



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-सा.-01022021-224859
CG-DL-W-01022021-224859

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 03] नई दिल्ली, जनवरी 17—जनवरी 23, 2021 शनिवार/ पौष 27—माघ 3, 1942
No. 03] NEW DELHI, JANUARY 17—JANUARY 23, 2021, SATURDAY/PAUSHA 27—MAGHA 3, 1942

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, 20 जनवरी, 2021

का. आ. 41.—भारतीय जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, एलआईसी हाउसिंग फाइनेंस लिमिटेड के मुख्य कार्यकारी अधिकारी श्री सिद्धार्थ मोहन्ती (जन्म तिथि: 8.6.1963) को दिनांक 1.2.2021 को या इसके पश्चात पदभार ग्रहण करने की तारीख से उनकी अधिवर्षिता की तारीख (अर्थात् 30.6.2023) तक अथवा अगले आदेशों तक, जो भी पहले हो, 2,05,400-2,24,400 रुपए के वेतनमान में भारतीय जीवन बीमा निगम के प्रबंध निदेशक के पद पर नियुक्त करती है।

[फा. सं. ए-15011/02/2020-बीमा-I]

विनोद कुमार, अवर सचिव

MINISTRY OF FINANCE**(Department of Financial Services)**

New Delhi, the 20th January, 2021

S.O. 41.—In exercise of the powers conferred by section 4 of the Life Insurance Corporation of India Act, 1956 (31 of 1956), the Central Government hereby appoints Shri Siddhartha Mohanty (date of birth: 8.6.1963), Chief Executive Officer, LIC Housing Finance Limited as Managing Director, Life Insurance Corporation of India, in the pay scale of Rs. 2,05,400-2,24,400 with effect from the date of assumption of charge of the post on or after 1.2.2021 and up to the date of his superannuation (i.e., 30.6.2023), or until further orders, whichever is earlier.

[F. No. A-15011/02/2020-Ins.I]

VINOD KUMAR, Under Secy.

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

नई दिल्ली, 18 जनवरी, 2021

का.आ. 42.—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 अरूणाचल प्रदेश राज्य सरकार के सतर्कता विभाग : सिविल सचिवालय, पपुमपारे, ईटानगर की अधिसूचना सं. वीआईजी-18/2011/619, दिनांक 29 अप्रैल, 2020 के माध्यम से जारी सहमति से, भारतीय दण्ड संहिता (1860 का 45) की धाराएं 409, 468, 471, 477-ए, 34 और भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) की धारा 13(2) सपठित धाराएं 13(1)(सी) & 13 (1)(डी) (i) & (ii) के तहत दर्ज एसआईसी (वीआईजी) पीएस मामला सं. 01/2012 (पूर्व में भारतीय दण्ड संहिता की धाराएं 409, 468, 471, 477-ए, 34 के तहत बमोडीला मामला सं. 12/2011 के रूप में दर्ज) से संबंधित अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) 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 समस्त अरूणाचल प्रदेश राज्य में करती है।

[फा. सं. 228/11/2020-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

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

New Delhi, the 18th January, 2021

S. O. 42.—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 Arunachal Pradesh, issued vide Notification No. VIG-18/2011/619 dated 29th April, 2020 of Department of Vigilance : Civil Secretariat, Papumpare, Itanagar, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Arunachal Pradesh for investigation into the offence(s) relating to SIC(VIG) PS Case No. 01/2012 under sections 409, 468, 471, 477-A, 34 of the Indian Penal Code (45 of 1860) and section 13(2) r/w sections 13(1)(c) & 13(1)(d)(i) & (ii) of the

Prevention of Corruption Act, 1988 (49 of 1988) (Previously registered as Bomdila Case No. 12/2011 under sections 409, 468, 471, 477-A, 34 of the Indian Penal Code); 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. 228/11/2020-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 19 जनवरी, 2021

का.आ. 43.—केन्द्र सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधिवक्ता, श्री पार्थ घोष को सीबीआई मामला सं. आरसी-2(ई)/87-कोल. से उद्भूत 2017 की सीआरआर सं. 3639 और सीबीआई मामला सं. आरसी-3(एस)/07-कोल. से उद्भूत 2018 की सीआरआर सं. 2239 का दिल्ली विशेष पुलिस स्थापन (केंद्रीय अन्वेषण ब्यूरो) की ओर से कलकत्ता उच्च न्यायालय, कोलकाता में और इन मामलों से उद्भूत या उससे संबंधित अथवा उसके आनुषंगिक अन्य मामलों का संचालन करने के लिए नियुक्ति की तारीख से तीन वर्ष की अवधि के लिए या मामले का निपटान होने तक, जो भी पहले हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/05/2020-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 19th January, 2021

S. O. 43.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Partha Ghosh, Advocate as Special Public Prosecutor for conducting CRR No. 3639 of 2017 arising out of CBI Case No. RC-2(E)/87-Kol and CRR No. 2239 of 2018 arising out of CBI Case No. RC-3(S)/07-Kol, on behalf of Delhi Special Police Establishment (Central Bureau of Investigation) in the Calcutta High Court at Kolkata and for other matters arising out of these cases or connected therewith or incidental thereto for a period of three years from the date of appointment or till disposal of the cases, whichever is earlier.

[F. No. 225/05/2020-AVD-II]

S.P.R. TRIPATHI, Under Secy.

नई दिल्ली, 19 जनवरी, 2021

का.आ. 44.—केन्द्र सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधिवक्ता, श्री अर्निबन मित्रा को सीबीआई मामला सं. आरसी-2(ई)/87-कोल. से उद्भूत 2017 की सीआरआर सं. 3639 और सीबीआई मामला सं. आरसी-3(एस)/07-कोल. से उद्भूत 2018 की सीआरआर सं. 2239 का दिल्ली विशेष पुलिस स्थापन (केंद्रीय अन्वेषण ब्यूरो) की ओर से कलकत्ता उच्च न्यायालय, कोलकाता में और इन मामलों से उद्भूत या उससे संबंधित अथवा उसके आनुषंगिक अन्य मामलों का संचालन करने के लिए नियुक्ति की तारीख से तीन वर्ष की अवधि के लिए या मामले का निपटान होने तक, जो भी पहले हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/05/2020-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 19th January, 2021

S. O. 44.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Anirban Mitra, Advocate, as Special Public Prosecutor for conducting CRR No. 3639 of 2017 arising out of CBI case No. RC-2(E)/87-Kol and CRR No. 2239 of 2018 arising out of CBI Case No. RC-3(S)/07-Kol, on behalf of Delhi Special Police Establishment (Central Bureau of Investigation) in the Calcutta High Court at Kolkata and for other matters arising out of these cases or connected therewith or incidental thereto for a period of three years from the date of appointment or till disposal of the cases, whichever is earlier.

[F. No. 225/05/2020-AVD-II]

S.P.R. TRIPATHI, Under Secy.

नई दिल्ली, 19 जनवरी, 2021

का.आ. 45.—केन्द्र सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री रवि प्रकाश और श्री जोहेब हुसैन अधिवक्ताओं को, विशेष न्यायाधीश न्यायालय, भ्रष्टाचार निरोध, केंद्रीय अन्वेषण ब्यूरो, गाजियाबाद और विधि द्वारा स्थापित अपील या पुनरीक्षण न्यायालयों में केंद्रीय अन्वेषण ब्यूरो मामला सं. आरसी 1202019ए0004 से उद्भूत अपील, पुनरीक्षण या अन्य मामलों हेतु दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) द्वारा संस्थित उक्त मामले के अन्वेषण के संचालन के लिए, उनकी नियुक्ति की तारीख से तीन वर्ष के लिए या मामले के निपटारे तक, इनमें से जो भी पूर्वतर हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/08/2020-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 19th January, 2021

S. O. 45.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri. Ravi Prakash and Shri. Zoheb Hossain, Advocates as Special Public Prosecutors for conducting prosecution of Central Bureau of Investigation Case No. RC1202019A0004, Central Bureau of Investigation, Anti Corruption Branch, Ghaziabad, instituted by Delhi Special Police Establishment (CBI) in the Court of Special Judge, Anti Corruption, Central Bureau of Investigation, Ghaziabad and appeal, revision or other matters arising out of the said case in appellate or revisional courts established by law, for a period of three years from the date of their appointment or till the disposal of the case, whichever is earlier.

[F. No. 225/08/2020-AVD-II]

S.P.R. TRIPATHI, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 18 जनवरी, 2021

का.आ. 46.—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 इन्सपेक्टोरेट ग्रिफिथ इंडिया प्राइवेट लिमिटेड, द्वार संख्या 23-13-28, प्रथम एवं द्वितीय तल, फातिमा बिल्डिंग, थॉम्पसन स्ट्रीट, विशाखापत्तनम-530001 (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, मैंगनीज अयस्क, फेरोमैंगनीज तथा बाक्साइट और समूह-II, अर्थात्, क्रोम अयस्क तथा बैराइट्स के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन विशाखापत्तनम पत्तन, गंगावरम पत्तन, काकीनाडा पत्तन और कृष्णपट्टनम 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 का निर्यात (निरीक्षण) नियम, 1965 खनिज और अयस्क समूह-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन विनिर्दिष्ट निरीक्षण के समय अपनाई जाने वाली निरीक्षण की पद्धति की जाँच के लिए 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-16014/3/2021-निर्यात निरीक्षण]

दिवाकर नाथ मिसरा, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)

New Delhi, the 18th January, 2021

S. O. 46.—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 Private Limited, Door No. 23-13-28, 1st and 2nd Floor, Fatima Building, Thompson Street, Visakhapatnam – 530001 (hereinafter referred to as said agency), 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, Manganese Ore, Ferromanganese and Bauxite; and Group – II, namely, Chrome Ore and Barytes 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 20th December, 1965 and S.O.3978 dated 20th December, 1965, respectively, prior to export of the said Minerals and Ores at Visakhapatnam Port, Gangavaram Port, Kakinada Port and Krishnapatnam 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 carry 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;
- (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-16014/03/2021-Export Inspection]

DIWAKAR NATH MISRA, Jt. Secy.

कोयला मंत्रालय

नई दिल्ली, 22 जनवरी, 2021

का.आ. 47.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी, भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख, 3 अक्टूबर, 2020 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 875, तारीख 28 सितम्बर, 2020 के प्रकाशन पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) और भूमि में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, डाकघर संख्या 60, जिला बिलासपुर-495006, छत्तीसगढ़ (जिसे इसमें इसके पश्चात् उक्त सरकारी कम्पनी कहा गया है), ऐसे निबंधनों और शर्तों का जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिये तैयार है ।

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त 37.619 हेक्टर (लगभग) या 92.96 एकड़ (लगभग) भूमि में या उस पर के सभी अधिकार, तारीख 3 अक्टूबर, 2020 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त सरकारी कम्पनी में निहित हो जाएंगे, अर्थात् :-

- (1) सरकारी कम्पनी, उक्त अधिनियम के उपबंधों और अन्य सुसंगत विधि के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों आदि से संबंधित और वैसी ही मदों की बाबत सभी संदाय करेगी;
- (2) उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा जिसमें सरकारी कम्पनी द्वारा शर्त (1) के अधीन, संदेय रकमों का अवधारण करने के प्रयोजनों के लिये और ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता करने के लिये नियुक्त व्यक्तियों के संबंधों में उपगत सभी व्यय वहन किये जायेंगे और इस प्रकार निहित उक्त भूमियों में या उस पर के अधिकारों के लिये या उनके संबंध में विधिक कार्यवाहियों, अपील सहित, आदि की बाबत उपगत सभी व्यय भी सरकारी कम्पनी द्वारा वहन किये जायेंगे;
- (3) सरकारी कम्पनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;
- (4) सरकारी कम्पनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि और उसके अधिकार को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी ।
- (5) सरकारी कम्पनी, ऐसे निदेशों और शर्तों का, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिये दिए जाएं या अधिरोपित की जाएं, पालन करेगी ।

[फा. सं. 43015/09/2017-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 22nd January, 2021

S. O. 47.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 875, dated the 28th September, 2020 published in the Gazette of India, Part II, Section 3, sub-section (ii), dated the 3rd October, 2020 issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and the all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act.

And whereas, the Central Government is satisfied that the South Eastern Coalfields Limited, Seepat Road, P. B. No. 60, District-Bilaspur-495006, Chhattisgarh (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby direct that the land measuring 37.619 hectares (approximately) or 92.96 acres (approximately) and all rights in or over the said lands so vested, shall, with effect from 3rd October, 2020 instead of continuing to so vest in the Central Government, shall vest in the Government Company subject to the following terms and conditions namely:-

- (1) the Government Company shall make all payments in respect of compensation, interest, damages, etc. and the like, as determined under the provisions of the said Act and other relevant law;
- (2) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable by the Government Company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal including all expenditure incurred in respect of all legal proceedings, including appeals, etc. for or in connection with the rights, in or over the said land, so vested, shall also be borne by the Government Company;
- (3) the Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said lands so vested;
- (4) the Government Company shall have no power to transfer the aforesaid rights in the said lands so vested, to any other persons without the prior approval of the Central Government; and
- (5) the Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands as and when necessary.

[F. No. 43015/ 09/ 2017-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 15 जनवरी, 2021

का.आ. 48.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. सीमेंट कोरपोरेशन आफ इंडिया लि., संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (44/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2021 को प्राप्त हुआ था।

[सं. एल-29012/21/2016-आई आर (एम)]

नवीन वैद्य, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 15th January, 2021

S.O. 48.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. Cement Corporation of India Ltd., and their workmen, received by the Central Government on 15.01.2021.

[No. L-29012/21/2016-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE

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

NO. CGIT/LC/R/44/2016

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

Shri Jeet Singh Kshatriya,
Purani Basti, At& PIO-Akaltara,
District Janigir-Champa (CG)-495552

...Workman

Versus

The General Manager
Cement Corporation of India Ltd.
At& PIO-Akaltara,
District Janigir-Champa (CG)-495552

...Management

AWARD

(Passed on this 16th day of December 2020)

1. As per letter dated 12/4/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L-29012/21/2016-IR(M). The dispute under reference relates to:

“Whether the action on the part of Management of CCL Akaltara Unit at first transferring Shri Jeet Singh Kshatriya from Akaltara to Kolkatta and again based on his request letter Dated 13-2-1991 from Kolkatta to CCI Unit Akaltara on reversion ground as per the order dated 5/3/1991 and again not considering his request on family problem ground to be retained at Akaltara and again transferring him to CCI Rajban Unit without considering his request tantamount to vindictive attitude and malafide intention of the Management of CCL Akaltara Unit and whether it is just and appropriate and if not, what action in case of Shri Jeet Singh Kshatriya, Ex.Assistant account is justified?”

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

2. The notice was held sufficiently served on workman side vide order dated 2-1-2020 but he never appeared. The Management filed its appearance, hence the case was ordered to be proceeded ex-parte against the workman vide order dated 2-1-2020.

3. No statement of claim or any evidence was filed by the workman. The Management filed its written statement wherein it was pleaded that the present controversy has already been settled by this Tribunal in Case No.CGIT/LC/R/50/2003 vide its Award dated 13-5-2016. The workman who was party in the pre-decided case also was offered the post of Junior Account Assistant vide letter dated 8-7-1976. He was liable to be transferred at the sole discretion of the employer at anywhere in India or at any branch /office/ project/ section/department/ plants /unit of the Management Corporation or from one shift to another shift. His transfer was to be governed by the prevailing Rules and Regulations. He accepted the conditions as above incorporated in his offer of appointment vide his acceptance letter dated 12-7-1976 and joined his job. He was promoted to the post of Accountant and due to exigency of work and requirement of finance, staff at Kolkatta office, the Management decided to transfer him to Kolkatta Zonal Office. The workman requested for cancellation of his transfer order which was not accepted vide letter of Management dated 17/19-7-1989 and the workman was directed to report on duty at Kolkatta. The workman then again filed a representation before the Management for cancellation of his transfer order and requested that if the transfer order is not cancelled, he may be reverted back to his previous post and previous posting. He subsequently reported to the transferred post in Kolkatta Zonal Office on 20-10-1989 and absented himself unauthorisedly without any intimation, permission and without the leave being sanctioned. He filed a Writ Petition No.4366/1989 during the period of his absenteeism seeking his reversion to wage Board Scale and posting back to previous place from where he was transferred. Hon'ble High Court directed vide its order dated 22-11-1990 directed to decide the representation of the petitioner within one month. The Management after considering his representation in the light of the aforesaid order of Hon'ble High Court, transferred the workman back to his previous place vide its order dated 5-3-1991. Thereafter he joined at his previous place of posting and filed his joining report on 29-3-1991. He was again promoted on 12-3-2001 but he did not accept his promotion, hence, he continued to draw pay which he was drawing earlier before promotion. He raised a dispute which was referred to this Tribunal and was registered as CGIT/LC/R/50/2003 and was decided vide Award dated 13-5-2016 as referred to earlier. The Akaltara unit where the workman has been posted became a sick unit and production stopped there. The Unit was referred to BIFR.

4. The case of Management is that when the Unit itself becomes sick, it is imperative of Management to transfer its employees to different units which was affirmed by Hon'ble High Court of Andhra Pradesh at Hyderabad in Writ Petition No.14804/2003 in case **of CCI Employees Union vs. Union of India**. In view of the proceedings before BIFR the scheme of voluntary retirement was notified which was opted by the workman and he was paid the retrial benefits. The workman filed another case before the Labour Court, Bilaspur on the same cause of action, which was dismissed vide order dated 16-1-1998. An appeal against this order was also dismissed vide order dated 18-9-1998. Another Writ Petition No.5052/1999 filed against the order of appeal by the workman was also dismissed by Hon'ble High Court of M.P. at Jabalpur vide its order dated 29-2-2000. Accordingly the Management has requested that the reference be answered against the workman.

5. The Management filed affidavit, uncross-examined of its witnesses and proved documents as referred above which are (Annexure M-1 to M-25).

6. Arguments of Mr. A.K.Shashi, learned counsel for the Management were heard. None appeared from the side of the workman. I have gone through the record as well.

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

8. The initial burden to prove its case lies on the party who asserts it. In this case the burden lies on the workman in which he has utterly failed. Hence the reference is liable to be answered against the workman.

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

A. The action of the management of CCL Akaltara Unit at first transferring Shri Jeet Singh Kshatriya from Akaltara to Kolkata and again based on his request letter Dated 13-2-1991 from Kolkatta to CCI Unit Akaltara on reversion ground as per the order dated 5/3/1991 and again not considering his request on family problem ground to be retained at Akaltara and again transferring him to CCI Rajban Unit without considering his request is held to be legal and justified.

B. The workman is held entitled to no relief.

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

DATE: 16.12.2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2021

का.आ. 49.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एल.आई.सी. आफ इंडिया, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (59/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2021 को प्राप्त हुआ था।

[सं. एल-17012/14/2013-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 15th January, 2021

S.O. 49.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2013 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of LIC of India and their workmen, received by the Central Government on 15.01.2021.

[No. L-17012/14/2013-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 59/2013

Ref. No. L-17012/14/2013-IR(M) dated 21.08.2013

BETWEEN :

Shri Manoj Kumar
House No. S-19/40-E, Varuna Pul, Nai Bazar
Varanasi (UP)

Vs

1. The Divisional Manager
LIC of Inda, Bhelapur
Varanasi.
2. The Zonal Manager
LIC of India
The Mall, Kanpur (UP)

AWARD

1. By order No. L-17012/14/2013-IR(M) dated 21.08.2013 and its subsequent corrigendum dated 18.09.2015, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Manoj Kumar, House No. S-19/40-E, Varuna Pul, Nai Bazar, Varanasi (UP) and the Divisional Manager, LIC of India, Bhelapur, Varanasi & the Zonal Manager, LIC of India, The Mall, Kanpur (UP) for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT DIVISIONAL MANAGER, LIC OF INDIA, VARANASI IN TERMINATING SERVICES OF SH. MANOJ KUMAR W.E.F. 10.04.1999 WITHOUT FOLLOWING DUE PROCEDURE IS JUST AND PROPER AND IF NOT, WHAT RELIEF THE WORKMAN IS ENTITLED TO?”

3. The case of the workman, Manoj Kumar, in brief, is that he had been appointed as Peon on 16.12.1996 after calling names from the Employment Exchange and conducting interview and his services had been terminated vide oral order dated 10.04.1999 without any notice or notice pay in lieu thereof. The workman has alleged that he worked continuously with the management for two years three months and twenty six days; but the management in a certificate issued to him has wrongly mentioned that he had worked for only 85 days. The workman has also alleged that the management taken other persons working with him but has not taken him on duty in disregard to the decision of the Hon'ble Apex Court in Civil Appeal No. 953-968/2005 in the case of D.V. Anil Kumar; accordingly, the workman has prayed that his termination w.e.f. 10.04.1999 be declared unjust and he be reinstated with consequential benefits.

4. The management of the LIC of India has disputed the claim of the workman through its written statement; wherein it has submitted that workman had been engaged as per need for 85 days only on purely temporary basis from 16.12.1996 to 10.03.1997 vide engagement letter dated 13.12.1996 in terms and condition mentioned therein. It has been submitted by the management that the services of the workman come to an end automatically after completion of the tenure for which he was engaged and since he was engaged/worked for 85 days only therefore, there arise no question of notice of notice pay. The management has also contended that the workman was neither qualified in terms of decision of Hon'ble Apex court; nor did he appeared in the test & interview, therefore, he cannot be given benefit of the said orders of the Apex Court. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman filed its rejoinder; wherein apart from reiterating the averments already made in the statement of claim, introduced nothing new.

6. The workman filed documentary evidence in support of his case vide list W-15; whereas the management filed its list of documents vide list M-16, which shall be referred as and when required. The workman examined himself whereas the management examined Shri Ram Lakhan Tiwari, Chief Manager, LIC, City Branch -2, Varanasi in support of their respective case. The parties cross-examined the witnesses of each other.

7. Perused entire evidence available on record and scanned entire evidence available on record in light of the rival pleading. I have scanned entire evidence available on record in light of the rival pleading and respective pleadings of the parties.

8. The workman has come up with a case that he worked with the management of the LIC w.e.f. 16.12.1996 to 10.04.1999 and his services have been terminated by the management without any notice or notice pay in lieu thereof or any retrenchment compensation. It is also the case of the workman that he had been given employment as per orders of the Hon'ble Apex Court in Civil Appeal No. 953-968/2005 in the case of D.V. Anil Kumar.

9. In rebuttal, the management has contended that the workman had been engaged for 85 days only on purely temporary basis from 16.12.1996 to 10.03.1997 as per terms of engagement vide engagement letter dated 13.12.1996 and that the workman was neither qualified nor he appeared for test/interview in terms of orders of the Hon'ble Apex Court; and since the workman was engaged for 85 days only therefore, there was no need of giving any notice or notice pay in lieu thereof.

10. It is well settled that if a party challenges the legality of an action/order, the burden lies upon him to prove illegality of the action/order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case, burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove that the termination order was illegal. It was the case of the workman that he had worked continuously w.e.f. 16.12.1996 to 10.04.1999. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked for 240 days in the year

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

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

11. In *Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai 2005 (107) FLR 1145 (SC)* Hon'ble Apex Court came to the conclusion that the workman could be entitled for the protection of section 25 – F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

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

Thus, in order to substantiate the workman has filed number of photocopy of the documents, less any appointment letter or termination order; rather it has been stated by the workman during his cross-examination that his name was sent by the Employment Exchange and his LIC called for names of the candidates from Employment Exchange for 85 days only. He also stated that he has not filed any document regarding working upto 10.04.1999. Moreover, the photocopy of the certificate filed by the workman goes to show that he worked with LIC w.e.f. 16.12.96 to 10.03.197 for 85 days and he had been paid salary @ Rs. 2611/- per month, this goes to disprove his version and prove the version of the management that the workman worked for 85 days only during his engagement period with the LIC. On the contrary, the management has filed letter dated 13.12.1996, paper No. 16/1, regarding offer of appoint of the workman w.e.f. 16.12.1996 to 10.03.1997 for 85 days only; wherein it has been mentioned in clause 2 of the letter that the appointment shall automatically cease with the expiry of the term and his services could be terminated in between also without assigning any reason and prior information. The management has also filed letter dated 16.12.1996, paper No. 16/2, addressed to the Employment Officer; whereby he had been intimated about appointment of the workman w.e.f. 16.12.1996 to 10.03.1997 for 85 days.

12. Admittedly the appointment letter dated 13.12.1996, issued to the workman was a fixed term appointment i.e. w.e.f. 16.12.1996 to 10.03.1997 for 85 days only, which automatically came to an end with the expiry of the time period and there was no need of any notice or notice pay etc. as per clause 2 of the appointment letter dated 13.12.1006. The is no iota of evidence that the workman actually worked beyond the said period of engagement i.e. w.e.f. 16.12.1996 to 10.03.1997, as claimed by him in his statement of claim. The details of engagement, available on record, do not show that the workman actually worked for 240 days in a year preceding the date of alleged termination i.e. 10.04.1999. Thus, the workman has utterly failed to discharge the burden that lied upon him and has failed to substantiate his pleading by cogent documentary evidence that he was actually in the services of the management of LIC and he worked for 240 days during period 09.04.1998 to 10.04.1999 i.e. one year preceding the date of his alleged termination; and his services were terminated in violation of Section 25 of the I.D. Act, 2005, without giving him any notice or notice pay in lieu thereof or any retrenchment compensation. Moreover, as regards non-grant of benefit of order dated 18.01.2011 of the Hon'ble Apex Court in Civil Appeal No. 953-968 of 2005, it is noteworthy to mention here that in the said order Hon'ble Supreme Court has observed that benefit was extended only to those temporary

persons were are working in LIC for more than five years and possess minimum eligibility qualification and age as prescribed at the relevant time of their entry in LIC; however, in the instant case the workman had worked only for 85 days, therefore, he was not eligible for consideration within the purview of the said scheme and the management had rightly not considered him for appointment.

13. Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year was on the workman but he has failed to discharge the same. There is no reliable material for recording findings that the workman had worked for more than 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

14. Accordingly, the reference is adjudicated against the workman; and I come to the conclusion that he is not entitled to any relief.

15. Award as above.

30th December, 2020

LUCKNOW

Let two copies of this award be sent to the Ministry for publication.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 50.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 26/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2021 को प्राप्त हुआ था।

[सं. एल-20012/49/2015-आई आर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 18th January, 2021

S.O. 50.—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. 26 of 2015) 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 16.01.2021.

[No. L-20012/49/2015-IR (CM-I)]

RAJENDER SINGH, Under Secy.

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. 26/2015

Employer in relation to the management of Ghanoodih Colliery under Bastacolla Area of M/s. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For Employer : Sri Amit Mahto, Manager (P)

For workman : Sri Gopal Prasad, Representative

State : Jharkhand.

Industry :-Coal

Dated 26.11.2020

AWARD

By Order No.L-20012/49/2015- (IR(CM-I)) dated 19.06.2015, 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 Ghanoodih Colliery under Bastacolla Area of M/s. BCCL in not correcting the date of birth Sri Ghanshyam Sharma, Dumper Operator as 02.07.1961 as per his educational certificate and intentionally retiring prematurely him without any basis from the services of the Company w.e.f. 01.01.2015 is fair and justified? To what relief the concerned workman is entitled to?”

2. After receipt of the reference, both the parties were noticed. Sri Gopal Prasad the representative of concerned workman namely Ghanshyam Sharma has filed its written statement of claim on 27/08/2015 and the management Ghanoodih Colliery Bastacolla Area has filed its written statement cum rejoinder on 28/01/2016.

The representative of the concerned workman has filed rejoinder to the written statement of the management on 05/05/2016.

3. The claim of the sponsoring union namely Bhartiya Mazdoor Sangh, Dhanbad as per its written statement is as follows:-

That the concerned workman was appointed by authority of M/s. BCCL on 01/07/1980 as a permanent employee and he was working in Ghanudih Colliery under Bastacolla Area of M/s. BCCL and was performing his duties as Dumper Operator having his personal no. 01192277 and CMPF No. D/47/283. The concerned workman is a matriculate having Matriculation Certificate and Mark-Sheet and he had submitted all the Xerox copy of Educational Certificate to the concerned authority but after getting the copy of the service excerpt, the concerned workman came to know that his date of birth had not been recorded as per Matriculation Certificate. The date of birth of concerned workman as per his Matriculation Certificate is 02/07/1961 but in the service record his date of birth has been wrongly entered as 01/07/1955 and accordingly the concerned workman was illegally and arbitrarily got retired w.e.f. 01/01/2015. The concerned workman had submitted several representation before the management for rectification of his date of birth but no action was taken on his representation and he was prematurely retired from service. There is a provision under JBCCI-IV-IMPLEMENTATION INSTRUCTION NO. 76 regarding procedure for determination/verification of age of employees in which it is mentioned that in case of appointees who have passed matriculation or equivalent examination, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances.

A prayer has been made to pass an award in favour of the concerned workman for correcting the date of birth of concerned workman as per his Matriculation Certificate.

4. On the other hand the case of the management as per its written statement cum rejoinder is as follows:-

That the written statement filed by sponsoring union is without any merit and the union has not come before the Tribunal with clean hands, rather it has suppressed the material facts. It is settled law that the application for correction of date of birth cannot be made at the fag end of the service as per decision of the various Hon'ble High Courts and Hon'ble Supreme Court. The concerned workman namely Ghanshyam Sharma joined the services of the company w.e.f. 01/07/1980 as per his service excerpts and in the same services excerpts prepared in 1988 his date of birth has been shown as 25 years as on 01/01/1980 meaning thereby that the date of birth of concerned employee Ghanshyam Sharma is 01/01/1955 without any objection. The service particulars of concerned workman of Basudeopur Colliery also shows the same fact. The concerned workman was transferred to various Collieries during his service tenure and in Form 'B' Register prepared by various Collieries, his date of birth has been mentioned as 25 years as on 01/01/1980 meaning thereby that his date of birth is 01/01/1955. The Identity Card of the concerned workman also shows his date of appointment is 01/07/1980 and date of birth as 25 years as on 01/01/1980. The concerned workman had never raised any objection with the management regarding his date of birth but only raised the objection at the fag end of service only to gain undue advantage of some years of service which is totally illegally.

The management by way of rejoinder has further stated that the statement made in Para 1 by the sponsoring union is reproduction of the schedule, statement made in Para 2 of the sponsoring union is a matter of matter of record, statement made in Para 3, 7, 9 and 10 of the sponsoring union are denied, the statement made in Para 4, 5 and 6 of the sponsoring union are cooked-up stories, the statement made in Para 8 of the sponsoring union is reproduction of I.I.76 of JBCCI and the statement made in Para 11 of the sponsoring union is a prayer portion.

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

6. The sponsoring union has examined only one witness. He is the concerned workman namely Ghanshyam Sharma.

7. The WW-1, Ghanshyam Sharma has deposed before the Tribunal that he was appointed by the management of M/s. BCCL on 01/07/1980 and at the time of his joining he had submitted his Matriculation Certificate, Mark-Sheet and other original documents to the concerned authority which was returned to him after verification of the original documents by concerned authority. He has also stated that as per Matriculation Certificate his date of birth is 02/07/1961 but the management had wrongly inserted his date of birth as 01/01/1980 in place of 02/07/1961. He has also deposed that he had reported to the management in writing for correction of his date of birth but the management deliberately did not do anything. He has also stated that the management had wrongly inserted his date of birth as 25 years as on 01/07/1980 in the I.D. Card and in Admit Card Register of Kenduadih Colliery. He has further deposed that the management had entered his age as 25 years on 01/01/1980 in the Form 'B' Register and in his service excerpt. He has further stated that the management had illegally and arbitrarily forced him to retire from service w.e.f. 01/01/2015. He has further deposed that he had submitted his representation on 06/12/2010 before the Ghanoodih Colliery but no action was taken.

In the cross-examination he has stated that he joined at Kenduadih Colliery on 01/07/1980 and he was not aware of the contents of Form 'B' Register. He has identified his signature and photograph in Form 'B' Register. He has further stated that from Kenduadih he was transferred to Alkusa Colliery and subsequently he was transferred to Basudeo Colliery but he did not know the contents of Form 'B' Register of Alkusa Colliery. He has not identified his signature on Exhibit M-6 marked as Exhibit X for identification and he had expressed doubt on Exhibit M-4 and has stated that signature marked as Exhibit Y is not his signature. He has also stated that he had raised the dispute regarding his date of birth in the year 2010.

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

Exhibit W-1- Photo Copy of Certificate of Ghanshyam Sharma Board of High School and Intermediate Education, U.P. 1979.

Exhibit W-2- Photo Copy of Voter I.Card of Ghanshyam Sharma issued by Election Commission of India.

Exhibit W-3- Photo Copy of PAN Card of Ghanshyam Sharma.

Exhibit W-4- Photo Copy of Identity Card of Ghanshyam Sharma issued by Bharat Coking Coal Limited.

Exhibit W-5- Attested copy of Marksheet of High School Examination, 1979 of Ghanshyam Sharma.

Exhibit W-6- Photo Copy of Implementation Instruction No. 76 issued under the signature of A.V. Brahma, Member Secretary JBCCI-IV.

Exhibit W-7- Photo Copy of Letter No. 1/(15)/2013. E. 5 dated 18/19-12-2014 issued by Assistant Labour Commissioner (Central) Dhanbad-III addressed to General Manger Bastacolla Area of M/s BCCL.

Exhibit W-8- Carbon Copy of Letter no. 1311 dated 29/10/2013 of Project Officer, Ghanudih Colliery addressed to Assistant Labour Commissioner (Central) Dhanbad- III regarding date of birth of Ghanshyam Sharma.

Exhibit W-9- Photo Copy of Letter no. 3041 dated 12/14-10-2011 written by Dy. General Manager, Ghanudih Colliery addressed to Project Officer, Godhar Colliery.

Exhibit W-10- Photo Copy of representation dated 06/12/2010 of concerned workman before Agent, Ghanudih Colliery regarding correction of his date of birth in his service records.

9. The management has examined only one witness. He is MW-1 Dharmendra.

10. The MW-1, Dharmendra has deposed that the concerned workman namely Ghanshyam Sharma joined the service of the company w.e.f. 01/07/1980 as per service excerpts and in the same service excerpts prepared in 1988 his date of birth has been mentioned as 25 years as on 01/01/1980 meaning thereby that his date of birth is 01/01/1955. He has also stated that the service particulars of Basudeopur Colliery shows appointment of concerned workman as on 01/07/1980 and his date of birth as 25 years as on 01/01/1980. He has further deposed that the concerned employee was transferred to various collieries during his service tenure and in all the Form 'B' Register prepared in various collieries his date of birth has been mentioned as 25 years as on 01/01/1980. He has also deposed that in the Identity Card Register his date of appointment is mentioned as 01/07/1980 and his date of birth is mentioned as 25 years as on 01/01/1980. He has further stated that the concerned workman

has never raised any objection to the management during his long tenure of service of about 35 years regarding his date of birth but he has raised the objection at the fag end of service only to gain undue advantage of some years.

In the cross-examination he has deposed that as per service excerpts his age was assessed 25 years as per medical board. He has further deposed that it is not a fact that the workman had given Matriculation Certificate at the very beginning. He has admitted that it is a fact that the concerned G.M. had recommended the case of the workman for correction of his date of birth as per Matriculation Certificate.

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

Exhibit M-1- Photo Copy of Identity Card Register of Kenduadih Colliery.

Exhibit M-2- Photo Copy of Identity card of Ghanshyam Sharma issued by Kenduadih Colliery.

Exhibit M-3- Photo Copy of Form 'B' Register of Alkusa Colliery.

Exhibit M-4- Photo Copy of Service excerpts of Ghanshyam Sharma of Basudeopur Colliery.

Exhibit M-5- Photo Copy of Service Particular of Ghanshyam Sharma of Basudeopur Colliery.

Exhibit M-6- Photo Copy of Form 'B' Register of Ghanshyam Sharma of Basudeopur Colliery.

Exhibit M-7- Photo Copy of Form 'B' Register of Gopali Chak Colliery.

12. The learned representative of the sponsoring union representing the concerned workman has submitted before the Tribunal that the concerned workman namely Ghanshyam Sharma was appointed on 01/07/1980 in Kenduadih Colliery and at that time Ghanshyam Sharma had produced his educational certificate in the office of the Colliery but the management had failed to produce the service book of that Colliery before the Tribunal. He has further argued that the management had erroneously written 25 years of age in the I.Card without any basis. He has also submitted that the Project Officer and General Manager had recommended the matter of correction of date of birth of the concerned workman to the management but the same was rejected vide letter dated 29/12/2014 on the ground that the matter had been raised at the fag end of service which is not justified. He has also argued that the concerned workman had already raised his dispute in the year 2010 but the management had not taken any action in his case. He has further submitted that as per Implementation Instruction No. 76 (annexure-1) there is a clear cut provision that in case of an appointees who has passed matriculation and equivalent examination the date of birth recorded in the said certificate should be treated as correct date of birth and the same will not be altered.

He has relied on the decision of Hon'ble Supreme Court has reported in 2014 (3) LJLR.

13. On the other hand the learned lawyer of the management has submitted that the concerned workman had been appointed as a Dumper Operator and he had not produced any educational certificates at the time of his appointment regarding his date of birth. He has also submitted that the concerned workman has raised the industrial dispute after 35 years regarding his date of birth which is at the fag end service, so it is not maintainable. He has also argued that at the time of his appointment, age of the concerned workman had been mentioned as 25 years as on 01/07/1980 and this fact has been mentioned in his Form 'B' Register of different Collieries, so the industrial dispute raised by the concerned workman is not maintainable.

14. Now, the only point of consideration in this case is whether the action of the management of Ghanoodih colliery under Bastacolla Area of M/s BCCL in not correcting the date of birth of Sri Ghanshyam Sharma, Dumper Operator as 02.07.1961 as per his educational certificate and intentionally retiring prematurely him without any basis from the services of the company w.e.f. 01.01.2015 is fair and justified and to what relief the concerned workman 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 Ghanshyam Sharma was appointed on 01/07/1980 as a Dumper Operator and at the time of his appointment his age has been mentioned as 25 years in his Form 'B' Register. it is also an admitted fact that the concerned workman had raised the dispute before the management for correction of his date of birth as 02/07/1961 on the basis of his matriculation certificate but the same was rejected on the ground that request had been made at the fag end of his service and he subsequently retired from the service of the company w.e.f. 01/01/2015.

16. The first point of consideration in this case is whether the date of birth of Ghanshyam Sharma the concerned workman is 25 years as on 01/07/1980 or his date of birth is 02/07/1961 as per his matriculation certificate.

17. Now, the Tribunal will examine the oral and documentary evidences produced by both the parties in this case.

18. The WW-1 Ghanshyam Sharma has categorically deposed that at the time of his appointment as a Dumper Operator on 01/07/1980 he had submitted his matriculation certificate, mark-sheet and other original documents to the concerned authority and after verification, the original documents were returned to him. He has also deposed that his date of birth has been recorded as 02/07/1961 in his matriculation certificate but the management had wrongly inserted his date of birth as 25 years as on 01/01/1980 in place of 02/07/1961. He has further deposed that he had submitted representation on 06/12/2010 before the Agent, Ghanudih Colliery for correction of his date of birth but the same was rejected and he was forced to retire prematurely from service w.e.f. 01/01/2015. In the cross-examination he has stated that he was not aware of the content of Form 'B' Register. He has also deposed that he had raised the dispute in the year 2010 for the first time.

The MW-1 Dharmendra has deposed that at the time of appointment of Ghanshyam Sharma on 01/07/1980 his date of birth had been recorded as 25 years as on 01/01/1980 meaning thereby his date of birth is 01/01/1955 without any objection. He has also deposed that the date of birth of concerned workman has been mentioned as 25 years as on 01/01/1980 in the service particulars of Basudeopur Colliery and other collieries. He has also stated that in the Identity Card of the concerned workman his date of birth has been shown as 25 years as on 01/01/1980. He has also stated that the concerned workman had not raised the dispute during the long service of 35 years but had raised the dispute at the fag end of service which is not maintainable. In the cross-examination he has deposed that it is not a fact that workman had given his matric certificate at the beginning of his service. He has admitted that their General Manager had recommended the case of workman to correct the date of birth as per matriculation certificate.

19. Now, coming to the documentary evidences of the concerned workman it appears that Exhibit W-1 is the photo copy of certificate of Ghanshyam Sharma of Board of High School and Intermediate Examination U.P. issued on 12th July 1979 in which his date of birth has been mentioned as 2nd July 1961. Exhibit W-2 is photo copy of Voter I. Card of Ghanshyam Sharma issued by Election Commission of India in which his age has been mentioned as 43 years as on 01/01/2003. Exhibit W-3 is photo copy of PAN Card of Ghanshyam Sharma in which his date of birth has been mentioned as 02/07/1961. Exhibit W-4 is photo copy of Identity Card of BCCL. Exhibit W-5 is Mark-sheet of Ghanshyam Sharma of High School Examination, 1979 in which his date of birth has been mentioned as 02/07/1961. Exhibit W-6 is Photo copy of Implementation Instruction No. 76 (Annexure 1). Exhibit W-7 is order of ALC, Dhanbad-III. Exhibit W-8 is photo copy of letter of Project Officer, Ghanudih Colliery addressed to Assistant Commissioner, Dhanbad-III. Exhibit W-9 is a photo copy of letter dated 12/14-10-11 written by Project Officer Godhar Colliery to Deputy General Manager, Ghanudih Colliery and Exhibit W-10 is the photo copy of representation of Ghanshyam Sharma before Agent, Ghanudih Colliery regarding correction of his date of birth.

On the other hand the documents of management shows that :-Exhibit M-1 is the photo copy of Identity Card Register of Kenduadih Colliery. Exhibit M-2 is Xerox copy of Identity Card of concerned workman of Kenduadih Colliery. Exhibit M-3 is Xerox copy of Form 'B' Register of Alkusa Colliery. Exhibit M-4 Xerox copy of service excerpts of Ghanshyam Sharma of Basudeopur Colliery. Exhibit M-5 is Xerox copy of service particulars of Ghanshyam Sharma of Basudeopur Colliery. Exhibit M-6 is Xerox copy of Form 'B' Register of Ghanshyam Sharma of Basudeopur Colliery. Exhibit M-7 is Xerox copy of Form 'B' Register of Gopali Chak Colliery.

20. Now after analysing the oral and documentary evidences of the both the parties it is quite apparent that the concerned workman namely Ghanshyam Sharma had submitted his matriculation certificate, mark-sheet and other original documents to the concerned authority of at the time of appointment and his testimony on this point has not been impeached in the cross-examination. Moreover it is also apparent that concerned workman had passed his matriculation examination in the year 1979 as per certificate of Board of High School and Intermediate Examination U.P. issued on 12th July 1979 (Exhibit M-1) and in that certificate his date of birth has been mentioned as 2nd July 1961. Further in the mark-sheet of Ghanshyam Sharma of High School Examination 1979 (Exhibit M-6) his date of birth has been mentioned as 02/07/1961 and in his PAN card (Exhibit W-3) his date of birth has been mentioned as 02/07/1961.

21. However, the management has produced photo copy of Identity Card Register of Kenduadih Colliery (Exhibit M-1) in which date of birth of concerned workman has been mentioned as 25 years as on 01/01/1980 but the management has not produced the service excerpt or Form 'B' Register of Kenduadih Colliery without any explanation where the concerned workman was first appointed. Further in the Identity card (Exhibit M-2) date of birth of concerned workman has been mentioned as 25 years as on 01/01/1980 and all other Form 'B' Register of Alkusa Colliery (Exhibit M-3) as well as service excerpt of Basudeopur Colliery (Exhibit M-4), Service Particulars of Basudeopur colliery (Exhibit M-5) and Xerox copy of Form 'B' Register of Basudeopur Colliery (Exhibit M-6) and Gopali Chak colliery (Exhibit M-7) his age has been mentioned as 25 years as on 01/01/1980.

22. At this stage it is relevant to mention here that Implementation Instruction No. 76 which is marked as Exhibit W-6 reads as follows:-

PROCEDURE FOR DETERMINATION VERIFICATION OF AGE OF EMPLOYEES

(A) Determination of the age at the time of appointment.

1) Matriculates

In the case of appointees who have passed Matriculation or equivalent examinations, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances.

23. Now, in this case as per Exhibit W-1 and W-5 it is very much evident that the date of birth of concerned workman namely Ghanshyam Sharma is 2nd July 1961 and the management has not disputed those certificates before the Tribunal. Further there is a provision of recording the date of birth of the appointee as per matriculation certificate and there is evidence that the concerned workman had submitted those certificates but surprisingly the management had not entered the date of birth of concerned workman on the basis of matriculation certificate.

24. In view of above discussion and as per I.I. No. 76 the Tribunal finds and holds that the date of birth of the concerned workman namely Ghanshyam Sharma is as 2nd July 1961 as per his matriculation certificate and the same should have been recorded in his Form 'B' Register and service excerpts of Ghanudih colliery of Bastacolla Area of M/s. BCCL

25. The next point of consideration in this case is whether concerned workman had admitted his date of birth as 25 years as on 01/01/1980 and he has raised the dispute at the fag end service.

26. In this regard it is required to mention here that the WW-1 Ghanshyam Sharma has categorically deposed before the Tribunal that the management had wrongly inserted his date of birth as 25 years as on 01/01/1980 in place of 02/07/1961 and he had submitted his original matriculation certificate, mark-sheet and other documents at the time of his appointment and the same had been returned after verification. He has also deposed that he had submitted representation before the management on 06/12/2010 for correction of his date of birth but the same was rejected and he was forced to retire prematurely from service w.e.f. 01/01/2015. In the cross-examination he has also deposed that he was not aware to the content of Form 'B' Register. Moreover his testimony has not been impeached in cross-examination.

It is required to mention here that the Exhibit W-10 is the representation of the concerned workman submitted before the Agent, Dhanudih Colliery for correction of his date of birth in his service record and Exhibit W-9 is a letter of Dy. General Manager Dhanudih colliery addressed to the Project Officer, Godhar colliery for sending service records of Ghanshyam Sharma.

Moreover MW-1 had admitted in his evidence that the General Manger had recommended the case of workman for correction of his date of birth as per matriculation certificate.

27. At this stage it is relevant to mention here that the learned representative of the sponsoring union has relied on the decision of **Hon'ble Supreme Court as reported in 2014 (3) JLJR** in which the Hon'ble Supreme Court has been pleased to hold that:-

“ In the present case the appellant-company failed to follow the procedure as laid down in the Implementation Instruction. It is the appellant's omission and not the inaction of the respondent which led to the dispute being raised in the courts at such a delayed stage. The attitude of such corporations wherein to avoid the rectification of a date of birth, litigation is unnecessarily prolonged just because they have number of resources at their command, goes against the grain of equity and duty towards society at large.”

28. On the other hand the learned lawyer of management has relied on the decision of **Hon'ble Supreme Court as reported in 1995 AIR 1499** in which the Hon'ble Supreme Court has been pleased to hold that:-

“ No reason is given as to why towards the fag end of the service career of the appellant before it, such correction should have been permitted. Moreover, even though the Matriculation certificate produced by the appellant before the Division Bench for the first time was seriously doubted, no opportunity had been given to the Government to make good the doubt. Having gone through the said judgment of the Division Bench in appeal, we have no hesitation in reaching the conclusion that the Division Bench was wholly unjust-fied in interfering with the order of the learned Single Judge of the same court whereby it was held, in our view, rightly that the appellant's writ application filed for correction of his date of birth at the fag end of his service career for avoiding his superannuation which was due, cannot be entertained.”

Further the learned lawyer of management has relied on the decision of **Hon'ble Jharkhand High Court passed in L.P.A. No. 123 of 2010** in which the Hon'ble High Court has been pleased to hold that:-

“These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the court.”

29. Now in this matter there is evidence that the concerned workman had already submitted his matriculation certificate, mark-sheet and other documents at the time of his appointment and the same had been returned after proper verification but his date of birth has been mentioned as 25 years as on 01/01/1980. Moreover the management had not produced the service excerpts/Form 'B' Register of Kenduadih Colliery where concerned workman was first appointed. Further the concerned workman had raised the dispute after submitting an application to Agent, Ghanudih Colliery on 06/12/2010, so it cannot be said that the concerned workman had raised the dispute for rectification of his date of birth at the fag end of his service.

30. In view of above discussion the Tribunal comes to the conclusion that the concerned workman had not admitted his age as 25 years on 01/01/1980 and he had not raised the dispute at the fag end of service.

31. After considering all the facts and circumstances, the Tribunal renders the following award:-

“The action of Management of Ghanoodih colliery under Bastacolla Area of M/s BCCL in not correcting the date of birth of Ghanshyam Sharma, Dumper Operator as per his educational certificate and intentionally retiring prematurely him without any basis from the service of the Company w.e.f. 01/01/2015 is not fair and justified”

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

The management of Ghanoodih Colliery under Bastacolla Area of M/s. BCCL is directed to record the date of birth of Ghanshyam Sharma, Dumper Operator as 02/07/1961 in service record/Form 'B' Register and other records of M/s. BCCL in place of 25 years as on 01/01/1980 within one month after publication of award in the Official Gazette and consequently his service will be deemed to continue after his date of superannuation i.e. 01/01/2015 with all back wages and other benefits as per recorded date of birth on the basis of this Award.

This is the Award of the Tribunal.

D. K. SINGH, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 51.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबंध में 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 27/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2021 को प्राप्त हुआ था।

[सं. एल-20012/26/2016-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, 18th January, 2021

S.O. 51.—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.27 of 2016) 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 16.01.2021.

[No. L-20012/26/2016-IR (CM-I)]

RAJENDER SINGH, Under Secy.

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. 27/2016**

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

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer**Appearances:**

For Employer : Sri D.K. Verma, Advocate

For workman : Sri D.N. Banerjee, Advocate

State : Jharkhand.

Industry:- Coal

Dated : 27.11.2020

AWARD

By Order No.L-20012/26/2016- (IR(CM-I)) dated 05.09.2016, 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 P.B. Area of M/s. BCCL in denying compassionate employment to Shri Manoj Kumar, dependent son of Late Jai Prakash Ram, who expired on 29.05.1998 under the provisions of NCWA is fair and justified? If not, to what relief Shri Manoj Kumar, dependent son of Late Jai Prakash Ram is entitled?”

2. After receipt of the reference, both the parties were noticed. Sri D.N. Banerjee the learned lawyer of sponsoring union has filed its written statement of claim on 04/10/2016 and the management Bararee Coke Works, Putkee Balihari Area has filed its written statement cum rejoinder on 18/07/2017.

The learned lawyer of sponsoring union has filed rejoinder to the written statement of the management on 29/08/2017.

3. The claim of the sponsoring union namely Coal Mines Engineering Workers Association as per its written statement is as follows:-

That Late Jai Prakash Ram, was an employee of Bararee Coke Plant under P.B. Area of M/s. BCCL, PO: Kusunda, District: Dhanbad having designation-Valveman Helper, Personal No. 00581561, Form-‘B’ No. 568, CMPF A/C No. D/530956 and he died on 29/05/1998 while in service. Thereafter Sri Manoj Kumar son of the deceased workman namely Late Jai Prakash Ram applied for employment on 08/12/1998 as per provision of NCWA in the prescribed format of CIL and its subsidiaries duly signed, verified with NOC from all surviving family members of the deceased. After receiving such prescribed Forms by the management of Bararee Coke Plant and after finding it correct the same was sent to P.B. Area Office and thereafter to M/s. BCCL, HQ Koyla Bhawan for approval. The competent authority at Koyla Bhawan vide Letter No. BCCL/PA-VI/13/PBA/13/40/99/27579-83 dated 10/11.12.2001 communicated its approval for employment of Sri Manoj Kumar as piece rated Miner Loader subject to Medical fitness to the General Manager, P.B. Area and General Manager, P.B. Area sent the same to Project Officer, Bararee Coke Plant for its compliance. Subsequently the management of Bararee Coke Plant on receipt of approval letter had sent information to Sri Manoj Kumar for appearance in Medical Board at his permanent home address which was returned “UNDELIVERED”. Thereafter, Champa Devi wife of deceased employee Late Jai Prakash Ram came to know regarding the grant of approval by the management but time period was over. She requested the management of Bararee Coke Plant for its re-validation. The management of Bararee Coke Plant had sent a proposal for re-validation of employment of Sri Manoj Kumar but same was regretted. Thereafter the wife of deceased workman had made a mercy appeal but no action was taken.

A prayer has been made to give employment to the son of deceased workman w.e.f. 25/12/2001 as well as other relief to compensate the mental agony and harassment with cost of litigation caused by the employer.

4. The case of the management of P.B. Area of M/s. BCCL as per its written statement cum rejoinder is as follows:-

That the present reference case is not maintainable and it is a stale dispute. The management had accorded approval for employment in the year 2001 but the applicant had not reported for medical examination, therefore the offer of appointment was automatically cancelled in the year 2001 itself, whereas the sponsoring union has raised the present industrial dispute after lapse of more than 15 years. There is no employer-employee relationship between Manoj Kumar and the management of BCCL, so there is no industrial dispute within the meaning of Section 2(k) of the I.D. Act. The compassionate employment cannot be granted after lapse of reasonable period as the object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadearner. The application for employment was submitted by the dependent of deceased workman namely Manoj Kumar after death of his father Late Jai Prakash Ram Ex-Valvemen, who died on 29/05/1998 and the same was referred to Head Quarter for approval. The Head Quarter of BCCL accorded approval for employment of Manoj Kumar for employment as PR underground miner loader vide letter dated 10/11-12-2001 subject to medical fitness and prior verification of certificate of identity and relationship certificate issued by BDO/Mukhiya of the Area. Subsequently the dependent, concerned was intimated for appearing in medical examination and the said letter was sent on his permanent address by registered post, but he didn't appear before the Medical Board for Medical examination, so the offer of appointment was automatically cancelled. It was specifically mentioned in the offer of appointment letter that if he failed to appear within seven days from the date of issuance of the offer of appointment letter, it would be stand cancelled and no further correspondence would be entrusted.

5. The management by way of rejoinder has stated that the statement of the union made in Paragraph No. 1, 2, 3, 4, 5 and 9 of the written statement are matter of record, the statement of union made in Paragraph No. 6 of written statement is not correct, the statement of the union made in Paragraph No. 7 and 8 of the written statement are not relevant, the statement of union made in Paragraph No. 10, 11 and 12 of the written statement are not correct and not relevant.

6. The sponsoring union has filed rejoinder to the written statement of the management in which it has been mentioned that statement made in Paragraph No. 2, 3, 4, 5, 10 and 11 are denied, the statement made in Paragraph No. 6, 7 and 8 are matter of record, the statement made in Paragraph No. 9 is partially denied as because the letter was sent to the applicant on the permanent home address while applicant was residing on the present address.

7. The sponsoring union has examined only one witness. He is WW-1, Manoj Kumar.

8. The WW-1, Manoj Kumar has deposed before the Tribunal that his father Late Jai Prakash Ram was an employee at Bararee Coke Plant under P.B. Area of M/s. BCCL and he died on 29/05/1998 while he was on the roll of management. He has also stated that after death of his father, he had submitted an application for employment under the provisions of NCWA on a prescribed proforma of M/s. BCCL in triplicate to the management for his employment and after finding his papers correct, the management of Bararee Coke Plant had sent his application to the Head Quarter for approval and subsequently the approval was granted vide letter dated 10/11/2001. He has also stated that after death of his father he was residing in quarter of company at Bararee Coke Plant which is mentioned in column 16 of Verification Roll Format and he had written applications to the management on 11/02/2013, 21/10/2014, 29/10/2014, 12/01/2015 and 04/08/2016 for providing employment to him but Bararee Coke Plant did not reply. He has also stated that he had not received any information from the management of Bararee Coke Plant and subsequently I.D. was raised in which written statement was submitted on 20/09/2015. He has proved the copy of reply of I.D. Case No. 1(63)/15 E-6 which has been marked as Exhibit W-1. He has also proved his application, identification certificate, verification roll and attestation form, which had been submitted before the management for getting employment and the same has been marked as Exhibit W-2, Exhibit W-3, Exhibit W-4 and Exhibit W-5 respectively. He has also proved letter of BCCL dated 10/02/2005 by which management had called for some documents from Head Quarter and the same has been marked as Exhibit W-6. He has also proved the letter dated 19/02/2005 written by Project Officer, Bararee addressed to Dy. Chief Manager (P) and the same has been marked as Exhibit W-7. He has also proved his application under R.T.I Act and the same has been marked as Exhibit W-8. He has also proved his application for first appeal and the same has been marked as Exhibit W-9. He has also proved the order of Central Information Commissioner, New Delhi and the same has been marked as Exhibit W-10.

In the cross-examination he has deposed that his father died on 29/05/1998 and he had submitted his application form for employment in the same year. He has denied the fact that after approval for appointment he had been referred to Medical Board for Medical Examination but he did not appear in the said Medical Board. He has also stated that he had not received any letter from the BCCL for appearing before the Medical Board, so he could not appear before the Medical Board on the fixed date. He has also stated that he had mentioned his

correspondence and permanent address on the application for employment. He has also stated that he has no knowledge about the membership of his father to any workers union but this case has been filed by Gopal Babu, Leader of the union. He has also stated that he had visited office of BCCL several times but no satisfactory reply was given to him. He has also stated that it is not true that he had been given offer of appointment and he had not joined the service.

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

Exhibit W-1- Photo Copy of letter no. BCW/2015/108 dated 20/09/2015 of Project Officer, Bararee Coke Works, Putkee Balihari Area addressed to Assistant Labour Commissioner (C), Dhanbad-I in I.D. Case No. 1(63)/2015/E-6 regarding not providing employment to the dependent son of concerned workman.

Exhibit W-2- Photo Copy of employment application form of applicant Manoj Kumar duly certified by the BDO of the respective Anchal.

Exhibit W-3- Identification certificate of applicant Manoj Kumar.

Exhibit W-4- Verification Roll of applicant Manoj Kumar. **Exhibit W-5-** Attestation Form of applicant Manoj Kumar.

Exhibit W-6- Photo Copy of Letter No. 1114 dated 10/02/2005 of A.K. Singh, Personnel Manger (MP&R)- HQ, Koyla Bhawan addressed to Dy. CPM, P.B. Area regarding revalidation of employment of Sri Manoj Kumar.

Exhibit W-7- Photo Copy of Letter No. 005/20084 dated 19/02/2005 of Project Officer, Bararee Coke Works addressed to Dy. PCPM-PB Area.

Exhibit W-8- Photo Copy of RTI application dated 11/02/2013.

Exhibit W-9- Photo Copy of Form-‘G’ Rule 6 (1) First Appeal dated 12/01/2015.

Exhibit W-10- Photo Copy of information of hearing from Central Information Commission dated 04/08/2016.

10. On the other hand the management has examined only one witness. He is MW-1, Rajeev Kumar Mishra.

11. The MW-1, Rajeev Kumar Mishra has deposed before the Tribunal that approval for appointment of Manoj Kumar had been granted by the company in the year 2001 and offer of appointment had been sent to him in which it was mentioned about the period within which he had to join the service. He has further deposed that it had been mentioned in the letter of offer of appointment that if he did not join within seven days the offer of appointment, the offer would automatically be cancelled. He has also stated that Manoj Kumar did not join the service within the stipulated period and the company authority had not re-validated its offer of appointment, so the claim of the petitioner is not justified.

In the cross-examination he has deposed that there is a prescribed format for appointment in BCCL and the applicant had submitted all the applications before the authority. He has further stated that the offer of appointment was sent on the permanent address of the Manoj Kumar. He has also stated that in Column no. 16 of Exhibit W-4, the address of the applicant has been mentioned as Bararee Coke P.O.- Kusunda P.S.- Kenduadih Dist.- Dhanbad but the company had not sent the offer of appointment on the address mentioned in column no. 16 of verification roll (Exhibit W-4). He has also stated that there is no provision on the standing order of BCCL that in case of return of offer letter by the post, the same would be sent on the present address and thereafter the offer letter would have been published in newspaper. He has denied the suggestion that he had suppressed the offer of appointment.

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

13. The learned lawyer appearing on behalf of the sponsoring union has submitted before the Tribunal that Jai Prakash Ram was an employee of P.B. Area of M/s. BCCL who died in course of service on 29/05/1998 and after his death his son Manoj Kumar had applied for his appointment in place of his father as per provision of NCWA. He has also submitted that management had approved the appointment of applicant Manoj Kumar, after death of his father Late Jai Prakash Ram the concerned workman but the management had issued a letter of offer of appointment on the permanent address of the applicant whereas the applicant had furnished the present address as Bararee Coke PO: Kusunda PS: Kenduadih Dist: Dhanbad in his application. He has further submitted that the applicant had never received his offer of appointment and he had requested the management for re-validation of the offer of appointment which was regretted by the management. He has also submitted that

the management had deliberately suppressed the matter, so that the applicant may not get employment in the company of BCCL.

14. On the other hand the learned lawyer of the management has submitted before the Tribunal that the management had issued the offer of appointment letter on the permanent address of the applicant Manoj Kumar with a condition to appear within seven days before the Medical Board otherwise the offer would be automatically cancelled. He has also submitted that the applicant had never appeared before the Medical Board as a result his offer of appointment was cancelled. He has also argued that there is no provision to re-validate the offer of appointment, so award may be passed in favour of the management.

15. Now, the only point of consideration in this reference case is whether the action of the management of P.B. Area of M/s. BCCL in denying compassionate employment to Shri Manoj Kumar, dependent son of Late Jai Prakash Ram, who expired on 29/05/1998 under the provision of NCWA is fair and justified and to what relief he is entitled?

FINDINGS

16. At the outset of discussion it is required to mention here that it is an admitted fact that Late Jai Prakash Ram was an employee of P.B. Area of M/s. BCCL and he died on 29/05/1998 while he was in service. It is also an admitted fact that after death of Late Jai Prakash Ram his dependent son Manoj Kumar had applied for his appointment under the provision of NCWA and the management of BCCL had approved the appointment of Manoj Kumar in place of his father Late Jai Prakash Ram. It is also an admitted fact that offer letter of appointment had been issued to the son of deceased workman on his permanent address by registered post.

17. Now, the question arises whether the management had denied the compassionate employment to Shri Manoj Kumar by not sending the offer of appointment letter on his present address?

18. In this regard the WW-1, Manoj Kumar had categorically stated that the applicant after death of his father was residing in company quarter at Bararee Coke Plant which is mentioned in column no. 16 of his Verification Roll Format. He has further stated that he had submitted several applications in writing on 11/02/2013, 21/10/2014, 29/10/2014, 12/01/2015 and lastly on 04/08/2016 to know the fact but the management of Bararee Coke had neither given him employment nor any reply. In the cross-examination he has also admitted that he has mentioned his correspondence and permanent address on his application and he had not received any letter from BCCL for appearing before the Medical Board, so he could not appear before the aforesaid Board.

19. The MW-1, Rajeev Kumar Mishra has deposed that the offer of appointment had been sent to the applicant Manoj Kumar on his permanent address. In the cross-examination he has admitted that in column no. 16 of Exhibit W-4, the address of applicant has been mentioned as Bararee Coke PO: Kusunda PS: Kenduadih Dist: Dhanbad and the company had not sent the offer of appointment on the address mentioned in column no. 16 of the verification roll (Exhibit W-4).

20. After perusal of the Exhibit W-4 which is Verification Roll, it appears that in Column no. 16, under heading Details With Full Address Of Places Where You Reside During The Last 5 Years it is mentioned as- Village Bararee Coke PO: Kusunda PS: Kenduadih Dist: Dhanbad State: Bihar.

Further after perusal of Exhibit W-5 which is Attestation Form it appears that in Present Address is mentioned as Bararee Coke, PO: Kusunda PS: Kenduadih Dist: Dhanbad. Further in column no. 3 of Attestation Form Home Address is mentioned as Kanhachatti PO: Kanhachatti PS: Chatra Dist: Hazaribag. Further Exhibit W-6, which is letter dated 10/02/2005, shows that Manoj Kumar had submitted application for re-validation of employment which was turned down. The Exhibit W-9, which is application of First Appeal, shows that the applicant had preferred first appeal. The Exhibit W-10 is the copy of order of Central Information Commission, New Delhi.

21. Now, after analysing the oral and documentary evidence it is quite apparent that the management of BCCL had accorded approval of appointment of applicant Manoj Kumar after death of his father Late Jai Prakash Ram but the management had sent the offer of appointment letter on the permanent address of Manoj Kumar whereas as per Exhibit W-4 he was residing at Bararee Coke PO: Kusunda PS: Kenduadih Dist: Dhanbad, so it is the an obligatory duty of the management to sent the offer of appointment letter on the present address if it returned unserved on the address sent. Moreover the applicant had submitted application on several dates for information but the same had not been made to available to him. Moreover the applicant had submitted application for re-validation which was turned down.

22. It is required to mention here that the employment to the dependent son of deceased, who died in harness is to mitigate the minimum financial hardship caused to the distress family after sudden death of the sole breadearner.

23. The Hon'ble Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana as reported in 1994 SCC (4) 138** has been pleased to observe that:-

“as a rule, appointments in public services should be made strictly on the basis of open invitation of application and on merit but appointment on compassionate ground was an exception to the aforesaid rule, which has given after taking into consideration the fact of the death of the employee while in service and leaving his family without any means of livelihood. In such cases, the object was to enable the family to tide over sudden crisis. However, such appointments on compassionate grounds have to be made in accordance with the rules regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

24. Now in the instant case the concerned employee namely Jai Prakash Ram died on 29/05/1998 and thereafter his son Manoj Kumar applied for appointment and the proposal of his appointment was approved by the competent authority after three year in the year 2001 but the offer of appointment letter was sent on the home address whereas the applicant was residing at his present address for last 5 years and that had not been taken into consideration by the management. The management should have sent a fresh offer of appointment letter to the applicant after it had returned unserved. Moreover the management had not considered the request for re-validation of the offer of appointment letter which is not just and proper.

25. Under such circumstances and conditions the Tribunal finds that the management of Bararee Coke Plant, P.B. Area of M/s. BCCL had denied the compassionate appointment to Manoj Kumar, son of deceased workman namely Late Jai Prakash Ram.

26. In view of above discussion the Tribunal renders the following Award:-

“The action of the management of P.B. Area of M/s. BCCL in denying compassionate employment to Shri Manoj Kumar, dependent son of Late Jai Prakash Ram, who expired on 29/05/1998 under the provisions of NCWA is not fair and justified.”

27. Hence, the applicant Manoj Kumar is entitled for relief which is as under:-

The management of P.B. Area of M/s. BCCL is directed to offer an employment to Shri Manoj Kumar deceased son of Late Jai Prakash Ram, Bararee Coke, P.O. Kusunda, P.S. Kenduadih as piece rated miner loader subject to his medical fitness within one month after publication of the Award in the Official Gazette.

This is the Award of the Tribunal.

D. K. SINGH, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 52.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 31/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2021 को प्राप्त हुआ था।

[सं. एल-20012/217/2004-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 18th January, 2021

S.O. 52.—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.31 of 2005) 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 16.01.2021.

[No. L-20012/217/2004-IR (CM-I)]

RAJENDER SINGH, Under Secy.

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. 31/2005**

Employer in relation to the management of Jealgora Colliery of M/s. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer**Appearances:**

For the Employers : Sri D.K. Verma, Advocate

For the workman. : None

State : Jharkhand.

Industry:- Coal

Dated :27.11.2020

AWARD

By Order No.L-20012/217/2004-IR (C-I) dated 31/03/2005 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 demand of the Bihar Mines Lal Jhanda Mazdoor Union for regularization of Md. Karim Ansari to the post of Rope Splicier Category-V from the management of Jealgora Colliery of M/s. BCCL is justified? If so, to what relief is the concerned workman entitled and from what date?”

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workman/union left appearing before the Tribunal. Thereafter again two regd. notices were issued to concerned union/workman but even then no one appeared on behalf of the workman/union. Now the Case is pending since 25/04/2005 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 53.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ई.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 33/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2021 को प्राप्त हुआ था।

[सं. एल-20012/535/2001-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 18th January, 2021

S.O. 53.—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. 33 of 2002) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. E.C.L and their workmen, which was received by the Central Government on 16.01.2021.

[No. L-20012/535/2001-IR (CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBADIn the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947**Reference: No. 33/2002**

Employer in relation to the management of Mugma Area of M/s. E.C.L.

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

For the Employers : Sri D.K. Verma, Advocate

For the workman. : None

State : Jharkhand.

Industry:- Coal

Dated : 25.11.2020

AWARD

By Order No.L-20012/535/2001-IR (C-I) dated 28/02/2002 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 M/s E.C.L. in not accepting the date of appointment of Sri Basdeo Ojha as 1.7.69 is fair and justified? If not, to what relief is the concerned workman entitled?”

2. After receipt of the reference, both parties were noticed but the workman/union didn't appear before the Tribunal. However, the management has appeared in this case. Thereafter registered notice was issued to the workman/union which returned with endorsement of “Addressee left”. Now the Case is pending since 21/03/2002 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 54.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी.एल. के प्रबंधन के संबंध में 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 306/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2021 को प्राप्त हुआ था।

[सं. एल-20012/295/2000-आईआर. (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 18th January, 2021

S.O. 54.—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. 306 of 2000) 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 16.01.2021.

[No. L-20012/295/2000-IR (CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBADIn the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947**Reference: No. 306/2000**

Employer in relation to the management of Karo Special Project of M/s. CCL.

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

For the Employers : Sri D. K. Verma, Advocate

For the workman. : None

State : Jharkhand.

Industry:- Coal

Dated : 26.11 .2020

AWARD

By Order No.L-20012/295/2000-C-I dated 30/10/2000 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 Karo Special Project of M/s C.C.Ltd. to terminate the service of Sri Shiv Ram Mehetar on the grounds of long absentee is legal and justified? If not, to what relief is the workman concerned entitled?”

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both the parties left appearing before the Tribunal. Thereafter again regd. notices were issued to both the parties but even then no one appeared. Later on the Ld. Lawyer of management appeared but no one appeared on behalf of the workman/union. Now the Case is pending since 21/11/2000 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D.K. SINGH, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 55.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 17/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 प्राप्त हुआ था।

[सं. एल-12025/01/2021-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 18th January, 2021

S.O. 55.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 18.01.2021.

[No. L-12025/01/2021-IR (B-I)]

D. GUHA, Under Secy.

ANNEXURE

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

Present: Shri. V.Vijaya Kumar, B. Sc, LLM, Presiding Officer
(Monday the 9th day of March 2020, 19 Phalguna 1941)

ID No. 17/2014

Workman...

Shri. K.V. Joy
Kollamolath House
Karukapilly P.O.
Kolenchery
Ernakulam – 682311
By Adv.Mathews K. Uthuppachan & Terry V. James

Managements...

1. The Deputy General Manager
State Bank of India
LHO Annex
Shanmugham Road
Ernakulam – 682301
2. The Chief General Manager
State Bank of India
Local Head Office
S. S. Kovil Road, Thampanoor
Trivandrum – 695001
3. The Assistant General Manager
State Bank of India
HR Department, LHO
S. S. Kovil Road, Thampanoor
Trivandrum – 695001
4. The Chief Manager
State Bank of India
M.G. Road Branch
Ernakulam – 682011
By Adv. Raynold Fernandez N.

This case coming up for final hearing on 21.01.2020 and this Tribunal-cum-Labour Court on 09.03.2020 passed the following:

AWARD

1. This is an industrial dispute filed U/s 2A(2) of the Industrial Disputes Act, 1947.
2. Notice was issued to the managements. Only management no. 4 entered appearance and managements 1 to 3 remained ex-parte.
3. The workman filed a claim to pass an award holding that his termination from service and denial of employment is not legally justifiable and also direct the managements to reinstate him in service and regularise his service with full back wages and continuity of service. The workman is an Ex-serviceman having served in the Army for 23 years. The workman joined the service of the management Bank as temporary guard on 07.10.2005 and his services were illegally terminated by the management on 03.01.2013. The dispute raised before the Assistant Labour Commissioner(Central) ended up in failure and the conciliation officer permitted the workman to raise this industrial dispute. After retirement from Army, the workman got himself registered in Zilla Sainik Welfare Board. The Zilla Sainik Welfare Board recommend his name for selection to the post of temporary guard in State Bank of India. The workman attended an interview in September 2005 and he was appointed as a temporary guard by the management Bank and his services continued till 03.01.2013. The workman worked for 1335 days during the aforesaid period in various branches of State Bank of India for the last 9 years. The State Bank of India conducted a recruitment for selection of Security /Armed Guards in 2005 and thereafter the selection was conducted only in May 2010. The workman also applied against the notification in 2010. However the application was rejected by the management Bank on the ground that he has crossed the age ceiling limit of 45 years. On 07.10.2005, when the workman was appointed by the management Bank as temporary guard he was aged 44 years. The management used to select temporary armed guards against permanent armed guards after conducting interview and physical test. The workman bonafidely believed that he will also get regularised as a permanent armed guard. Hence the workman did not apply for

any other job. The management never intimated the Zilla Sainik Welfare Board regarding the guidelines dt.21.07.2002. When the application for permanent armed guard was rejected on the ground that he crossed the age of 45 years the workman made a representation seeking relaxation of age to the extent of his provisional service, before the management Bank. The representation was not considered by the management Bank. Since the rejection of the application of the workman was not intimated to Zilla Sainik Welfare Board they did not sponsor the workman's name for any other job. Hence he lost the opportunity to be suitably appointed in some other institution. The workman and 4 other similarly placed Ex-servicemen filed W.P.(C).8520/2011 before the Hon'ble High Court of Kerala challenging the rejection of their application. The Hon'ble High Court of Kerala while dismissing the writ petition vide judgment dt.11.10.2012 observed that if regularisation is sought, temporary service has to be reckoned and special consideration has to be given. In view of the judgment the workman approached the management claiming regularisation of his service. The same was rejected vide order dt.31.12.2012. The workman moved the Assistant Labour Commissioner (Central), Ernakulam, against the rejection. When the industrial dispute was pending, State Bank of India initiated recruitment process for filling up the vacancies of armed guards in Kerala. The Assistant Labour Commissioner (Central) issued an order dt.22.08.2013 staying the recruitment process. The management challenged the said order in W.P.(C).3112/2013 and Hon'ble High Court vide order dt.26.08.2013 stayed the operation of the Assistant Labour Commissioner(Central). The workman approached the Hon'ble High Court of Kerala in W.P.(C) 22055/2013 to stay the selection process till a final order is passed by Assistant Labour Commissioner (Central). The Hon'ble High Court did not stay the recruitment process but directed the Assistant Labour Commissioner(Central) to dispose of the industrial dispute expeditiously. The workman challenged the order of the Hon'ble High Court before the Division Bench in W.A.64/2014 which was disposed of by the Court vide judgment dt.10.01.2014 directing the Ministry of Defence to consider and pass orders on the request given by the workman with regard to relaxation of age. No orders are passed by the Ministry so far. The workman is not alternatively or profitably employed after his termination by the management Bank. Having worked for more than 240 days continuously in the previous 3 years immediately before his termination, the service of the workman could only be terminated by complying with the provisions of the Industrial Disputes Act. The termination of the workman and denial of employment is illegal and arbitrary.

4. The management filed written statement denying the allegations in the claim petition. It is admitted by the management that the workman was appointed on 07.10.2005 as temporary guard by the management Bank at the age of 45 years. The engagement of the workman was purely temporary and there was no illegality in terminating his services. The management denied the allegation that selection of permanent staff is done from the temporary watchman/guard after conducting interview and physical test. The management had never made out any representation to the workman that he will be regularised in service at some point of time. The management cannot be held responsible if the workman was not aware of the guidelines dt.21.07.2002 issued by the management Bank for recruitment of armed guards. The management Bank has framed comprehensive guidelines for recruitment of armed guards in permanent vacancies as early as 21.07.2002. In sub clause (f) of Clause 5 of the above guidelines, it is mentioned that the age ceiling is subject to the maximum of 45 years. Phase 1 of the selection process involves physical test and phase 2 involves interview by a properly constituted selection committee. A copy of the guidelines dt.21.07.2002 is produced as Exbt. M1. It is true that the workman applied for a post of armed guard against circular dt. 27.05.2010 and the same was rejected for the reason that the workman crossed the age of 45 years. The relaxation allowable in respect of the post of armed guards is subject to the maximum age limit of 45 years. There is no provisions in the guidelines for relaxation of upper age limit of 45 years. The Hon'ble High Court of Kerala in its judgment dt. 11.10.2012 in W.P.(C) 8520/2011 upheld the view that the age limit provided in Clause 5(f) of the comprehensive guidelines cannot be interfered with. The Court further observed that the issue is something which comes within the realm of policy for selection in the matters of appointment. The contention of the workman that when he was initially appointed he was within the age limit will not in any way help the workman. Further the temporary service of casual employees cannot be computed for the purpose of arriving at the eligibility of age criteria as per the guide lines. The claim of the workman that he worked continuously for 1335 days over a period of 9 years is denied by the management. There was no continuous engagement and the workman was engaged on a temporary basis as and when there is a vacancy. The management also denied the allegation that the workman had continuously worked for more than 240 days in a calendar year. It is true that the workman applied against the circular dt.27.05.2010 for regular appoint. However his application was rejected as he crossed the age of 45 years as on the cut of date. The workman approached the Hon'ble High Court of Kerala in W.P.(C) no.22055/2013 for staying the selection process of armed guards. The Hon'ble High Court refused any relief. W.A. 64/2014 filed by the workman before the Division Bench was disposed of with direction to the Defence Ministry to consider the representation of the workman regarding relaxing of age. The defence ministry has not passed any order till date. The workman was only a casual employee and hence there was no termination of service of the workman. There is no violation of the provision of Sec 25F of ID Act. The workman has already approached the Hon'ble High Court for the same relief and identical contentions and same was declined by the Hon'ble High Court of Kerala. The workman

cannot re-agitated the same issues in this proceedings. The management is not guilty of any unfair labour practice.

5. The workman filed a rejoinder denying the allegations in the written statement and reiterating his claims in the claim petition.

6. The workman examined WW1 and WW2 and marked Exbts.W1-W12. Exbt.W9 and W10 were marked subject to proof. The management examined MW1 and marked Exbt.M1 and M2.

7. After completion of pleadings and evidence the following issues are framed for examination.

1. Whether the workman is entitled for regularisation, relaxing the age limit of 45 ?
2. Whether there is any violation of sec 25F of Industrial Disputes Act, 1947?
3. Relief and cost

8. **Issue No.1**

It is an admitted fact that the workman was appointed as temporary armed guard in the service of the management Bank on 07.10.2005 when he was 44 years of age. His engagement was done through Zilla Sainik Welfare Board. There was no recruitment of permanent armed security guard in the management in between 2005 and 2010. On 27.05.2010 the management Bank issued a circular for appointing permanent armed security guards. The workman also applied for the post. However his application was rejected on the ground that he crossed the age of 45 years as on the date of application. The request given by the workman for relaxation of age limit was also rejected by the management Bank. At the time of the initial appointment in 2005 the workman was aged 44 and therefore well within the age limit of 45 years. According to the learned Counsel for the management the recruitment of armed guards in permanent vacancies is guided by the comprehensive guidelines in Exbt.M1. As per the eligibility criteria in Exbt. M1, the maximum age ceiling is 45 years. Clause 5 (f) of Exbt.M1 reads as follows;

“Age Ceiling - For recruitment as Bank guards, Ex-servicemen are entitled to relaxation in age ceiling in full, to the extent of service in the Armed Forces and 3 years in addition there to, subject to the maximum age ceiling of 45 years”.

The workman and similarly placed armed security guards challenged the rejection of their application for regular appointment claiming relaxation of age limit in a series of writ petitions before the Hon'ble High Court Court of Kerala. The Hon'ble High Court considered all these matters and disposed of all the writ petitions by a common judgment in W.P.(C) 8520/2011 vide its order dt.11.10.2012. The Hon'ble High Court of Kerala considered all the above issues including the provisions in Clause 5(f) of Exbt.M1. The Hon'ble High Court after examining various issues concluded that

“The above aspect, when harmoniously constructed with Clause 5(f) of the comprehensive guidelines indicate that the rationale behind is to ensure that selected candidates are left with enough service and to ensure that they are possess desired standards of physical fitness. This Court is not in a position to interfere with the decision taken by the Bank authorities in their wisdom in formulating guidelines prescribing such cut of age in consonance with guidelines of the Central Govt. It is a matter which is purely coming within the realm of policy decision in the matter of appointment. Unless it is established that such policy lacks total nexus with the objective sought to be achieved or that it is totally irrational and arbitry, this Court cannot interfere. Moreover there is no direct challenge against the guidelines prescribed. This Court cannot hold that the petitioners are entitled to be selected in the process of recruitment against permanent vacancy which is made through prescribed selection process on the basis of settled guidelines. Therefore the challenge against rejection of candidature on the basis of crossing of upper age limit cannot be sustained ”.

The Hon'ble High Court also considered whether it is justifiable to consider the temporary service and relaxation of the eligibility criteria in the case of the workman. After considering the facts and also the related decisions the Hon'ble High Court held that "In that point of view the urge for regularisation in service of the Bank on the basis of temporary appointments need consideration. But it is for the appropriate authorities to decide such issues". While dismissing the writ petition the Hon'ble High Court made it clear that the dismissal of the writ petitions will not stand in the way of the petitioners claim of regularisation of service in the Bank or seeking in further modification of the guidelines providing relaxation in upper age limit. It is left open to the petitioners to approach the appropriate authority either in the Bank or in the Central Govt to seek for such modifications and to seek recruitment against permanent vacancies arising in future. They will also be at liberty to seek regularisation on the strength of temporary service put in. From the above it is clear that the question of relaxation of age for permanent appointment of the workman and also considering the relaxation taking into account the temporary service, was considered by the Hon'ble High Court of Kerala and the same was rejected with a direction to the workman to approach the appropriate authority seeking relaxation. Hence it is not open

this Court to examine the same issues which were considered and disposed of by the Hon'ble High Court. Hence the claim for relaxation of age limit and regularisation of service of the workman are decided against the workman and in favour of the management.

9. **Issue no.2**

According to the learned Counsel for the workman, the workman worked continuously for 9 years and for 1335 days. It was also argued that the workman worked continuously for 240 days for all 3 years since 2010. When he was terminated on 03.01.2013 he was not given any notice, notice pay or compensation as required U/s 25F of ID Act, 1947. Hence his termination is arbitrary and is clearly illegal. To substantiate his claim the workman produced Exbts.W1-W7. Those exhibits are certificates issued by various branches of the management Bank stating that the workman worked with them for so many days during a particular period. The question involved is whether the workman worked for 240 days one year immediately prior to his termination of service. Exbt.W6 will show that the workman worked for 246 days for the period from 01.12.2011-12.10.2012. The workman could prima facie establish that he has worked for more than 240 days within one year prior to his termination on 03.01.2013. The workman filed IA no.11/2016 seeking a direction to the management to produce the original attendance/duty register, attendance book and wage payment details with respect to the workman maintained at State Bank of India, M.G.Road, Ernakulam branch during the period 10/2005 to 12/2012. After protracted proceedings, the Interlocutory Application was allowed directing the management to produce the listed documents or to file an affidavit in case of non production. The management neither produce the documents nor filed any affidavit explaining the reasons for non production of the documents ordered to be produced in the proceedings. The documents ought to be produced by the workman are in the custody of the management and are crucial in establishing whether the workman worked for 240 days one year prior to his retrenchment particularly in view of the fact that the workman has prima facie established that he worked for more than 240 days. Hence an adverse presumption will have to be drawn against the management for non production of crucial documents such as attendance register and payment details of the workman for the relevant point of time. It may be relevant to examine the decision of Hon'ble Supreme Court in **Gauri Shankar Vs State of Rajasthan**, 2015 12 SCC 754. In the above case, the workman was working with the respondent and his case was that he was appointed against a permanent and sanctioned post w.e.f. 01.01.1987 till his services came to be retrenched and he had rendered service of more than 240 days in every calendar year and has received salary from the respondent department each month. The workman challenged the retrenchment as bad in law as the same was in violation of Sec 25F, 25G, 25H, 25T and 25U of the ID Act. The workman applied for production of the Muster Roll and the management failed to produce the relevant Muster Rolls. The Hon'ble Supreme Court relying on its earlier decisions in **Gopal Krishna G Ketker Vs Muhammed Haji Latheef**, AIR 1968 SC 1413 and **Murukesam Pillai Vs Manikyavasaka Pandara**, 1917 5 LW 759 held that even if the burden of proof does lie on a party, the Court can draw an adverse inference if he withholds important documents in his possession which can throw light on the facts of issue. It may also be relevant to examine the decision of the Hon'ble Supreme Court in **Sriram Industrial Enterprises Ltd Vs Mahak Singh and others**, 2007 4 SCC 94, wherein the Hon'ble Supreme Court held that when the workman discharged their initial onus by producing the documents in their possession, it is the responsibility of the management to disprove the claim of the workman that he did not work for more than 240 days with the management one year immediately prior to his/her termination. In this case, as already stated, Exbt.W6 certificate issued by the Management Bank, will clearly establish that the worker worked for more than 240 days one year immediately prior to his retrenchment. However the documents ordered to be produced by the Management such as the attendance register and wage payment details of the workman, could have conclusively proved the claim of the workman that he worked for more than 240 days one year immediately prior to his retrenchment. Hence in the absence any explanation on the side of the Management an adverse inference is that the workman worked for more than 240 days one year immediately prior to his termination on 03.01.2013. Hence the management is liable to follow the conditions precedent before the retrenchment of the workman as contemplated U/s 25F of ID Act, 1947.

10. It was also pointed out that the workman in this case is only a casual employee on daily wages and hence he is not entitled to claim the benefits U/s 25F of the ID Act. The learned Counsel for the workman relied on the decision of Hon'ble High Court of Kerala in **Sreekumar K. Vs Managing Director, KTDC Ltd**, 2019 (1) KHC 225 to point out that the definition in Sec 2(s) of the ID Act includes casual employees also. In the above case the Hon'ble High Court held that;

“Para 18. From this it is quiet evident that the definition of the term ‘workman’ U/s 2(s) of the ID Act includes a casual employee as well and hence the decision cited (Supra) (in the context governed by the provisions of the workman’s Compensation Act) is not at all attracted to the case in hand.”

11. Another issue to be considered is in view of the decision of the Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, 2006 4 SCC 1 and the **State of Bihar and others Vs Devendra Sharma**, Civil Appeal no. 7879/2019, to argue that the management Bank being a ‘state’ under Article 12 of the Constitution, whether back door entry in service can be allowed violating Article 14 & 16 of the Constitution of India. It was

argued that when there is a violation of the provisions of ID Act, the dictum laid down in the above decisions is clearly distinguishable. In **Ajaypal Singh Vs Haryana Warehousing Corporation**, (2015) 6 Supreme Court Cases 321 the Hon'ble Supreme Court considered the decision in **Uma Devi's case** (Supra) and held that ;

“17. In **Uma Devi's case**, (3) this Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since rule of law is a core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The provisions of the Industrial Disputes Act and powers of the Industrial and Labour Court provided therein were not at all under consideration in **Uma Devi's case** (3). The issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in **Uma Devi's case**.

18. We have noticed that Industrial Dispute Act is made for the settlement of industrial disputes and certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for long period without giving them the status and privilege of permanent employees.

19. Sec 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent for retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under the said provisions if the employer retrenches the workman. Such a workman cannot be retrenched until he/she is given one month notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice apart from compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Govt or such Authority as may be specified by appropriate Govt by notification in the official Gazette. If any part of the provisions of Sec 25F is violated and the employer there by, resorts to unfair trade practice with the object to deprive the workman with privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 & 16 of the Constitution of India.

(20) - - - - -

(21) - - - - -

Para 22. It is always open to the employer to issue an order of “retrenchment” on the ground that the initial appointment of the workman was not in conformity with Article 14 & 16 of the Constitution of India or in accordance with rules. Even for retrenchment for such ground, unfair labour practice cannot be resorted to and thereby the workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Sec 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year”.

The above decisions was also quoted with approval by the Hon'ble Supreme Court in **Durgapur Casual Workers Union and others Vs Food Corporation of India and others**, (2015) 5 SCC 786. The Hon'ble Court held that an undertaking of the government which comes within the meaning of ‘industry’ or its establishment cannot justify its illegal action including unfair labour practice nor can ask for different treatment on the ground that public undertaking is guided by Articles 14 & 16 of Constitution of India and the private industries are not guided by 14 & 16 of the Constitution. In **Umralla Grama Panchayat Vs Secretary, Municipal Employees Union**, 2015 12 SCC 775 the Hon'ble Supreme Court directed that the services of the workmen in that case be regularized and made permanent since they worked for more than 240 days in a calendar year.

12. In view of the above, it is very clear that the management terminated the service of the workman in clear violation of the provisions of Sec 25F of the Industrial Disputes Act, 1947.

13. Issue No. 3

Issue no.2 regarding the legality of termination of the workman is decided in favour of the workman and against the management. The learned Counsel for the workman argued that once this Tribunal found that the termination of the workman was illegal he is entitled for reinstatement in service with full back wages. The workman was already on the verge of retirement age and he is a daily wage employee and continued as a daily wage employee and is not entitled for regularisation for the reasons discussed at issue no.1. The Hon'ble Supreme Court in **State of Uttarakhand and others Vs Rajkumar**, 2019 1 LLJ 513 SC relying on the decision of the Court in **BSNL Vs Bhurumal**, (2014) 7 SCC 177 and **District Development Officer and another Vs Satish Kantilal Amerelia** 2018 12 SCC 298 held that in the circumstance of that case it would be just and proper and reasonable to award lumpsum monetary compensation to the workman in full and final satisfaction of his claim of reinstatement and other consequential benefits. The Hon'ble Supreme Court has laid down the law on the subject in **BSNL case** (Supra) as follows ;

“ Para 33. It is clear from the readings of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workmen are terminated illegally and/or malafide and/or by way of victimization, of unfair labour practice, etc. However when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Sec 25F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

Para 34. The reasons for denying the relief for reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non payment of retrenchment compensation and notice pay as mandatorily required U/s 25F of the ID Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated he has no right to seek regularization [see **State of Karnataka Vs Uma Devi(3)**]. Thus when he cannot claim regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

Para 35. We would however, like to add a caveat here. There may be cases where termination of daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principles of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases reinstatement should be the rule and only in exceptional cases, for the reasons stated to be in writing, such relief can be denied”.

14. In the present case, it is proved that the workman was engaged as a daily wage employee and he worked continuously for more than 240 days one year before his termination. The management failed to establish that the workman was gainfully engaged during the period of termination. Hence it is a fit case where the dictum laid down by the Hon'ble Supreme Court in **State of Uttarakhand and others Vs Rajkumar** (Supra) is squarely applicable. It is seen that the workman was engaged on daily basis and he was being paid daily wage of Rs.375/- per day. It is also seen that the workman has crossed 59 years of age as on date. In these circumstances it would be just and proper and reasonable to award a lumpsum monetary compensation to the workman in full and final satisfaction of his claim of reinstatement and other consequential benefits. If the wages are worked out from his date of termination till date it will approximately come to Rs.8,50,000/- as back wages. Further he is also entitled to the benefit U/s 25F of the ID Act. Taking into account all these aspects it is felt that interest of justice will be met if the management is directed to pay 50% of the back wages and other benefits U/s 25F of the ID Act. Hence the management is directed to pay a lumpsum monetary compensation of Rs.4,50,000/- to the workman in full and final settlement of his claim within one month from the notification of the award.

Hence an award is passed holding that the workman is not entitled for regular appointment relaxing the age limit. However he is entitled to be reinstated with 50% of the back wages and therefore the management is directed to give him a lumpsum monetary compensation of Rs.4,50,000/- in full and final settlement of all his claims.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 9th day of March, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX**Witness for the Workman:-**

- WW1 - Shri. K.V. Joy, dt.18.01.2016
 WW2 - Shri. Joseph M.P., dt. 01.03.2017

Witness for the Management:-

- MW1 - Shri.N.G. Mathew, dt. 01.11.2019

Exhibits for the Workman:-

- W1 - Certificate dt. 21.05.2010 issued by the Chief Manager, SBI, M.G.Road Branch, Ernakulam
 W2 - Certificate dt. 17.02.2010 issued by the Chief Manager, SBI, Ernakulam Branch
 W3 - Certificate dt. 20.05.2010 issued by the Chief Manager (HR) Section, SBI, Ernakulam
 W4 - Certificate dt. 20.05.2010 issued by the Chief Manager, SBI, Ambalamedu Branch
 W5 - Certificate dt. 22.03.2011 issued by the Chief Manager, SBI, M.G.Road Branch, Ernakulam
 W6 - Certificate dt. 12.10.2012 issued by the Chief Manager, SBI, M.G.Road Branch, Ernakulam
 W7 - Certificate issued by the SBI, M.G. Road Branch, Ernakulam
 W8 - True copy of judgment dt.10.01.2014 in W.A. no. 64/2014 of the Hon'ble High Court of Kerala
 W9 - Certificate dt. 03.07.1993 issued by the SBI to Mr.C.Valsalan (marked subject to proof)
 W10 - Identity Card issued by the Zilla Sainik Welfare Board to Mr. C.Valsalan (marked subject to proof)
 W11 - Certified copy of letter dt.30.07.2016 sent by the Zilla Sainik Welfare Officer, Ernakulam to the Senior Manager, Canara Bank, M.G.Road, Trivandrum
 W12 - Certified copy of letter dt.26.11.2016 sent by the Zilla Sainik Welfare Officer, Ernakulam to the Chief Manager, Punjab National Bank, Market Road, Ernakulam

Exhibits for the Management:-

- M1 - Photocopy of the guidelines dt. 21.07.2002
 M2 - Photocopy of the judgement in W.P. (C). 8529/2011(L) dt.11.10.2012.

नई दिल्ली, 18 जनवरी, 2021

का.आ. 56.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंधन के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 15/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 प्राप्त हुआ था।

[सं. एल-41011/09/2014-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 18th January, 2021

S.O. 56.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 18.01.2021.

[No. L-41011/09/2014-IR (B-I)]

D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 15/2014

Ref. No. L-41011/09/2014-IR(B-I) dated 19.03.2014

BETWEEN :

Mandal Sanghthan Mantri
Uttar Railway Karmchari Union
C/o Shri Parvej Alam, 283/63, Kh, Ghari Kannora
Premvati Nagar, PO, Manak Nagar
Lucknow.
(Espousing cause of Shri Guru Prasad)

AND

Senior divisional Personal Officer
Northern Railway, DRM Office
Hazratganj, Lucknow.

AWARD

1. By order No. L-41011/09/2014-IR(B-I) dated 19.03.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sanghthan Mantri, Uttar Railway Karmchari Union, C/o Shri Parvej Alam, 283/63, Kh, Ghari Kannora, Premvati Nagar, PO, Manak Nagar, Lucknow and Senior divisional Personal Officer, Northern Railway, DRM Office, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is:

“KYA PRABANDHAN UTTAR RAILWAY, LUCKNOW DEARA APNE KARMKAAR SHRI GURU PRASAD, M.C.M. ADHINATH VARI. KHAND ABHIYANTA (TELE), DOORSANCHAR LINE, U.R., CHARAGH, LUCKNOW KI GRATUITY SE KUL 70,464.00 KI KATAUTI KARNA NYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO KARMKAAR KYA ANUTOSH PANE KA ADHIKAARI HAI?”

3. The case of the workman's union, in brief, is that the workman, Guru Prasad, whose date of birth in his service book had been mentioned as 09.11.1950; and accordingly he worked upto 30.11.2010 i.e. upto attaining age of 60 years. It has been alleged by the workman that the competent authority vide order dated 15.11.2010 ordered that the date of birth mentioned on the first page of the service book be treated correct and the workman be retired and paid retrial benefits accordingly, even then the workman had been retired w.e.f. 30.09.2010 and deduction from his gratuity towards salary for October & November, 2010 along with income tax, amounting to Rs. 70464/- had illegally been deducted. The workman has also alleged that the above recovery had been made without any show cause etc., therefore, the same may be refunded to him with interest.

4. The management of the railways has disputed the claim of the workman by filing its written statement wherein it has submitted that the date of retirement of the workman had inadvertently been mentioned as 30.11.2010 instead of 30.09.2010, therefore, when workman was retired on 30.11.2010, the excess payment made to him, amounting to Rs. 63,876/- was recovered from his gratuity. It has been submitted by the management rectification had been made in the date of birth, wrongly mentioned in a certificate, which resulted into recovery of excess amount paid to the workman, therefore, there is no illegality in the action of the workman and accordingly, the management of the railways has prayed that the claim of the workman's union be rejected without any claim to the workman concerned.

5. The workman's union has filed rejoinder whereby it has only reiterated its averments in the statement of claim and has not introduced any new fact.

6. After completion of pleadings on behalf of the parties, the parties were called upon to file documentary evidence in support of their respective case and accordingly, the workman's union filed documents vide list dated 17/18-02-2015 and the management of the railways filed none. The workman's union was given opportunity to file its evidence on affidavit; and accordingly, it filed its evidence in shape of affidavit on 09.08.2018; but did not turned for cross-examination, on several dates, accordingly, the management was afforded opportunity to file its evidence on 05.03.2020, closing the opportunity of the workman to get cross-examined. On the date fixed for management evidence, the learned counsel for management stated that since the workman did not turn up for cross-examination, therefore, it does not want to final any evidence. Thus,

keeping in view long pendency of the case since 2014, the case was heard on merit and file was reserved for award.

7. It is noteworthy to mention that in the instant case the authorized representative of the workman's union made his last appearance on 07.03.2019; and since then he is not turning up to contest its case; and it is only the authorized representative of the opposite party who is appearing before this Tribunal for last several dates.

8. The case of the workman that recoveries were made from his gratuity without any show cause etc.; per contra, the management has come up with a case that the excess payment were made due to wrong entry of date of retirement; accordingly, the excess payment made was recovered from the gratuity.

9. In view of rival contentions of the parties, I have scanned entire material placed on the file.

10. It is well settled that if a party challenges the legality of action, the burden lies upon him to prove illegality of the action and if no evidence is produced by the party, invoking jurisdiction of the court, must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the action of the management in making recovery from his gratuity. It was the case of the workman that the recovery was made from the gratuity of the workman illegally. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that the management illegally made recovery from the gratuity. The workman's union though filed documentary evidence vide list, W-7; which included photocopy of various documents; moreover, it did not turn up to prove the photocopy of the documents filed, in evidence before this Tribunal.

11. In 2008 (118) FLR 1164 M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Sanker Chakravarti vs. Britannia Biscuit Co. Ltd., 1979 (39) FLR 70 (SC) V.K. Raj Industries v. Labour Court and others, 1984 (49) FLR 38 Airtech Private Limited v. State of U.P. and others and 1996 (74) FLR 2004 (All.) Meritech India Ltd. v. State of U.P. and others; wherein it was observed by the Apex Court:

"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

12. In the present case the workman has not turned to substantiate his case by way evidence as he did not turn up to get cross-examined. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that the management illegally made recovery from the gratuity; but the workman failed to forward any evidence in support of its claim, as it did not turn up to get cross-examined. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of Railway in making recovery from the gratuity is illegal and unjustified.

13. Accordingly, the reference is adjudicated against the workman; and as such, I come to the conclusion that the workman, is not entitled to any of the relief claimed.

14. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW

01st January, 2021

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 57.—औद्योगिक विवाद अधिनियम, 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंधन के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 68/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 प्राप्त हुआ था।

[सं. एल-41011/54/2015-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 18th January, 2021

S.O. 57.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 18.01.2021.

[No. L-41011/54/2015-IR (B-I)]

D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 68/2015

Ref. No. L-41011/54/2015-IR(B-I) dated 12.10.2015

BETWEEN :

The President
Rail Sewak Sangh
By S. N. Shrivastav, J-422, Inderlok Colony
Kanpur Road, Lucknow.

Vs

Mandal Sanket & Doorsanchar Abhiyanta
Northern Railway
(bridge line), Varanasi Kant, &
Mandal Rail Prabandhak, Uttar Railway, Lucknow

AWARD

1. By order No. L-41011/54/2015-IR(B-I) dated 12.10.2015, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the President, Rail Sewak Sangh, By S. N. Shrivastav, J-422, Inderlok Colony, Kanpur Road, Lucknow and Mandal Sanket & Doorsanchar Abhiyanta, Northern Railway, (bridge line), Varanasi Kant, & Mandal Rail Prabandhak, Uttar Railway, Lucknow for adjudication.

3. The reference under adjudication is:

“kya prabandhan, uttar railway dwara shri gauri Shankar ko seva nivrrit dinank 30/06/2011 ke upraant 3 varsh paschat der se bhugtaan karne deye dhanraashi par byaj bhugtaan na karna, rail sewa pension niyam 10=993 ke rule 76 ka ullanghan karne par prabadhan ke virudh audhogik vivad adhiniyam 1947 ki dhara 25 u ke antargat karyaahi ki maang karna nyayochit evam vaidh hai? Yadi nahi to shramsangh/kaamgaar ki raahat ko paane ka haqdaar hai?”

3. The order of reference was endorsed to the President, Rail Sewak Sangh, By S. N. Shrivastav, J-422, Inderlok Colony, Kanpur Road, Lucknow with direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957.

4. The industrial dispute was registered in the Tribunal on 01.10.2015 and the office was directed to issue registered notice to the workman's union for filing the statement of claim with list of reliance & list of witnesses on 29.12.2015; but no statement of claim together with documents etc. was filed. The workman's union put up its appearance on 16.02.2016 and since then it did not file any statement of claim and had been seeking date at one pretext or the other. On 08/04/2016 the management filed its authority in favour of Shri U.K. Bajpai, advocate, which was taken on record. More than five years' time has passed and the woman's union has failed to file its statement of claim, therefore, the case was reserved for award keeping in view the reluctance of the workman's union to contest the case; moreover, Shri Bajpai also denied to file any statement of defence on behalf of the management in absence of any statement of claim from the workman.

5. It is well settled that if a party challenges the legality of an action, the burden lies upon it to prove illegality of the action and if no evidence is produced by the party, invoking jurisdiction of the court, must fail. In the present case burden was on the workman's union to set out the grounds to challenge the validity of the action of the management in not paying interest on the belated payment of pension benefits as per Rules.

6. In the above circumstances, it appears that the workman's union does not want to pursue its claim on the basis of which it has raised the present industrial dispute; therefore, the present reference order is decided as if there is no grievance left with the workmen's union. Resultantly no relief is required to be given to the workmen concerned. The reference under adjudication is answered accordingly.

7. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW

30th December, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 58.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ोदा पश्चिम यू पी ग्रामीण बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 33/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 प्राप्त हुआ था।

[सं. एल-12012/169/2008-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 18th January, 2021

S.O. 58.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Baroda Western U.P. Gramin Bank and their workmen, received by the Central Government on 18.01.2021.

[No. L-12012/169/2008-IR (B-I)]

D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 33/2009

Ref. No. L-12012/169/2008-IR(B-I) dated 01/09/2009

BETWEEN :

Shri Harish Chandra S/o Shri Shiv Sahai
Vill: Kurtara Post – Agras
Distt. – Bareilly (UP)

Vs.

The Chairman
Baroda Western U.P. Gramin Bank
Regional Office
124-C, Civil Lines, Bareilly.

AWARD

1. By order No. L-12012/169/2008-IR(B-I) dated 01/09/2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Harish Chandra S/o Shri Shiv Sahai, Vill: Kurtara Post – Agras, Distt. – Bareilly (UP) and the Chairman, Baroda Western U.P. Gramin Bank, Regional Office, 124-C, Civil Lines, Bareilly for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF BARODA WESTERN U.P. GRAMIN BANK, BAREILLY TO DISMISS FROM SERVICE TO SHRI HARISH CHANDRA, MESSENGER W.E.F. 4-2-2006, IS FAIR, LEGAL AND JUSTIFIED? IF NOT, WHAT RELIEF IS THE WORKMAN CONCERNED ENTITLED TO?”

2. It is admitted case of the parties that the workman, Harish Chandra was working as Messenger in Bithri Chainpur branch of the bank when he was suspended for alleged charges of financial irregularities, mis-appropriation and fraud on 04.08.2005 and subsequently had been issued a charge sheet dated 12.08.2005, which was duly replied by the workman vide his reply dated 24.08.2005; and the management of the Bank, being unsatisfied with the reply of the workman, appointed Sri Iqbaal Singh, Manager, Bhojipura as Enquiry Officer, who submitted his enquiry report vide letter dated 20.12.2005 before the disciplinary authority. The Disciplinary Authority, on the basis of findings of the Enquiry Officer, issued a show cause to the workman; which was duly replied by the workman vide his reply dated 01.02.2006. The Disciplinary Authority issued punishment order dated 04.02.2006, which was confirmed by the Appellant Authority after considering his appeal dated 21.03.2006 vide appellate order.

3. It has been alleged by the charge sheet dated 12.08.2005 is false and frivolous and the inquiry officer conducted the departmental inquiry without observing the due procedure of domestic inquiry, in violation of the principles of natural justice, inasmuch as the Inquiry Officer during the inquiry did not afford proper opportunity to the workman for his defence. It has also been alleged by the workman that the inquiry officer did not summon relevant witnesses before inquiry, which caused prejudice to his case; moreover, the Disciplinary Authority and Appellate Authority issued punishment order and appellate order without considering the reply to the show cause and his appeal respectively. Accordingly, the workman has prayed that the Departmental proceedings which were conducted in violation to the principles of natural justice is liable to be set aside.

4. The management of the Bank in its written statement has denied the allegations of the workman and has defended its domestic proceedings with submission that the workman had been afforded all reasonable opportunity given under rules the principles of natural justice were fully complied with; hence, there is no anomaly with it; and accordingly, has prayed that domestic enquiry proceedings conducted by it may be upheld and the action of the Bank vide order dated 04.02.2006 be declared just, fair and legal without any benefit to the workman concerned.

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

6. The workman did not file any document in support of his case. Likewise, the management filed only copy of charge sheet dated 12.08.2005 with his written statement. It is noteworthy to mention here that the workman almost refrained the proceedings since 18.12.2012, after filing of rejoinder, and turned up only on few dates; but did not turn up to prove his case before this Tribunal i.e. he neither filed any documentary nor any oral evidence to prove his pleadings before this Tribunal.

7. Keeping in view long pendency of the case, following preliminary issues were framed vide order dated 20.11.2020:

(i) Whether the domestic inquiry conducted by the management is fair and proper.

(ii) Whether the findings of inquiry officer are perverse?

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

After framing the above preliminary issues, the submissions of the authorized representative has been heard and date was fixed for award; however, the parties were afforded an opportunity to file their written submission, if any.

8. Heard learned counsel of the management alone and perused entire material available on record.

Issue No: 01 & 02:

9. The authorized representative of the management has submitted that the workman committed gross misconduct of fraud, cheating and misappropriation on various accounts of the customers. He acted dishonestly and deliberately against the interests of the Bank; accordingly, was charge sheeted vide charge sheet dated 12.08.2005 and after conducting a fair domestic inquiry; wherein the workman had been afforded all reasonable opportunity to defend himself was awarded punishment of dismissal; which cannot be called disproportionate at all.

In rebuttal, the workman did not submit any oral or written submission; moreover, he failed to prove his pleadings before this Tribunal through cogent evidence, documentary and oral.

10. It is well settled that if a party challenges the legality of an action, the burden lies upon it to prove illegality of the action and if no evidence is produced by the party, invoking jurisdiction of the court, must fail.

In the present case burden was on the workman to set out the grounds to challenge the validity of the action of the management in dismissing him from the services of the Bank, after conducting a departmental inquiry; wherein the principles of natural justice were not observed by the inquiry officer and the punishment imposed upon him was disproportionate. Since the management denied this claim of the workman, therefore, it was for the workman to lead evidence, documentary as well as oral, to show that the alleged injustice had been done to the workman; but he could not succeed.

11. In 2008 (118) FLR 1164 M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Sanker Chakravarti vs. Britannia Biscuit Co. Ltd., 1979 (39) FLR 70 (SC) V.K. Raj Industries v. Labour Court and others, 1984 (49) FLR 38 Airtech Private Limited v. State of U.P. and others and 1996 (74) FLR 2004 (All.) Meritech India Ltd. v. State of U.P. and others; wherein it was observed by the Apex Court:

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

12. In the present case the workman did not turn up to substantiate its case by way of filing any oral evidence and refrained at the proceedings before this Tribunal. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that the workman was actually not given proper opportunity of defence before the inquiry officer during domestic inquiry and the inquiry was conducted against the principles of natural justice; and that also that the findings of the inquiry officer are perverse; and finally that the punishment imposed upon him was disproportionate or harsh; but the workman failed to forward any substantive evidence in support of its claim, in spite of ample opportunity being provided to him. Thus, there is no reliable material for recording findings that the alleged injustice was done to the workman or the departmental inquiry was conducted in utter violation to the principles of natural justice or the findings of the inquiry officer are perverse. Accordingly, in view of the facts and circumstances of the case, narrated hereinabove, the issued No. 01 & 02 is decided in favour of the management.

Issue No. 03:

13. Now, after decision of the preliminary issue no. 01 & 02, in the favour of the management, the pleadings of the workman that the punishment imposed upon him is disproportionate and this Tribunal should interfere into it within the provisions providing under Section 11 A of the Industrial Disputes Act, 1947 is taken into account. In this regard, it is well settled that the Labour Court has ample power under section 11-A of the Industrial Disputes Act, 1947 to substitute a lesser punishment, taking into consideration the facts and circumstances of the case. Moreover, the principle of proportionality calls for interference of this Court into the punishment imposed by the management i.e. of removal in view of law in *Joseph Solomon vs. Presiding Officer, Labour Court, U.P., Dehradun & another* 2012 (134) FLR 424.

14. It is admitted proposition of law that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment; however, the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is harsh. Admittedly, in the instant case the workman was given charge sheet for committing misconduct of 'doing acts prejudicial to the interest of the bank' i.e. cheating, fraud and misappropriation; and was penalized with punishment of dismissal. Moreover, it has been held in preceding para that the disciplinary enquiry was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself; and also that the findings of the Enquiry Officer do not suffer with the vice of perversity.

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

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

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

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

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

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

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

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

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

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

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

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

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

17. In the instant case the workman, committed gross misconduct of fraud, cheating, misappropriation in various accounts of the customers to the tune of Rs. 1,31,600/-, which not caused financial loss to the bank but also was prejudicial to the interests of the Bank.

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

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

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

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

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

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

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

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”

20. In the instant case the charge of gross misconduct of fraud, cheating, misappropriation by the workman was found to be proved and principles of natural justice were properly observed while conducting the departmental inquiry; and also the findings of the Inquiry Officer were not found to be perverse, therefore the punishment of dismissal cannot be said to be disproportionate or harsh to the proved misconduct, at any stretch of imagination.

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

21. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW

29th December, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 59.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ोदा पश्चिम यू. पी. ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 64/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-12011/20/2007-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 18th January, 2021

S.O. 59.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Baroda Western U.P. Gramin Bank and their workmen, received by the Central Government on 18.01.2021.

[No. L-12011/20/2007-IR (B-I)]

D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 64/2007

Ref. No. L-12011/20/2007-IR(B-I) dated 28.11.2007

BETWEEN :

The District Secretary
Bhartiya Mazdoor Sangh
Bans Mandi, Bareilly (UP)
(Espousing cause of Shri Pradeep Kumar)

Vs

The Chairman
Baroda Western U.P. Gramin Bank
124-C, Civil Lines, Bareilly (UP)

AWARD

1. By order No. L-12011/20/2007-IR(B-I) dated 28.11.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the District Secretary, Bhartiya Mazdoor Sangh, Bans Mandi, Bareilly (UP) and the Chairman, Baroda Western U.P. Gramin Bank, 124-C, Civil Lines, Bareilly (UP) for adjudication.

3. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF BARODA WESTERN U.P. GRAMIN BANK, BAREILLY TO AWARD PUNISHMENT TO SHRI PRADEEP KUMAR, CLERK CUM CASHIER OF DEGRADATION TO A LOWER STAGE IN INCREMENTAL SCALE BY EIGHT INCREMENTS IS FAIR, LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN CONCERNED IS ENTITLED?”

2. It is admitted case of the parties that the workman, Pradeep Kumar was working as Clerk-cum-Cashier in Damkhoda branch of the Bank when he was had been issued a charge sheet dated 20.08.2003, which was duly replied by the workman vide his reply dated 20.09.2003; and the management of the Bank, being unsatisfied with the reply of the workman, appointed Sri Askandar Mirza as Enquiry Officer, who submitted his enquiry report dated 03.03.2004 before the disciplinary authority. A copy of the findings of the Inquiry Officer was provided to the workman vide letter dated 05.03.2004 for representation and the workman submitted in representation dated 21.03.2004. The Disciplinary Authority, on the basis of findings of the Enquiry Officer, representation of the workman, issued a show cause to the workman vide dated 17.05.2004; which was duly replied by the workman vide his reply dated 26.06.2004; and after giving an opportunity of personal hearing to the workman, the Disciplinary Authority issued punishment order dated 02.12.2004, which was confirmed by the Appellant Authority after considering his appeal dated 30.12.2004 vide appellate order dated 21.10.2005.

3. It has been alleged by the workman that the charge sheet dated 20.08.2003 is ambiguous and does not disclose the specific details of alleged misconduct. It has also been alleged by the workman that the inquiry officer conducted the departmental inquiry without observing the due procedure of domestic inquiry, in violation of the principles of natural justice, inasmuch as the Inquiry Officer during the inquiry did not afford proper opportunity to the workman for his defence. Further, the workman has alleged that the inquiry officer did not summon relevant witnesses before inquiry, which caused prejudice to his case; moreover, the Disciplinary Authority and Appellate Authority issued punishment order and appellate order without

considering the reply to the show cause and his appeal respectively. Accordingly, the workman has prayed that the Departmental proceedings which were conducted in violation to the principles of natural justice is liable to be set aside.

4. The management of the Bank in its written statement has denied the allegations of the workman and has defended its domestic proceedings with submission that the workman had been afforded all reasonable opportunity given under rules the principles of natural justice were fully complied with; hence, there is no anomaly with it; and accordingly, has prayed that domestic enquiry proceedings conducted by it may be upheld and the action of the Bank vide order dated 02.12.2004 be declared just, fair and legal without any benefit to the workman concerned.

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

6. The workman did not file any document in support of his case, whereas the management filed copy of entire inquiry proceedings. Following preliminary issues were framed vide order dated 18.05.2010:

(i) Whether the domestic inquiry conducted by the employer is fair and proper? If not, its effect.

(ii) Whether the findings of inquiry officer are perverse? If so, its effect; and

(iii) Whether the punishment awarded to the workman is harsh? If so its effect.

After framing the above preliminary issues, the parties were called upon to adduce evidence. The workman examined himself in support of his case; but did not turn up to cross-examine the management witness on several dates, which led to closure of his opportunity. It is noteworthy to mention here that the workman refrained the proceedings since 09.09.2014 and neither turned up to cross-examine the management witness nor for the oral submissions; accordingly, only the submissions of the authorized representative of the management has been heard; and date was fixed for award, keeping in view long pendency of the case, since 2007; however, the parties were afforded an opportunity to file their written submission, if any.

8. Heard learned counsel of the management alone and perused entire material available on record.

Issue No: 01:

9. The authorized representative of the management has submitted that the workman committed gross misconduct of fraud and acted grossly negligently whereby he made payment of impersonated loans, which resulted into monetary loss to the Bank amounting to Rs. 6,46,000/-. He acted dishonestly and deliberately against the interests of the Bank and misused his post; accordingly, was charge sheeted vide charge sheet dated 20.08.2003 for the gross misconduct; and after conducting a fair domestic inquiry; wherein the workman had been afforded all reasonable opportunity to defend himself was awarded punishment of 'degradation to a lower stage in his incremental scale by eight increments'; which cannot be called disproportionate at all.

In rebuttal, the workman did not submit any oral or written submission; moreover, he failed to cross-examine the management witness.

10. The workman has come forward with a case that he had been issued an ambiguous charge sheet and he was denied proper defence, before the inquiry officer, as the Inquiry Officer did not summon the relevant witnesses during the course of inquiry. The management has denied the charges and in support of its pleadings has filed affidavit of its witness; but the workman did not turn to cross-examine him; also there is no such pleading on behalf of the workman that he made any request before the Inquiry Officer to summon any witness, which was relevant from his point of view, in order to prove his innocence. Admittedly, the workman had been issued a charge sheet for gross misconduct of issuing impersonated loans, whereby cause loss to the Bank amount to Rs. 6,46,000/-. From the pleadings of the workman itself as well as the inquiry proceeding, available on record, it is evident that he had been afforded all reasonable opportunity to defend himself as he was given copy of charge sheet with documents and on his denial of charges, before the Inquiry Officer, the Inquiry officer proceeded with the inquiry. The workman did not opt to be represented by any defence representative; also, he was opportunity to cross-examine the witnesses produced by the prosecution and was also given an opportunity to produce witnesses in his defence; apart from affording an opportunity to file written arguments. There seems no anomaly or denial of principles of natural justice to the workman by the Inquiry Officer; however the workman has alleged that the Inquiry Officer did not summon the relevant witnesses; but in this connection he was at liberty to submit a list of witnesses before the Inquiry Officer to be summoned to prove his case, thus, the workman himself failed to bring the relevant witnesses in the witness box, therefore, he cannot claim the benefit of the same at this point of time.

It is well settled that if a party challenges the legality of an action, the burden lies upon it to prove illegality of the action, here in the instant case, it was burden upon the workman to prove how not summoning any witness cause prejudice to his case, particularly when he did not make any effort in this regard at all. However, in the case in hand, there is no iota of evidence on record which goes to suggest that the workman

made any effort to get any of the witness summoned, who was a material witness from his point of defence and his non-summoning cause prejudice to his case. Thus, the workman utterly failed to substantiate that the Inquiry Officer did not conduct the inquiry in accordance with the principles of natural justice, and accordingly, the issue No. 01 is decided in favour of the management.

Issue No. 02:

11. The workman has pleaded that the inquiry report of the Inquiry officer is based on surmise and conjecture and are perverse as based on no material. However, the management has denied the allegation of the workman and has submitted that the findings of the inquiry officer are based on the evidence, collected by the Inquiry Officer during the inquiry and are detailed.

From perusal of the Inquiry Report, it is evident that the Inquiry Officer has based his findings on the documents produced during the inquiry and written submissions given by the workman before the Inquiry Officer. Further, he has also referred statement of certain witness i.e. MW-6, 9 and 10; moreover, he has also mentioned that the workman produced affidavit of as many as five persons in his defence with his written arguments; hence they were not taken into account as the same were not produced during the course of inquiry. In this regard it is noteworthy to mention here that the inquiry officer rightly did not consider said affidavits as they could have only been relied upon when firstly, they would have been produced during inquiry and secondly, the prosecution would have been afforded opportunity to cross-examine the persons with made statement in the affidavits. Thus, it could be well inferred that the findings of the Inquiry Officer do not suffer with the vice of perversity; and accordingly, the issue No. 02 is decided in favour of the management.

Issue No. 03:

13. Now, after decision of the preliminary issue no. 01 & 02, in the favour of the management, the pleadings of the workman that the punishment imposed upon him is disproportionate and this Tribunal should interfere into it within the provisions providing under Section 11 A of the Industrial Disputes Act, 1947 is taken into account. In this regard, it is well settled that the Labour Court has ample power under section 11-A of the Industrial Disputes Act, 1947 to substitute a lesser punishment, taking into consideration the facts and circumstances of the case. Moreover, the principle of proportionality calls for interference of this Court into the punishment imposed by the management i.e. of removal in view of law in *Joseph Solomon vs. Presiding Officer, Labour Court, U.P., Dehradun & another* 2012 (134) FLR 424.

14. It is admitted proposition of law that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment; however, the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is harsh. Admittedly, in the instant case the workman was given charge sheet for committing misconduct of 'doing acts prejudicial to the interest of the bank' i.e. fraud, gross negligence in duties and loss to the bank; and was issued a show cause notice for dismissal; but after considering his reply, taking a lenient view, was penalized with punishment of 'degradation to a lower stage in his incremental scale by eight increments'. Moreover, it has been held in preceding para that the disciplinary enquiry was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself; and also that the findings of the Enquiry Officer do not suffer with the vice of perversity.

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

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

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relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works.”

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

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

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17. In the instant case the workman, committed gross misconduct of fraud, gross negligence to his duties and caused loss to the bank to the tune of Rs. 6,46,000/-, which not only caused financial loss to the bank but also was prejudicial to the interests of the Bank.

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

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

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

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20. In the instant case the charge of gross misconduct of fraud, gross negligence to his duties and loss to the Bank by the workman was found to be proved and principles of natural justice were properly observed while conducting the departmental inquiry; and also the findings of the Inquiry Officer were not found to be perverse; and also that the initially the workman has been issued show cause with proposed punishment of 'dismissal' which was lowered by many folds, taking a lenient view to 'degradation to a lower stage in his incremental scale by eight increments, therefore, the punishment awarded in the instant case, cannot be said to be disproportionate or harsh to the proved misconduct, at any stretch of imagination.

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

21. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW.

29th December, 2020.

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 60.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पारादीप पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 36/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-38011/01/2014-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 18th January, 2021

S.O. 60.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Paradip Port Trust, and their workmen, received by the Central Government on 18.01.2021.

[No. L-38011/01/2014-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR****Industrial Dispute Case No. 36 of 2014****Dated this the 17th day of December, 2020**

Present: Shri B.C. Rath, LL.B., Presiding Officer,
CGIT-cum-Labour Court, Bhubaneswar

Between:-

1. The Secretary,
Paradip Port Trust, Paradip

...First Party-Management

AND

The President,
Paradip Port & Duck Mazdoor Union,
Paradip Port, Paradip.

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

For the First Party Management : Sri S.N. Mishra

For the 2nd Party Union : Sri D. Mohanta**AWARD**

Government of India Ministry of Labour and Employment, New Delhi in exercise of its authority U/s 10 of the Industrial Dispute Act, 1947 (14 of 1947) conferred by clause(d) of sub section (1) and sub section 2(A) of I.D.Act,1947 hereinafter referred a dispute vide reference No.L-38011/01/2014-IR (B.II) dated 13-06-2014 between the aforementioned parties for its adjudication and the term and schedule of the reference is as under:-

“Whether the claim of the Paradip Port & Duck Mazdoor Union to get variable dearness allowance to the clearing, forwarding and handling workers of Paradip Port Trust in view of the Arbitration award passed by the Chief Labour Commissioner (Central), New Delhi in the year 1986 is legal and or justified even if the managing committee formed thereafter in 1993 to administer the functioning of the said workers and were not party to the award? What relief the clearing, forwarding and handling workers are entitled to?”

Bereft of unnecessary details the case of the 2nd Party Union as emerging from the statement of claim and during adjudication is that the Paradip Port Trust (1st Party Management) established under the major Port Act,1963 is inter- alia engaged in Cargo Handling (Loading and unloading) operations on board on the vessels on shore and clearing & forwarding cargo at the point of receipt and dispatch. Operations of

cargo handling on board on the vessel on shore during course of landing or shipment as well as inter-port transportation are handled by the cargo handling workers (CH Workers) listed under the Paradip Cargo Handling Workers (Regulation of Employment) Scheme, 1979 (in short Scheme of 1979). The service conditions including payment of wages and allowances etc. of such CH Workers is being guided and regulated by the scheme 1979. The other operation of cargo handling at the port from the point of receipt and dispatch are handled by the workers known as clearing, forwarding and handling workers (CF&H Workers). Such operation of clearing and forwarding of cargo by CF&H workers started operation from a private pool known as CF & H workers pool from 7.5.1984. The 2nd party union raised various issues in regard to service conditions and payment of wages & allowances and other benefits as per payment being extended to the cargo handling workers under the scheme of 1979. As a result the dispute regarding inter-alia payment of wages to such unlisted CF&H Workers in terms of National Wage Settlement dated.4.1.1981 and 11.4.1984, method of working out daily wage, payment of attendance allowance etc. was referred to for arbitration in terms of Sec.10-A of the Act. During pendency of the said arbitration proceeding the parties arrived at mutual settlement on all the issues and submitted a petition to that effect on 23.7.1986 before the Arbitrator. Accordingly, award was passed with the mutual settlement being the part and parcel of the award, which was notified by the Government of India on 31.10.1986 and thereby the Award became enforceable. It is the claim of the 2nd Party Union that as per the settlement and the award each unlisted worker drawn from the pool would be paid wages on a rate as per annexure-1 of that agreement and such wage shall include basic pay D.A. VDA, SDA, House Rent Allowance, Off day wages, National and Festival holiday wages, Attendance Allowance and computation of daily wages dividing basic monthly pay by 26 days and other components by 30 days. The agreement came into force with effect from 23.7.1986. The CF & H workers started receiving wages in terms of such arbitration award with annual increment and VDA as approved by the National wage settlement. But, they were not facilitated some other financial benefits and service conditions at par with CH Listed Workers under the scheme of 1979. Disputes were raised from time to time by different unions for de-casualisation of CF & H unlisted workers which ultimately led to a Civil Appeal bearing No. 1422/1990 in the Hon'ble Supreme Court. As per the order dated.15.3.1990 of Hon'ble Supreme Court a high power committee was constituted. The Committee recommended de-casualisation under a scheme in the light of Scheme of 1979. The Committee also recommended as to how the de-casualisation of workers can be worked out as well as their entitlements, service conditions etc. including the source of finance for implementation of the recommendations and the proposed scheme. The report of the High Power Committee was accepted in toto by the Hon'ble Supreme Court.

Pursuant to the direction of the Supreme Court the Paradeep Port Trust constituted a Management Committee and a scheme in the nomenclature of Paradeep Port Clearing, Forwarding and Handling Workers (Regulation of employment) Scheme, 1994 (in short scheme of 1994) was formulated in the light of Scheme of 1979. The said Scheme provides the service conditions as recommended by the High Power Committee in regard to registration of workers, payment of wages as per National Wage Settlement, assured works to the workers and in case of failure to provide work to make payment of minimum days of guaranteed wages, Attendance Allowance equivalent to 1/60 of monthly wages, weekly off day with wages, Productivity linked Bonus Act. After formulation and implementation of Scheme of 1994 with effect from 27.5.1994 the CF & H workers were paid wages as per pay scale and allowances including V.D.A. as settled between Government of India and Federation of Port Dock Workers as provided in the Scheme of 1994. But, the Management Committee stopped paying Variance Dearness Allowances(VDA) from November, 2000 without any notice to that effect as provided U/s.9-A of the Act. It is stated that such VDA is being paid from 1.1.2012 onwards. According to the 2nd party Union payment of wages in terms of National wage settlement is a condition of service on being part and parcel of the Arbitration Award dated.23.7.1986 and the same being adhered to by the Managing Committee under the Scheme 1994 till October, 2000 cannot be changed in violation of Sec.9-A of the Act. That apart, the scheme 1994 provides payment of such allowance to the CF & H workers and the Scheme being constituted under the direction of the Hon'ble Supreme Court, the Management Committee has no jurisdiction/authority to withdraw such facility/benefit available to CF & H workers. Therefore, a dispute was raised before the labour machinery for stopping of payment of VDA which ultimately cumulated to the reference as mention in supra.

3. The 1st Party Management has resisted the claim taking a stand that the High Power Committee was constituted for looking into the problems and demands of the Unions and to make suggestions / recommendation listing of (de-casualisation) of Unlisted CF & H Workers keeping in mind the recommendations under Para. 13.2, 13.8 of the Abraham Committee Report and in accordance with the Paradeep Port Cargo Handling Workers (Regulation of Employment Scheme, 1994). It was also directed that Paradeep Port shall implement the scheme within two months from the date of submission of the report. The Committee was also directed to work out a scheme to mitigate the unemployment of surplus workers. It is averred by the 1st Party Management that all decisions in regard to administration of the proposed

scheme shall be taken by the Management Committee and the Management Committee should frame the scheme on the lines of scheme of 1979. Keeping in view the orders of the Hon'ble Supreme Court and recommendation of High Power Committee for implementation of its report, the PPT created posts of Chairman and Secretary for the Management Committee with approval of the Central Govt. and the Management Committee as contemplated under the High Power Committee Report was constituted by PPT. As per the direction of the PPT the Scheme of 1994 was formulated by the Management Committee and the same was approved in the meeting of the committee dated.23.5.1994. The said approved scheme was placed before the Board of Trustee of Paradeep Port for approval. Consequent upon the decision taken by the Board, the CF & H Workers (Regulations of Employment) Scheme 1994, became a separate entity in itself. As per the Scheme the CF & H Workers are under the control of the Management Committee and financial liability towards implementation of the scheme is borne by the CF & H agents. It is the stand of the 1st Party Management that the CF & H Workers are not the employees of PPT and their wages and dues are recovered by the Committee from their employer i.e. C & F agents and Handling Contractors who pay wages of the workers and certain percentage of levy to meet the administrative expenses. Before implementation of the Scheme the workers were under the control of a pool of CF Agents. The mutual agreement dated.23.7.1986 before the Arbitrator was between the unions of unlisted workers and the CF Agents managing the pool. The Management Committee is not a party to the Settlement or Award as it came into existence in July,1993. Therefore, the Arbitration Award is not binding to the 1st Party Management Committee. However, having regard to the mutual settlement dated.23.7.1986 the CF & H Workers were paid VDA under the Scheme of 1994 till it was discontinued as per resolution dated.24.12.2000 of the Committee to freeze the DA at 30% w.e.f January,2001 in order to keep the cost of cargo handling competitive with other ports. The decision was consented by the Unions as their representatives are part and parcel of the Management Committee. Comprehensive wage settlement dated. 30.10.2010 towards fixation of Daily Wage of CF & H workers was implemented and the Union accepted the revised wages. There was no demand for payment of VDA till the dispute was raised in the year 2012. Consequent upon the wage settlement dated 2.8.2000 due from 1.1.1998 arrived at between the CF & H Agents and the disputant union, Management Committee stopped the payment of VDA as per its meeting dated 30.1.2002. Since discontinuation of VDA was discussed and rectified in an agreement between the Agents and the Union, the demand for payment of VDA w.e.f 1.1.2001 is neither legally justified nor the same is binding on the Management Committee by any agreement / settlement of in 23.6.1986. Hence, prayer is made for rejection of the statement of claim.

On the aforesaid pleadings of the parties the following issues are settled for just adjudication of the dispute.

ISSUES

- 1) Whether the reference is maintainable under the Industrial Disputes Act?
- 2) Whether the demand of Paradeep Port and Dock Mazdoor Union, Paradeep for disbursement of arrear VDA to be paid to the workmen working in CFH Category for the period from 1.10.2000 to 31.12.2011 by the Management Committee formed in 1993, as per clause-3 of Arbitration Award dated 15.10.1986 as the Management Committee covering same set of workmen had paid VDA uninterruptedly till 30.9.2000 to 30.12.2011 and withdrawn the same w.e.f 1.10.2000 in violation of 9-A of I.D.Act is legal/justified?

If, so what relief the workmen of the Union are entitled to ?

To substantiate its claim the 2nd Party Union has examined one of the office bearer of the Union as AW. No. 1 and filed copy of notification of Ministry of Labour, Govt. of India dated. 31.10.1986 towards the award passed by the Arbitrator constituted U/s.10-A of the Act for adjudication of an industrial dispute between Paradeep Port Stevedores Association and the disputed union, which is marked as Ext.1, whereas the Management did not choose to adduce any evidence except relying upon contents of Report of High Power Committee and CFH (Regulation of Employment Scheme 1994 to refute the claim of the Union.

For sake of convenience all the issues are taken for consideration simultaneously as they are inter related to each other.

It is emerging from the pleadings and evidence of the 2nd Party Union as well as the pleadings advanced by the 1st Party Management in his W.S. that prior to the listing of CF&H Workers under the scheme of 1994 the workers were engaged under the private pool of Stevedores Association. Due to dispute in regard to fixation and payment of wages and other ancillary benefits to such workers, the dispute was referred to for Arbitration U/s.10-A of the Act. During adjudication before the Arbitrators the

Stevedores Association and the disputant Union arrived at mutual settlement dated.23.7.1986. Consequent upon such settlement an award with the agreement dt.23.7.1986 as part and parcel of the award was passed and notified. Ext.1 is the said award and it is not disputed by the 1st Party Management. It is not also disputed by either parties that the Scheme of 1994 came into force w.e.f. 27.5.1994 as per direction of the Hon'ble Supreme Court in regard to acceptance of the report of the HPC in to and its earlier order dated 15-03-1998 that the Port Trust implemented the decision of the Committee within two months from the date of submitting the report thereof and recommendations of the High Power Committee constituted by the Hon'ble Supreme Court vide its order dated. 15.3.1990 in Civil Appeal No.1422/1990 and a result there is de-casualisation of CFH Workers and their employment and service conditions have come under the regulation of the Scheme of 1994. The 1st Party Management has been formed as per the recommendation of High Power Committee to implement the Scheme 1994. The Scheme of 1994 is formulated by the Management Committee as per the recommendation of the High Power Committee in the morality of the Scheme of 1979 meant for Cargo Handling Workers working under the PPT. Keeping in view the above facts and circumstances, it can be safely held that the Management Committee become controlling authority of the workers pool previously managed under CF Agents. In that view of the matter it would not be wrong to hold that the Management Committee became the successor of the private workers pool under the control of the Stevedores Association. There is also nothing either in the recommendation of the High Power Committee Report or any resolution / proceeding of the Board of Trustee of Paradeep Port as well as meeting / proceeding of the Management Committee that any settlement or award earlier to the formulation of the Management Committee and the Scheme would not be implemented or complied with or binding to the Management Committee in charge of the Scheme of 1994 or such settlement cannot be a clause of the scheme. There was also nothing on the record to suggest that the disputant union or any other union of the CFH Workers had agreed after the year 1994 to ignore their claim as settled under the award under Ext.1. In the above backdrops the contentions advanced by the 1st Party Management that the Management Committee is not duty bound or liable to comply with the stipulation as agreed in the mutual settlement dated.23.7.1986 or the Arbitration Award passed on the basis of such settlement is not acceptable. On the other hand it is coming from the award and pleadings that provision of VDA was worked out in the light of such provision extended to CH workers of 1979 scheme and in the light of National Wage settlement.

Apart from that, it is evident that after introduction and implementation of the Scheme 1994, the CFH Workers were paid wages and allowances including VDA as received by them on the basis of the Arbitration Award and Settlement. It is seen from close reading of the Award and Settlement that the CFH unlisted workers would be paid wages which shall include basic Pay, D.A., V.D.A., S.D.A, House Rent Allowances, Off day wages, National and Festival Holiday wages, Attendance Allowance etc. Thus, it is evident that the CFH Workers were receiving VDA after de-casualisation and implementation of the Scheme 1994 till it was discontinued from 1.1.2001. Admittedly, no notice as contemplated U/s.9-A of the Act was issued before the Management Committee decided to stop payment of VDA. Fixation and payment of wages is undoubtedly a service condition and any reduction or fixation or change of wage structure needs prior notice of 21 days minimum as contemplated U/s.9-A of the Act. Undisputedly, no notice was given to the workers or their Unions when the provision of VDA was stopped in the proceeding dated.30.10.2010 of the Management Committee. The contention of the Management that three representatives of workmen in the Management Committee being a party to the proceeding dated 24-12-2010 is itself a consent and notice and therefore no illegality was committed in change of service condition effected by stoppage of VDA has no merit since mere participation and consent of workers representative in the alleged proceeding cannot be accepted as notice under section 9A of the Act in any stretch of imagination. Their consent cannot also be assumed that the 2nd Party Union of the CFH workers had agreed to forgo the provision of VDA. Hence, any change in regard to freezing of VDA is unjustified and illegal.

There was no settlement or agreement between the Management Committee and the disputant workmen or their Unions in regard to change of wage structure i.e non-payment of VDA before 1.1.2001. The agreement / proceeding dated.27.11.2001 as relied upon by the Management does not also disclose that the Management Committee is to decide as to how the wages to be paid to the CFH Workers and would be worked out. The said bi-partite agreement does not specify the mode by which revised wage would be worked out or non-payment of VDA as agreed in the mutual settlement of 23.7.1986. Therefore, stoppage of payment of VDA w.e.f 1.1.2001 is unilateral on the part of the 1st Party Management. The 1st Party Management being successor of the representative of CF Agents running/ managing the unlisted pool of CFH Workers is liable to honour the Arbitration Award and mutual settlement made in 1986 under Ext.1.

The entitlement or benefits flowing from the Awards under Exts.1 and 2 cannot usually be interfered with keeping in view the provision of Sec.2(b) read with Sec.18 of the I.D, Act when there is no

specific observation or recommendation in this regard in the report of the High Power Committee and when there was no agreement or proposal from the side of the Union to discontinue the claim or wages flowing from the Award of 1986. The 1st Party Management is statutorily bound to oblige the terms of settlement as per the principle set out by the Hon'ble Apex Court in the case between State of Odisha and another – Vers- N.N.Swamy and others 1977 AIR 1237. Therefore, with holding the VDA from November, 2000 to 31.12.2011 without taking the 2nd Party Union into confidence cannot be sustainable in the eye of law. The same is unjustified illegal and an act of unfair labour practice as defined in the I.D. Act more particularly when payment of VDA was made up to October, 2000 and after 1.1.2012, which is not disputed by the Management.

For the reasons and analysis made above non-payment/withholding of disbursement of VDA in between 1.11.2000 to 31.12.2011 is not legal and justified and it was an act on the part of the Management Committee in violation of Sec.9-A of I.D. Act. Therefore, the 1st Party Management is to take steps to make payment of the dues in this regard to the CFH Workers under the Scheme within six months from the date of notification of the Award failing which the disputant workmen are entitled to receive simple interest @ 6.5 % on their dues from the date of expiry of six months within which the dues are to be paid till the same is realized.

Accordingly the reference is answered.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 61.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 82/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-12012/48/2004-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 18th January, 2021

S.O. 61.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow 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 18.01.2021.

[No. L-12012/48/2004-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 82/2004

Ref. No. L-12012/48/2004-IR(B-II) dated: 28.06.2004

BETWEEN :

Shri Sugandh Kumar, S/o Sh. Ayodhya
Village Harkhera Bajar, Distt. Mahrajganj (UP)

Vs.

The Regional Manager
Central Bank of India, Regional Office
Bank Road, Gorakhpur.

AWARD

1. By order No. L-12012/48/2004-IR(B-II) dated: 28.06.2004 and its subsequent corrigendum dated 18.10.2004, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Sugandh Kumar, S/o Sh. Ayodhya, Village Harkhera Bajar, Distt. Mahrajganj (UP) and the Regional Manager, Central Bank of India, Regional, Office, Bank Road, Gorakhpur for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

“WHETHER THE CLAIM OF SHRI SUGANDH KUMAR S/O SH. AYODHYA TO HAVE BEEN ILLEGALLY TERMINATED FROM THE SERVICE W.E.F. 07-04-2003 BY THE MANAGEMENT OF CENTRAL BANK OF INDIA IS JUST AND PROPER? IF SO, WHAT RELIEF THE CLAIMANT IS ENTITLED FOR?”

3. The case of the workman, in brief, is that the workman, Sugandh Kumar, had worked against the vacancy, aroused out of transfer of one regular sweeper, in the Daurva branch of the bank, from 11.11.94 to 06.04.2003, on daily rate basis. The workman has alleged that he worked continuously for the said period for more than 240 days in a year; and his services have been terminated by the management without any notice or notice pay in lieu thereof or any retrenchment compensation, in utter disregard to the provisions of Section 25 F of the Act on 07.04.2003. The workman has also alleged that while removing him the management retained one junior worker viz. Shailendra Kumar and did not follow the principal of first come last go and accordingly, violated provisions of Section 25 G & H of the Act. The workman has submitted that the work done by him was perineal in nature, therefore, his termination be declared illegal and he be reinstated with consequential benefits.

4. The management of the Central Bank of India has disputed the claim of the workman through its written statement; wherein it has submitted that workman had never worked as sweeper w.e.f. 11.11.1994; nor did he work for 240 days; nor was paid any remuneration on monthly or daily basis. The management has submitted that the workman was asked to work on casual basis for one or two hour only and that too for very few day and was paid accordingly. The management has specifically pleaded that the workman worked for total 60 with the bank, therefore, the provisions of Section 25 F of the Act does not attract in the present case. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman filed its rejoined; wherein apart from reiterating the averments already made in the statement of claim, introduced nothing new.

6. The workman field documentary evidence in support of his case vide list C-14; whereas the management did not file any. The workman examined himself whereas the management examined Shri R.P. Dubey, Branch Manager, Daurva in support of their respective case. The parties cross-examined the witnesses of each other.

7. Perused entire evidence available on record and scanned entire evidence available on record in light of the rival pleading. I have scanned entire evidence available on record in light of the rival pleading and respective pleadings of the parties.

8. The workman has come up with a case that he worked with the management of the bank w.e.f. 11.11.94 to 06.04.2003, on daily rate basis; and he worked continuously more than 240 days in a year during said duration. It is also the case of the workman that his services have been terminated by the management without any notice or notice pay in lieu thereof or any retrenchment compensation, in contravention to the provisions of Section 25 F, G & H of the Act on 07.04.2003.

9. In rebuttal, the management has contended that the workman never worked for the duration claimed by him; rather he was engaged as daily rated casual worker on intermittent basis as and when required and was paid accordingly. In this regard that management has pleaded specifically that the workman had worked for 60 days only with the bank for one or two hours, therefore, the provisions of Act do not attract while disengaging his services. It was also contended that the workman never worked for 240 days continuously in any calendar year and there was no termination/retrenchment at any point of time since the workman was a casual labour whose services were availed by the branch intermittently; and this does not violate any of the provisions of the Industrial Disputes Act, 1947.

12. It is well settled that if a party challenges the legality of an action/order, the burden lies upon him to prove illegality of the action/order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case, burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove that the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in each calendar year. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked for 240 days in the year preceding his alleged termination. In *Range Forest Officer vs S.T. Hadimani (2002) 3 SCC 25* Hon'ble Apex Court has observed as under:

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

14. In *Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai* 2005 (107) FLR 1145 (SC) Hon'ble Apex Court came to the conclusion that the workman could be entitled for the protection of section 25 – F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

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

Thus, in order to substantiate the workman has filed number of photocopy of the documents, less any appointment letter or termination order; rather it has been stated by the workman during his cross-examination that no appointment letter was given to him; likewise, his services have been termination orally. In order to substantiate his claim, the workman has filed list of documents C-14; however, the paper No. 14/3, 14/4 and 14/5, filed by the workman himself, goes to disprove his version and prove the version of the management that the workman worked for 60 days only during his engagement period with the Bank. Moreover, the workman during his cross-examination admitted that he put signatures for payment of 60 days only; and that he was appointed by Shri U.S Dubey, Branch Manager.

15. Admittedly no appointment letter was issued; and also, there is no evidence that the Branch Manager of the Bank was competent to appoint any one in capacity of sweeper. The details of engagement relied upon by the workman do not show that the workman actually worked for 240 days in a year preceding the date of alleged termination i.e. 07.04.2003. Thus, the workman has utterly failed to discharge the burden that lied upon him and has failed to substantiate his pleading by cogent documentary evidence that he was actually in the services of the management of Bank and he worked for 240 days during period 05.04.2002 to 06.04.2003 i.e. one year preceding the date of his alleged termination; and his services were terminated in violation of Section 25 of the I.D. Act, 2005, without giving him any notice or notice pay in lieu thereof or any retrenchment compensation.

16. Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year was on the workman but he has failed to discharge the same. There is no reliable material for recording findings that the workman had worked for more than 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

17. Accordingly, the reference is adjudicated against the workman; and I come to the conclusion that he is not entitled to any relief.

18. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW

26th November, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 62.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पारादीप पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 26/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-38011/01/2017-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 18th January, 2021

S.O. 62.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Paradip Port Trust, and their workmen, received by the Central Government on 18.01.2021.

[No. L-38011/01/2017-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

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

Industrial Dispute Case No. 26 of 2017

Dated this the 18th day of December, 2020

Present: Shri B.C.Rath, LL.B., Presiding Officer,
CGIT-cum-Labour Court, Bhubaneswar

Between:-

1. The Chairman,
Management Committee, CFH Scheme,
Paradip Port Trust, Paradip.
 2. The Chairman, Paradip Port Trust, Paradip
- ...First Party- Management

AND

The General Secretary,
Paradip Port Workers Union,
Paradip.

...2nd. Party Union

Appearances:-

For the First Party Management No. 1 : None

For the First Party Management No. 2. : None

For the 2nd Party Union:- Sri Sudhakar Mantry

AWARD

Govt. of India, Ministry of Labour and Employment in exercising its authority conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Dispute Act, 1947 (herein after referred to as "The ACT") have referred the dispute vide reference No.L-38011/01/2017-IR(B.II) dated 26-04-2017 between the parties mentioned above for its adjudication and the schedule of the reference is as under:-

"Whether the demand of the Union (Paradip Port Workers Union) for change of date of birth of Sri Bhagaban Behera, CFH Workers by the management of Management Committee, Paradip Port Trust, Paradip from 28-08-58 to 28-08-56 arbitrarily is legal and/or justified? If not, what relief the workman is entitled to?"

The case of the 2nd Party Union is that the disputed workman Sri Bhagaban Behera was engaged as CFH pool worker at Paradip Port as an unlisted worker before operation/implementation of Paradip Port Clearing Forwarding and Handling Workers (Regulation of Employment Scheme, 1994) (herein after refer to as the scheme) which came in to operation on 27th May 1994. He was enlisted and registered as a CFH pool worker under the scheme after its implementation. While being enlisted/registration he filled up the application form showing his date of birth 28-08-1958 basing on date of birth shown in his school leaving certificate. It is alleged that the management committee, who is in-charge of implementing the scheme, has tampered and manipulated the original document submitted by the disputant and entered his date of birth as on 28-08-1956 instead of 28-08-1958. He submitted an affidavit sworn before the executive magistrate, Kujanga on 02-06-1994 along with his application in the office of the management committee. When he came to know about wrong entry of his date of birth in the year 2007 he came to know that his date of birth is manipulated in the record and shown as on 28-08-1956. Hence he made a representation to the management committee on 24-05-2007 for necessary correction of his date of birth along with copy of school leaving certificate. He also approached the management committee time and again for correction of the entry. When no attention was paid

to his grievance, he raised a dispute through the 2nd Party Union before the labour machinery which ultimately accumulated in to the reference as mentioned earlier when the conciliation before the labour machinery failed. It has been prayed by the Union that direction may be passed to the management committee to rectify the wrong entry and the disputant be allowed to work till the age of his superannuation by treating his date of birth as on 28-08-1958.

The Management No.2 is set exparte as it did not appear and contest the claim inspite of service of notice whereas the 1st Party Management No.1 the Management Committee has contested the claim making an averment that the Management Committee is formed for implementing the scheme as per recommendation of a High Power Committee constituted by the Hon'ble Supreme Court of India in CA No.1422/90 and the recommendation being accepted by the Hon'ble Supreme Court. As per clause 17 of the scheme the CFH workers have been registered. During registration under the scheme all the workers were required to fulfill appropriate qualification, medical examination and other formalities. Accordingly applications submitted by the CFH pool workers were verified w.e.f. 27-06-1994 by a sub-committee constituted by the management committee. As per the report of the sub-committee discrepancy was found on the age of some workers including the disputant. The disputant was asked to appear before the sub-committee when his age as shown in the application was doubted. When he physically appeared before the sub-committee, the date of birth was corrected as 18-08-1956 instead of 28-08-1958 on his statement and consent. He had also signed the application form after such entry as a token of acceptance. Accordingly the disputant was superannuated w.e.f 31-08-2016 after attaining 60 years in view the provision of clause 41 of the scheme. It has been further pleaded by the Management No.1 that 59 CFH workers including the disputants preferred Writs before the Hon'ble High Court on the issue of change of their date of birth on the records. The Writ of the disputant was dismissed with a liberty to the petitioner to approach the appropriate forum for his grievance. According to the management the applicant was well aware of the entry of his date of birth and the same was entered on his statement and consent. Therefore, the claim on his date of birth should not be entertained in the belated stage keeping in view the settled principles of the Hon'ble Supreme Court as set out in the case of Registrar General High Court of Madras Vrs. M. Manickam and other reported (2011) 9 SCC 245. Hence prayer is made for rejection of the statement of claim.

On the aforesaid pleadings the following issues have been settled for just and appropriate adjudication of the dispute:-

1. Whether the reference is maintainable in the eye of Law?
2. Whether the date of birth of the disputant workman is 28-08-1958 and as such his superannuation is legal and justified?
3. To what relief the workman is entitled to?

FINDINGS

Issue No.2 being vital for adjudication of the dispute is taken for consideration first.

It appears from the own pleading of the 1st Party Management No.1 that a sub-committee was constituted for verification of the applications of the CFH workers during their listing / registration under the scheme. As there was doubt on the age of the disputant as shown in his application, he was asked to appear before the sub-committee. It is also emerging from the para 7 of written statement of the management No.1 that on appearance of the disputant the date of birth was corrected as 28-08-1956 instead of 28-08-1958 on statement/consent of the disputant. Therefore, it can be safely said and accepted that the disputant submitted his application for his registration as CFH workers showing his date of birth as on 28-08-1958. That apart, it is found from copy of the affidavit of the disputant as made on 25-06-1994 and copy of his school leaving certificate that his date of birth as shown in both the documents marked as Exbt. 3 & 4 is 28-08-1958. The management has not specifically denied that those documents were no attached with the application of the disputant at the time of his registration as CFH pool worker. Exbt. 5 relied upon by the 2nd party reveals that the disputant submitted in writing for correction of his date of birth in office record from 28-08-1956 to 28-08-1958 and such application was presented before the management committee on 24-05-2007. The copy of his application under Exbt. 1 reveals that some correction/overwriting is made in regard to date of birth and age of the disputant. Close scrutiny of the correction/overwriting reveals that the date of birth was initially shown as 28-08-1958 and the number 8 was blackened with pen and number 6 is written. Similarly the age is overwritten as 37 in place of 35. The disputant, while being examined as W.W-1, has categorically reproduced the pleadings advanced in the claim statement in regard to the tampering and manipulation of his date of birth and age as shown in his application. It is not out of place to note here that after filing of W.S. by the management No.1, it did not contest the case as a result of which the oral testimony of the disputant remains uncontroverted and unchallenged. If such uncontroverted and unchallenged testimony of the disputant is taken into consideration along with the documents filed by the 2nd party more particularly Exbt.1, Exbt. 2,3 & 4 it can be clearly held that the disputant had shown his date of birth as on 28-08-1958 in his application submitted before

the management committee and the said entry was tampered and shown as on 28-08-1956. It is also established that the disputant brought the notice of the management committee on such wrong entry and tampering in the year 2007. He was superannuated on 31-08-1956 and he represented his authority more than 09 years before his superannuation for correction of the date of birth in official records. Therefore, it cannot be said that he claimed for change of his date of birth in flag end of his service.

Undisputedly the settled principles of the Hon'ble Apex Court in regard to such claim for change of date of birth in service record is that claim for correction in service record long after joining service particularly when employee is on verge of retirement should not be entertained. But in the case at hand such claim is made much before the date of retirement. There is no rule or order prescribing any period in which a claim is to be made for correction of the entry on date of birth except that the government servant must do so without unreasonable delay. In the case the applicant had produced irrefutable proof relating to his date of birth i.e. school leaving certificate. It is also established by him that he made an affidavit in regard to his age before the executive magistrate in June, 1996. It is shown by him that he claimed in his application that his date of birth is 28-08-1958 but the same tampered and manipulated. He brought to the knowledge of the management committee on such wrong entry in the year 2007. Thus, he has unimpeachable evidence to show that the entry in regard to his actual date of birth was tampered and corrected as 1956 instead of original writing of 1958. In the above facts and circumstances it is established from unchallenged and uncontroverted evidence that his date of birth as shown in the application under Exbt. 1 during registration under the scheme was originally 28-08-1958 which is subsequently converted to 1956. Therefore, he was required to be superannuated on 31-08-2018. But, he was superannuated on 31-08-2016. Hence, his such superannuation on 31-08-2016 is not legal and justified.

Coming to issue No.1 & 2 it can be said that no serious dispute is raised on maintainability of the reference. There is employer and employee relationship between the parties and the dispute as raised in the reference is related to service condition i.e. premature superannuation of the disputant. So far the relief to which the disputant is entitled to it can be said that the disputant deprived of financial benefit available to him from his employment for a period of 02 years. At the same time it cannot be over sighted that he did not rendered any service to his employer after his superannuation on 31-08-2016.

Having regard to the totality of the facts and circumstances emerging in the case it is just and appropriate to direct the 1st Party Management No.1 to extend 50% of the wages to which the disputant is entitled being deemed in continuance of employment from 31-08-2016 to 31-08-2018 and other consequential benefits if any, by virtue of two year extension of his service. Such financial benefits accruing from above wages (50%) and financial benefits shall be paid to the disputant within 02 months of the notification of the award failing which the 1st Party Management No.1 shall pay simple interest 6.5% per annum till the disbursement of amount to which the disputant is entitled to.

Accordingly the reference is answered.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 63.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 28/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-12012/29/2016-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 18th January, 2021

S.O. 63.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 18.01.2021.

[No. L-12012/29/2016-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA , HJS (Retd.)

I.D. No. 28/2016

Ref. No. L-12012/29/2016-IR(B-II) dated: 29.07.2016

BETWEEN :

Shri Raj Kumar Singh S/o Late Samar Bahadur Singh
Village Laapur, Post Office – Madhukarpur
Baibareli.

Vs

1. The Assistant General Manager
Bank of Baroda
Regional Office, 19, Way Road, Lucknow (UP)
2. The Branch Manager
Bank of Baroda
Branch Office, Gurubaxganj
Raebareli.

AWARD

1. By order No. L-12012/29/2016-IR(B-II) dated: 29.07.2016, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Raj Kumar Singh S/o Late Samar Bahadur Singh Village Laapur, Post Office – Madhukarpur, Baibareli and the Assistant General Manager, Bank of Baroda, Regional Office, 19, Way Road, Lucknow (UP) & the Branch Manager, Bank of Baroda, Branch Office, Gurubaxganj, Raebareli for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

“KYA PRABNDHAN, BANK OF BARODA, LUCKNOW VA RAEBAREILY DWARA SHRI RAJ KUMAR SINGH, CASUAL WORKER/DAILY WAGER KO SEVA MAIN NIYAMIT NA KAR, AUDHOGIK VIVAAD ADHINIYAM KE PRAVDHANO KA PAALAN KIYE BINA DINANK 12/04/2015 KO NAUKARI SE NIKALA JANA NYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO KAAMGAAR KIS RAAHAT KO PAANE KA HAKDAAR HAI?”

3. The case of the workman, Raj Kumar Singh, in brief, is that he was engaged by the opposite party as casual worker, from 23.07.2012 to 11.04.2015 on daily rate basis and during period of his engagement he was initially paid his wages on weekly basis @ Rs. 300/- week and later w.e.f. January, 2014 he had been paid @ Rs. 360/- per week and his payment was regularly been transferred to his saving bank account, maintained in the same branch of the bank. The workman has alleged that he worked continuously for the said period for more than 240 days in a year; and his services have been terminated by the management without any notice or notice pay in lieu thereof or any retrenchment compensation, in utter disregard to the provisions of Section 25 F, G & H of the Industrial Disputes Act, 1947. on 07.04.2003. The workman has also alleged that while removing him the management retained one junior worker viz. Shailendra Kumar and did not follow the principal of first come last go and accordingly, violated provisions of Section 25 G & H of the Act; and accordingly, has prayed that his termination be declared illegal and he be reinstated with consequential benefits.

4. The management of the Bank of Baroda has disputed the claim of the workman through its written statement; wherein it has submitted that the opposite party Bank has specific method of recruitment of Award staff and the workman never undergone through prescribed selection process and there never existed master and servant relationship between the Bank and the workman. The management has submitted that the workman had never been paid any wages or salary by the opposite party bank. The management has also stated that the workman's services had been availed as and when required in exigency and was paid accordingly, on daily rate basis on the same day or after few days. The management has also stated that the workman had never worked continuously in any capacity. The management has specifically pleaded that the workman worked for as and when required on casual basis only, therefore, the provisions of Industrial Disputes Act, 1947 do not attract in the present case. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman filed its rejoined; wherein apart from reiterating the averments already made in the statement of claim, introduced nothing new.

6. The workman filed documentary evidence in support of his case vide list W-9; whereas the management filed its list of documents, M-9. The workman examined himself and two more witnesses viz. Sarvesh Kumar and Shri Krishana; whereas the management examined Shri Ankit Tiwari, Sr. Manager in support of their respective case. The parties cross-examined the witnesses of each other.

7. Perused entire evidence available on record and scanned entire evidence available on record in light of the rival pleading. I have scanned entire evidence available on record in light of the rival pleading and respective pleadings of the parties.

8. The authorized representative of the workman has argued that the workman had been engaged by the bank on 23.07.2012 to carry out different chores and continued working as such continuously up to 11.04.2015 when his services have been terminated without any notice or notice pay in violation to the provisions of Section 25 F, G & H of the Act. The learned counsel has submitted that the management used to pay the workman wages directly into his saving bank account, which corroborate that the workman worked for more than 240 days in a calendar year preceding the date of alleged termination. He has relied upon:

- (i) *Hon'ble Supreme Court in Civil Appeal No. 6950 of 2009 Tamilnadu Terminated Full Time Temporary LIC Employees Association vs Life Insurance Corporation of India & others decided on 18.03.2015.*
- (ii) *Award of this Tribunal in ID No. 42/2003 the President Bank of Baroda Employees' Union vs the Assistant General Manager, Bank of Baroda.*

9. In rebuttal, the learned counsel for the management has submitted that the workman had been engaged on casual basis and payment was made to him and the provisions of Act do not attract in this case as the workman did not worked continuously for 240 days in preceding one year from the date of alleged termination. It is also argued by the management that the workman cannot claim relief of reinstatement/regularization as the same is not permissible under law, particularly in absence of sanctioned post and adherence to the rules regarding recruitment to the specific post. He has relied upon:

- (i) *2005 CJ (SC) 1602 Uttar Pradesh State Brassware Corporation Limited vs Udai Narain Pandey.*
- (ii) *2002 CJ (SC) 875 Range Forest Officer vs S.T. Hadimani.*

10. I have given my thoughtful consideration to the rival submissions of the learned counsel.

11. The workman has come up with a case that he worked with the management of the bank w.e.f. 23.07.2012 to 11.04.2015 on daily rate basis; and he worked continuously more than 240 days in a year during said duration. It is also the case of the workman that his services have been terminated by the management without any notice or notice pay in lieu thereof or any retrenchment compensation, in contravention to the provisions of Section 25 F, G & H of the Act.

12. In rebuttal, the management has contended that the workman never worked for the duration claimed by him; rather he was engaged as daily rated casual worker on intermittent basis as and when required and was paid accordingly. In this regard that management has pleaded specifically that the bank has well defined recruitment rules; and the workman never undergone the selection procedure at any point of time and since engagement was on casual basis for one or two hours, therefore, the provisions of Act do not attract in his case. It was also contended that the workman never worked for 240 days continuously in any calendar year and there was no termination/retrenchment at any point of time since the workman was a casual labour whose services were availed by the branch intermittently; and this does not violate any of the provisions of the Industrial Disputes Act, 1947.

13. It is well settled that if a party challenges the legality of an action/order, the burden lies upon him to prove illegality of the action/order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case, burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove that the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in each calendar year. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked for 240 days in the year preceding his alleged termination. In *Range Forest Officer vs S.T. Hadimani (2002) 3 SCC 25* Hon'ble Apex Court has observed as under:

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

14. In *Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai* 2005 (107) FLR 1145 (SC) Hon'ble Apex Court came to the conclusion that the workman could be entitled for the protection of section 25 – F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

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

Thus, in order to substantiate the workman has filed number of photocopy of the documents, less any appointment letter or termination order; rather it has been stated by the workman during his cross-examination that no appointment letter was given to him. The workman has made specific pleadings that his wages used to be transferred by the Bank into his saving account, maintained in the same branch of the bank; and in order to substantiate his claim, the workman has filed list of documents W-9, which includes photocopy of his saving bank account and photocopy of payment vouchers.

However, in order to extend benefits of Section 25 F of the Act, this Tribunal has to confine its probe with the period preceding 12 calendar months from the date of his alleged termination i.e. w.e.f. 10.04.2014 to 11.04.2015; and scrutinizing the photocopy of the entries of pass book, filed by the workman, it is evident that same are for period w.e.f. 11.02.2013 to 01.07.2014 and during period under scrutiny, there is no entry to corroborate his claim that his wages had been transferred by the Bank during period 10.04.2014 to 11.04.2015 to substantiate his claim that he worked for more than 240 days in a year preceding his alleged termination. Most of the photocopy of the payment vouchers, filed by the workman, are not for period 10.4.2014 to 11.04.2015. Only few payment vouchers pertain to the relevant period, but they too are paid to different persons with different name. The statement of the workman's witnesses, Sarvesh Kumar and Shri Krishna, who stated that they used to see the workman busy in bank duties when they visited branch of the bank is of no use, as the frequency of their visit was once in a week. Both the witnesses vide para 02 of their affidavit stated as under:

2. The deponent used to visit the branch almost in each and every week of the month for the purposes of transaction in his account and other allied works.”

On the contrary, the management has pleaded that Bank entered into a contract to provide generator for uninterrupted supply of electricity and that contractor engaged the workman for operation of generator; however, the Bank also availed services of the workman as and when required. The management witness identified the workman before this Tribunal and stated that he was engaged by the contractor and the contractor used to pay his wages for his generator operation; however, the workman also extended his services occasionally to the bank and for the same he was paid accordingly, on daily rates.

15. Admittedly no appointment letter was issued; and also, there is no evidence that the Branch Manager of the Bank was competent to appoint any one in capacity of Peon. The details of engagement relied upon by the workman do not show that the workman actually worked for 240 days in a year preceding the date of alleged termination i.e. 12.04.2015. Thus, the workman has utterly failed to discharge the burden that lied upon him and has failed to substantiate his pleading by cogent documentary evidence that he was actually in the services of the management of Bank and he worked for 240 days during period w.e.f. 10.04.2014 to 11.04.2015 i.e. one year preceding the date of his alleged termination; and his services were terminated in violation of Section 25 F of the I.D. Act, 2005, without giving him any notice or notice pay in lieu thereof or any retrenchment compensation.

16. Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year was on the workman but he has failed to discharge the same. There is no reliable material for recording findings that the workman had worked for more than 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

17. Accordingly, the reference is adjudicated against the workman; and I come to the conclusion that he is not entitled to any relief.

18. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW

30th December, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 64.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल 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, लखनऊ के पंचाट (संदर्भ सं. 09/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-12012/103/2008-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 18th January, 2021

S.O. 64.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow 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 18.01.2021.

[No. L-12012/103/2008-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 09/2009

Ref. No. L-12012/103/2008-IR(B-II) dated 26.03.2009

BETWEEN :

The General Manager
Central Bank Staff Association 87/H/1, Kidwai Nagar
Kanpur.
(Espousing cause of Shri Udai Pal Singh)

VS

The Dy. General Manager
Central Bank of India
Zonal Office, 23, Vidhan Sabha Road
Lucknow.

AWARD

1. By order No. L-12012/103/2008-IR(B-II) dated 26.03.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the General Manager, Central Bank Staff Association 87/H/1, Kidwai Nagar, Kanpur and the Dy. General Manager, Central Bank of India, Zonal Office, 23, Vidhan Sabha Road, Lucknow for adjudication.

4. The reference under adjudication is:

“WHETHER THE ACTION OF CENTRAL BANK OF INDIA IN IMPOSING THE PENALTY OF COMPULSORY RETIREMENT ON SHRI UDAI PAL SINGH, ARMED GUARD VIDE ORDER DATED 15.12.2007 AND CONFIRMING THE SAME BY THE APPELLATE AUTHORITY VIDE ORDER DATED 13.06.2008 IS LEGAL AND JUSTIFIED? WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED TO?”

3. It is admitted case of the parties that the workman, Udai Pal Singh was working as Armed Guard, in the PSEB branch of the Bank when he was placed under suspension vide order dated 25.08.2006; and subsequently, was issued a charge sheet dated 05.02.2007 for misconduct. Sri Vibhav Kumar, Branch Manager, Faizabad Branch was appointed as Enquiry Officer, who submitted his enquiry report dated 14.08.2007 before the disciplinary authority. The Disciplinary Authority, on the basis of findings of the Enquiry Officer, issued show cause dated 27.10.2007; whereby the workman was proposed of the punishment of compulsory retirement with superannuation benefits without disqualification for future employment. Thereafter, the Disciplinary Authority passed punishment order dated 15.12.2007; which was subsequently confirmed by the Appellate Authority vide order dated 13.08.2008.

4. It has been alleged by the workman that the Chief Manager issued the charged sheet, in capacity of Disciplinary Authority, which he was competent for and Inquiry Officer during the inquiry did not summon relevant witness, before whom he had allegedly misbehaved with the AGM. Accordingly, the workman has prayed that the Departmental proceedings which were conducted in violation to the principles of natural justice is liable to be set aside.

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

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

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

1. *Whether the departmental inquiry was conducted in violation of principles of natural justice; and*
2. *Whether the findings of inquiry officer are perverse*

After framing of preliminary issues, the parties the parties were called upon to adduce their evidence on preliminary issues. The parties filed documents in support of their respective case and adduced oral evidence, the parties also cross-examined witnesses of each other. Following orders were passed, on preliminary issues, vide order dated 09.10.2020:

“Thus, from the facts & circumstances of the case and discussions made hereinabove, I am of the considered view that the disciplinary enquiry, against the workman, was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself; and findings of enquiry office with respect to proof of charges is correct. As such, the issue No. 01 & 02 are decided in favour of the management. An additional issue No. 03, is also framed which reads as under:

3. *Whether the punishment imposed is proportionate to the charges or not?”*

8. When the workman or his authorized representative did not turn up for oral submissions, the argument of the management was heard on the point of quantum of punishment under Section 11 A of the Industrial Disputes Act, 1947. Also, the parties were afforded opportunity to file their written submission.

9. Heard, authorized representative of the management and perused entire material available on record.

10. Now taking up the third issue, it is well settled that the Labour Court has ample power under section 11-A of the Industrial Disputes Act, 1947 to substitute a lesser punishment, taking into consideration the facts and circumstances of the case. Moreover, the principle of proportionality calls for interference of this Court into the punishment imposed by the management i.e. of removal in view of law in *Joseph Solomon vs. Presiding Officer, Labour Court, U.P., Dehradun & another 2012 (134) FLR 424*.

11. In the instant case the workman was charge sheeted for his alleged misconduct of misbehaving and assaulting the senior officials and disorderly behavior in the bank premises; which had been found proved by the inquiry officer and accordingly, the workman had been punished with punishment of compulsory retirement with superannuation benefit, without disqualification for future employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Moreover, the Banks being financial institution; where the hard earned money of the public at large is kept, and any disorderly atmosphere in the Bank premises may lead to loss to trust of the depositors on the Banking institution; which may ultimately lead to collapse of financial system of the country and the same is not permissible at all. Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”

15. In the instant case, the workman had been punished with the compulsory retirement with superannuation benefit, without disqualification for future employment. Hon'ble Bombay High Court in *Western Coalfield Ltd. vs Santosh Kumar and others* 2018 LLR 764 has observed that hurling of filthy abusive language at a senior officer justifies dismissal; whereas in the present case, the workman had been punished with compulsory retirement with superannuation benefit, without disqualification for future employment, on the proved charges. Therefore, under the facts and the circumstances of the case in hand and considering the laws pronounced by Hon'ble Supreme Court and Hon'ble High Courts, there is no justification in interfering with the punishment imposed upon the workman. Accordingly, the workman is not entitled for any relief.

16. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW

01st January, 2021

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 65.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 113/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-12011/176/2003-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 18th January, 2021

S.O. 65.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Canara Bank, and their workmen, received by the Central Government on 18/01/2021.

[No. L-12011/176/2003-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 113/2003

L-12011/176/2003-IR(B-II) dated: 28.10.2003

BETWEEN :

The State Secretary
Canara Bank Employees' Union
UP State Committee, Canara Bank
Hazaratganj, Lucknow.
(Espousing cause of Shri H.C. Mishra)

AND

The Dy. General Manager
Canara Bank
Circle Office, Vipin Khand
Gomti Nagar, Lucknow.

ORDER

1. By order No. L-12011/176/2003-IR(B-II) dated: 28.10.2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the State Secretary, Canara Bank Employees' Union, UP State Committee, Canara Bank, Hazaratganj, Lucknow and the Dy. General Manager, Canara Bank, Circle Office, Vipin Khand for adjudication.

2. The reference under adjudication is as under:

“WHETHER THE ACTION OF THE MANAGEMENT OF CANARA BANK TO IMPOSE THE PUNISHMENT OF STOPPAGE OF FOUR INCREMENTS ON SHRI H.C. MISHRA AND TO TREAT THE SUSPENSION PERIOD AS NOT SPENT ON DUTY IS LEGAL AND JUSTIFIED? IF NOT, WHAT RELIEF IS THE CONCERNED WORKMAN ENTITLED TO?”

2. It is admitted case of the parties that the workman, H.C. Mishra was working as Clerk cum Cashier, in the Zero Road, Allahabad of the erstwhile Laxmi Commercial Bank (merged with Canara Bank) when he was placed under suspension vide order dated 18.05.1984; and subsequently, was issued a charge sheet dated 16.04.1988 for gross misconduct. Sri K. K. Das was appointed as Enquiry Officer, who submitted his enquiry report vide letter dated 26.06.2000 before the disciplinary authority. The copy of the findings of the Inquiry Officer was forwarded to the workman for submissions and after analyzing the submissions of the workman and findings of the Inquiry Officer, the Disciplinary Authority agreed to the findings of the Inquiry Officer and after affording an opportunity of personal hearing to the workman, he was imposed with the punishment of “stoppage of four increments with cumulative effect and suspension period was treated as not spent on duty” vide order dated 09.02.2002. The appeal preferred by the workman had been rejected by the Appellant Authority vide order dated 18.01.2003.

3. It has been alleged by the workman that the Inquiry Officer during the inquiry did not afforded the workman proper opportunity to defend himself, inasmuch as he did not consider the Hon'ble Acquittal in the criminal case, instituted against him on similar charges. The workman has also pleaded that the findings of the inquiry officer suffers with the vice of perversity as they are not based upon the evidence relied upon before him. summon any account holder from whom the workman allegedly received any money. Accordingly, the workman has prayed that the Departmental proceedings which were conducted in violation to the principles of natural justice is liable to be set aside.

4. The management of the Bank in its written statement has denied the allegations of the workman and has defended its domestic proceedings with submission that the workman had been afforded all opportunity given under rules the principles of natural justice were fully complied with; hence, there is no anomaly with it; and accordingly, has prayed that domestic enquiry proceedings conducted by it may be upheld and the action of the Bank vide order dated 09.02.2001 be declared just, fair and legal without any benefit to the workman concerned.

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

6. The parties filed documents in support of their respective case. Following preliminary issues were framed in the presence of the parties vide order dated 13.07.2006:

(i) Whether the enquiry proceeding conducted by the enquiry officer are in violation of principle of natural justice as alleged by the trade union;

(ii) Whether the findings of enquiry officer are perverse?

After framing of preliminary issues, oral submissions of the parties have been heard as the evidence of the parties had already been concluded. Thus, issue No. 01 had been decided in favour of the management vide order dated 13.07.2006. The relevant portion of the orders is reproduced hereunder:

“I have gone through the evidence on record and find that only those documents were not given to the worker which were not in power and possession of the bank. On the discussion above I come to the conclusion that the Enquiry Officer did not violate the principle of natural justice & the enquiry conducted by him just & proper. Issue no. 1 is accordingly decided in favour of the management of the Bank.”

9. After deciding issue No. 1 in favour of the management, the parties were afforded opportunity to submit further submissions over issue No. 2 and accordingly, after hearing the submissions of the parties over issue No. 2, the same had been decided vide order dated 07.04.2015, the operative portion of the same is as under:

“As discussed above, the findings of the Inquiry Officer are perverse. As such, the issue No. 02 is decided against the management. The management of the Canara Bank, is afforded opportunity to prove the charges leveled against the workman before this Tribunal. Accordingly, the management is directed to file list of witnesses and reliance on 06.05.2015.”

10. Aggrieved from order dated 07.04.2015, the management of the Canara Bank preferred a Writ Petition No. 5690 (MS) of 2015 before Hon’ble High Court, Lucknow Bench, Lucknow, which pleased to stay the proceedings before this Tribunal vide order dated 24.09.2015; and thereafter, disposed of the writ petition with following order vide order dated 04.04.2017:

“Accordingly, the writ petition is disposed of with the direction to opposite party No. 1/Central Government Industrial Tribunal –cum- Labour Court Lucknow to decide the matter in regard to holding inquiry after giving due opportunity to the parties concerned as per law and thereafter adjudication case shall also be decided expeditiously.”

11. Thus, after order dated 04.04.2017 of the Hon’ble High Court the parties were called upon to adduce evidence on issue No. 02 afresh; however, the management of the Bank moved an application M-58, praying therein that since the issue no. 1 regarding fairness of the inquiry had been decided in favour of the management, therefore, the material/evidence already available on record may be considered by this Tribunal, acting as Enquiry Officer, for the purpose of recording its own finding in respect of the charges. After inviting objections of the workman and hearing oral submissions of the parties, application M-58 was allowed with following orders:

“In the light of the order dated 04.04.2017 in WP No. 5690 of 2015 of the Hon’ble High Court, the certified copy of which is on record, M-58 is wallowed to the extent that the material already available on record shall be considered for deciding preliminary issue No. 02.

After hearing the learned counsel of the parties, following additional issue is being framed:

3. Subject to the outcome of the issue No. 2, whether the workman is entitled to any relief?”

12. Thereafter, the parties were called upon to submit their argument on issue No. 02 & 03. The workman did not turn up to submit its oral submissions, though sufficient opportunity had been granted; accordingly, heard the learned counsel for the monument had been heard alone and case was reserved for award, keeping in view long pendency of the industrial dispute since 2003 and directions of the Hon’ble High Court in Writ Petition No. 5690 (MS) of 2015, with liberty to the parties to file written submission, if any, within ten days. The management filed its written submission.

13. I have scanned entire material available on record, including pleading of the respective parties, evidence relied upon by them documentary as well oral.

Issue No. 02:

14. It has been pleaded by the workman that the findings of the inquiry officer are perverse and is based on no evidence as the documentary evidence produced before the inquiry was different and the findings of the inquiry officer do not correlate the documents relied upon before it. It has also been alleged by the workman that the inquiry officer has given findings outside the scope and ambit of the charge sheet. Moreover, the inquiry officer has not applied his mind and submitted his findings, based on no legal evidence and the inquiry officer did not take into account the fact that the workman had been acquitted clearly on merit in a criminal case which was instituted on same charges.

15. In rebuttal, the management has submitted that the bare perusal of token book, peon register, weekly statement and cash book would show that the allegations of misconduct levelled against the workman were duly corroborated and supported by the circumstantial evidence on record before the inquiry, therefore, the report of the inquiry officer is fair and based on the evidence relied upon it and does not suffers with the vice of perversity.

11. In the instant case the workman was charge sheeted for his alleged gross misconduct, prejudicial to the interest of the Bank i.e. attempt to cause damage to the property of the bank. It has been alleged in the charge sheet that the workman opened a saving bank account in the name of one Shri Ram Naresh, resident of 38, Pusawaldi Budganj, Allahabad; however, the investigation into the matter revealed that no person by name resided there. The workman got issued a cheque book in the name Ram Naresh and operated the account by signing himself as Ram Naresh. He manipulated to credit the account by means of bogus and false entries and

subsequently drawn the amounts through different cheques on various dates and received payment; and thereafter he destroyed relevant books of account and record to cover up his lapses. The inquiry was upheld by this Tribunal vide order dated 13.07.2006, holding that the disciplinary enquiry was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself. The bare perusal of token book, peon register, weekly statement and cash book marked on exhibit ME-2, ME-3 and ME-6 would show that the allegations of misconduct levelled against the claimant workman were corroborated and supported by the circumstantial evidence/material on records. Moreover, from perusal of the inquiry proceedings available on record as well as inquiry report, submitted by the Inquiry Officer, it is evident that the findings of the Inquiry Officer were based upon the evidence collected during inquiry, after affording all reasonable opportunities to the workman to defend himself. Thus, it would be well inferred that the findings of the Inquiry Officer do not suffer with the vice of perversity; and accordingly, the issue No. 02 is decided in favour of the management.

Issue No. 03:

12. Now, after decision of the preliminary issue no. 02, in the favour of the management, the submissions of the workman that the punishment imposed upon him is disproportionate and this Tribunal should interfere into it within the provisions providing under Section 11 A of the Industrial Disputes Act, 1947 is taken into account. In this regard, it is well settled that the Labour Court has ample power under section 11-A of the Industrial Disputes Act, 1947 to substitute a lesser punishment, taking into consideration the facts and circumstances of the case. Moreover, the principle of proportionality calls for interference of this Court into the punishment imposed by the management i.e. of removal in view of law in *Joseph Solomon vs. Presiding Officer, Labour Court, U.P., Dehradun & another* 2012 (134) FLR 424.

13. It is admitted proposition of law that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment; however, the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is harsh. Admittedly, in the instant case the workman was given charge sheet for committing misconduct of 'doing acts prejudicial to the interest of the bank' i.e. attempt to cause damage to the property of the bank by opening bank account in fictitious names and operating the same; and was penalized with punishment of stoppage of four increments and to treat the suspension period as not spent on duty. Moreover, this Tribunal vide its order dated 13.07.2006 has found that "the disciplinary enquiry was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself; and also it is held, in the preceding para, that the findings of the Enquiry Officer do not suffer with the vice of perversity.

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

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

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

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

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

"11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should

not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

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

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

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

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

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

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

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

16. In the instant case the workman, committed gross misconduct; whereby he opened a bank account in fictitious name and not only operated the same on many occasions; but also, in order to suppress his misdeeds, he destroyed the material/record related to it. This fraudulent act of the workman was prejudicial to the interests of the Bank.

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

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

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

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

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

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

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

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

19. In the instant case the charge of gross misconduct was found to be proved and principles of natural justice were properly observed while conducting the departmental inquiry; and also the findings of the Inquiry Officer are not found to be perverse; however, the workman, taking a lenient view, had been awarded punishment of "stoppage of four increments and to treat the suspension period as not spent on duty", which cannot be said to be disproportionate or harsh to the proved misconduct, at any stretch of imagination.

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

20. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW

24th December, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 66.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 02/2020) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-12011/48/2019-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 18th January, 2021

S.O. 66.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2020) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank, and their workmen, received by the Central Government on 18.01.2021.

[No. L-12011/48/2019-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 02/2020

Ref. No. L-12011/48/2019-IR(B-II) dated: 27.12.2019

BETWEEN :

The General Secretary
National Confederation of Bank Employees
State Bank Building, 8th Floor, Local Head Office
Post Box No. 358, Moti Mahal Marg
Lucknow – 226001

AND

1. The Chief Regional Manager
Indian Overseas Bank
Regional Office, 3rd Floor,
New Chetna Kendra, Hazratganj
Lucknow.
2. The General Manager (HRMD)
Indian Overseas Bank
Head Office, 763, Annasalai
Chennai (Tamilnadu) – 600002

AWARD

1. By order No. L-12011/48/2019-IR(B-II) dated: 27.12.2019 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the General Secretary, National Confederation of Bank Employees, State Bank Building, 8th Floor, Local Head Office, Post Box No. 358, Moti Mahal Marg, Lucknow and the Chief Regional Manager, Indian Overseas Bank, Regional Office, 3rd Floor, New Chetna Kendra, Hazratganj, Lucknow & the General Manager (HRMD), Indian Overseas Bank, Head Office, 763, Annasalai, Chennai (Tamilnadu) for adjudication.

2. The reference under adjudication is:

“WHETHER SHRI U.P. DUBEY, SPECIAL ASSISTANT, AMINABAD BRANCH, LUCKNOW OF THE INDIAN OVERSEAS BANK IS A PROTECTED WORKMAN UNDER THE INDUSTRIAL DISPUTE ACT, IF SO, WHETHER SERVING A CHARGE SHEET TO HIM DURING CONCILIATION PROCEEDING WITHOUT OBTAINING PERMISSION FROM CONCILIATION OFFICER AND INITIATING DISCIPLINARY PROCEEDINGS AGAINST HIM IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF WORKMEN IS ENTITLED TO AND TO WHAT EXTENT?”

3. The order of reference was endorsed to the General Secretary of the Union with direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957.

4. The order of reference was registered in the Tribunal on 28.01.2020 and the office was directed to issue registered notice to the workman's union for filing the statement of claim with list of reliance & list of witnesses on 05.03.2020; however, on the date fixed, the workman union moved an application, W-3, regarding settlement of its grievances; wherein it has been submitted that the opposite parties have settled the dispute to the satisfaction of aggrieved workman viz. Shri U.P. Dubey; accordingly it does not want to pursue the matter further. The management did not oppose the application. Accordingly, the parties were given a chance to file the terms of settlement; but none turned up from either parties.

5. In the circumstances, narrated above, it appears that the parties have settled their dispute out of court and accordingly, the workman's union does not want to pursue its claim on the basis of which it has raised the present industrial dispute; therefore, the present reference order is decided as if there is no grievance left with the workmen's union. Resultantly no relief is required to be given to the workmen concerned. The reference under adjudication is answered accordingly.

6. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW

22nd December, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 जनवरी, 2021

का.आ. 67.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 31/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-12011/47/2018-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 18th January, 2021

S.O. 67.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 18.01.2021.

[No. L-12011/47/2018-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, HJS (Retd.)

I.D. No. 31/2018

Ref. No. L-12011/47/2018-IR(B-II) dated: 26.10.2018

BETWEEN :

Shri K. K. Mishra
Secretary, PNB Staff Association, U.P.
E-5/146, Rajajipuram
Lucknow – 226017

Vs.

1. The Regional General Manager
Punjab National Bank
F.G. M. Office, Vibhuti Khand
Gomti Nagar, Lucknow – 226010.
2. Circle Head/Appointing Authority
Chief Manager (Circle Head)
Circle Office, Vibhuti Khand
Gomti Nagar, Lucknow – 226010.

AWARD

1. By order No. L-12011/47/2018-IR(B-II) dated: 26.10.2018 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri K. K. Mishra, Secretary, PNB Staff Association, U.P., E-5/146, Rajajipuram, Lucknow and the Regional General Manager, Punjab National Bank, F.G. M. Office, Vibhuti Khand, Gomti Nagar, Lucknow & Circle Head/Appointing Authority, Chief Manager (Circle Head), Circle Office, Vibhuti Khand, Gomti Nagar, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE DEMAND RAISED BY PNB STAFF ASSOCIATION U.P., LUCKNOW FOR NOT GIVING PREFERENCE FOR REGULARIZATION OF TEMPORARY WORKMAN AS PER BIPARTITE SETTLEMENT TO SHRI DEEPAK KUMAR S/O SH. RAJU AND 9 OTHERS (FOR THE PERIOD AS PER ANNEXURE), ON THE MANAGEMENT OF PNB, LUCKNOW CIRCLE HEAD AND THEREBY ADOPTING UNFAIR LABOUR PRACTICE IS LEGAL & JUSTIFIED? IF SO, WHAT RELIEF THE WORKMEN ARE ENTITLED TO AND WHAT DIRECTIONS ARE NECESSARY IN THE CASE?”

3. The order of reference was registered in the Tribunal on 28.01.2020 and the office was directed to issue registered notice to parties, calling upon them to file their respective pleadings; whereupon the workmen's union filed its statement of claim and the management filed its written statement and next date was fixed for filing of rejoinder by the workmen's union. However, on the date fixed, the workman union moved an application, W-6, regarding settlement of its grievances; wherein it has been submitted that there exists no dispute; and prayed to pass an award accordingly.

4. In the circumstances, narrated above, it appears that the parties have settled their dispute out of court and accordingly, the workman's union does not want to pursue its claim on the basis of which it has raised the present industrial dispute; therefore, the present reference order is decided as if there is no grievance left with the workmen's union. Resultantly no relief is required to be given to the workmen concerned. The reference under adjudication is answered accordingly.

5. Award as above.

Let two copies of this award be sent to the Ministry for publication.

LUCKNOW

31st December, 2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 जनवरी, 2021

का.आ. 68.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 नई दिल्ली के पंचाट (संदर्भ संख्या 50/11) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.01.2021 प्राप्त हुआ था।

[सं. एल-12012/46/2011-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 20th January, 2021

S.O. 68.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/11) of the Cent.Govt.Indus.Tribunal-cum-Labour Court – II, New Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.01.2021.

[No. L-12012/46/2011-IR (B-I)]

D. GUHA, Under Secy.

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

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

INDUSTRIAL DISPUTE CASE NO. 50/11**Date of Passing Award- 17th November, 2020****Between:**

Smt. Indirawati,
W/o Late Shri Ranbir Singh,
R/o -D-166, (F), Sector -11
Vijay Nagar,
Ghaziabad (U.P)

... Claimant

Versus

The Dy. General Manager,
State Bank of India,
Zonal Officer-I, II,
Parliament Street,
New Delhi-110001.

...Management

Appearances:-

Shri S.P. Saxena (A/R) : For the claimant

Smt. Kittu Bajaj (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Zonal Officer-I, II, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/46/2011 IR (B-I) dated 20.06.2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of State Bank of India, New Delhi in terminating the services of Smt. Indirawati, Ex- Assistant, w.e.f. 19/12/2005. Is legal and justified? To what relief the workman is entitled?”

The facts pleaded in the claim statement and not disputed by the management in short are that the claimant was appointed in the post of assistant in the management bank and was posted in the RajGhat Power Station branch of the Bank. On 8-7-2003 when she was performing duty in the cash counter of the bank three bearer cheques were presented in the counter by one Malkiyat Singh for payment. Total value of the said cheques were 1,16,354. Though the claimant made payment to the bearer on the same day failed to enter the same in the cash payment register. Again on 16-7-2003 she had received Rs25000 from a customer RamAwadh for deposit Rs. 20000 /in one account and Rs 5000/ in another account. But she retained the amount in her possession till 19 -7-2003. When these were brought to the notice of the bank authority, on 21-7-2003, action for misconduct was taken and the claimant was placed under suspension which was followed by a charge sheet. The claimant was called upon to submit her explanation. The said explanation, since found not satisfactory, the management started disciplinary proceeding inquiry. The claimant had participated in the inquiry along with her defence assistant and demanded supply of all relevant documents. Considering the oral and documentary evidence adduced by both the parties the inquiry officer found the charges proved and the disciplinary authority by his order dt 31.10.2005, took a tentative decision to impose the punishment “removal from service” along with other consequential punishments like recovery of the loss suffered by the bank and forfeiture of the gratuity etc. Calling upon her to appear with the defence assistant for personal hearing. Afterwards final order was passed imposing the punishment as proposed. Though the claimant had preferred departmental appeal, that too was decided against her. Being aggrieved she approached the labour commissioner for redressal of the grievance. The efforts made for conciliation since failed, the appropriate govt. referred the matter for adjudication on the point of legality and proportionality of the punishment imposed on the claimant.

In the claim petition the claimant while admitting the allegations partially has explained that on 8.7.2003, three bearer cheques were presented to her in the cash counter by one Malkiyat Singh for a total amount of Rs 1,16,354. Since those were bearer cheques, payment was made to the bearer Malkiyat Singh. Later said Malkiyat Singh requested for deposit of one lakh in their current account and submitted deposit voucher. The same was accepted and the counterfoil of the voucher with the seal of the bank was given to him. Sometimes thereafter Malkiyat Singh returned and requested for receipt of cash of one lakh to which the claimant agreed and demanded return of the counterfoil of the deposit slip. He instead of returning the same approached the then manager of the bank shri R.K. Bansal, who came to the cash counter and insisted on payment of one lakh to him. The claimant thus made the payment and the manager himself tore the deposit slip of Rs one lakh then and there. But the office of Malkiyat Singh later on made a complaint about non deposit of one lakh in their account which is not attributable to the claimant. Similarly on 16.7.2003 one customer named Ram Awadh came to the counter with Rs 25000 / and wanted to deposit the same in two separate accounts. Since it was past 4 pm he was advised to come on the next day. But for his insistence she accepted and kept the money with her to be deposited on the next day. But for her illness, remained absent from office for two days and was deposited on 19/7/2003 having no ill intention for the same. Though all these explanations were offered by her during domestic inquiry, the authorities never considered the same and in a whimsical manner passed the order holding her guilty of misconduct. Even the material witnesses were not examined during inquiry.

In its reply the management bank refuted all the plea and stand taken by the claimant and added that all the documents as demanded were supplied during domestic inquiry. The claimant was given proper opportunity to defend herself and she had a defence assistant throughout the inquiry to help her. Moreover, she admitted all the events mentioned in the charge and the explanation offered was not found convincing by the disciplinary authority. Hence she was rightly found guilty of misconduct. The other stand taken by the management is with regard to the maintainability of this proceeding being barred by time as the dispute has been raised seven years after dismissal of the departmental appeal.

Based on the pleadings this tribunal had earlier framed three issues by order dated 8.4.2013 and proceeded to decide issue no 1 as a preliminary issue. During preliminary issue hearing both parties adduced oral and documentary evidence and considering the same, this tribunal by order dated 19.2.2019 came to hold that the departmental inquiry was not conducted in accordance with the rules and standing orders and principles of natural justice were not followed. Holding the domestic inquiry against the claimant as vitiated, the management was called upon to adduce evidence to prove the charge against the claimant. But the management opted not to adduce any further evidence and rely upon the evidence already on record being adduced during preliminary issue hearing. The claimant also chooses not to adduce any other evidence than the one already adduced.

At the outset of the argument the learned counsel for the management urged that the basic rule for appreciation of evidence is that, facts admitted need not be proved. In this matter the claimant was facing inquiry for the charge of misconduct as she had failed to discharge her duties as per the norms of the bank. She was charged for disbursing cash without entering the same in cash disbursement register. Again she received cash from the same customer without making an entry in the cash receipt register and handed over the counterfoil of the deposit slip to him. But the said cash was never deposited in the account of the account holder. The claimant admitted these facts in clear terms during the inquiry with explanation that, on the same day she returned the cash to the customer without receiving back the counterfoil of the deposit on the insistence of the then bank manager, which was found not convincing during the inquiry. There was another charge on 16.7.2003. she had received Rs 25000/ from another customer for deposit in two separate accounts. But she kept the amount with her till 19.7.2003. when through a deposit slip prepared in her own handwriting it was deposited. The explanation offered was found not convincing. For both the instances being admitted during preliminary issue inquiry, she insisted that the same be considered by the tribunal for proving the charge.

The counter argument in this regard advanced by the claimant is that the said evidence has already been dismissed by the tribunal as unworthy of acceptance since all the documents were only photocopies without any certificate of authenticity. More over the witnesses examined were not the witnesses during domestic inquiry nor have any direct knowledge on the facts alleged in the charge. Hence management has not adduced any evidence to prove the charge.

The Hon'ble SC in the case of Workmen vs. Firestone Tyre & Rubber Co. of India Ltd reported in (1973) SCC 813, which was later on followed in the case of SBI vs. Tarun K Banarjee reported in (2000) 8 SCC 12, have set out the principles governing the Tribunals while adjudicating disputes relating to dismissal or discharge after a domestic inquiry. These include

- a-If the action of the employer is justified
- b-If the inquiry was conducted in accordance with the rule and standing order following the principles of natural justice.

C-if after the proper inquiry, the finding of misconduct is a plausible conclusion, flowing from the evidence adduced during the inquiry.

d-If the inquiry is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order has to give an opportunity to the employer to adduce evidence and prove the charge. The tribunal then gets jurisdiction to consider the evidence adduced for the first time before it to decide the justification of the action taken.

E- an employer who wants to avail the opportunity of adducing the evidence for the first time before the tribunal shall apply for the same at the appropriate time, and the tribunal has no power to refuse the same.

F- once the misconduct is proved through domestic inquiry or through evidence adduced for the first time before the tribunal, punishment imposed cannot be interfered with except for a situation where the punishment is too harsh so as to suggest victimization.

Thus it is the clear position of law that when the domestic inquiry is found to be defective, it is incumbent upon the employer to adduce evidence to prove the charge. In this matter when the employer bank was called upon to adduce evidence, it opted to rely on the evidence adduced during preliminary issue hearing and added that the charge having been admitted by the claimant no further evidence is required to be adduced. Thus it is necessary to examine if the claimant has admitted the charge and the evidence adduced during preliminary issue hearing is sufficient to prove the charge.

The preliminary issue was about the procedure adopted during the inquiry and the principles of natural justice if followed. To begin with the admission of the charges by the claimant, management has relied upon the show cause submitted by the claimant during the inquiry, which has been exhibited during preliminary issue hearing. Management has also relied upon the representation of the claimant submitted during departmental appeal. In addition to that management has relied upon the evidence of two witnesses examined on behalf of the bank during preliminary issue hearing. These two witnesses namely Trilokinath and Kanhaiya Lal examined as MW1 and MW 2 were not the witnesses during the departmental inquiry. Kanhaiya Lal claims to have been posted in the branch when the alleged act of misconduct was committed by the claimant. Both the witnesses during cross examination have stated that the statement given by them is derived from the documents of the bank which have been filed in the proceeding. All the documents are found to be photocopies of bank records and registers without any certificate of authenticity. There is also no evidence deduced by the bank to say who is the custodian of those documents and from whose custody those were produced before the tribunal. It is noteworthy that the claimant during the domestic inquiry and also during preliminary issue hearing has disputed the authenticity of those documents. With regard to the admission of the charges by the claimant, the learned counsel for the employer bank pointed out the pleadings of the claimant in the claim statement and the show cause submitted during domestic inquiry to argue that strict rules of evidence act are not applicable in domestic inquiry. The materials which are logically probative to a prudent mind are to be accepted. She also submitted that the documents are the photo copies of the registers maintained in day to day business of a nationalized bank and thus should not be readily disbelieved when the claimant has admitted the charges.

It is true that the documents are photocopies of different registers of the bank used during normal bank business for entry of cash received, cash disbursed etc, which are updated at the end of each working day. The banks have their own reputation of maintaining their records with transparency and uptodate. But in this case since the time of domestic inquiry the claimant is disputing the documents and demanding authenticated copies of the documents, which were never supplied to her. The only explanation offered by the bank is that the claimant has admitted the omission made by her which amounts to misconduct. The show cause submitted by the claimant during domestic inquiry has been placed on record by the management. Claimant admits this document. Attention was drawn to the statement of claim filed in this proceeding which contains the admission of the claimant that she had received three no. of cheques from Malkiyat Singh on 8.7.2003 and disbursed cash of Rs 16,354/ to the bearer and retained Rs 100000/ for deposit in the account as desired by the customer. But entries were not made in the cash disbursement register or receipt register and also stated that the entries of those registers though closed at the end of the working hour, was not signed by her. Banking on this admission the management argued that the claimant being a responsible employee of the bank omitted to discharge her duties diligently and acted with a malafide intention which amounts to misconduct and she was appropriately found guilty during the inquiry and the punishment inflicted is proportionate too.

But it is seen that in the claim statement and during the domestic inquiry the claimant has taken a specific stand that The bearer of the cheque at one point time, wanted deposit of one lakh in the account and on the same day again wanted to take back the amount if not posted against the account. His request was acceded to on the insistence of the then bank manager R.K.Bansal. The counterfoil of deposit slip handed over to the customer was not returned as Mr Bansal insisted that he is a valued customer and the counterfoil will be destroyed by him. Though bank alleges about non deposit of said one lakh in the account of the customer by the claimant and receipt of complaint to that effect from the customer, surprisingly said Malkiyat Singh was neither examined as a witness during domestic inquiry nor in this proceeding. No explanation in this regard has been

offered by the management. The claimant examined as witness in this proceeding has stated that in the regular business of the bank there is no practice of the cash issue register or cash receipt register to be signed by the clerk at the counter, which is usually done by the cashier at the end of the day. To counter this statement of the claimant no oral or documentary evidence has been adduced. The original or authenticated copy of those registers could have been filed by the bank. Since the claimant from the very beginning disputing the authenticity of the documents filed by the bank, this Tribunal has no hesitation in concluding that no evidence has been placed on record by the Bank to prove that the claimant had received Rs one lakh from customer Malkiat Singh, but miscondacted herself by not posting the amount in his account.

The other charge in the domestic inquiry against the claimant is that she had received Rs25000/ from one Ram Awadh on 16.7.2003, but deposited the same in the respective accounts on 19.7.2003 when the financial irregularities were noticed by the authority. In order to prove this charge the bank during the domestic inquiry had examined one R P Bhutani the cash officer to prove that the cash was received by the claimant on 16.7.2003, but deposited in the account of the customer on 19.7.2003. The claimant since kept the money of the customer in her possession for two days amounts to misconduct. While considering this charge the disciplinary authority never took into consideration the explanation offered by the claimant and the letter submitted by the customer stating that on her request the money was kept by the claimant after the banking hour to be deposited on the next day. Remarkable is the fact that during inquiry neither the said customer was called as a witness nor the original deposit voucher containing endorsement of receipt and date was produced.

As stated in the preceding paragraph of this order when the order of domestic inquiry is held vitiated, the employer is at liberty of adducing fresh evidence before the tribunal to prove the charge against the claimant. In this matter when called upon, the management bank instead of adducing fresh evidence expressed that the statement of witnesses recorded during preliminary issues hearings are the only evidence to be relied upon by them. The witnesses examined are one Trilokinath, an employee of the bank who has no direct knowledge about the facts alleged. As admitted by him his evidence is based upon the documents of the bank only. Needless to say that the original or authenticated copies of the bank document were never produced before this tribunal and the claimant has disputed the authenticity of the documents throughout the inquiry. The other witness examined by the bank is one Mr. Kanhyalal, the manager of the bank. He was working in the Raj Ghat branch of the bank when the alleged financial irregularities were committed by the claimant. In his sworn testimony, he has narrated how and when the claimant omitted to perform her duties diligently and how the omission amounts to misconduct on the part of the claimant. This witness was not examined by the bank during the domestic inquiry. He was cross examined at length by the claimant before this tribunal during which he admitted that statement given by him is based upon documents only. He further stated that the claimant was not subordinate to him and thus he had no direct knowledge of the alleged incident.

Thus on a careful analysis of the evidence placed on record by the employer bank it appears that the bank has not succeeded in proving the charge against the claimant. It is a basic rule of administration of justice that no authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same based on justifiable grounds supported by acceptable materials and reasons thereof. Therefore grant of relief must depend on the facts and circumstances of each case. In this case the domestic inquiry has been found vitiated for non adherence of the principles of natural justice since the bank failed to produce original documents, despite the demand made by the claimant.

The learned counsel for the bank advanced argument to say, that the claimant has admitted the alleged financial irregularities. In such a situation even if it is held that the charges could not be proved, the tribunal cannot lose sight of the fact that the bank, a financial institution, dealing with public money has lost faith in the claimant and in such a situation it would not be proper to direct reinstatement with back wages. No evidence has been placed on record to prove the current age of the claimant. It is not known whether she has attained the age of superannuation in the meantime or not. Furthermore, the law with regard to loss of confidence is well settled that the reinstatement or full back wages cannot be ordered when the employee acts in such a manner by which the management loses confidence in him. The Hon'ble High Court of Delhi in a recent judgment i.e State Bank of Travancore vs. Prem Singh reported in 2019 SCC, on line del8258 in which Air India Corporation vs. V.A.Rebellow(AIR 1972 SC, 1343) and Karnataka State Road Transport Corporation vs. M.G.Vittal(2012 SCC,442) were discussed, came to hold that "when an employee acts in manner by which the management loses confidence in him, his reinstatement cannot be ordered because it would neither be desirable nor expedient to continue the employee in service. It may also be detrimental to the discipline or security of the establishment. In case of loss of confidence, only compensation should be awarded.

It is also a decided principle of law that the loss of confidence by the employer has to be bonafide and cannot be subjective. It has to rest on some objective facts so as to create a reasonable apprehension in the mind of the employer. In this case as admitted by the claimant she had not entered the details of the notes paid to Malkiat Singh in the relevant register. Similarly she did not enter the cash receipt of Rs 100000/ in the register for credit into a particular account. She has also admitted to have received Rs 25000/ from a customer and retained the same for two days before depositing in the account of the customer. Of course the claimant has

offered explanation for such acts and management has not successfully proved the charge against the claimant. But that will not erase the admissions made by the claimant which are sufficient for a reasonable apprehension in the mind of an employer with regard to the effective functioning of an institution or establishment.

Hence considering all these aspects and the evidence placed on record it is concluded that the management Bank failed to prove the charges of misconduct against the claimant and the action taken against her is illegal and unjustified. The reference is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is answered in favour of the claimant. The action taken by the Bank management in terminating her service with effect from 9/12/2005 is held to be illegal and unjustified. Since the bank has lost faith in the claimant, no direction can be given for her reinstatement in service with full back wages. Instead it is directed that the management Bank shall pay compensation to the claimant @ 200000/ per annum for the remaining years of service the claimant could have rendered, had the punishment not been imposed on her. It is further directed that the bank management shall pay the compensation to the claimant along with all other service benefits like leave encashment, gratuity etc according to her entitlement and if not yet paid. All the dues shall be paid by the bank within three months from the date when this award would become enforceable, failing which the said accrued amount shall carry interest @9% per annum from the date of this award till the actual payment would be made. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

17th November, 2020

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 जनवरी, 2021

का.आ. 69.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बेंगलूर के पंचाट (संदर्भ संख्या 04/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.01.2021 प्राप्त हुआ था।

[सं. एल-12012/121/2015-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 20th January, 2021

S.O. 69.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.01.2021.

[No. L-12012/121/2015-IR (B-I)]

D. GUHA, Under Secy.

ANNEXURE

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

DATED : 05TH JANUARY, 2021

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 04/2016

I Party

Sh. Prakash Chennappa Shettar,
Opp : Bus Stand, Annigeri,
Taluk : Navalgund,
District : Dharward - 582201

II Party

The Deputy General Manager,
State Bank of India,
Regional Office,
Hubli - 580020.

Appearance :

Advocate for I Party : Mr. M. H. Bhat

Advocate for II Party : Mr. N. Venkatesh

AWARD

The Central Government vide Order No. L-12012/121/2015-IR(B-I) dated 07.01.2016 / 12.01.2016 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 State Bank of Mysore is justified in removing Sh. Prakash Chennappa Shettar from the services of the Bank. If not, what are the reliefs the workman is entitled to?”

On receipt of the reference order, notice was issued to the 1st Party workman: he appeared through his counsel Sh. MHB but failed to submit his claim statement. The second notice sent to him returned unserved with the endorsement “DOOR LOCKED”.

2. The 2nd Party has filed their statement contending that

there is inordinate delay of 8 years in raising the dispute: 1st Party was working as Single Window Operator at Byadgi Branch of the 2nd Party: he was issued charge sheet dated 12.06.2007 on two counts. First allegation was, misappropriation of Rs. 646/- cash received at receipt counter during November 2006: the second charge pertains to unauthorised absence from duties since 11.12.2006 continuously without intimation. He submitted his reply to the charge sheet on 09.07.2007: enquiry was initiated by appointing Enquiry Officer and the Presenting Officer: during the enquiry 1st Party was assisted by the Representative of the Registered Trade Union of the Bank Employees of which he is a member: during the preliminary enquiry the Enquiry Officer questioned him whether he accepts or denies both charges: he submitted that he has no intention to contest or deny both the charge: he remitted back the amount of Rs. 646/- on 10.09.2007: the Enquiry Officer submitted his Report that 1st Party accepted both the charges. He signed the proceedings of the enquiry dated 10.09.2007. Show cause notice was issued by the Disciplinary Authority after Enquiry Report was submitted. Though time was given for personal hearing 1st Party did not give any reply till 29.01.2008, on that the Disciplinary Authority passed the order “*Be removed from Service with superannuation Benefits i.e. Pension or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment*” - in terms of clause-6 (c) of the Bipartite Settlement on Disciplinary Action and Procedure dated 10.04.2002. Copy of the same was received and acknowledged on 31.01.2008. In appeal preferred by the 1st Party, the Appellate Authority provided him the opportunity of personal hearing, after giving audience the punishment order was modified by the Appellate Authority as “*Be Compulsorily Retired with Superannuation Benefits i.e. Pension or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment*”. The orders of the Appellate Authority and Disciplinary Authority are perfectly valid and are in accordance with the Memorandum of Settlement applicable to him. Enquiry is held in fair manner and in compliance with the principles of natural justice. The Punishment Order commensurate with the gravity of misconduct proved during the enquiry. The Bank has lost faith in him as the Bank deals with crores of rupees of Public Money and the acts of 1st Party has tarnished the image of 2nd Party.

3. To corroborate the contention, the 2nd Party produced Enquiry Records and the Past Records of the 1st Party workman, orders of the Disciplinary Authority and Appellate Authority as Ex M-1 to Ex M-9 through their witness / the present Branch Manager Byadgi Branch.

Written argument is also submitted by them. Perused the records.

4. As per the charge sheet dated 12.06.2007, (Ex M-1) the 1st Party workman was charged on two counts.

Firstly, he misappropriated the cash received at receipt counter to an extent of Rs. 646/- during November 2006 (the details of the date, Account Number, Actual Cash Receipt, Amount of cash posted to the Account and Difference Misappropriated was detailed in the charge sheet).

Secondly, he remained absent unauthorisedly since 11.12.2006.

5. The CSE gave his reply that “...since Byadgi Branch is a very heavy Branch, there is lot of pressure in cash dept. counters and in rush of work I may have erred unintentionally in totalling the amount....due to my illness I was advised bed rest by my Doctor and hence could not attend to my duties...I have no intention of disputing the charges for the simple reason that I would like to behave more responsibly and serve my esteemed Bank to the best of my ability.

During the Domestic Enquiry (Ex M-3) the proceedings held on 10.09.2007, the 1st Party reiterated his stance as above: in response to the question of the Enquiry Officer whether he accepts or denies both charges his reply was

“Sir, I have no intention to contest or deny both the charges, for the past one year, I have been suffering from health problem and on many occasions I have tried to work even in sickness. On the days mentioned in the Charge Sheet also, I was not keeping good health and may not have attended to my duties properly and I regret for the same. I have also remitted back the amount of Rs. 646/- today”.

His defence Representative was also called upon to have his say and he submitted that since CSE is not denying the charges he has nothing more to add. The Enquiry Officer provided final opportunity to the parties to present their case. Even thereafter no new factum was brought before the Enquiry Officer on the same date i.e. on 10.09.2007. He deposited Rs. 646/- allegedly misappropriated by him at the Branch. Consequently, the Enquiry Officer submitted his Report that the charges are proved vide his Report Ex M-4. The Disciplinary Authority issued a show cause notice (Ex M-5) calling to show cause why the proposed punishment of Removal from Service with superannuation benefits..... should not be imposed on him.

6. In his final order dated 29.01.2008 vide Ex M-6 the Disciplinary Authority has noted that CSE has not responded to the Enquiry Findings Report, though he has received the show cause notice he did not ask for personal hearing nor submitted his reply to the show cause notice.

In the back ground of the above the Disciplinary Authority recorded his finding that,

- (a) The lapse of the CSE is already established and proved to be very serious in nature.
- (b) Cash misappropriation on eight occasions is an act of dishonesty.
- (c) Intentional misappropriation of cash is admitted by him.
- (d) Continuation of CSE may expose the Bank for more risk and good image of the Bank in the eyes of the public will be affected.

That led to the punishment in terms of Bipartite Settlement dated 10.04.2002 on Disciplinary Action and Procedure Clause 6(c)

“Be removed from service with superannuation benefits, i.e. Pension or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and Without disqualification from future employment”.

7. He was provided personal hearing by the Appellate Authority: the Appellate Authority vide its considered order Ex M-8 dated 21.05.2008 modified the order only to the extent of Compulsory Retirement in the place of Removal from Service and retained all the benefits of superannuation i.e. Pension or Provident Fund and Gratuity.

8. As against the order of the Appellate Authority dated 21.05.2008, the dispute appears to have been raised after a delay of 8 years. It appears the 1st Party is not interested in pursuing the dispute. 2nd Party by their evidence coupled with the documents Ex M-1 to Ex M-3 have established that during the Domestic Enquiry sufficient opportunity was given to the workman to defend against the charges, though he had taken his Defence Representative to the Enquiry hall, he had opted not to deny the charges: he deposited the misappropriated amount. Hence, there cannot be any second word about the fairness of the Domestic Enquiry, the Disciplinary Authority has inferred that the misconduct is serious in nature amounts to dishonesty and risks the image of the Bank. The punishment is imposed in terms of the Bipartite Settlement dated 10.04.2002. I find the punishment order is legal and appropriate, when there is no claim before this Tribunal by the 1st Party, there is no room for exercising the jurisdiction under Sec 11-A of ‘the Act’ to mould any relief in his favour.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 05th January, 2021)

JUSTICE SMT. RATNAKALA, Presiding Officer