण करने तक अथवा अगले आदेशो तक केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय/ राष्ट्रीय औद्योगिक अधिकरण, कोलकाता के पीठासीन अधिकारी के पद का अतिरिक्त प्रभार सौंपते हैं।

[सं. अ-11016/02/2019-सीएलएस-II]

सतीश चन्दर, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 18th November, 2020

S.O. 1031.—The President is pleased to entrust the additional charge of the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court/National Industrial Tribunal, Kolkata to Justice (Retd.) Ravindra Nath Kakkar, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No. 1/National Industrial Tribunal, Mumbai for a period of six months with effect from 06.11.2020 or till joining of a regular incumbent or until further orders, whichever is the earliest.

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

SATISH CHANDER, Under Secy.

नई दिल्ली, 19 नवम्बर, 2020

का.आ. 1032.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 29/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2020 को प्राप्त हुआ था।

[सं. एल-12012/58/2016-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 19th November, 2020

S.O. 1032.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2016) 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 19.11.2020.

[No. L-12012/58/2016-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 10TH NOVEMBER, 2020**PRESENT** : JUSTICE SMT. RATNAKALA, Presiding Officer**CR 29/2016****I Party**

Sh. Nagaraj S. V.,
H. No. 15/42, Karthik Nilaya,
Nehrunagar, Sagara,
Shimoga - 577401.

II Party

The Chairman,
Union Bank of India,
Head Office,
Mangalore - 575001.

Appearance

Authorised Representative for I Party : Mr. M. Rama Rao

Advocate for II Party : Mr. Pradeep S. Sawkar

AWARD

The Central Government vide Order No. L-12012/58/2016-IR(B-II) dated 05.09.2016 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 Corporation Bank is justified in awarding the punishment of Compulsory retirement from services to Sh. S.V. Nagaraj? If not, what are the reliefs the workman is entitled to?'

1. The 1st Party workman herein is aggrieved by the punishment order imposed by his former employer Corporation Bank presently Union Bank of India whereby he is Compulsorily Retired from the service of the Bank vide order dated 23.06.2011 as a measure of Disciplinary Action, the punishment was imposed after conducting Departmental Enquiry on two charges. The Enquiry Officer after conducting the enquiry submitted his Report holding that first charge is proved and the second charge is not proved. Acting on the Enquiry Report the Disciplinary Authority after calling for remarks of the 1st Party to the Enquiry Report and after affording personal audience to him confirmed the punishment of Compulsory Retirement which was already proposed.

2. He joined the service of the 2nd Party Bank on 19.08.1999 as a Clerk come Cashier and served for 11 years. The workman in his claim statement has assailed the fairness of the enquiry conducted against him, attributes perversity to the Enquiry Report and non-application of mind of the Disciplinary Authority while passing the punishment order. He alleges that in other cases though charges were severe those employees are continued in service and he is discriminated. Because of the punishment order he is facing hardship, monetary loss and unable to secure a job.

3. The claim is contested by the 2nd Party. Allegations levelled by 1st Party against the procedure of enquiry, Enquiry Report and the Punishment Order are denied and the Punishment Order is sought to be justified.

4. On the rival pleadings of the parties touching the fairness of the Domestic Enquiry a Preliminary Issue was raised and the 2nd Party produced their documents Ex M-1 to Ex M-30. Sh. MRR for the 1st Party vide his submission dated 26.12.2019 conceded the fairness of the Domestic Enquiry conducted against the workman thus, the Preliminary Issue was answered in the affirmative in favour of the Management.

5. Both parties have submitted their respective written argument.

6. The first charge which led to the punishment order of the workman was to the effect that, while working as Single Window Operator-B at Sagar B.H.Road Branch, on 08.11.2010 a customer of the Bank Sh. J T Padmanabha CBCA Account No. 01/00004 tendered Rs 28,000/- for the said account along with Pay-in-Slip; after accepting the cash, he has made credit entry in CBCA account for Rs. 10,000/- and also authorised the entry in the computer system under Operator B Module and issued counterfoil to Sh. J T Padmanabha for Rs. 28,000/-; he has misappropriated the amount of Rs. 18,000/- ; to conceal this act he destroyed Bank's portion of relevant Pay-in-Slip; after the Customer lodged a complaint on 27.11.2010 informing short credit of amount of Rs. 18,000/- to his CBCA Account, the Brother of the CSE made good the amount. Thus, he temporarily misappropriated Bank's funds.

He was granted 10 days' time to submit his explanation otherwise to initiate enquiry. Since, he did not submit any, Domestic Enquiry was proceeded by appointing Enquiry Officer.

7. During the enquiry on behalf of the prosecution the then Branch Manager was examined who deposed about receiving the Complaint from the Customer (as alleged in the charge sheet). He further deposed that after receipt of the complaint they cross examined the slip bundles but could not trace the challan of Rs. 28,000/- which was supposed to be credited to CBCA Account; the Account holder showed the counter foil for Rs. 28,000/- with the branch seal and initials of the CSE; they could not trace the challan in other cash transactions also; the complaint given by the customer along with Xerox copy of the challan was forwarded to the Zonal office; on 29.11.2010 the Brother of the CSE deposited Rs. 18,000/- to the Account of the Customer; the witness identified the official documents.

The tone of cross examination to the witness was, the Branch is not following the security guidelines and cash management procedure of the Bank; without tallying the challan and correctness of the slips, the Bank is bundling and signing the covering flap; thus sometimes challans will be missing and officials and Bank will be put into lot of trouble.

It was the defence that on 08.11.2010 the CSE asked the customer for some funds on behalf of his brother and the same was paid by his Brother to the Customer's Account and there was no malafide intention.

8. After conclusion of the evidence of the Management, the 1st Party was questioned by the Enquiry Officer. To sum up his statement, on 08.11.2010 Mr. J. T. Padmanabha came to the branch and tendered cash of Rs. 28,000/- along with Pay-in-Slip, he accepted the amount; in the meantime he requested the customer for Rs. 18,000/- on behalf of his Brother Mr. Ravindra, for which the customer consented; he kept the cash of Rs. 18,000/- with himself and credited balance of Rs. 10,000/- to Party's account; due to heavy rush in the Branch, he handed over the counterfoil of Rs. 28,000/- duly initiated by him to Sh. Padmanabha. Subsequently his Brother Mr. Ravindra credited Rs. 18,000/- on 29.11.2010 to the CBCA Account of the Customer. During his service commencing from 19.08.1999 there were no incidents of misappropriation of funds or unauthorised absence; he has family with two small kids who are entirely dependent on him. He will not commit the lapses hereinafter and requested to pardon his mistake.

9. The admission so extracted during the questioning of the CSE was sufficient for the Enquiry Officer to draw his Report as first charge proved.

During the personal hearing before the Disciplinary Authority also, he had represented that, owing to communication gap between him and the complainant the first charge regarding misappropriation of Rs. 18,000/- is generated. The Disciplinary Authority considered his representation and proceeded to pass the punishment order which proposal was already communicated to the workman, it was observed that the misconduct tantamounts to doing act prejudicial to the interest of the Bank and a gross misconduct under clause 5(j) of the Memorandum of Settlement on Disciplinary Procedure dated 10.04.2002.

10. The appeal preferred against the punishment order did not succeed. The Appellate Authority considered all the contentions raised by him filament by filament; in the body of it's order observed that,

‘.....Appellant did not cite any witness or document on his behalf although he had ample opportunity during the enquiry, he could have cited the complainant as a witness which he did not do; the complaint was introduced during the enquiry with the consent of the defence and no objection was raised by him; the counterfoil submitted by the customer in proof of his remittance of Rs. 28,000/- was not disputed by the Appellant. In the absence of any proof to the contrary, it has to be taken that the customer has remitted the amount represented by the counterfoil and the main challan is also to be taken as Rs. 28,000/-; disappearance of the challan gives rise to presumption that the same was done to conceal the fact. It is only the Appellant who would be benefited by destruction of such evidence. Therefore preponderance of probability strongly weighs against the case of the Appellant....’

11. In the written argument Sh. MRR for the 1st Party highlights that there was no loss to the customer as well as to the Bank by the alleged transaction and the punishment imposed is excessive, the Enquiry Report is perverse.

12. I am unable to subscribe to the above contention of the 1st Party; on his own showing the 1st Party has taken Rs. 18,000/- out of the amount of Rs. 28,000/- tendered by the customer for deposit. Said amount though was made good on a future date by his brother, fact remain that he has made credit entry of Rs. 10,000/- only and also posted Rs. 10,000/- in the computer though issued the counterfoil with his due signature to the customer for Rs. 28,000/-. The defence raised by him would indicate that it was not a casualty due to inadvertence on slip of the moment. The story built up by him that the amount was taken on behalf of his brother etc., is not proved by adducing evidence. The Bank having proved the allegation through the evidence of MW-1 / Branch Manager and also the documentary proof, the onus shifted to 1st Party to rebut the same, which he failed to do. Though the Bank has not suffered financial loss the customer has suffered loss of interest for the said amount of Rs. 18,000/- for the period from 08.11.2010 to 29.11.2010. The complainant has not withdrawn his complaint or has not appeared before the Enquiry Officer to bail out the 1st Party, the Enquiry Report is entirely based upon the evidence brought during the enquiry and the Disciplinary Authority has taken a lenient view though the misconduct alleged is gross, warranting major punishment. Hence, my answer to the referred issues is,

the action of the 2nd Party Management / erstwhile Corporation Bank presently Union Bank of India in awarding the punishment of Compulsory Retirement from service to Sh. S. V. Nagaraj is justified and the workman is not entitled for any relief in this reference.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 10th November, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 19 नवम्बर, 2020

का.आ. 1033.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार श्रम न्यायालय, औरंगाबाद के पंचाट (संदर्भ सं. 12/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 19th November, 2020

S.O. 1033.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2016) of the Labour Court, Aurangabad as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 19.11.2020.

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

SEEMA BANSAL, Section Officer

**ANNEXURE
BEFORE THE JUDGE, LABOUR COURT AURANGABAD**

(Presided over by D.V. Joshi)

REFERENCE (IDA) NO. 12/2016

(CNR: MH-LC-20-000434-2016)

Dispute between

1. Central Bank of India, Through: its Regional Manager,
Aurangabad Region, Aurangabad
(Deleted as per order dated 04.10.2019)
2. The Disciplinary Authority Regional Manager,
Central Bank of India,
Aurangabad
... (First Party No. 1)
3. The Appellate Authority, Dy. General Manager,
Central Bank of India,
Regional Office, Nagpur
...(First Party No. 2)
4. The Chairman/Managing Director Central Bank of India,
Central Office, Chandramukhi,
Nariman Point, Mumbai 400021
(Deleted as per order dated 04.10.2019)
5. Zonal Manager, The Zonal Office Central Bank of India,
M.G. Road, Pune 411001
(Deleted as per order dated 04.10.2019)
6. Mr. K.C. Prakash,
Regional Manager,
Central Bank of India,
Mascarenhas Building
Antao De Norona Road,
Panaji Goa,
(Deleted as per order dtd. 04.10.2019)

AND

Ajitkumar Motilal Kasliwal,
Raj Galaxy, Flat No. B-4,
Cidco, Aurangabad
...Second party/workman

Advocates:

Mr. S. S. Vidwauns for first party/employer

Mr. U.V. Khonde, for second party/workman

Order on Preliminary Issues (Award Part-I)

(Dtd. 29/10/2020)

1 The Hon'ble High Court, Bombay Bench at Aurangabad has remanded the said matter by passing an order in Writ Petition No. 433/2019 dtd. 07/02/2020 and thereby directed this Court for fresh decision on the issue as regards correctness of the findings of the enquiry officer.

2 This reference is referred by the Central Government of India, under section 10(2) Sub 2-A 1(d) of the I.D. Act, 1947 for adjudication of dispute in respect of dismissal of second party/workman.

3 The case of the second party that he was working with first party as a Peon from 03/10/1984 as a daily wager. He became permanent w.e.f. 01/01/1994 at Mondha Branch Aurangabad. He was promoted as Cash Peon w.e.f. 30/01/1995. His entire service record was clean and blotless. His work was appreciated by the first party on many occasions. The Second party was met with an accident and said fact was intimated to the first party. After pathological test, Hepatitis-B was detected and he was taking treatment from Sainath Hospital. He was also suffering from Diabetes and Hypertension which requires life time treatment. One Super Specialist Gastroenterology Dr. Nageshwar Reddy and Dr. Umesh Takalkar issued letter dtd. 01/02/2009 mentioning that the second party is patient of Hepatitis with HsAg Positive disease. The Doctor prescribes Tab. Entacavir.5mgBD continuously for one year to him. He purchased the said tablets from 'Nayan Medical & General Stores Hudco, Aurangabad. After submissions of medical certificate and tablet bills, the bank used to reduce the bills. He was referred to Medical Board by the first party. He made complaint of A.C. Prakash about delay of sanction of Bill and on that count only, the disciplinary action was taken against him. The said departmental enquiry was with malafide intention and with ulterior motive with revengeful attitude. The first party issued memo on 02/01/2014. Later on charge sheet was issued on 04/02/2014. The charges were under clause 5-j of Memorandum of settlement dtd. 10/04/2002 on disciplinary action procedure for workman. The main allegations against the second party that he acted prejudicial to interest of the Bank or gross negligence involving or likely to involve the bank in serious loss. The first party did not wait for reply to the charge sheet and hurriedly initiated enquiry. He was not permitted to appoint Advocate as defence representative. The enquiry officer was sponsored officer. He did not apply his mind for appreciation of evidence. The documents are not provided to the Second party. Therefore, entire enquiry is conducted in violation of principles of natural justice. An Enquiry officer has not considered the entire documents produced by the Second party, therefore, enquiry is illegal and the findings of enquiry officer are perverse.

4 The first party filed his Say cum Written Statement below Ex.C-6. As the Second party has committed serious misconducts, therefore, the bank has conducted the departmental enquiry against the Second party. Each and every opportunity was given to the Second party. The enquiry was conducted according to the principles of natural justice. The Second party claimed that he was suffering from Hepatitis-B since November 2008. Initially, he claimed Rs.13698/- p.m. from the first party on account of reimbursement of domiciliary claim facility. Later on his bill was continuously increasing and reached to Rs. 29,233/- in October-2012 Rs. 43781/- in May 2013. He paid more than required amount to second party who submitted fabricated and fake bills. On that count, memo was issued. The charge sheet was issued. Each and every opportunity was given to the Second party. The findings of enquiry officer are based on material produced before him. Therefore, the enquiry is proper and findings are not perverse.

5 Issues are framed at Ex.O:2. The issue No. 1 & 2 are in respect of legality and findings recorded by the Enquiry Officer. The same are treated as preliminary issues. They are reproduced as under along with my findings thereon for the reasons given below.

Sr. No.	Issues	Findings
1.	Whether the second party proves that the inquiry conducted against him is illegal, improper and void ?	In the negative
2.	Whether the second party proves that the findings of the inquiry officer are perverse ?	In the negative
3.	What order ?	As per final order

Reasons

As to issues No. 1 :-

6 In order to prove the case, the second party has examined himself at Ex.U-21. He filed the documents below Ex.U-2, Ex.U-22 and closes his evidence by filing Pursis at Ex.U-23. The first party examined one witness viz. Raghvendra Shankarrao Holkar at Ex.C-13. He filed the documents below Ex.C-9, Ex.C-10 & Ex.C-15. He closed his evidence by filing Pursis Ex.C-14. After remand of the matter, both the parties have filed their Written Notes of Arguments vide Ex.U- 16 & Ex.C-30 respectively.

7 The learned Advocate of the second party submitted that the enquiry was conducted in violation of principles of natural justice. Sufficient opportunity was not given to the Second party. He was not allowed to appoint defense representative. The enquiry officer has not considered the evidence of the Second party. Mere on the basis of assumption, he came to the conclusion, therefore, the enquiry is illegal. The enquiry officer has not considered the evidence produced by the second party. The second party has produced entire bill receipts but same is not considered by the enquiry officer and wrongly came to the conclusion that second party only filed the certificate. The enquiry officer relied on the allegations of surrender of drugs License but has not considered the aspect of Home Delivery of these tablets by the Medical owner. The second party purchases the tablets from time to time from the said medical owner but this aspect is not considered by the enquiry officer and wrongly concluded that the entire medical bills are false. Therefore, the entire findings of the enquiry officer is not based on the evidence. Hence, findings recorded by the enquiry officer are perverse.

8 The learned Adv of the first party submits that as the second party has committed serious misconducts, the enquiry was conducted against him by adopting the principles of natural justice. Each and every opportunity was given to him to defend himself in the enquiry proceeding. The findings of the enquiry officer are based on evidence produced in Departmental Enquiry. Therefore, the enquiry is proper and the findings of the enquiry officer are not perverse.

9 On perusal of proceedings of enquiry papers filed below Ex.C-9, Ex.C-10 and Ex.U-2. It shows that memo was issued against the second party on 02/01/2014. Four charges were framed against the Second party. The main allegations against the Second party is that he has claimed bill of treatment which was not at all required to him. He submitted the bills of Shop which is not in existence and thereby he was defrauded the bank by submitting the fake bills. He replied to the said memo on 13/01/2014. As the bank has not satisfied to his reply, therefore, the bank issued the charge sheet on 04/02/2014 against the Second party under Para 5-J of the Memorandum of Settlement Dtd. 10/04/2002 on Disciplinary Action Procedure for Workman. The copy of charge sheet and memo in Hindi Translation was provided to the Second party. The notice of enquiry was issued against Second party.

10 On 25/02/2014, the first date of enquiry, the second party was present before the enquiry officer. The enquiry officer asked the preliminary questions to the Second party. The enquiry officer asked the second party whether he wants to appoint defense representative. The Second party answered that "he wants to appoint the defense representative". The Second Party further requested that he was not a member of any union, therefore, he may be permitted to appoint other person as his defense representative. The said request is also granted by the enquiry officer. The Second Party was allowed to inspect the entire documents which were produced in the enquiry proceeding. The management examined one witness Narhari Vasude Adgaonkar in presence of Second party on next date of enquiry i.e. 11-03-2014. On oral request of Second party, the short time was granted to appoint defense representative. On 16/04/2014, the request of the Second party short time was granted for appointing defense representative by the enquiry officer. On 21/05/2014, the Second party decided to defend himself in enquiry proceeding and elected not to appoint any defense representative. He was allowed to inspect all the documents. He was allowed to produce the documents in his defense and same is marked as Exhibits and kept in record by the enquiry officer. His request for adjournment for cross examining management witness is also granted by the enquiry officer. The Second party has taken cross examination of the management witness in detail. On 04/06/2014, the Second party was permitted to produce entire documents in his defense and after that he has completed his cross examination. The Second party has examined himself in the enquiry proceeding. He was cross examined by the management. On 25/06/2014, opportunity was given to the Second party to examine the witness in his defense. But the Second party failed to bring any witness and he himself given the statement. After that he filed the written statement of his defense and closed his evidence. Thereafter, the enquiry officer recorded his findings.

11 From the record it shows that the second party was present on each and every date of enquiry. The management witness was examined in the presence of second party. The second party was allowed to cross examine the witness. All the documents were provided to the Second party workman. The second party signed on each and every papers of enquiry proceedings. The second party was allowed to appoint defense representative. But second party himself decided to defend himself in the enquiry proceeding. Therefore, from record it shows that enquiry was conducted by adopting the principles of natural justice. Hence, I answer issue no. 1 in negative.

As to issue No. 02:-

12 On perusal of record it shows that the management has examined one witness i.e. Narhari Vasude Adgaonkar as MW-1. He was cross examined by the second party. The second party has also adduced his oral and documentary evidence before the enquiry officer. From the medical papers, it is not disputed that the second party was suffering from Hepatitis with HsAg Positive disease. He was taking treatment from Dr. Reddy and Dr. Kodlikari. He has produced the certificate issued by said Doctors. In the said certificate, it is mentioned that the second part was suffering from Hepatitis-B and he required the Tablet viz., Entacavir.5mg BD.

13 It is not disputed that the second party was referred to the Medical Board by the second poarty. The second party appeared before the Medical Board. The second party was medically examined by the Medical Board. After his medical examination, the Board has issued the certificate. According to the said medical certificate, the second party is suffering from Hepatitis-B and he required one Tablet Entacavir.5mgBD till 2010 and thereafter he is not required to consume the said Tablets. The said certificate is issued by the Medical Board after medical examination of the second party/workman which prescribes that the second party was not longer required said Tablets. This certificate has stronger evidential value comparing to other medical certificates. The second party has not produced the prescription of the doctors from whom he was taking the treatment. The second party only submitted that the medical certificates. From the record, it is not disputed that Nayan Medical & General Stores Hudco, Aurangabad has surrendered his Drug License in the year 2010. If the said medical store is closed in the year 2010 how he supplied the medicine to the second party is not explained by the second

party in the entire proceeding. Once, the Drug License is surrendered and medical shop is closed how the Manager of Medical Shop Keeper used to make Home Delivery of the medicine to the second party. The medical bills do not disclose that it was home delivery. Once, the drug license is surrendered by the above named medical Store, then he has right to give medicines by home delivery by issuing the bills, this aspect is not explained by the second party in entire proceeding. Merely saying that the second party received the medicines from the above medical store by home delivery not appears to be probable in absence of such explanation. This aspect is not explained by the second party in entire proceeding. The conclusive evidence about the surrender of Drug License is produced by the First Party by producing the letter of Food and Drugs Department. Therefore, considering the oral and documentary evidence, it creates doubt about the Medical Bills produced by the second party of Nayan Medical & General Stores Hudco, Aurangabad for purchase of tablets. The said documentary and oral evidence is considered by the enquiry officer in the entire enquiry proceeding. Therefore, I am satisfied that the enquiry officer has appreciated the entire evidence produced in the departmental enquiry. The enquiry officer relied on oral and documentary evidence and come to the conclusion. Therefore, the findings of the enquiry officer are based on evidence produced in the departmental enquiry. Therefore, I answer issue No. 02 in negative and pass the following order:

ORDER

- 1 The enquiry is proper and findings of enquiry officer are not perverse.
- 2 The matter be further proceeded to record evidence on remaining issues.
- 3 The four copies of the Award (Part-I) be sent for its publication to the Appropriate Government.

Dtd. 29.10.2020

D.V. JOSHI, Presiding Officer & Judge

नई दिल्ली, 19 नवम्बर, 2020

का.आ. 1034.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आन्ध्रा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 21/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 19th November, 2020

S.O. 1034.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2016) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Andhra Bank, and their workmen, received by the Central Government on 19.11.2020.

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

SEEMA BANSAL, Section Officer

ANNEXURE

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

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 18th day of August, 2020

INDUSTRIAL DISPUTE L. C. No. 21/2016

Between:

Sri S. Subramanyam,

S/o Late Venkata Reddy,

R/o Kanigiri,

Prakasam District

...Petitioner

AND

1. The Chief Manager (P & D),
And Disciplinary Authority,
The Andhra bank,
Zonal Office, Ongole.
Prakasam District.
2. The General Manager (IR),
The Andhra Bank,
Head Office: Saifabad,
Hyderabad.

... Respondents

Appearances:

For the Petitioner : Sri William Burra, Advocate

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

AWARD

Sri S. Subramanyam, who worked as Clerk-cum-Cashier (who will be referred to as workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents with a prayer to treat the entire period of suspension from 1.12.2009 to 31.3.2011 as on duty and the Petitioner may be reinstated with full back wages from 1.4.2011 with all other attendant benefits such as, continuity of service, leave with pay, PF benefits, annual increments, gratuity, pension and all other attendant benefits etc., as if he is on duty and grant compensation for the illegal termination along with costs and other reliefs.

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

The Petitioner was initially appointed as a Security Guard on 10.4.1990 Respondent's bank at Stone-house Pet Branch, Nellore. Thereafter he was promoted as Clerk-cum-Cashier on 20.11.2001 and worked as such from then on. While the matter stood thus, on 27.11.2009, the Life Insurance Corporation of India in short the (LIC) Divisional Office at Nellore has sent a fax message stating that the deposits made by the LIC on different dates were not accounted for on the dates of deposit. The said letter was not signed by anybody. However, the Respondent management had initiated action by conducting one preliminary enquiry. Basing on the said preliminary enquiry dated 1.12.2009 conducted by Sri M. Varadarajan, an officer (Sr. Manager, Andhra Bank Zonal Office, Ongole), the Petitioner was kept under suspension alleging misconduct w.e.f. 2.12.2009. It is further stated that on 12.2.2010 one charge memo was issued to the Petitioner by Respondent No.1 framing four charges wherein the first charge was that the Petitioner failed to account for in the books of the bank certain cash deposits remitted by the LIC for the purpose of crediting to their current accounts on different dates during the year 2009, on the date of deposit. This allegation is totally false and fabricated. The fact is that the Petitioner had entered the receipt of the amounts in the system on the same date of deposit and given credit to the Respondents account. It is further submitted that merely because the vouchers contained some dates, would not be the proof of presenting the said vouchers with cash on the same dates. The Respondents have failed to prove the charge, either orally or by documentary evidence by examining the LIC official who remitted the cash with the date of such remittance into the bank by marking remittance book maintained by the LIC. The second charge was that the Petitioner failed to account for in the books of the bank. On the same date an amount of Rs.8,53,067.30 deposited by the LIC of India on 2.11.2009 to the credit of their account. This charge is also totally false and fabricated as the Petitioner did not make such necessary entry. It is submitted that the said entry was made by a probationary clerk namely, Ms N. Maheshwari. Therefore, for the fault committed by Ms. N. Maheshwari, the Petitioner is not liable for the charges and hence, the second charge is also not proved at all. The third charge was that M/s. Harinath Agencies's deposited Rs.2,19,500/- on 2.11.2009 but the Petitioner had given credit of Rs.10,72,500/- to their account. It is submitted that this charge is also false and fabricated as the said entry was not made by the Petitioner. It was made by Ms. N. Maheshwari and for the fault committed by Ms. N. Maheshwari the Petitioner is not liable. The second and third charges would reveal that Ms. N. Maheshwari has given the total credit to M/s. Harinath Agencies's account but no credit was given to the Life Insurance Corporation of India for Rs.8,53,967.30 ps. and both the deposits are received on 2.11.2009. It is further submitted that evidently Ms. N. Maheshwari has made a mistake which appears to be a genuine and for which the Petitioner is made scape goat. Hence, charge No.2 and 3 are fabricated and are liable to be set aside. The 4th charge levelled against the Petitioner was that as against Rs.1,48,028.20 ps. deposited by the LIC of India to the credit of their current account on 4.11.2009, only an amount of Rs.1,18,028.20 ps. was accounted for on that date thereby the Petitioner has misappropriated the balance amount of Rs.30,000/. It is stated that this charge of misappropriation is also false and fabricated for the reason that it is clear case of compensating error. It is clearly stated that Ms. N. Maheshwari a clerk, Staff

No. MAH 24322 has made an entry in the books of account as Rs.33,000/- in M/s. Swathi Enterprises account though they actually deposited Rs.3,000/- and thus mistakenly she entered additional amount of Rs.30000/- in M/s. Swathi Enterprises account. Further the LIC though deposited Rs.1,48,028.20, the credit entry was made for Rs.1,18,028.20. Therefore, it is seen that there was no misappropriation of money by the Petitioner and it is attributable for compensating error only. It is stated that from the foregoing reasons it is seen that the charges levelled against the Petitioner were not proved beyond any reasonable doubt. The Petitioner's services were terminated by an order dated 14.1.2011. Being aggrieved by the above order dated 14.1.2011 of the first Respondent the Petitioner approached the 2nd Respondent, and he being the Appellate Authority, has dismissed the appeal of the Petitioner by order dated 31.3.2011. It is further submitted that being aggrieved by the orders of termination passed by the first and second Respondents the Petitioner filed WP No.15522/2011 before the Hon'ble High Court of Judicature, at Hyderabad. The said WP was dismissed by order dated 18.6.2016 with the liberty to approach the competent authority i.e., Industrial Tribunal for redressal. The Petitioner also filed one WA which was also dismissed on 4.7.2016 and pursuant to the order of the Hon'ble High Court the Petitioner has filed this petition before this Tribunal claiming relief mentioned above.

3. **The Respondents filed counter with the averments in brief which runs as follows:**

The Respondents filed their counter denying the facts averred in the claim statement, and also specifically stated that the Petitioner joined the service of the bank as a security guard in sub-staff cadre on 20.4.1990. He was promoted to clerical cadre with effect from 21.8.2001. While he was working as a clerk cum cashier at Kanigiri branch of the bank in Prakasam district, a complaint was received from the Divisional Office, LIC, Nellore complaining that the cash remitted by them in the branch had not been credited to their account on the same day of remittance instead the amounts were credited on a later dates. Basing on their complaints they observed that this practice was being continued every month whenever they use to remit the amount in the beginning of the month. But the amounts used to be credited only at the end of the month. Taking cognizance into the complaint an internal investigation was conducted into the matter. During the investigation it was found that the Petitioner used to illegally receive the cash from the officials of the LIC of India across the counter and used to give acknowledgements immediately under his signature and that the Petitioner instead of accounting for the amounts so received on the same day, used to account for the amounts with delay and he used to change the dates on the vouchers as if the remittances were made on the dates on which the amounts were accounted for. During the internal investigation, the Petitioner accepted that he used to make remittances into the accounts of LIC of India with delays. It is also stated that during the pending initiation of Departmental enquiry, the Petitioner was placed under suspension with effect from 2.12.2009. Thereafter he was served with a charge sheet bearing No.1603/20/V/CS-T-1043/2216 dated 12.2.2010 by the Chief Manager & Disciplinary Authority, Zonal Office, Ongole, who was the competent authority for initiating Disciplinary action against the Petitioner and also framed four charges against the Petitioner, the Petitioner having received cash deposit by the LIC of India on different dates and having acknowledged receipt of the same did not account for the same in the book of the bank on the dates of the deposit, instead of accounted for the same in the books of the bank at later dates. Thus, the Petitioner has misappropriated the money remitted by the customer. The Petitioner having received the amount of Rs.8,53,067.30 ps. deposited by the Life Insurance Corporation of India on 2.11.2009 to the credit of their account did not account for the amount in the respective customer's account on the same day. As against cash amounting to Rs.2,19,500/- deposited to the credit of OCC A/c of M/s. Harinath Agencies (A/c No.033613046000425) vide pay-in-slip dated 2.11.2009, the Petitioner has accounted for Rs.10,72,500/- to the credit of their account, thus passed on undue gain to the party. The Petitioner having received cash of Rs. 1,48,028.20 ps deposited by LIC of India to the credit of their account on 4.11.2009 has accounted for Rs.1,18,020.20 ps only in the books of the bank, thereby misappropriated the balance amount. It is stated that on receipt of the charge sheet the Petitioner had submitted his explanation and the charges levelled against him vide his letter dated 3.3.2010, stating that he did not make delay in accounting for the remittances received on any day, and the delay in remitting the amounts must be by the LIC officials. In view of the denial of the charges by the Petitioner, a Departmental enquiry was ordered into the charges levelled against the Petitioner by appointing Mr. B. Ravi Kumar, the Senior Manager, Zonal Office, Tirupathi, as the Enquiry Officer and Mr. G.S.V.S. Tilak, Senior Manager, H.R. Department, Head office, Hyderabad, as the Presenting Officer. The Petitioner was given beneficent opportunities and he had participated in the enquiry. He was also assisted by Mr. B.V.V. Kondala Rao, General Secretary, Andhra Bank Award Employees' Union, as defence representative. During the course of enquiry on behalf of the management Ex.m1 to M12 were marked and Mr. M. Varadarajan, Sr. Manager (P & D), Zonal Office, Ongole, who investigated into the matter, was examined as the Management witness. On defence side Ex.D1 to D9 were marked. The defence did not examine any witness. The Enquiry Officer after analyzing the evidence brought on record had held that charges 1,2 and 4 were established and charge No.3 was not established beyond reasonable doubt. A copy of the report of the Enquiry Officer was furnished to the Petitioner for his comments/submissions and the findings of the Enquiry Officer vide letter No.1603/20/C-19094/1101, dated 30.9.2010 was also supplied to him. The Petitioner had made his submission on the findings of the Enquiry Officer by his letter dated nil which was received by the Disciplinary Authority on 16.10.2010. It is submitted

that the Disciplinary Authority after consideration of the findings of the Enquiry Officer by his letter dated nil which was received by the Disciplinary Authority on 16.10.2010, and the entire matters brought on record, the submission made by the Petitioner on the Enquiry Officer's findings, and taking into account the gravity of the charges alleged against the Petitioner and established in the enquiry, proposed to impose on him the penalty of "Compulsory Retirement" from the service of the bank vide proceedings dated 30.11.2010. As against the penalty proposed to be imposed on the Petitioner a personal hearing was given to the Petitioner, who attended the personal hearing along with his defence representative. The submission of the Petitioner during the personal hearing was recorded and taken into consideration. The Disciplinary Authority after consideration of the entire material afresh and finding no mitigating factors to alter the penalty proposed, had imposed the penalty of Compulsory Retirement as proposed to be imposed and the entire period of his suspension was treated as "not on duty" vide orders dated 14.1.2011. The Petitioner preferred an appeal dated 28.2.2011 against the order of the Disciplinary Authority before the Assistant General Manager (HR) the Appellate Authority, Head Office, Hyderabad. The appeal was duly examined by the Appellate Authority. After examination of the appeal and finding no justifiable ground to interfere with the orders of the Disciplinary Authority, the Appellate Authority had also confirmed the penalty of compulsory retirement as imposed on the Petitioner vide orders dated 19.3.2011. It is further submitted that the Petitioner was not retrenched under Sec.25F of the Industrial Disputes Act, 1947 instead he was imposed with the penalty of "Compulsory Retirement" from the services of the bank as per Clause 6(c) of Memorandum of Settlement dated 10.4.2002 on Disciplinary actions and procedures there for, The Petitioner was removed from service by way of inflicting major penalty of compulsory retirement after the enquiry. Therefore, Sec.25F of the Industrial Disputes Act, 1947 is not applicable to the present case of the Petitioner. It is submitted that the Petitioner is not entitled for reinstatement or full back wages as he was not retrenched from service of the bank, instead of exit from the services of the bank because of the imposition of major penalty of compulsory retirement as per service rules. It is also submitted that the bank being financial institution, the misconduct of misappropriation of the monies remitted by any customer, even if it is temporary, will tarnish the reputation and image of the bank. Such misconduct on the part of an employee of a public sector bank has to be dealt with deterrently. The Petitioner was rightly imposed with the penalty of compulsory retirement for his misconduct. It is further stated that subsequent to imposition of penalty, the Petitioner was paid an amount of Rs.252430/- towards Gratuity and Rs.174745.25 ps., towards Provident Fund as terminal benefits and the same were accepted by the Petitioner without any demur and with these averments the Respondent submitted for dismissal of the claim of the Petitioner.

4. In view of the memo filed by the counsel for the Petitioner stating therein not to press the validity of domestic enquiry, the domestic enquiry held by the Respondent is held legal and valid vide order dated 16.10.2017.

5. I have already heard the arguments of both the sides.

6. **The points for determination are:**

- I. Whether the Petitioner is entitled to be reinstated into service and to get full back wages from 1.4.2011 with all other attendant benefits such as continuity of service, annual increment, gratuity, pension, leave with pay and provident fund benefits as if on duty?
- II. Whether the period of suspension of the Petitioner from 1.12.2009 to 31.3.2011 will be treated as on duty?
- III. Whether the Petitioner is entitled to get compensation for the illegal termination? And
- IV. Whether the Petitioner is entitled to get any other relief?

7. **Point Nos. I & II:** Both the points are taken up together for convenient discussion as the facts involved in both these are interlinked to each other. The Learned Counsel appearing on behalf of the Petitioner submitted that the Petitioner was initially appointed as a Security Guard on 10.4.1990 in the Respondent's bank at Stonehouse Pet Branch, Nellore. Thereafter he was promoted as Clerk-cum-Cashier on 20.11.2001 and worked as such thereon. While working there, on 27.11.2009, the Life Insurance Corporation of India (LIC) Divisional Office at Nellore sent a fax message stating that the deposits made by the LIC on different dates were not accounted for on the dates of deposit and the said letter was not signed by anybody. The Respondent management had initiated action by conducting one preliminary enquiry and basing on the said preliminary enquiry dated 1.12.2009 conducted by Sri M. Varadarajan, an officer (Sr. Manager, Andhra Bank Zonal Office, Ongole), the Petitioner was kept under suspension alleging misconduct w.e.f. 2.12.2009. It is further submitted that on 12.2.2010 one charge memo was issued to the Petitioner by Respondent No.1 framing four charges wherein the first charge was that the Petitioner failed to account for in the books of the bank certain cash deposits remitted by the LIC for the purpose of crediting to their current accounts on different dates during the year 2009, on the date of deposit. He contended that the above allegation is totally false and fabricated. The fact is that the Petitioner had entered the receipt of the amounts in the system on the same date of deposit and given credit to the Respondents account. It is also submitted that merely because the vouchers contained some

dates, it would not be the proof of presenting the said vouchers with cash on the same dates. The Respondents have failed to prove the charge, either orally or by documentary evidence by examining the LIC official who remitted the cash with the date of such remittance into the bank by marking remittance book maintained by the LIC. Similarly, the second charge was that the Petitioner failed to account for in the books of the bank. On the same date an amount of Rs.8,53,067.30 deposited by the LIC of India on 2.11.2009 to the credit of their account. He submitted that this charge is also totally false and fabricated as the Petitioner did not make necessary entry. It is submitted that the said entry was made by a probationary clerk Ms N. Maheshwari. The Petitioner is not liable for the charges and hence, the second charge is also not proved at all. The third charge was that M/s. Harinath Agencies deposited Rs.2,19,500/- on 2.11.2009 but the Petitioner had given credit of Rs.10,72,500/- to their account. It is submitted that this charge is also false and fabricated as the said entry was not made by the Petitioner. It was made by Ms. N. Maheshwari and for the fault committed by Ms. N. Maheshwari the Petitioner is not liable. The second and third charges would reveal that Ms. N. Maheshwari has given the total credit to M/s. Harinath Agencies account, but no credit was given to the Life Insurance Corporation of India for Rs.8,53,967.30 ps. and both the deposits are received on 2.11.2009. It is further submitted that evidently Ms. N. Maheshwari made a mistake which appears to be a genuine one and for which the Petitioner is made scape goat. Hence, charge No.2 and 3 are fabricated and are liable to be set aside. The 4th charge levelled against the Petitioner was that as against Rs.1,48,028.20 ps. deposited by the LIC of India to the credit of their current account on 4.11.2009, only an amount of Rs.1,18,028.20 ps. was accounted for on that date thereby the Petitioner has misappropriated the balance amount of Rs.30,000/-. It is stated that this charge of misappropriation is also false and fabricated for the reason that it is a clear case of compensating error. He clearly submitted that Ms. N. Maheshwari a clerk, Staff No.MAH 24322 has made an entry in the books of account as Rs.33,000/- in M/s. Swathi Enterprises's account though they actually deposited Rs.3,000/- and thus mistakenly she entered an additional amount of Rs.30000/- in M/s. Swathi Enterprises's account. Further, the LIC though deposited Rs.1,48,028.20 ps, the credit entry was made for Rs.1,18,028.20 ps. Therefore, it is seen that there was no misappropriation of money by the Petitioner and it is attributable for compensating error only. it is stated that from the fore going reasons it is seen that the charges levelled against the Petitioner were not proved beyond any reasonable doubt. The Petitioner's services were terminated by an order dated 14.1.2011. The Petitioner being aggrieved by the above order dated 14.1.2011 of the first Respondent the Petitioner approached the 2nd Respondent, who being the Appellate Authority, has dismissed the appeal of the Petitioner by order dated 31.3.2011. It is further submitted that being aggrieved by the orders of termination passed by the first and second Respondents the Petitioner filed WP No.15522/2011 before the Hon'ble High Court of Judicature, at Hyderabad. The said WP was dismissed by order dated 18.6.2016 with liberty to approach the competent authority i.e., Industrial Tribunal for redressal. The Petitioner also filed one WA before the Hon'ble Court which was also dismissed from 4.7.2016 with the same observation.

8. It is also submitted that as per the allegations of the Respondents the Petitioner had not accounted for in the books of account on various dates of deposit. But the Respondents failed to file any documents in this case in support of their contention. Only basing on the averments made in the counter, claim without proving any document either orally or documentary, it cannot be stated that the Petitioner is liable to be terminated from service. It is also contended that the complaint made by the Life Insurance Corporation of India dated 27.11.2009 which had been marked as Ex.M4, during the course of enquiry, clearly shows that there was delay in accounting for the cash received in the books of accounts of the bank. The said complaint dated 27.11.2009 relied upon by the Enquiry Officer in the domestic enquiry is not a valid document and the same did not bear the signature of the competent authority of the Life Insurance Corporation of India. Therefore, the entire enquiry proceeding is vitiated. It is submitted that the cash deposit vouchers book, counter foils would show the dates of remittance made by the Life Insurance Corporation of India on various dates. These counter foils are available with the Life Insurance Corporation of India. Those counter foils would establish the factum of exact dates on which the deposits were received by the Petitioner. The Respondents have failed to file those counter foils either before the court or before the Enquiry Officer, as the management witness was to face to face the cross examination or any such material witness orally, which would have been fatal to the allegation of the Respondents. It is also submitted that the remittances/deposits were made by the said branch who have not lodged the compliant. Therefore, the compliant dated 27.11.2009, which has not been signed by anybody was made by the officer, LIC, Satellite branch, Nellore who has no locus standi to make such complaint. Further, the satellite branch's silence would show that the remittances/deposits were made into the bank belatedly. Thus, the delay is caused by the Life Insurance Corporation of India, Satellite branch, and not by the Petitioner in accounting for the deposit in the books of accounts of the Respondent's bank. It is submitted that as per the context, enquiry report, Ms. Maheshwari, another clerk had also made entries in the books of account of the bank during the relevant period. But the Respondents had not issued a single memo to Ms. Maheshwari inspite of the findings of the Enquiry Officer made in the enquiry report. The Learned Counsel for the Petitioner contended that the work of the Petitioner and the transactions made by him are subject to verification by the Petitioner's immediate officer of the bank to put together the entries of authentication by them. Further more, cash vouchers of the above, Rs. 25,000/- where initials have been made by the enquiry with dates. In the instant case, those senior officers who have given their initials in the cash vouchers were neither issued with any memo

nor they are made responsible for any such mistake. In this case, either any of the eye witnesses or any of the bank staffs should have been examined to prove the allegations basing on the side counter foils so it cannot be stated that the Petitioner is responsible to account for, the vouchers.

9. On the other hand the Learned Counsel appearing on behalf of the Respondents submitted that the Petitioner is intentionally accounted for the vouchers deposited by the Life Insurance Corporation of India on the dates of deposit, instead the amounts were credited on a later dates. Basing on their complaints they observed that this practice was being continued every month whenever they use to remit the amount in the beginning of the month. But the amounts used to be credited only at the end of the month. Taking cognizance into the complaint an internal investigation was conducted into the matter. During the course of investigation it was found that the Petitioner used to illegally receive the cash from the officials of the LIC of India across the counter and used to give acknowledgements immediately under his signature and the Petitioner instead of accounting for the amounts so received on the same day, used to account for the amounts with delay and that he used to change the dates on the vouchers as if the remittances were made on the dates on which the amounts were accounted for. During the internal investigation, the Petitioner accepted that he used to make remittances into the accounts of LIC of India with delays. The Petitioner was removed from service by way of inflicting major penalty of compulsory retirement after the enquiry. Therefore, Sec.25F of the Industrial Disputes Act, 1947 is not applicable to the present case of the Petitioner. It is submitted that the Petitioner is not entitled for reinstatement or full back wages as he was not retrenched from service of the bank, instead, exit from the services of the bank because of the imposition of major penalty of compulsory retirement as per service rules. It is also submitted that the bank being a financial institution, the misconduct of misappropriation of monies remitted by any customer, even if it is temporary, will tarnish the reputation and image of the bank. Such misconduct on the part of an employee of a public sector bank has to be dealt with deterrently. The Petitioner has been rightly imposed with the penalty of compulsory retirement for his misconduct. It is further stated that subsequent to imposition of penalty, the Petitioner was paid an amount of Rs.252430/- towards Gratuity and Rs.174745.25 ps., towards Provident Fund as terminal benefits and the same were accepted by the Petitioner without any demur and the bank has rightly passed the order against the Petitioner which needs no interference of this Tribunal.

10. In view of the rival contentions of both the sides it is noticed that one domestic enquiry was conducted and the Petitioner has conceded the validity of the domestic enquiry. It is not known how charges 1,2 and 4 were proved without proof of any original documents. The person who made the complaint from the side of the LIC has not been examined by the Department during the course of the enquiry. The Respondents have alleged that the Petitioner has not accounted for the deposits made by the Life Insurance Corporation of India on different dates on the dates of deposit. Basically the Petitioner was appointed as a security guard on 10.4.1990 but, he was entrusted to handle with cash after getting some experience. It is the duty of the superior officers of the bank to verify the duties of the cashier who had given promotion from the post of a security guard. Even though the Petitioner has committed some mistakes, his work was subject to verification by his immediate superior officer. When on the date of deposit any mistake was committed by the Petitioner why it was not brought to the notice of the superior officers. From the allegation made against the Petitioner it is clearly seen that it is due to ignorance and lack of experience, the Petitioner might committed the mistake but he has not misappropriated a single amount from the bank. It is not known if any misappropriation was made by the Petitioner why, the matter was not reported to the police for investigation. Why other persons/ staffs of the bank who were incharge of the supervising work of the Petitioner were not made responsible for the mistake committed by the Petitioner. From the above circumstantial evidence it is clearly proved that the Respondents only to suppress the mistake of the bank they have entangled the Petitioner in the alleged case. Admittedly Ms. N. Maheshwari has made the entry in the system. But she has not been examined in this case to know under which circumstances the entries were made. The Respondents have not proved the original documents either before the court or before the Enquiry Officer to show the mistake committed by the Petitioner. The clear allegation of the Respondents was that the Petitioner having received the cash deposited by the LIC on different dates and having acknowledged the receipt of the same did not account for the same in the books of the bank on the date of deposit, instead accounting for the same in the books of the bank on the later date. Therefore, the Petitioner has misappropriated the money remitted by the customer on different dates. The allegation of misappropriation has not been established by the Respondents. It is not known how much amount has been misappropriated by the Petitioner due to such delay committed by the Petitioner when the Petitioner has not made the entry alone. On this allegation the Petitioner has been placed under suspension and also after conducting the domestic enquiry he was given compulsory retirement. But basing on the allegation of the Respondents against the Petitioner punishment of compulsory retirement has been given which is too harsh. First the Petitioner was placed under suspension from 1.12.2009 to 31.3.2011 and thereafter, on completion of enquiry the Petitioner was given compulsory retirement. Even though the Petitioner has challenged the domestic enquiry but later he did not press or contest the same. Ultimately as no challenge was made, the court held that the domestic enquiry conducted by the Respondents is held as legal and valid. In fact on perusal of the materials available in the domestic enquiry it is noticed that the domestic enquiry has not been conducted properly, no valid opportunity

had been given to the Petitioner to put forth his grievances, no original documents have been proved during the course of the domestic enquiry. The persons who have been involved in the allegations made against the Petitioner have not been examined either before this Tribunal or before the Enquiry Officer. The complainant himself has not been examined to prove the genuineness of the allegation. It is not known how the Enquiry Officer held charge Nos.1,2 and 4 were proved. In fact the charges have not proved beyond all reasonable doubt and the Petitioner has been given capital punishment for no fault of him. Since the Petitioner has already given the punishment of suspension and has been compulsorily retired from service, it can safely be held that the punishment of suspension order is not legal and valid. So also the punishment of compulsory retirement given to the Petitioner is also not legal and valid. But as the Petitioner has not done any duty during the suspension period it is not correct to hold that the suspension period be treated as on duty. But any fault of the Petitioner, he has been given punishment of compulsory retirement which is not legal and justified. Thus, the Petitioner be reinstated into service w.e.f. 1.4.2011.

Thus, Point Nos. I and II are answered accordingly.

11. **Point Nos.III and IV:** Both the points are taken up together for convenient discussion as the facts involved in both the points are interlinked to each other. In view of the findings given in Point Nos. I and II, it is noticed that without any fault of the Petitioner he has been placed under suspension from 1.12.2009 to 31.3.2011. The suspension period has been declared as not legal and valid but the Petitioner has been given severe punishment for no fault of him. Since he has not discharged any duty during the period of suspension as well as compulsory retirement he is not entitled to get any back wages. But he is entitled to get compensation of Rs.50000/-(Fifty thousand rupees) for his illegal retirement/termination and only entitled to be reinstated into service to get terminal benefits and not entitled to get any other reliefs.

Thus, Point Nos.III and IV are answered accordingly. Hence, order.

ORDER

In view of the findings given in Point Nos. I-IV, the Petitioner is entitled to be reinstated into service from 1.4.2011 and he is entitled to get all other service benefits at the time of his normal superannuation. At the same time he is entitled to get compensation of Rs.50000/-(Fifty thousand rupees) for his illegal retirement/termination. The Respondent bank is directed to reinstate the Petitioner into service from 1.4.2011 and also give all his terminal benefits deducting the amount if already paid to him and also liable to pay Rs.50000/- compensation to the Petitioner for the illegal retirement/ termination within a period of four months of the date of receipt of the order, failing which the Petitioner is at liberty to take shelter in the appropriate forum.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 18th day of August, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 नवम्बर, 2020

का.आ. 1035.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इन्सुरेंस कॉर्पोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, घनबाद के पंचाट (संदर्भ सं. 07/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2020 को प्राप्त हुआ था।

[सं. एल-17011/6/1998-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 19th November, 2020

S.O. 1035.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Dhanbad shown in the Annexure, in the industrial dispute between the management of Life Insurance Corporation of India, and their workmen, received by the Central Government on 19.11.2020.

[No. L-17011/6/1998-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO .2), AT DHANBAD

PRESENT : Dr. S. K.Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act. 1947

REFERENCE NO 07 OF 2016

PARTIES:

Shri S.P. Paswan,
Vill: Chhoti,
Keshopur. PO: Jamalpur
Distt: Mungyr, 811214
(Jharkhand).

Vs.

Sr. Divisional Manager,
Life Insurance Corporation of India,
Patna Divisional Office, Frazer Road, Patna -800001
Order No. L-17011/6/1998 IR(B-II) dt.18.01.2016

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. M. A. Khan, Ld. Advocate

State : Jharkhand

Industry : Insurance

Dated: Dhanbad, the 27th December, 2019

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. **L-17011/6/1998 IR (B-II) dt.18.01.2016.**

SCHEDULE

“Whether Sh. Surendra Prasad Paswan has worked for 240 days or more with the Management of LIC of India, .If so whether the action of the Management of LIC of India in terminating his services w.e. f. 27.04.96 is justified? If not to what relief the workman is entitled to?”

On receipt of the Order No. **L-17011/6/1998 IR (B-II) dt. 18.01.2016** of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 07 of 2016 was registered on 01.02.2016 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

2. The Instant case was listed for hearing on 27.11.2019 for filing of Written Statement of Claim on the part of the workman but none was found present from either side on call nor did file Written Statement of Claim, It was specifically ordered vide dated. 19.09.2019 that appropriate order will be issued in accordance with law in case Written Statement of Claim is not filed by the workman ,but the workman failed to file the Written Statement of Claim even after lapse of two months time as such appropriate order has been passed in the matter to close this case presuming that the workman is not interested to proceed with hearing in the case. Noteworthy the Written Statement from the party who has raised the dispute , should have been filed within 15 days of the receipt of the order as stated in the Order of Reference from Government of India which reads as follows:

“The Parties raising the dispute shall file a statement of claim complete with relent documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such statement to each one of the opposite parties involved in this dispute under rule 10(b) of the Industrial Disputes (Central), rules, 1957.”

3. Usually, the case hearing stand adjourned on dates as 25.04.2016, 17.06.2016, 09.08.2016, 27.09.2016, 24.11.2016, 22.08.2017, 11.10.2017, 19.09.2019 and finally on 27.11.2019 apart from placement of the record before the Tribunal on 01.02.2016, 19.01.2017, 08.03.2017, 01.05.2017, 21.06.2017, 22.08.2017, 24.1.2017, 26.08.2017 and on 04.11.2017 for taking step in the matter of filing of Written Statement of Claim. The Case dates back to the year 2016. Notices dt. 22.03.2016, 02.09.2019 and even fresh Notice dt. 05.11.2019 were sent by Regd. Post at the respective address of the Sponsoring Union as well as the Management directing to appear in person or through Representative informing therein the Case will be decided ex-parte if Written Statement of claim is not filed within the stipulated time period. Even the last two successive notices sent currently upon the address of the Sponsoring Union the matter remained unrepresented. Since the Regd. Notices sent have not been returned undelivered it is treated that the notices have been served on the recorded address.

4. Moreover, several sittings were held and short adjournments were granted on different grounds with no sign of initiative taken on the part of the workmen. The status of the Case as revealed revolving around filing of written statement of claim by the workmen pending since long back. So long the representation from the Management side none had approached except on 19.09.2019, the date Mr. M.A. Khan appeared and filed ‘Vakalatnama’ on behalf of the O.P./Management to represent as warranted so. Whereas appearance from the O.P./Management does not matter much under the situation in the absence of Written Statement of Claim. To be filed by the workman side.

5. The case under Reference is concerned with termination of service of the workman concerned naming Shri Surendra Prasad Paswan even after working more than 240 days with the LIC Management at Patna to whom the adjudication came up as Reference before the Tribunal as referred from the Government of India, New Delhi.

6. In view of the above facts and circumstances, there is every reason to believe that workman is not interested at all to pursue this reference further as after eight adjournments and repeated Regd. Notices, the workman failed to appear for filing written Statement of Claim on his behalf. So adjournments for dates further will prove merely wastage of time of the Tribunal.

Upon a careful perusal of the different materials available on record, it has been made clear that the petitioner has not taken effective step to proceed with case despite issuance of repeated Regd. Notices even after eight short adjournment. This being the position, the Tribunal finds no scope to adjourn the proceeding for an indefinite period of time. Hence it is ordered that an Award be passed in this order of reference that the dispute is disposed of presuming non-existence of any dispute between the parties and no relief is awarded to the disputing workman accordingly.

Dr. S. K. THAKUR, Presiding Officer

नई दिल्ली, 23 नवम्बर, 2020

का.आ. 1036.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 01/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2020 को प्राप्त हुआ था।

[सं. एल-20012/94/2018-आई आर (सीएम-1)]
राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 23rd November, 2020

S.O. 1036.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No.01 of 2019) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.11.2020.

[No. L-20012/94/2018-IR (CM-I)]

RAJENDER SINGH, Desk Officer/ Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947**Reference: No. 01/2019**

Employer in relation to the management of Katras Area of M/s. BCCL.

AND**Their workman****Present:** Shri Dinesh Kumar Singh, Presiding Officer**Appearances:**

For Employer : Sri Nitish Sahay, Advocate

For workman : Sri N.G. Arun, Representative

State : Jharkhand.

Industry: Coal

Dated: 30.09.2020

AWARD

By Order No. L-20012/94/2018-IR(CM-I)) dated 06.12.2018, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Salanpur Colliery under Katras Area IV of M/s. Bharat Coking Coal Limited in denial to record the date of birth of Sri Shadeo Das (personnel No. 02860252) as per the Admit Card of the Matriculation Examination is justified. If not, to what relief the concerned workman is entitled to.”

2. After receipt of the reference, both the parties were noticed. The Sponsoring Union/workman of Rashtriya Colliery Mazdoor Sangh has filed his written statement of claim on 17/01/2019 and the management Kusunda Area of M/s. BCCL has filed his written statement on 28/03/2019.

The Sponsoring Union/workman has filed rejoinder to the written statement of the management on 03/06/2019.

3. The claim of sponsoring union as per its written statement is as follows:-

That the concerned workman namely Shahdeo Das is a permanent employee having designation as SDL Operator of Salanpur Colliery under the management of M/s. BCCL, Katras Area and his actual date of birth as mentioned in matriculation certificate and admit card is 05/01/1972 but the management had arbitrarily and wrongly entered his date of birth as 30 years on 18/09/1990 in place of his actual date of birth in his Form ‘B’ Register and other records. The concerned workman had submitted an application for correction of his date of birth on 31/10/2015 before the Project Officer of Salanpur Colliery as well as before other officials of BCCL but the management did not pay any attention towards his application for making correction of his date of birth in the Form ‘B’ Register and other records. The concerned workman had raised a dispute before the Assistant Labour Commissioner, Dhanbad on 14/12/2016 and when the matter was not settled in the conciliation proceeding, the same was referred to the Ministry of Labour and Employment resulting reference of this case.

A prayer has been made to pass an award holding the demand of the concerned workman for rectification/correction of his date of birth as per his matriculation certificate and as per circular of I.I. No.76 dated 5.1.1972 in place of 30 years as on 18/09/1990 in the service record/Form ‘B’ Register and other records of M/s. BCCL, Salanpur Colliery.

4. The case of the management as per its written statement is as follows:-

That the date of birth of the concerned workman has been mentioned as 30 years as on 18/09/1990 in his service record and there has been his signature and thumb impression acknowledging the service particulars including the date of birth. The service sheet excerpt was supplied to the concerned workman in the year 1992 containing his service particular recorded in the service file including the date of birth mentioned therein, which was returned after acknowledging the date of birth recorded therein by putting his signature and thumb impression, so he is now precluded to raise any dispute regarding his date of birth after expiry of a considerable

period of time and particularly on arriving near to his date of superannuation. The concerned workman had not raised any objection earlier regarding his date of birth recorded in the service record, nor has produced any document such as any academic/educational certificate at the relevant time which could be conclusive proof of his date of birth, so the correction of date of birth at this stage, i.e. *fag end* is barred by the principle of acceptance *sub silentio*. The correction of date of birth cannot be done at the *fag end* of service. The management in his written statement has further mentioned that in the written statement of sponsoring union, the statement made in Paragraph nos. 1 and 2 are matter of record, the statement made in Paragraph nos. 3 to 6 are not relevant, the statement made in Paragraph nos. 7 to 9 are matter of record and the grounds taken in Paragraph nos. 1 to IX are not correct.

A prayer has been made to hold the action of the management of Salanpur Colliery of Katras Area of M/s. BCCL as justified and to pass an Award in favour of the management.

5. The sponsoring union has filed rejoinder to the written statement of the management in which almost all averments made by the management have been denied.

6. The workman has examined two witnesses. They are WW-1 Shahdeo Das and WW-2 Videhshwar Dusadh.

7. The WW-1, Shahdeo Das has deposed before the Tribunal that he is a permanent employee of Salanpur Colliery under the management of BCCL as a SDL Operator, Katras Area having his Personnel No. 02860252 and he had submitted an application for correction of his date of birth on 31/10/2015 before the Project Officer, Salanpur Colliery as well as General Manager/Project Officer BCCL, Katras Area No. IV, Salanpur Colliery but the management of M/s. BCCL had not taken any action regarding correction of his date of birth in his service book/Form 'B' Register. He has also deposed that as per matriculation certificate and admit card his actual date of birth is 05/01/1972 passed in the year 1987 before his employment and appointment on 24/09/1990. He has further stated that his date of birth has been wrongly and arbitrarily mentioned as 30 years on 18/09/1990 by the management in place of 05/01/1972. He has also deposed that at the time of his appointment he had shown his matriculation certificate in respect of his actual date of birth but it is surprising that the management had not considered it. He has also stated that as per circular of Coal India Ltd. vide I.I. No.1976 there is a provision that if the workman has passed the matriculation and he has a matriculate certificate of the year prior to his appointment then his date of birth should be treated as per his matriculation certificate but the management had not accepted his date of birth of his matriculation certificate.

In the cross-examination he has deposed that he had joined his service at Bhalgraha, M/S BCCL on 24/09/1990 and he had passed matriculation certificate before joining his service. He has also deposed that he had submitted his matriculation certificate in the office. He has also deposed that management had not given him service record/book in the year 1992. He has denied the suggestion that he had been given service book on which he had put his LTI. He has also deposed that he had no knowledge that the management had mentioned his age as 30 years at the time of his appointment. He has also deposed that he had made oral requested in the office of management for correction of his date of birth and he had submitted his application for the same in the year 2015. He has denied the suggestion that he has submitted his application for correction of his date of birth at the time of reaching his superannuation.

8. The WW-2, Videhshwar Dusadh has deposed that he has been working as Trammer in Salanpur Colliery along with Shahdeo Das who is known to him for last 15 years. He has also deposed that Shahdeo Das has a dispute with management with regard to correction of his date of birth and Shahdeo Das had submitted an application to the management which had been received by the management on 31/10/2015 and 16/09/2016. He has identified photo copy of both the letters which have been marked as X and X-1 for identification. He has further deposed that Shahdeo Das always visited office of management for correction of his date of birth but management had not accepted his request. He has further stated that the claim of Shahdeo Das is correct.

In the cross-examination he has deposed that Shahdeo Das was appointed in the year 1990 and he got information regarding the dispute of age of Shahdeo Das and management in the year 2013 and Shahdeo Das had given his application for the first time to the management in the year 2015. He has denied the suggestion that he has no knowledge of fact of this case.

9. The workman has proved the following documents which are marked as:-

Exhibit W-1- Original Mark-sheet of Matriculation of Bihar School Examination Board, Patna.

Exhibit W-2- Original Transfer Certificate/School Leaving Certificate issued from Sri Shankar Dayal High School, Rowam-Baghmara, PO: Rowan, Dist. Dhanbad.

Exhibit W-3- Original Admit Card of Matriculation Examination of Bihar School Examination Board.

Exhibit W-4- Photo Copy of Implementation Instruction No-76.

Exhibit X- Photo Copy of Application of Shahdeo Das submitted on 31/10/2015 before Project Officer, Salanpur Colliery.

Exhibit X-1- Photo Copy of Application dated 15/09/2016 of Shahdeo Das submitted to Project Officer Salanpur Colliery.

10. The management has examined only one witness. He is MW-1, Ashok Kumar, Dy. Manager (Personnel), Salanpur Colliery under Katras Area of M/s. BCCL.

11. The MW-1, Ashok Kumar has deposed that he is working as Dy. Manager (Personnel) at Salanpur Colliery under Katras Area of M/s. BCCL and he is acquainted with the facts and circumstances of this case. He has further stated that this case is related to the dispute of date of birth and the same has not been sponsored by the operating union of the company, so it cannot be treated as an Industrial Dispute. He has also stated that the date of birth of concerned workman has been mentioned as 30 years as on 18/09/1990 as per records and the same has been acknowledged by the concerned workman by putting his signature and thumb impression. He has further deposed that the concerned workman was supplied with the excerpt of the service containing his service particulars recorded in the service file including his date of birth in the year 1992 and the same was returned after acknowledging his date of birth by putting his signature and thumb impression. He has also stated that the concerned workman had never raised any objection earlier regarding his date of birth recorded in service sheet excerpt and had not produced any such documents at the relevant time, so he is now precluded to raise any dispute regarding his date of birth. He has also deposed that the concerned workman had not disputed his date of birth as recorded in the service book and as such his claim for correction of date of birth at fag end of service is barred by the principle of acceptance sub silentio. He has also stated that the correction of date of birth cannot be done at the fag end of service, so the claim of the concerned workman is not correct.

In the cross-examination he has deposed that the concerned workman had submitted his matriculation, school leaving certificate and admit card in the year 2015. He has also deposed that the concerned workman had submitted his application on 31/10/2015 regarding his knowledge about the wrong entry of his date of birth. He has further deposed that he had no knowledge that the concerned workman had again submitted his application on 15/09/2016. He has also deposed that the date of birth as mentioned in matriculation certificate of workman will be considered as his date of birth but it will not be applicable in this case. He has also stated that no action had been taken by the management on the application submitted by the concerned workman.

12. The management has not proved any documents in support of its case.

13. The representative of sponsoring union has submitted before the Tribunal that the concerned workman namely Shahdeo Das had been appointed on 18/09/1990 and at that time his date of birth had been arbitrarily and wrongly mentioned as 30 years by the management in his service book. He has also argued that before joining, service the concerned workman had appeared in the matriculation examination and in the admit card of that examination his date of birth has been mentioned as 05/01/1972 and in his school leaving certificate, his date of birth has also been mentioned as 05/01/1972. He has further argued that the concerned workman had submitted an application before the management for correction of his date of birth on 31/10/2015 and 16/09/2016 but no action had been taken by the management. He has also submitted that as per circular of Coal India Limited vide I.I. No.76 of NCWA-III, in case of appointees who have pursued studies in recognized educational institution, the date of birth recorded in school leaving certificate shall be treated as correct date of birth and same would not be altered under any circumstances. He has also submitted that in the school leaving certificate of the concerned workman the date of birth has been mentioned as 05/01/1972, so the date of birth as recorded in the service book of the concerned workman may be corrected as 05/01/1972 in place of 30 years at the time of appointment on 18/09/1990.

14. On the other hand the learned lawyer of management has submitted before the Tribunal that the concerned workman has raised the dispute regarding correction of his date of birth as mentioned in his service book at the fag end of his service, so it is not maintainable. He has also submitted that the excerpt of the service book had been given to the concerned workman and after putting his signature and thumb impression he returned the same to the management. He has also argued that the concerned workman had not raised the dispute at that time, so he had admitted his date of birth as 30 years on the date of his appointment that is 18/09/1990. He has lastly submitted that the action of management in not correcting the date of birth of concerned workman is justified.

15. Now, the only point of determination in this case is whether the action of the management of Salanpur Colliery under Katras Area IV of M/s. BCCL in denial to record the date of birth of Sri Shahdeo Das as per admit card of the matriculation examination is justified and if not to what relief the concerned workman is entitled to.

FINDINGS

16. At the outset of discussion it is required to mention here that it is an admitted fact that the concerned workman namely Shahdeo Das had been appointed on 18/09/1990 and at that time his age had been assessed as 30 years which has been mentioned in his service book and subsequently his date of birth has been calculated as 18/09/1960.

Further it is also an admitted fact that the concerned workman has been working as SDL Operator of Salanpur Colliery under BCCL, Katras Area as a permanent employee.

17. It is the case of the sponsoring union that the date of birth of concerned workman had been wrongly and arbitrarily mentioned as 30 years as 18/09/1990 in his service book and as per his admit card of matriculation examination and school leaving certificate his date of birth is 05/01/1972, so in his service book his date of birth may be corrected as 05/01/1972.

On the other hand it is the pleading of the management that the concerned workman after signing the excerpts of service book has admitted his date of birth as 30 years on 18/09/1990 and he had raised this dispute for correction of his date of birth at the fag end of his service which is not maintainable.

18. Now, in the light of pleading of both the parties the Tribunal will examine oral and documentary evidence available on the record.

19. The most competent witness in this case is WW-1 Shahdeo Das. The WW-1, Shahdeo Das has categorically deposed that in his admit card of matriculation examination of the year 1987, his date of birth has been mentioned as 05/01/1972 which is before his employment and appointment but the management had arbitrarily and wrongly mentioned his age as 30 years on 18/09/1990. He has also deposed that he had raised this issue on 31/10/2015 before the Project Officer and management of M/s. BCCL but no action had been taken. In the cross-examination he has deposed that he had no knowledge that his date of birth had been mentioned as 30 years in his service book at the time of his appointment. The WW-2 Vidheshwar Dusadh has proved an application of Shahdeo Das dated 31/10/2015 and 16/09/2016 which has been marked as X and X-1 for identification. He has also deposed that the concerned workman had raised the dispute before the management for correction of his date of birth.

20. The MW-1 Ashok Kumar has deposed that at the time of appointment of concerned workman on 18/09/1990 his date of birth had been recorded as 30 years and the same had been acknowledged by him by putting his signature and thumb impression. He has also deposed that the concerned workman had raised this dispute at the fag end of his service, so he had been precluded to raise such dispute. In the cross-examination he has admitted that the concerned workman had submitted his Matriculation Certificate, School Leaving Certificate and Admit Card in the year 2015 and the concerned workman had also submitted his application on 31/10/2015 but he has no knowledge that the concerned workman had again submitted his application on 15/09/2016. He has also deposed that no action had been taken by the management on the application submitted by the concerned workman.

21. Now, coming to the documentary evidence of the concerned workman it appears that the Exhibit W-2 is a Transfer Certificate/School Leaving Certificate of concerned workman namely Shahdeo Das which shows that Shahdeo Das was admitted in the school on 15/04/1985 and his date of birth had been mentioned as 05/01/1972. It further shows that Shahdeo Das had appeared in the matriculation examination of Bihar School Examination Board in the year 1987 but he didn't pass. The Exhibit W-3 is an admit card of Shahdeo Das in which his date of birth has been mentioned as 05/01/1972. The Exhibit W-1 is a mark-sheet of Shahdeo Das in which it has been mentioned that he didn't pass the matriculation examination.

22. It is relevant to mention here that in I.I. No.76 of NCWA-III it has been mentioned under A(ii) of heading Determination Of Age At The Time Of Appointment that in case of appointees who have been pursued study in a recognized educational institution, the date of birth recorded in the School Leaving Certificate shall be treated as correct date of birth and same will not be altered under any circumstances.

23. Now, in this case, as per Exhibit W-2 which is Transfer Certificate/ School Leaving Certificate of concerned workman it is evident that the concerned workman Shahdeo Das was a student of Sri Shankar Dayal Uchha Vidyalaya, Rowam Baghmara from 15/04/1985 where his date of birth had been recorded as 05/01/1972 and he had appeared in matriculation examination of 1987 but he didn't pass. Further Exhibit W-3, which is admit card of concerned workman, shows that his date of birth is 05/01/1972.

24. It is required to mention here that the management has nowhere denied the certificates of the concerned workman and the provisions of I.I. No. 76 dated 05/01/1972.

25. In view of above discussion and as per I.I.No.76 of NCWA III the date of birth of concerned workman shall be recorded as 05/01/1972 as mentioned in his Transfer Certificate/ School Leaving Certificate and Admit Card.

26. The next point of consideration in this case is whether the concerned workman had admitted his date of birth as 30 years on the date of his appointment on 18/09/1990 and he had raised the dispute at the fag end of his service.

In this regard it is required to mention here that WW-1 Shahdeo Das in his evidence has deposed that his date of birth had been arbitrarily and wrongly mentioned as 30 years on 18/09/1990 and in the cross-examination he had denied that he had been given his service book on which he had put his signature and LTI, so the concerned workman has not admitted his date of birth as 30 years as on 18/09/1990.

27. Further the WW-1, Shahdeo Das has deposed that he had raised the dispute in the year 2015 and he had submitted all the documents before the management. The MW-1 in his cross-examination has admitted that the concerned workman had submitted his documents in the year 2015.

It is relevant to mention here that the concerned workman is due to retire in month of September 2020 as per his date of birth mentioned at the time of his appointment and he had raised the dispute in the year 2015, so it cannot be said that he had raised the dispute at the fag end of service.

28. In view of above discussion the Tribunal comes to the conclusion that the date of birth of concerned workman namely Shahdeo Das is 05/01/1972 as per his Transfer Certificate/School Leaving Certificate (Exhibit W-2) and Admit Card (Exhibit W-3). Further the Tribunal also finds that the concerned workman had appeared in the annual examination of Bihar School Examination Board in the year 1987 before joining his service on 18/09/1990.

29. After considering all the facts and circumstances of the Tribunal renders the following Award:-

“The action of the management of Salanpur Colliery Under Katras Area IV of M/s. BCCL in denial to record the date of birth of Sri Shahdeo Das as per the Admit Card of the Matriculation Examination is not justified.”

Hence the concerned workman is entitled for relief which is as under:-

The management of Salanpur Colliery Under Katras Area IV of M/s. BCCL is directed to record the date of birth of Shahdeo Das as 05/01/1972 in service record/Form ‘B’ Register and other records of M/s. BCCL, Salanpur Colliery in place of 30 years on 18/09/1990 within one month after publication of award in the Official Gazette and consequently his service will continue with all benefits as per recorded date of birth on the basis of this award.

This is Award of the Tribunal.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 23 नवम्बर, 2020

का.आ. 1037.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 14/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2020 को प्राप्त हुआ था।

[सं. एल-20012/27/2011-आई आर (सीएम-1)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 23rd November, 2020

S.O. 1037.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No.14 of 2012) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.11.2020.

[No. L-20012/27/2011-IR (CM-1)]

RAJENDER SINGH, Desk Officer/ Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

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

Reference: No. 14/2012

Employer in relation to the management of C.V. Area of M/s. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For Employer : Sri S.N. Ghosh, Advocate

For workman : Sri Lala Sahdeo Pd., Representative

State : Jharkhand.

Industry: Coal

Dated:29.10.2020

AWARD

By Order No.L-20012/27/2011 IR(CM-I) dated 25.01.2012, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Basantimata Colliery of M/s BCCL in dismissing Sri Biswanath Mondal, Badli UG Loader, from the services of the company vide officer order dated 07/08.12.2005 is fair and justified?” To what relief the workman concerned is entitled to?”

2. After receipt of the reference, both the parties were noticed. The Sponsoring Union, Colliery Mazdoor Congress has filed its written statement of claim on 26/03/2012 and the Management, C.V. Area of M/s. BCCL has filed its written statement cum rejoinder on 03/04/2014.

The Sponsoring Union/workman has filed rejoinder to the written statement of the management on 24/07/2014.

3. The claim of the sponsoring union namely Colliery Mazdoor Congress as per its written statement filed on behalf of concerned workman namely Biswanath Mandal is as follows:-

That the concerned workman namely Sri Biswanath Mandal was working as underground loader at Basanti Mata Colliery having Form ‘B’ No. 3055 but the management had issued charge sheet No. BM/Agent/CS/05/550 dated 7/12.09.2005 to him for charges under para 26.1.1 of certified standing orders of M/s. BCCL for remaining absent from duty for 21 days only between the period 20/05/2005 to 11/06/2005 without any notice or authorised leave. The concerned workman had submitted reply to the charge sheet mentioning therein that due to sickness he could not attend his duty and he was under treatment but the management without considering his case had ordered for departmental/domestic enquiry. The concerned workman was also under the treatment at company’s dispensary and he was referred to Central Hospital, Dhanbad for further treatment before the period of absence due to his illness. The concerned workman had applied for advance of Rs. 5000/- to meet the financial crisis on 30/05/2005 but no action was taken by the management and charges of unauthorised absence from duty in this case is not justified in view of the treatment of the concerned workman at Colliery dispensary and Central Hospital, Dhanbad. The Central Hospital, Dhanbad in its medical certificate had recommended light duty to the concerned workman but the management instead of considering the same dismissed him for remaining absence which was beyond his control. The concerned workman in second show cause notice had specified his reasons of absence as sickness which was beyond his control but he was dismissed from services of company vide office order dated 7/8-12-2005. The concerned workman thereafter died on 14/03/2006 due to continuous illness. The harsh punishment of dismissal for remaining absence for 21 days that too due to prolonged sickness of the concerned workman is not at all justified and legal rather it is whimsical, deliberate and arbitrary action of the management.

A prayer has been made to pass an Award holding the action of the management as not justified with consequential benefits of employment to his dependent wife and payment of legitimate dues to her as per provisions of NCWA as applicable.

In course of hearing of the case a petition has been filed by the wife of the deceased workman for substituting the name of her deceased husband by her son namely Uttam Mandal and the same has been allowed vide order dated 07/05/2015.

Further, the wife of deceased workman has filed a petition on 04/10/2007 before the Tribunal that neither she nor any legal heirs would claim service in future in place of her deceased husband.

4. The case of the management of Basantimata Colliery of C.V. Area of M/s. BCCL as per written statement cum rejoinder is as follows:—

That the sponsoring union with ulterior motive and keeping the conciliating authority in dark that the concerned workman had died in the year 2006, filed industrial dispute before A.L.C. (C), Dhanbad in the year 2011 after five years of death of the concerned workman and the industrial dispute cannot stand in favour of dead person. The dependent or wife of the deceased concerned workman had not raised I.D. before the A.L.C. and the same had been raised on behalf of the concerned workman after his death in the year 2011 which is a abuse of the process of law. The concerned workman who died subsequently after dismissal is not entitled for reinstatement or any consequential benefits and the legal heirs are also not entitled for any compassionate appointment with fringe benefits.

The management had made para wise comment to the claim of the sponsoring union by stating therein that statement made in para-1 by union is reproduction of the reference order, the statement made in paragraph 2, 8, 9 and 10 by union are denied, the statement made in para 3 by the union is a matter of record, the statement made in paragraph 4 by union is true to the extent of his absence of duty for which he was charge-sheeted, the statement made in para 5,6 and 7 by union does not mention actual nature of illness, the statement made in paragraph 11 by union is the eternal truth, and the statement made in paragraph -12 & 13 by union has already been discussed.

A prayer has been made to pass an award in favour of management.

5. The sponsoring union has filed rejoinder to the written statement by the management in which the sponsoring union has denied almost all the averments made by the management.

6. The sponsoring union has examined two witnesses. They are WW-1, Lala Sahadeo Prasad and WW-2, Nihari Mandal.

7. The WW-1, Lala Sahadeo Prasad has deposed before the Tribunal that he is Joint Secretary of Janta Colliery Mazdoor Congress. He has also stated that the concerned workman Biswanath Mandal was an employee of Basanti Mata Colliery as underground loader and he was member of his union. He has deposed that he had raised an Industrial dispute on illegal action of the management of Basanti Mata Colliery for dismissing Biswanath Mandal from service vide order dated 7/8.12.2005. He has further stated that the concerned workman was charge sheeted vide charge sheet no. BM/Agent/CS/05/550 dated 7/12.9.05 for alleged unauthorised absence between the period from 20/05/2005 to 16/06/2005 and the concerned workman had submitted his reply mentioning therein that the alleged absence was due to his sickness for which he was treated both at Colliery Dispensary and Company Central Hospital, Dhanbad. He has further stated that the concerned workman had submitted all his treatment papers and fitness certificate to the management but the management issued charge sheet against him and subsequently dismissed him from service. He has also stated that the concerned workman died on 14/03/2006, so the legal heirs as per service record of workman are entitled to the payment of full wages with all consequential benefits as per NCWA.

In the cross-examination he has deposed that he had not accompanied Biswanath Mandal when he had filed documents before the P.O. of management. He has also deposed that I.D. was raised in the year 2007 and has denied the suggestion that the concerned workman was dismissed in the year 2005 and he died in 2006 whereas the I.D. was raised thereafter. He has also denied the suggestion that the claim of the workman is false.

8. The WW-2, Nihari Mandal who is wife of concerned workman namely Bishwanath Mandal has deposed before the Tribunal that her husband Bishwanath Mandal was permanent employee of M/s. BCCL and he was performing his duties as U.G. Loader in Basanti Mata Colliery. She has also deposed that she is the legally wedded wife of Biswanath Mandal and she is residing at C.M.W.O. Colony Jurkunda Fatak P.O. & P.S. Chirkunda Dist. Dhanbad with her family members. She has also deposed that her husband Biswanath Mandal had raised the dispute but as he died on 14/03/2006 at 5 A.M. during the pendency of this case leaving behind herself Nihari Mandal, son Uttam Mandal, and daughter Pratima Mandal, Chandana Mandal and Anna Mandal.

In the cross-examination she has deposed that her late husband was working as loader under the management and he was charge sheeted to which he replied but he was dismissed from the service.

9. The sponsoring union has proved the following documents which are marked as:—

Exhibit W-1- Photo Copy of appointment letter dated 11.11.1986 of Md. Shamim son of Md. Ghulam Rasool.

Exhibit W-2- Photo Copy of extract of Certified Standing Order.

Exhibit W-3 series- Photo copy of reference letter dated 17/02/2005 of Dy. Personnel Manager, Basantimata Colliery to Central Hospital, Dhanbad for treatment of concerned workman, photo copy of order of allowing Biswanath Mandal for joining duty on 18/03/2005 as he was sick from 08/03/2005 to 17/03/2005, photo copy of medical certificate issued by Dr. J.S. Yadav in which it is mentioned that Biswanath Mandal was suffering from loose motion and vomiting and was under his treatment from 20/05/2005 to 11/06/2005, photo copy of medical certificate showing sickness from 13/06/2005 to 06/09/2005, photo copy of application submitted to Dy. Chief Manager (Personnel) on 30/05/2005 for grant of Rs. 5000/- as advance, photo copy of medical prescription dated 27/08/2005 of BCCL, Original medical prescription dated 05/07/05 and 31/08/2005 of Central Institute of Psychiatry, Ranchi & photo copy of medical prescription of BCCL dated 02/07/2005, 20/07/2005 and photo copy of death certificate dated 14/03/2006 issued by BCCL Chanch Victoria Area.

Exhibit W-4- Carbon copy of application of Nihari Mandal for demanding of Rs. 10000/- for performing funerals and other work after death of her husband Biswanath Mandal.

Exhibit W-5- Photo Copy of Application of Nihari Mandal demanding job in place of her deceased husband.

Exhibit W-6- Photo Copy of Letter issued by Joint Secretary demanding payment of death benefit to the dependent of Biswanath Mandal.

Exhibit W-7- Letter issued by Basantimata Colliery to Biswanath Mandal directing him to appear before Medical Board on 30/06/2000.

Exhibit-X- Carbon Copy of letter of Biswanath Mandal addressed to Dy. Chief Manager (P) Chanch Victoria Area.

10. The management has not examined any witness in this case.

11. However the management has proved the following documents which are marked as:—

Exhibit M-1- Original Copy of charge sheet no 550 dated 07/12-9-05.

Exhibit M-2- Carbon copy of the dismissal letter dated 7/8-12-05 issued to the workman.

Exhibit M-3- Carbon copy of the 2nd show cause notice no 2034 dated 27/28-10-05.

Exhibit M-4- Original Copy of reply dated 31/10/2005 of the workman on 2nd show cause.

Exhibit M-5 series- Original Copy of Proforma for forwarding absenteeism cases including photocopy of peon-book dated 08/12/2005 and photo copy of dispatch register dated 08/12/2005.

Exhibit M-6 series- Original Copy of letter of Nihari Mandal dated 17/03/2006 addressed to Project Officer, Basantimata Colliery for payment for Rs. 10,000/- from benevolent fund, and Carbon Copy of the reply dated 22/24-3-06 by the Agent, Basantimata Colliery .

Exhibit M-7- Copy of office order no-2457 dated 3/6 Nov, 97 showing issuance of charge sheet to Biswanath Mandal for unauthorised absence and allowing duty on censure.

Exhibit M-8- Carbon copy of letter no. 2102 dated 27/28-10-98 showing award of punishment to Biswanath Mandal and resumption of duty due to unauthorised absence.

Exhibit M-9- Carbon copy of letter no. 174 dated 19th April 1999 showing last warning to Biswanath Mandal to rectify himself.

Exhibit M-10- Carbon Copy of letter no. 2491 dated 6/8-10-09.

Exhibit M-11- Photo Copy of death certificate of Bishwanath mandal issued by Medical Supdt. Basantimata Colliery Chanch Victoria Area dated 14/03/2006.

Exhibit M-12- Photo Copy of the service excerpts of Late Bishwanath Mandal dated 11/02/1993.

Exhibit M-13 series - Original Enquiry proceeding of CS/05/550 dated 7/12.9.05 total two sheets, and Original enquiry report dated 03/10/2005.

Exhibit M-14- Carbon copy of notice of enquiry dated 16/09/05.

Exhibit M-15- Carbon Copy of order of appointment of Enquiry Officer dated 14/15-09-05.

12. The learned representative of the concerned workman has submitted before the Tribunal that the concerned workman was absent from his duty from 20/05/2005 to 11/06/2005 as he was sick but the management without considering his illness, had issued a charge-sheet and subsequently conducted a departmental enquiry in which the concerned workman was found guilty. He has further argued that the concerned workman was arbitrarily and illegally dismissed from the service which is disproportionate to the

nature of guilt. He has further argued that the concerned workman in course of treatment died on 14/03/2006 due to continued and prolonged illness, so the action of the management in dismissing the concerned workman is not legal and justified. He has further submitted that the punishment awarded to the concerned workman was disproportionate to his guilt, so he may be reinstated with all back wages till his death and all benefits of deceased workman be granted to the substituted applicant namely Uttam Mandal.

13. On the other hand the learned lawyer of the management has submitted that the concerned workman was without any permission or information to the management had remained absent for 21 days for which charge-sheet was issued against him and after finding the explanation not satisfactory the departmental/domestic enquiry was held in which he was found guilty and subsequently dismissed from service vide order dated 07/08.12.05. He has also argued that the concerned workman had participated in the enquiry proceeding and there is no illegality and irregularity in the enquiry proceeding. He has also argued that the concerned workman was a habitual absentee during his service, so considering the past record he was dismissed from service. He has also argued that the concerned workman died on 14/03/2006 and this dispute has been raised in the year 2012, so this reference case is not maintainable.

14. Now, the only point of determination in this case whether the action of the management of Basantimata Colliery of M/s. BCCL in dismissing the concerned workman namely Biswanath Mandal, Badli U.G. Loader from services of the company is fair and justified and to what relief he is entitled to?

FINDINGS

15. At the outset of discussion it is required to mention here that it is an admitted fact that the concerned workman namely Biswanath Mandal was a permanent employee of Basantimata Colliery of M/s. BCCL and he was absent from his duty from 20.05.2005 to 11/06/2005 without any notice or authorised leave. It is also an admitted fact that after conducting enquiry for his absence by the management the concerned workman was dismissed from service vide order dated 07/08.12.2005.

16. Now, the Tribunal will analyze the oral and documentary evidence of both the parties available on the record.

17. The WW-1, Lala Shahdeo Prasad has deposed that the concerned workman namely Biswanath Mandal was charge-sheeted on 07/12.09.2005 for his absence from duty from 20/05/2005 to 11/06/2005, to which he had submitted his reply mentioning there in that he was suffering from illness but the management was not satisfied and subsequently after conducting enquiry had dismissed the concerned workman from service vide order dated 07/08.12.2005. He has also deposed that the concerned workman died on 14/03/2006 in course of treatment. He has also deposed that the concerned workman is entitled for reinstatement with full back wages and his legal heirs are entitled for payment of all consequential benefits after his death. In the cross-examination he has deposed that the concerned workman had not received the dismissal order as per his knowledge and he has denied the suggestion that the concerned workman was dismissed in the year 2005.

The WW-2 Nihari Mandal who is wife of the concerned workman has deposed before the Tribunal that her husband Biswanath Mandal died on 14/03/2006 during the pendency of this case. In the cross-examination she has deposed that her husband was working as loader under the management and he was dismissed from service.

18. Now, coming to the documentary evidence of the sponsoring union, it appears that Exhibit W-1 is the appointment letter of Md. Shamim son of Md. Ghulam Rasool which is not relevant in this case and Exhibit W-2 is a photo copy of extract of Certified Standing Order. Further Exhibit W-3 series are a photo copy of reference letter issued by Dy. Personnel Manager, Basantimata Colliery, Central Hospital, Dhanbad for treatment of concerned workman, photo copy of order dated 17/03/2005 by which Biswanath Mandal was allowed to join duty on 18/03/2005, photo copy of medical certificate issued by Dr. J.S. Yadav in which it is mentioned that Biswanath Mandal was suffering from loose motion and vomiting and was under his treatment from 20/05/2005 to 11/06/2005, medical certificate showing sickness from 13/06/2005 to 06/09/2005, photo copy of application submitted by Biswanath Mandal to Dy. Chief (Personnel) on 30/05/2005 for grant of Rs. 5000/- as advance, photo copy of medical prescription dated 27/08/2005 of BCCL, original medical prescriptions dated 05/07/05, 31/08/2005 of Central Institute of Psychiatry, Ranchi, photo copy of medical prescription of BCCL and photo copy of death certificate issued by BCCL Chanch Victoria Area. Exhibit W-4 is a Carbon copy of application of Nihari Mandal for demanding of Rs. 10000/- for performing funerals and other work after death of her husband Biswanath Mandal. Exhibit W-5 is an application of Nihari Mandal demanding job in place of her deceased husband. Exhibit W-6 is a letter issued by Joint Secretary of Colliery Mazdoor Congress demanding payment of death benefit to the dependent of Biswanath Mandal. Exhibit W-7 is a letter issued by Basantimata Colliery directing the concerned workman to appear before Medical Board on 30/06/2000.

19. The documentary evidence of management shows that Exhibit M-1 is a charge-sheet issued to the concerned workman for his absence from 20/05/2005 to 11/06/2005. Exhibit M-2 is the dismissal order dated 07/08.12.2005. Exhibit M-3 is the second show cause notice dated 27/28.10.05. Exhibit M-4 is a reply of concerned workman of second show cause. Exhibit M-5 series are proforma for absenteeism cases of Biswanath Mandal. Exhibit M-6 is an application of Nihari Mandal wife of Biswanath Mandal dated 17/03/2006. Exhibit M-7 is an office order dated 3/6 Nov. 1997. Exhibit M-8 is an officer order dated 27/28/10/1998. Exhibit M-9 is an office order dated 19th April 1999. Exhibit M-10 is an office order dated 06/08.10.2009 denying payment of benevolent fund on the ground of dismissed of concerned workman. Exhibit M-11 is death certificate of Biswanath Mandal issued by BCCL. Exhibit M-12 is Photo Copy of service book of concerned workman. Exhibit M-13 series are copy of enquiry proceeding. Exhibit M-14 is notice issued on 16/09/2005 to concerned workman for his appearance before the Enquiry Officer. Exhibit M-15 is letter of Enquiry Officer vide order dated 14/09/2005.

20. Now after analysing the oral and documentary evidence of both the parties it is ample clear that the concerned workman namely Biswanath Mandal was absent from his duty from 20/05/2005 to 11/06/2005 and for that charge-sheet was issued to him. It is the also evident that a departmental/domestic enquiry was held in which the concerned workman had been found guilty. It further appears that in the enquiry proceeding the concerned workman had participated and a sufficient opportunity had been given to him for cross-examines the witness and producing his own witnesses. Further the enquiry proceeding report also shows that the statement of Biswanath Mandal had been recorded.

In view of above discussion the Tribunal comes to the conclusion that the departmental/domestic enquiry conducted by the management is just, proper and fair.

21. Now the question arises whether the punishment of dismissal awarded to the concerned workman by the management of Basantimata Colliery of M/s. BCCL for his absence from duty for 21 days is proportionate to his guilt or not?

22. At this stage it is required to mention here that section 11 A of I.D. Act reads as follows:—

Section 11A- “Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.”

23. The Hon’ble Supreme Court has been pleased to observe in a case as reported in **1973 AIR 1227 (Workmen of Messrs Firestone Tyre...Vs Management & others)** that:—

“The Act is beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees has to be preferred. The interpretation must be liberal enough to achieve the legislative purpose”.

24. However the Hon’ble Supreme Court in a another case as reported in **2005(2) SCALE 302 (Mahindra and Mahindra Ltd. Vs. N.B. Narawade)** has been pleased to hold that:—

“It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11A of the Act and reduce the punishment.”

25. In the instant case it is relevant to mention here that the Exhibit W-3 series which are the medical prescriptions of the concerned workman categorically show that he was suffering from illness and he had been referred to Central Hospital, Dhanbad vide letter dated 17/02/2005 for treatment by the Dy. Personnel Manager,

Basantimata Colliery. Further there is a medical certificate issued by Dr. J.S. Yadav that the concerned workman was under his treatment since 20/05/2005 to 11/06/2005. Moreover there is medical certificate which shows that the concerned workman was sick from 13/06/2005 to 06/09/2005. Additionally, the medical prescription of shows that the concerned workman was under treatment at Central Institute of Psychiatry, Ranchi and Hospital of BCCL during the period of enquiry. Further there is a death certificate issued by Dr. S.C. Biswas of BCCL in which it is mentioned under the heading cause of death as very poor general condition following C.R. failure.

26. Now after analyzing all the documents under Exhibit W-3 series it is quite evident that the concerned workman namely Biswanath Mandal was suffering from illness since February 2005 and he was under treatment of Dr. J.S. Yadav from 20/05/2005 to 11/06/2005. Moreover in course of treatment the concerned workman died on 14/03/2006 leaving behind his wife, son and three daughters.

27. Now on the basis of the medical report/prescription of the concerned workman it is quite evident that the concerned workman was suffering from illness from 20/05/2005 to 11/06/2005, so he was absent from duty for 21 days and subsequently he was dismissed from service which is shockingly disproportionate to his guilt.

28. At this stage it is required to mention here that the Exhibit M-5 shows that the concerned workman was earlier absent from his duty and in this regard he was censured, awarded punishment of ten days suspension without wages and warning was given to him (Exhibit M-7, Exhibit M-8 & Exhibit M-9).

29. In this regard it is important to mention here that the Exhibit W-3 series show that the concerned workman was suffering from various ailment and he was treated at hospital of BCCL, private clinics and the Central Institute of Psychiatry, Ranchi and in the death report it is mentioned under heading of death as very poor general condition.

Hence, it is quite apparent that the concerned workman was suffering from various ailments, so he might have failed to attend his duty on earlier occasions.

30. In view of above discussion the Tribunal finds that the concerned workman was dismissed from service for his absence from duty for twenty one days only whereas he was suffering from illness and he died in course of treatment, so the punishment of dismissal awarded to him is disproportionate to the gravity of the misconduct and there is existence of mitigating circumstances which requires reduction of punishment.

Hence the Tribunal comes to the conclusion that the order of dismissal of concerned workman namely Biswanath Mandal is not justified, so the order of dismissal dated 07/08-12-2005 is set aside.

31. After considering all the facts and circumstances of the case the Tribunal renders the following award:—

“The action of the management of Basantimata Colliery of M/s. BCCL in dismissing Sri Biswanath Mondal, Badli UG Loader, from the services of the company vide officer order dated 07/08-12-2005 is not fair and justified.”

33. Hence, the concerned workman is entitled for relief which is as under:-

The management of Basantimata Colliery is directed to treat the service of the concerned workman namely Biswanath Mandal on rolls of company till the date of his death and to make payment of all back wages as well as all consequential benefits to the legal heirs of the concerned workman as per provisions of NCWA.

34. The management of Basantimata Colliery M/s. BCCL is directed to implement the award within one month after publication of the Award in official Gazette.

This is the Award of the Tribunal.

D. K. SINGH, Presiding Officer

नई दिल्ली, 23 नवम्बर, 2020

का.आ. 1038.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 12/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2020 को प्राप्त हुआ था।

[सं. एल-20012/67/2005-आई आर (सीएम-1)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 23rd November, 2020

S.O. 1038.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No.12 of 2006) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 16.11.2020.

[No. L-20012/67/2005-IR (CM-I)]

RAJENDER SINGH, Desk Officer/ Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

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

Reference: No. 12/2006

Employer in relation to the management of Barka Sayal Area of M/s. CCL.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For Employer : Sri D.K. Verma, Advocate

For workman : Sri C. Prasad, Advocate

State : Jharkhand.

Industry: Coal

Dated: 29.10.2020

AWARD

By Order No.L-20012/67/2005- IR(C-I) dated 09.12.2005, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Urimari Underground Project, Barka Sayal Area, M/s C.C.Ltd. P.O.-Sayal, Distt.- Hazaribag (Jharkhand) in superannuating Sri Puran Mahato, Ex-Tramrer, Gr. III w.e.f. 01/07/2004 is fair and justified? If not, to what relief is the workman entitled?”

2. After receipt of the reference, both the parties were noticed. The son of concerned workman Late Puran Mahto has filed his written statement of claim on 16/03/2012 and the management CCL Sayal ‘D’ Colliery has filed its written statement on 07/11/2012.

3. The Sponsoring Union/workman has filed rejoinder to the written statement of the management on 19/02/2013.

After receiving of reference of this case by the Tribunal, it was informed that the concerned workman namely Puran Mahato died on 28/09/2009 and written statement has been filed by his son namely Rajendra Mahato.

4. The claim of the substituted son of concerned workman namely Puran Mahato as per written statement filed by him is as follows:-

That the concerned workman namely Puran Mahato was appointed in Sarubera Colliery on 18/08/1973 in Form ‘B’ Register which is statutory register of management and at the time of appointment his date of birth was recorded as 24/12/1952 and thereafter the recorded date of birth by the management of Sarubera Colliery was forwarded to Regional Commissioner, Coal Mines Provident Fund, Ranchi vide letter no. CMPF/2003/522 dated 08/08/2003 which had been confirmed by Regional Commissioner CMPF, Dhanbad. In the meantime the concerned workman was transferred from Sarubera Colliery to K.K. Colliery and again from K.K. Colliery to Urimari Underground Project in Barkasayal Area of CCL. The Regional Commissioner, Coal Mines Provident

Fund, Ranchi had recorded the date of birth of concerned workman as 24/12/1952 which was confirmed by vide letter no. 1774 dated 30/08/2003 of Personnel Officer, Urimari Underground Project and the concerned workman was allotted CMPF No. R/53-3318 but after transfer of the concerned workman from Sarubera Colliery to K.K. Colliery the date of birth was mentioned as 18/06/1944 in the Pay Slip resulting deprivation of LLT and LLTC for last nine years. The concerned workman wrote several letters to the Director (Technical) Project and Planning, Darbhanga House, Ranchi which was received by management on 28/05/2003 for correction of his date of birth in service but no action was taken. After that the concerned workman wrote a letter dated 18/06/2003 to Project Manager, Urimari Underground Mines enclosing the letter of Dy. Personnel Manager, Sarubera Colliery and requested him to correct his date of birth but no action was taken. After that the concerned workman again wrote a letter to Director (Technical) Project & Planning, Darbhanga House, Ranchi which was received by the management on 10/09/2003 for correction of his date of birth but Manager neither corrected his date of birth nor replied to his letters. The Project Officer, Sayal 'D' Project had confirmed to the Assistant Labour Commissioner (Central) that the concerned workman namely Puran Mahato had come on transfer from Sarubera Colliery to K.K. Colliery and thereafter Urimari Underground Project on 31/07/1995 but no service sheet was sent by K.K. Colliery to Urimari Underground Project and his payment was being made on the basis of LPC of K.K. Colliery and in the Pay Slip original date of birth was mentioned as 18/06/1944, so the date of birth of concerned workman had been written as 18/06/1944 in Form 'B' register on the basis of his Pay Slip. The service book of Puran Mahato was lost. The Dy. Personnel Manager, Sarubera Colliery had informed the Personnel Manager, Urimari Underground Project P.O. Sayal, Distt. Hazaribagh vide his letter no. PO/SAR/CMPF/2003/522 dated 08/09/2003 informing details of service particulars of concerned workman including his date of birth as 24/12/1952. The concerned workman had got a certificate issued by Colliery Manager, Sarubera Colliery in which his date of appointment and date of birth had mentioned as 18/05/1973 and 24/12/1952 respectively but the management in violation of the Principles of Natural Justice had superannuated the concerned workman from his service vide Ref. No. PO/URI/PD/Retirement/Notice/2004/55 dated 21/04/2004 w.e.f. 01/07/2004. The concerned workman was an illiterate person who had not given proper information by his co-workers, so he could not file written statement and he died on 28/09/2009 leaving behind his substituted son and other family members.

5. A prayer has been made to pass an award that the action of the management of Urimari Underground Project in superannuating the concerned workman Puran Mahato is not fair and justified and he is entitled back wages with all consequential benefits of his service.

6. On the other hand the case of the management of Urimari Underground Project Barkasayal Area of M/s. CCL as per its written statement is as follows:-

That the present reference case is not maintainable in law or in facts. The party who has raised the dispute has not filed written statement according to Rule 10 B of the I.D. Act within the stipulated period and after laps of several years s/o late Puran Mahato has submitted written statement who has got no locus standi. The jural relationship between the management and the concerned workman had ended after his representation from service and such persons are not workman within the meaning of Section 2 (s) of the I.D. Act. The concerned workman namely Puran Mahato came on transferred from Sarubera Colliery, Kuju during the later part of the year 1979 and his date of birth had been recorded as 18/06/1944 in 'B' Form record and the same had been accepted by the concerned workman by putting his LTI. The 'B' Form record is a statutory record under the provision of Mines Act and the Rules framed thereunder and the particulars including the date of birth of the employee recorded therein need not be interfered with. The concerned workman was all along aware of his date of birth i.e. 18/06/1944 recorded in the company record and the same had been regularly communicated to him in his pay slip. The concerned workman was superannuated on the basis of his date of birth available in the company record vide notice dated 21/04/2004 w.e.f. 01/07/2004. The dispute regarding the age/date of birth is not maintainable at the fall end of the employment and the concerned workman had raised the dispute after his superannuation.

7. The management has stated that the statements made in Para no- 1, 2 and 3 of the claim of statement are matter of records and statement made in Para no. 4,5,6,8,9,10,11,12,13,14,15,17,18,19 & 20 are not correct and statement made in Para no- 7 is not relevant and statement made in Para-16 is false and baseless. The concerned workman has submitted the rejoinder to the written statement of the management in which he has categorically mentioned that the statement made in Para 2 and 6 are misconceived. The statement made in Para 3,4 and 5 is the reproduction of the advice given in the order of reference the statement made in Para 7 and 8 against the all cannons of laws. Statement made in Para 9 is not fully correct. The statement made in Para 10 and 11 are denied and statement made in Para 13 is liable to be set aside.

8. The concerned workman has examined two witnesses. They are WW-1, Brij Nandan Singh and WW-2, Rajendra Mahato.

The WW-1, Brijnandan Singh has deposed before Tribunal that he was Ex. Vice President of CCL colliery Karamchari Sangh (Bhartiya Mazdoor Sangh) in CCL Zone and he has knowledge that Late Puran

Mahato had raised an industrial dispute individually u/s. 10(1) (d) of Industrial Dispute Act and after his death his son Rajendra Mahato was substituted. He has also deposed that the management had arbitrarily superannuated Late Puran Mahato from his service. He has also deposed that Late Puran Mahato was appointment in Sarubera Colliery on 18/08/1973 and his date of birth was recorded as 24/12/1952. He has further stated that details of the concerned workman was forwarded to CMPF Office vide letter no. CMPF/2003/522 dated 08/08/2003 for confirmation of his date of birth. He has also stated that the concerned workman was transferred from Sarubera Colliery to K.K. Colliery and again from K.K. Colliery to Urimari Underground Project in Barkakana Sayal Area. He has also stated that the date of birth of concerned workman was recorded as 24/12/1952 in Form 'B' register which was confirmed by Regional Commissioner, Coal Mines Provident Fund, Ranchi through their letter no. 1774 dated 30/08/2003 of Personnel Officer, Urimari Underground Project to the staff Officer Barka Sayal Area CCL. He has further stated that the concerned workman was allotted CMPF No. R/53-3318 on transfer from K.K. Colliery, but pay slip was issued indicating his date of birth as 18/06/1944 which was wrong. He has also stated that the Late Puran Mahato had written several letters to the management regarding wrong entry of his date of birth but no action was taken. He has also stated that the service book of the concerned workman was lost and the same was confirmed by the letter written by Project Officer, Sayal 'D' Project to the Assistant Labour Commissioner, Ranchi. He has further stated that the concerned workman died on 28/09/2009 during the pendency of this reference case.

9. In the cross-examination he has stated that he is not a office bearer of any union. He could not show any paper that he was elected as Vice President. He has further deposed that he has neither seen the birth certificate nor the Voter I. Card of the concerned workman. He has not raised the dispute.

10. The WW-2, Rajendra Mahto has deposed before the Tribunal that he is legal son of Late Puran Mahto who was working as Trammer Grade III, Urimari Underground Project, Barkakana Sayal Area of CCL ltd. and he has been substituted in place of this deceased father Late Puran Mahto in this reference case. He has also stated that at the time of appointment of his deceased father his date of birth was recorded as 24/12/1952 in service excerpts and prescribed form of CMPF which was forwarded to the office of R.C., C.M.P.F., Ranchi. He has further stated that his father was appointed on 18/08/1973 in Sarubera Colliery and from there he was transferred to K.K. Colliery but subsequently transferred to Urimari Underground Project of Barkakana Sayal Area of CCL. He has further stated that the service book, Form 'B' register etc in respect of his father were not sent to Urimari Underground Project and on the basis of pay slip sent to this project in which the date of birth of his father was wrongly recorded as 18/06/1944. He has also stated that his deceased father was superannuated from service w.e.f. 01/07/2004 on the basis of wrong entry of his date of birth as 18/06/1944. He has also deposed that his father had written several letters to the management of Urimari Underground Project but his date of birth was not corrected. He has further deposed that his father had raised an industrial dispute.

11. In the cross-examination he has stated that he is natural son of the deceased and he can produce paper to show the age of his father as 24/12/1952. He has further stated that his father was superannuated on 01/07/2004 while he was working in Urimari Colliery on the basis of his date birth recorded as 1944.

12. The workman has proved the following documents which are marked as:-

Exhibit W-1- Original letter dated 08/08/2003 of Dy. Personnel Manager, Sarubera Colliery to the Personnel Manager Urimari U.G. Project.

Exhibit W-2- Photo Copy of letter dated 30/08/2003 of Personnel Officer, Urimari Project to Staff Officer (P) Barka Sayal Area.

Exhibit W-3- Photo Copy of letter dated 18/08/2003 of Puran Mahato addressed to Project Officer, Urimari Underground Mines, received by management on 19/08/2003.

Exhibit W-4- Photo Copy of letter dated 06/01/2004 of Puran Mahato addressed to Director (P), Darbhanga House, Ranchi.

Exhibit W-5- Photo Copy of letter of Puran Mahato addressed to Chairman-Cum-Managing Director, CCL, Darbhanga House, Ranchi received by his office on 06/04/2004.

Exhibit:W-6- Photo Copy of letter no. PO/URI/PD/Retirement/Notice/2004/55 dated 21/04/2004 of Project Manager, Urimari Underground Project addressed to Puran Mahato, Trammer Cat-III Urimari U/G Project for retirement from service.

Exhibit W-7- Photo Copy of letter of Puran Mahato addressed to Director (Technical) Project & Planning, Darbhanga House, Ranchi which was received by management on 10/09/2003.

Exhibit W-8- Photo Copy of letter of Puran Mahato addressed to Director(P) Darbhanga House, Ranchi received by office on 07/04.

Exhibit W-9- Photo Copy of Letter of Puran Mahto addressed to Project Officer, Urimari Underground Project, Barka Sayal Area received by Office on 21/04/2004.

Exhibit W-10- Photo Copy of letter of Project Officer, Sayal 'D' Project to A.L.C. (C), Ranchi total two sheets.

Exhibit W-11- Photo Copy of letter no. PO/CGM(BS)/Dup.S. Sheet/1513 P.Mahto/Uri(UG)/04 dated 17/04/2004 of Staff Officer (P&A)B5) addressed to the Project Manager Urimari (UG) Project.

13. The management has examined only one witness. He is MW1, Abhay Kumar Singh.

The MW-1 Abhay Kumar Singh has deposed that he is working in Urimari Underground Project and he has filed relevant portion of original form 'B' register in which name of the concerned workman is mentioned in serial no. 3 with date of his birth as 18/06/1944 and the same is marked as Exhibit M-1. He has further deposed that the concerned workman was previously posted in K.K. Colliery and after its closing the concerned workman came to their colliery. He has also filed the original form 'B' register of K.K. Colliery which is marked as Exhibit M-2. He has also stated that documents are permanent record and maintained regularly. He has also proved the original pay slip of concerned workman which is marked as Exhibit M-3 in which the date of birth of concerned workman is mentioned as 18/06/1944.

14. In the cross-examination he has deposed that he has no personal knowledge of the documents and there is no date on the concerned page. He has further stated that the page of Exhibit M-1 is signed by the Personnel Manager on 07/05/1997. He has also stated that the concerned workman was initially appointed at Sarubera Colliery and the Exhibit W-1 is not their documents. He has also stated that he has not filed Form 'B' Register of Sarubera Colliery of CCL. He has further stated that before coming to Urimari Colliery the concerned workman was at K.K. Colliery and before that he joined at Sarubera Colliery. He has also stated that he got the payment slip during the work man's transfer but the Form 'B' Register remains on the place where he first joined. He has further stated a fresh Form 'B' Register has been opened on the basis of payment slip and other documents. He has also deposed that he got the date of birth of concerned workman on the basis of payment slip.

15. The management has proved the following documents which are marked as:-

Exhibit M-1- Original Form 'B' Register of this in which name of the concerned workman has been mentioned in serial no. 3 where his date of birth has been mentioned as 18/06/1944.

Exhibit M-2- Original form 'B' register of K.K. Colliery.

Exhibit M-3- Original Pay Slip of concerned workman in which the date of birth of concerned workman is mentioned as 18/06/1944.

16. The learned representative of the concerned workman has submitted before the Tribunal that this reference case was initiated by Late Puran Mahto but on 28/09/2009 he died as a result his son Rajendra Mahto was substituted in this case in his place. He has also submitted that the concerned workman namely Puran Mahto was appointed in Sarubera Colliery as trammer and at that time his date of birth was recorded as 24/12/1952. He has also argued that the date of birth of Late Puran Mahto as 24/12/1952 was forwarded to Regional Commissioner, CMPF Office, Ranchi vide letter no. CMPF/2003/522 dated 08/08/2003. He has also submitted that Late Puran Mahto was transferred to K.K. Colliery and subsequently Urimari Underground Project in Barka Sayal Area of M/s. CCL where he retired on 01/07/2004. He has also argued that Late Puran Mahto had submitted several representation before the management for correction of his date of birth but no action was taken. He has further argued that Exhibit W-1 and Exhibit W-2 are clear proof of date of birth of Late Puran Mahto as 24/12/1952 and Exhibit W-3 to Exhibit W-5 are the representation submitted to the management for correction of his date of birth. He has also submitted that the management had not produced the original Form 'B' Register of Late Puran Mahto recorded in Sarubera Colliery where he was initially appointed and the Exhibit M-1 and Exhibit M-2 are manufactured documents on which reliance could not be placed. He has also submitted award may be passed in favour of the Late Puran Mahto with a direction to reinstate him and full back wages as well as consequential benefits with employment of his son namely Rajendra Mahto on compassionate ground.

17. On the other hand the learned lawyer of management has submitted that after retirement of Late Puran Mahto he has no longer workman of the company, so no industrial dispute can be raised under I.D. Act. He has also submitted that date of birth of Late Puran Mahto was recorded as 18/06/1944 in Form 'B' Register which had been duly accepted by him by putting his LTI therein, so the concerned workman was aware of his date of birth. He has also submitted that it is settled principles of law that the dispute regarding date of birth is not maintainable at the fag end of employment and in this case the industrial dispute has been raised even after the date of superannuation, so there is no merit in this case and consequently the workman is not entitled for any relief.

FINDINGS

18. In this case it is an admitted fact that the concerned workman Late Puran Mahto was appointed as Trammer in Sarubera Colliery and he was transferred to K.K. Colliery and subsequently transferred to Urimari Underground Project under Bakra Sayal Area of M/s. CCL. It is also an admitted fact that the Late Puran Mahto got superannuated from 01/07/2004.

19. It is the case of the son of concerned workman that date of birth of his father was initially recorded as 24/12/1952 at the time of his appointment in 1973 at Sarubera Colliery and he was subsequently transferred to K.K. Colliery from where he was transferred to Urimari Underground Project under Barka Sayal Area of M/s. CCL where he was arbitrarily superannuated from 01/07/2004.

20. It is further case of the son of Late Puran Mahto that the date of birth of his father, recorded in Sarubera Colliery was forwarded to CMPF, Dhanbad and after getting knowledge of wrong entry of his date of birth his father had submitted several representation before the management.

21. On the other hand it is the case of the management that the date of birth of Late Puran Mahto had been recorded as 18/06/1944 in the Form 'B' Register record and he had full knowledge about his date of birth as he had put his signature on the Form 'B' Register.

It is further case of the management that the Late Puran Mahto had raised the dispute at the fag end of service, so it is not maintainable.

Now in the light of pleading of both the parties, the Tribunal thinks it proper to analyze oral and documentary evidence of both the parties.

22. At the outset of discussion it is required to mention here that the WW-1, Brij Nandan Singh has deposed that date of birth of Late Puran Mahto was recorded as 24/12/1952 in Sarubera Colliery on 18/08/1973 and the same was forwarded to CMPF Office for confirmation of his date of birth. He has also stated that Late Puran Mahto was allotted CMPF No. R/53-3318 but on his transfer from K.K. Colliery his date of birth had been mentioned as 18/06/1944 on the pay slip. He has also stated that Late Puran Mahto had requested the management for correction of his date of birth and the Late Puran Mahto Was illiterate. There is nothing in the cross-examination which requires discussion here.

23. The WW-2, Rajendra Mahto has also stated that at the time of appointment of his father his date of birth was recorded as 24/12/1952 and the same was forwarded to CMPF, Dhanbad. He has also stated that his Late father was transferred to K.K. Colliery and thereafter to Urimari Underground Project but his Form 'B' Register was not sent to Urimari Underground Project as a result the date of birth of his father was recorded as 18/06/1944 in the service book. He has also stated that his father was superannuated from 01/07/2004 considering his date of birth 18/06/1944.

24. The MW-1, Abhay Kumar Singh has proved the Form 'B' Register of Urimari Underground Project and Form 'B' Register of K.K. Colliery which is marked as Exhibit M-1 and Exhibit M-2 respectively. He has also proved original pay slip of Late Puran Mahto in which his date of birth mentioned as 18/06/1944 which is marked as Exhibit M-3. In the cross-examination he has admitted that the concerned workman was initially appointed at Sarubera Colliery of M/s. CCL but his Form 'B' Register remained on the place where he first joined and he had prepared Form 'B' Register afresh on the basis of payment slip. He has also stated that he has not filed Form 'B' Register of Sarubera Colliery of M/s. CCL.

25. Now, coming to the documentary evidence it is quite apparent that the Exhibit W-1 is a letter written by Personnel Manager, Sarubera Colliery to Personnel Manager Urimari Underground Project mentioning the date of birth of Late Puran Mahto as 24/12/1952. Further the Exhibit W-2 is a letter of Personnel Officer, Urimari Project written to Staff Officer (P) Barka sayal Area regarding reopening of S/Sheet and determination of age of Puran Mahto on the ground that CMPF Commissioner, Ranchi had informed his date of birth as 24/12/1952. The Exhibit W-3, W-4, W-4, W-7, W-8 and W-9 are the representation of the Late Puran Mahto submitted to the management in the year 2003 and 2004 for correction of his date of birth. Exhibit W-6 is the notice of retirement from service. Exhibit W-10 is a letter written to Assistant Labour Commissioner regarding decision of competent authority. Exhibit W-11 is opening of duplicate S/Sheet of Puran Mahto.

26. Now, coming to the documentary evidence of the management it appears that the Exhibit M-1 is the Form 'B' Register of Urimari Project in which the date of birth of Late Puran Mahto has been mentioned as 18/06/1944. The Exhibit M-2 which is Form 'B' Register of K.K. Colliery in which the date of birth of Late Puran Mahto has been mentioned as 18/06/1944. Exhibit M-3 is the Original Pay Slip of Late Puran Mahto of Urimari Project in which his date of birth has been mentioned as 18/06/1944.

27. It is relevant to mention here that the management has not produced the original Form 'B' Register of Sarubera Colliery. The Exhibit M-1 and M-2 are the Form 'B' Register of Urimari Underground Project and K.K. Colliery respectively in which his date of birth has been mentioned as 18/06/1944. The Exhibit W-1 is a

letter of Dy. Personnel Manager, Sarubera Colliery to Urimari Underground Project mentioning the name and details of the Late Puran Mahto in which his date of birth has been mentioned as 24/12/1952. Further the Exhibit W-2 shows that CMPF Commissioner, Ranchi had informed the Urimari Underground Project regarding date of birth of Late Puran Mahto as 24/12/1952. Further the Exhibit W-10 it has been mentioned that the S/Sheets of Late Puran Mahto could not be traced of by the Sarubera Colliery and Senior Personnel Manager had given written comments on 26/02/2001 on the letter that S/Sheet of Puran Mahto was not available in the office of Sarubera Colliery.

28. Now the Exhibit W-1 which is letter written by Dy. Personnel Manager, Sarubera Colliery in which the date of birth of Late Puran Mahto has been subsequently mentioned as 24/12/1952 and this documents has not been denied by the management. Moreover in the letter of CMPF Commissioner, Ranchi, the date of birth of Late Puran Mahto has been mentioned as 24/12/1952. Further the management has failed to produce the original S-Sheet/Form 'B' Register of Sarubera Colliery of Late Puran Mahto where he was appointed.

29. It has been the submission of the learned lawyer of management that the concerned workman had raised the issue of correction of his date of birth of birth at fag end of retirement, so it is not maintainable.

It is required to mention here that the deceased workman Late Puran Mahto had submitted his representation for correction of his date of birth. The Exhibit W-3 to W-9 are those representation which had been submitted by the deceased Late Puran Mahto before competent authority. The first representation was submitted before the Project Officer Urimari Underground Mines on 19/08/2003, so it cannot be said that the concerned workman had raised the issue of correction of his date of birth at the fag end of retirement. Hence the argument of learned lawyer of management is not tenable.

30. In view of such facts the Tribunal comes to the conclusion that the management had wrongly entered the date of birth of Late Puran Mahto as 18/06/1944 in place of 24/12/1952.

Now, the Tribunal renders the following award:-

That the action of the management of Urimari Underground Project, Barka Sayal Area, M/s. CCLtd. P.O- Sayal, Distt.- Hazaribag (Jharkhand) in superannuating Sri Puran Mahto, Ex-Trammer, Gr. III w.e.f. 01/07/2004 is not fair and justified.

31. Hence, the concerned workman is entitled for relief which is as under:-

The management Urimari Underground Project, Barka Sayal Area under CCL is directed to record the date of birth of Late Puran Mahto as 24/12/1952 in the Form 'B' Register and treat him on rolls of service of Urimari Underground Project till his death on 28/09/2009 as per corrected date of birth i.e. 24/12/1952.

Further, the management of Urimari Underground Project Barka Sayal Area is directed to pay all the back wages of the concerned workman with consequential benefits as per NCWA to Rajendra Mahto, substituted son of Late Puran Mahto.

This is the Award of the Tribunal.

D. K. SINGH. Presiding Officer