



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-सा.-04022021-224929
CG-DL-W-04022021-224929

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 04] नई दिल्ली, जनवरी 24—जनवरी 30, 2021 शनिवार/ माघ 4— माघ 10, 1942
No. 04] NEW DELHI, JANUARY 24—JANUARY 30, 2021, SATURDAY/MAGHA 4—MAGHA 10, 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)

विदेश मंत्रालय
(सी.पी.वी. प्रभाग)

नई दिल्ली, 14 जनवरी, 2021

का. आ. 70.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के प्रधान कौंसलावास, म्यूनिख में श्री अनिल कुमार, सहायक अनुभाग अधिकारी को दिनांक 14 जनवरी 2021 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2014]

विष्णु कुमार शर्मा, निदेशक (सी.पी.वी.)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 14th January, 2021

S.O. 70.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Anil Kumar, Assistant Section Officer as Assistant Consular Officer in Consulate General of India, Munich to perform the Consular services with effect from 14th January, 2021.

[F. No. T-4330/01/2014]

VISHNU KUMAR SHARMA, Director (CPV)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 20 जनवरी, 2021

का.आ. 71.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंधक, टाईगर 4 सिक्योरिटी एंड डिटेक्टिव इंडिया प्रा.लि., भीलवाड़ा, (राज) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, भीलवाड़ा के पंचाट (संदर्भ संख्या 02/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.21 को प्राप्त हुए थे।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 20th January, 2021

S.O. 71.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2017) of The Labor Court - Bhilwara, (Raj) as shown in the Annexure, in the Industrial dispute between the employers in relation to The Manger, Tiger 4 Security and Detective India Private Limited, Bhilwadra, (Raj) and their workmen which were received by the Central Government on 18.01.21.

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

D. K. HIMANSHU, Under Secy.

अनुबंध**मु. नं. सन् 2017 उदयलाल बनाम टाईगर फोर सिक्यूरिटी****श्रम न्यायालय, भीलवाड़ा****पीठासीन अधिकारी :** श्री अजीत कुमार हिंजर, आर.जे.एस. (जिला न्यायाधीश संवर्ग)**प्रकरण संख्या :** 2/2017 एल.सी.आर

श्री उदयलाल गाडरी पुत्र श्री रूपलाल, निवासी—
देवनारायण मंदिर के पास, गांधीनगर, भीलवाड़ा

...प्रार्थी

: बनाम :

प्रबंधक, मै. टाईगर 4 सिक्योरिटी एंड डिटेक्टिव इंडिया प्रा. लि.,
410, फोर्थ फ्लोर, शेखावाटी काम्पलेक्स, स्टेशन रोड, जयपुर

...विपक्षी / नियोजक

उपस्थित :

श्री कन्हैयालाल बुलावत, प्रतिनिधि—प्रार्थी की ओर से।
विपक्षी के खिलाफ एकतरफा कार्यवाही।

पंचाट

दिनांक 21.10.2019

श्रमिक ने विपक्षी नियोजक के विरुद्ध उसे सेवा से पृथक किये जाने संबंधी श्रम विवाद उप मुख्य श्रम आयुक्त (केन्द्रीय), अजमेर के समक्ष पेश किया, जहां 45 दिन की समयावधि में कोई समझौता नहीं होने के कारण प्रार्थी ने औद्योगिक विवाद अधिनियम 1947 (जिसे पंचाट में आगे अधि. 1947 से सम्बोधित किया जायेगा) की धारा 2 (ए) के तहत यह विवाद न्यायालय के समक्ष पेश किया।

उपरोक्तानुसार विवाद प्राप्त होने पर पक्षकारों को नोटिस जारी कर तलब किया गया।

प्रार्थी ने क्लेम प्रार्थना पत्र में यह अंकित किया कि उसने विपक्षी के अधीन फरवरी 2014 से भीलवाडा स्थित भारतीय स्टेट बैंक, शाखा—सेवा सदन रोड, भीलवाडा के ए.टी.एम. पर सिक्योरिटी गार्ड—केयर टेकर के पद पर दिनांक 17.10.2015 तक काम किया। प्रत्येक कलेण्डर वर्ष में 240 दिवसों से अधिक कार्य किया। अधि० 1947 की धारा 25—बी के तहत उसका नियोजन नियमित नियोजन है। वह दिनांक 18.10.2015 को कार्य पर उपस्थित हुआ तो विपक्षी के सुपरवाइजर ने बैंक के प्रबंधक के निर्देश पर उसे काम पर लेने से मना कर दिया। उसे बिना किसी जांच के, बिना कोई कारण बताये, बिना नोटिस दिये दिनांक 18.10.2015 से सेवा पृथक कर दिया। सेवा पृथककरण से पूर्व अधि. 1947 की धारा 25—एफ, जी व एच के आज्ञापक प्रावधानों की पालना नहीं की गई। सेवा पृथककरण के बाद से ही वह बेरोजगार है। वह समस्त वेतन परिलाभों सहित पुनः पूर्व पद पर नियोजित होने का अधिकारी है।

विपक्षी की ओर से बावजूद तामील किसी के हाजिर नहीं होने पर दिनांक 12.1.2018 को उनके खिलाफ एकतरफा कार्यवाही के आदेश दिये गये गये।

प्रार्थी की ओर से साक्ष्य में उदयलाल ए ड 1 व कुलदीप ए ड 2 के बयान शपथ पत्र पर दर्ज करवाये गये तथा बैंक पासबुक प्रदर्श 1, आधार कार्ड प्रदर्श 2, परिचय पत्र प्रदर्श 3 को प्रदर्शित करवाया गया।

सर्व प्रथम यह देखना है कि क्या प्रार्थी व विपक्षी के मध्य श्रमिक—नियोजक के संबंध हैं एवं क्या विपक्षी ने प्रार्थी को दिनांक 18.10.2015 को अवैध रूप से सेवा पृथक कर दिया? यदि हां, तो प्रार्थी क्या अनुतोष प्राप्त करने का अधिकारी है?

साक्ष्य में प्रार्थी उदयलाल ने मुख्य परीक्षण स्वरूप शपथ पत्र में अंकित किया है कि विपक्षी कंपनी ने उसे भारतीय स्टेट बैंक की शाखा पुर रोड, भीलवाडा के ए.टी.एम पर सिक्योरिटी गार्ड—केयर टेकर के पद पर फरवरी 2014 में नियोजित किया, तब से ही उसने लगातार दिनांक 17.10.2015 तक वहां संतोषप्रद सेवाएं दीं। उसके कार्य से विपक्षी को कोई शिकायत नहीं रही एवं उसका कार्य स्थाई प्रकृति का था। उसने प्रत्येक कलेण्डर वर्ष में 240 दिवसों से अधिक काम किया। उसका नियोजन नियमित नियोजन है। दिनांक 18.10.2015 को जब वह कार्य पर उपस्थित हुआ तो विपक्षी के सुपरवाइजर ने भारतीय स्टेट बैंक के प्रबंधक के निर्देश पर प्रार्थी को काम पर लेने से साफ इंकार कर दिया। उसे सेवा पृथक कर दिया। इससे पूर्व उसे कोई नोटिस नहीं दिया गया व जांच नहीं की गई। इस प्रकार अधि. 1947 की धारा 25—एफ के आज्ञापक प्रावधानों की अवहेलना कर उसे सेवा पृथक किया गया है। वह पुनः नियोजित होने का अधिकारी है।

प्रार्थी के गवाह कुलदीप सिंह ए ड 2 ने भी प्रार्थी द्वारा बताये गये तथ्यों के जैसे ही उल्लेख अपने मुख्य परीक्षण स्वरूप शपथ पत्र में किये हैं।

बहस के दौरान प्रार्थी प्रतिनिधि ने प्रार्थना पत्र में उल्लेखित तथ्यों को दोहराया व लिखित बहस भी पेश की तथा वांछित अनुतोष प्रदान करने का निवेदन किया।

प्रार्थी के अभिवचनों व प्रस्तुत साक्ष्य से यह प्रकट होता है कि विपक्षी सिक्योरिटी व डिटेक्टीव सेवाएं उपलब्ध कराने का कार्य करता है तथा प्रार्थी को इन्हीं कार्यों में से किसी कार्य के लिए नियोजित किया गया। इस स्टेज पर प्रार्थी की साक्ष्य से विपक्षी का उद्योग की तारीफ में होना प्रकट होता है।

प्रार्थी द्वारा प्रस्तुत विपक्षी द्वारा जारी पहचान पत्र प्रदर्श 3 केक अवलोकन से यह प्रकट होता है कि प्रार्थी, विपक्षी के यहां फरवरी 2014 से कार्यरत रहा है। विपक्षी संस्थान द्वारा सिक्योरिटी एवं डिटेक्टीव का काम करना उक्त पहचान पत्र से प्रकट होता है। प्रार्थी ने स्वयं का विपक्षी के यहां सिक्योरिटी गार्ड के पद पर होने का जो कथन किया है, उस संबंध में विपक्षी की ओर से कोई खंडन मौजूद नहीं है। विपक्षी बावजूद विधिवत तामील हमारे समक्ष उपस्थित नहीं हुआ है। इसी क्रम में यह भी उल्लेखनीय है कि पत्रावली पर विपक्षी द्वारा श्रम प्रवर्तन अधिकारी (केन्द्रीय),

भीलवाडा को प्रेषित एक पत्र दिनांक 28.1.2015 की फोटो प्रति (जो प्रार्थी द्वारा पेश की गई है) उपलब्ध है, जिसमें प्रार्थी का केयर टेकर के पद पर कार्य करने का उल्लेख है। इसके अलावा स्वयं प्रार्थी ने अपने जो बैंक स्टेटमेंट की प्रति प्रदर्श 1 पेश की है, उसमें उसे विपक्षी से वेतन राशि 4429 रु. दिनांक 13.3.2015 को प्राप्त होने का अंकन है। इन सभी से यह स्पष्ट है कि प्रार्थी विपक्षी के यहां बताये अनुसार सिक्कोरिटी गार्ड — केयरटेकर के पद पर कार्यरत रहा है। उसके पहचान पत्र में उसका नियोजन फरवरी 2014 से होने का उल्लेख है तथा उसने विपक्षी द्वारा दिनांक 18.10.2015 को सेवा पृथक करने का जो अभिवचन व साक्ष्य पेश किया है, इसका कोई खंडन हमारे समक्ष नहीं है। इस प्रकार प्रार्थी की साक्ष्य अखंडित है। फरवरी 2014 से 17.10.2015 तक उसका नियोजन अधि. 1947 की धारा 25—बी के परिपेक्ष्य में नियमित नियोजन होना भी प्रार्थी की साक्ष्य से स्पष्ट है। विपक्षी ने उपस्थित होकर प्रार्थी के नियमित नियोजन व संतोषप्रद कार्य के संबंध में कोई विपरीत आशय का अभिवचन या साक्ष्य पेश नहीं किया है, अतः यह प्रकट होता है कि उसे दिनांक 18.10.2015 को अवैध तौर पर सेवा पृथक किया गया। उसका नियोजन विपक्षी ने किन्हीं शर्तों के तहत अवधि विशेष के लिए किया हो, ऐसी स्थिति भी प्रकट नहीं होती। अतः उसे अवैध तौर पर सेवा पृथक किये जाने के कारण वह पुनर्नियोजन का अधिकारी है।

आदेश

अतः उक्त विवेचन के आधार पर यह आदेश दिया जाता है कि प्रार्थी श्रमिक श्री उदयलाल गाडरी पुत्र श्री रूपलाल व प्रबंधक, मै. टाईगर 4 सिक्कोरिटी एंड डिटेक्टिव इंडिया प्रा.लि. के मध्य श्रमिक—नियोजक के संबंध हैं। प्रार्थी श्रमिक को दिनांक 18.10.2015 से सेवा पृथक करना उचित एवं वैध नहीं है। प्रार्थी श्रमिक पुनः सिक्कोरिटी गार्ड—केयरटेकर के पद पर नियोजित होने का अधिकारी है।

प्रार्थी श्रमिक को पंचाट प्रकाशित होने की तिथि से एक माह के भीतर पुनः सिक्कोरिटी गार्ड—केयरटेकर के पद पर नियोजित किया जाये। प्रार्थी श्रमिक सेवा पृथककरण की तिथि 18.10.2015 से पुनर्नियोजन की तिथि तक उसे सेवा पृथक करते समय देय वेतन की दर से कुल वेतन की 20 प्रतिशत राशि भी प्राप्त करेगा।

पंचाट की प्रति राज्य सरकार को प्रकाशनार्थ भेजी जाये।

अजीत कुमार हिंजर, न्यायाधीश

नई दिल्ली, 20 जनवरी, 2021

का.आ. 72.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, आई टीआई लिमिटेड, मनकापुर, गोंडा (यूपी) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 11/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2021 को प्राप्त हुए थे।

[सं. एल-42011/173/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th January, 2021

S.O. 72.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2014) of the Central Government Industrial Tribunal-cum Labour Court, Lucknow as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, ITI Limited, Mankapu, Gonda (UP) and their workmen which were received by the Central Government on 13.01.2021.

[No. L-42011/173/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

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

I.D. No. 11/2014

Ref. No. L-42011/173/2013-IR(DU) dated 07.03.2014

BETWEEN :

Shri B. K. Mishra, President
ITI Limited Labour Union
A-804, Sanchar Vihar Colony
ITI Township, Mankapur
Gonda (UP) – 271308

Vs

The General Manager
ITI Limited, Mankapur
Gonda (UP) – 271308

AWARD

1. By order No. L-42011/173/2013-IR(DU) dated 07.03.2014 and its subsequent corrigendum dated 05.02.2015, 08.06.2015 & 12.08.2015, 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 B.K. Mishra, President, ITI Limited Labour Union, A-804, Sanchar Vihar Colony, ITI Township, Mankapur, Gonda (UP) and the General Manager, ITI Limited, Mankapur, Gonda (UP) for adjudication.

2. The reference under adjudication is:

“क्या प्रबंधन आई.टी.आई. लिमिटेड, मनकापुर, गोंडा द्वारा अपने श्रमिक शिर बी. के. मिश्रा को दिनांक 12-01-2011 से निलंबित किया जाना व निर्वाह भत्ता 75 प्रतिशत न दिया जाना उचित एवं वैधानिक है? यदि नहीं तो श्रमिक क्या हित लाभ पाने का अधिकारी है?”

3. The case of the workman, B. K. Mishra, in brief, is that he had been appointed in category B with the opposite party establishment w.e.f. 26.02.1987 and had been raising matters relating to the labour welfare before the management, therefore, the management got annoyed and in order to victimize him, placed under suspension w.e.f. 12.01.2011, on account of false and fabricated charges. The workman has alleged that the management kept him under suspension for 15 months and during his suspension period only 50% as subsistence allowance in violation to the Certified Standing Orders. The workman has also alleged that the management, during his suspension period, made deductions at rate of his full basic pay instead at the rate of the subsistence allowance paid to him; accordingly, the workman has prayed that the action of the management be declared illegal and he be held entitled for subsistence allowance @ 50% for the period of 90 days w.e.f. from 12.01.2011 and thereafter he be given subsistence allowance @ 75%.

4. The management of the ITI has disputed the claim of the workman by filing its written statement; wherein it has contended that the workman has been issued charge sheet for grave misconduct i.e. to create nuisance inside the Factory continuously and he had been paid suspension allowance as per provisions of the Standing Order. The management has submitted that the workman had been punished for his misconduct vide order 12.10.2012 and since the workman has not challenged the punishment order dated 12.10.2012, therefore, his present claim is liable to be rejected outrightly being devoid of any merit.

5. The workman filed his rejoinder wherein apart from reiterating the facts already submitted in his statement of claim has submitted nothing new.

6. The parties have filed photocopies of the documents, in support of their respective case. However, on 18.04.2018, an application along with death certificate of the workman has been moved before this Tribunal; however, none turned up on behalf of the workman after substitution had been allowed.

7. It was the case of the workman that he had been paid suspension allowance at lower rates than it was provided under Certified Standing Orders of the ITI and the claim of the workman had been disputed by the management with submission that he had been paid the subsistence allowance as per Standing Orders, therefore

it was incumbent upon the workman to substantiate his claim through cogent evidence. The workman filed documentary evidence but could not prove them through oral evidence due to his demise, even none turned up from his legal heirs after substation. Since the matter had been referred to this Tribunal for adjudication by the Appropriate Government, therefore, this Tribunal is duty bound to answer the same.

8. 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 not giving him the subsistence allowance as per Rules. 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.

9. 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.”

10. In the present case the workman did not turn up to substantiate its case by way of filing any oral evidence due to his death. Mere pleadings are no substitute for proof. It was obligatory on the part of workman or his legal hires to come forward with the case that the workman was actually not given the subsistence allowance at the prescribed rates; but the workman or his legal hires failed to forward any substantive evidence in support of its claim, in spite of ample opportunity being provided to it. Thus, there is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of the ITI in not giving him subsistence allowance @ 75% was unjustified and illegal.

11. Accordingly, the reference is adjudicated against the workman; and as such, I come to the conclusion that the workman, B. K. Mishra is not entitled to any of the relief(s) claimed by him.

12. 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, 20 जनवरी, 2021

का.आ. 73.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, एचएमटी मशीन टूल्स लिमिटेड, जलाहल्ली, बेंगलोर (कर्नाटक), एवं श्री मुनियप्पा उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलोर के पंचाट (संदर्भ संख्या 09/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2021 को प्राप्त हुए थे।

[सं. एल-42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th January, 2021

S.O. 73.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 . the Central Government hereby publishes the award (Ref. No. 09/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, HMT Machine Tools Limited, Jalahalli, Bangalore (Karnataka), and Sh Muniyappa , workmen which were received by the Central Government on 13.01.2021.

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 05TH JANUARY, 2021**PRESENT :** JUSTICE SMT. RATNAKALA, Presiding Officer**ID 09/2012****I Party**

Sh. Muniyappa,
S/o Chinnaiah,
R/a No. 724, MES Road,
5th Cross, Bhovi Colony,
Jalahalli, Bangalore - 560013.

II Party

The General Manager,
HMT Machine Tools Limited,
Jalahalli, Bangalore - 560013.

Appearance

Advocate for I Party : Mr. S. B. Mukkannappa

Advocate for II Party : Mr. T. Raja Ram

AWARD

It is a petition filed under Sec 2-A(2) of the Industrial Dispute Act (Amendment) Act, 2010 (for brevity 'the Act' hereinafter).

The claim of the 1st Party workman is, he joined the 2nd Party on 27.10.1981 as casual worker on daily wage basis: in the year 1983 he was transferred to Sewerage Department and worked there upto 1986: in the year 1990 he was transferred to HTC Department: he was doing the job which is permanent in nature: his service was terminated w.e.f 08.07.1992, but juniors to him were allowed to continue: termination compensation was not paid: aggrieved by his termination he raised Industrial Dispute before the State Labour Court in Reference No. 89/1995 which concluded by an Award dated 08.09.2004 directing the Respondent Company to reinstate him with continuity of service. The Award was implemented: he was reinstated and posted to work in R.D Department as a Fitter: his service was utilised as helper: he has worked continuously in the 2nd Party, doing the work of permanent nature: he is a permanent employee but his service is not regularised. Similarly placed employees raised Industrial Dispute for regularisation of their service: while the matter was pending before the State Industrial Tribunal in Reference No. 16/1999 the 2nd Party entered into settlement with 106 workers: out of 106 workers the service of 83 of them was regularised and they were put on training for a period of one year and thereafter absorbed as permanent employees. However, the 1st Party continued as a daily wage: he raised Industrial Dispute before the State Industrial Tribunal in ID No. 206/2006, but reference was rejected on the ground that he cannot be ordered for regularisation on the basis of Award passed in I.D 18/1995. He is orally terminated w.e.f. 27.08.2011 without prior notice / notice pay / compensation. His salary for the month of July - August 2011 is not paid to him: as on the date of his oral termination he was holding the Token No. 700: the order of oral termination is contrary to the terms and conditions of the Appointment Order and against the principles of natural justice. He has worked continuously from 27.10.1981 to 27.08.2011. His termination amounts to illegal retrenchment for non-compliance of provisions of Sec 25-F of 'the Act': he is unemployed and he is under obligation to maintain the family.

2. Claim is contested by the 2nd Party on the following lines:

1st Party was engaged as casual labourer on 27.10.1981: he was discontinued due to non-availability of work: however, as per the Award passed in Reference No. 89/1995 he was reinstated and engaged as casual labourer by paying minimum wages without any consequential benefits: the Industrial Dispute raised by him in

No. 206/2006 seeking regularisation was concluded by rejected the reference and by holding that he is not entitled for any relief. The Award dated 31.03.2011 binds him and his prayer for regularisation is rejected by the Labour Court, hence further adjudication on the very same question of regularisation does not arise: it amounts to *resjudicata*. His nature of work was purely casual in nature: whenever there is exigency of work such work will be extended to casual labourers who are on the Muster rolls of the Company. The reference is not maintainable.

3. Two witnesses are examined for the 2nd party: the first witness is Officer Hindi and Legal and second witness is AGM (HR) HMT and the Award passed by State Industrial Tribunal in I.D No. 206/2006 was produced as Ex M-1.

Both the witnesses have reiterated the case of the 2nd Party that, since the regularisation is already rejected by the Labour Court dated 31.03.2011 present dispute is not maintainable.

The 1st Party adduced rebuttal evidence and produced documents Ex W-1 to Ex W-12.

4. During his cross examination, MW-1 admits that 1st Party was appointed as casual labourer on 27.10.1981 and transferred to Sewerage Department in the year 1983; he worked in the Sewerage Department from 1983 to 1986: his daily wages has been increased from the initial rate of Rs. 6/- per day to Rs. 12/- per day, and then to Rs. 22/- per day. As per the Award in CR No. 89/1995 he was reinstated and posted to R & D Department.

During cross examination of MW-2 he came with a new version that the 1st Party worked upto the year 2006: however he could not specify the date on which his service was discontinued. He expressed his helplessness to produce the Muster Roll under the excuse that they maintain the documents 8 – 10 years only. However, admits the suggestion that since the workman was litigating from the year 2006 probably his Muster Roll may be available: the witness during the course of cross examination made yet another improvement to the case of the 2nd Party by stating that a notice was issued to the workman about dropping him from service.

5. The 1st Party during his cross examination admits that on dismissal of his petition ID 206/2006 he was not permitted anymore with the 2nd Party.

6. Admittedly the 1st Party workman was taken as a casual worker and continued to be so until he was refused employment allegedly on 27.08.2011. The dispute raised by him seeking regularisation of service having been rejected by the State Labour Court vide Award dated 31.03.2011, the present petition is for the relief of reinstatement with continuity of service. On his own showing all the while he worked as a casual worker on daily wage basis: it is not his case that he has worked against any sanctioned vacancy. Being a casual labourer he falls within the definition of ‘workman’ contemplated by Sec 2(s) of ‘the Act’.

7. The tone of counter of the 2nd Party in their counter statement is, his request for regularisation already having been adjudicated by the Competent Forum, same is hit by the principles of *resjudicata*: they extend work to the casual labourers who are on the Muster Rolls of the Company, if there is no work the workmen cannot be engaged. Fortunately for the workman in the present petition he is not seeking for regularisation but for reinstatement.

8. This is the second refusal of employment for him by the 2nd party. As per Ex W-1 / Award in Reference No. 89/1995 he had been orally refused employment w.e.f 08.07.1992. Award was passed on 08.09.2004 almost after a time gap of 12 years directing the 2nd Party to *reinstate him into service with continuity of service only without any other consequential benefits*. For the second time he is orally refused employment w.e.f. 27.08.2011. Fortunately for the workman there is no specific denial of the 2nd Party that he has not worked continuously all these days, that lends and inference that from the date of his initial engagement till 27.08.2011 with the in between break of 08.07.1992 to 08.09.2004 (the period during which he was out of work) he has worked for the 2nd Party. Despite their being such a long gap his service is saved by the Award passed by the State Forum in Reference No. 89/1995 which awarded him the relief of reinstatement into service with continuity of service only without any other consequential benefits. The 2nd Party is the custodian of the documents pertaining to the number of days he was provided work. Not even a scrap of paper is produced by them to demonstrate that all the while his engagement was on need base and not continuous.

9. The identity of the 1st Party and his engagement as casual / daily wage since not disputed, it shall be presumed that he has continuously worked w.e.f 27.10.1981 to 27.08.2011. 2nd Party being a Public Sector Undertaking having its own Recruitment Rules cannot be shouldered with the burden of reinstating the casual worker whose service is not required for them. Moreover 1st Party is already aged 55 years. For not having complied the provisions of Sec 25-F of ‘the Act’, the refusal of employment amounts to illegal retrenchment which shall be addressed by Awarding monetary compensation. Instead of reinstatement he shall be paid Retrenchment Compensation for the period 27.10.1981 to 27.08.2011 along with interest at 12% per annum.

AWARD

The petition is allowed on following terms:

The 2nd Party is directed to pay Retrenchment Compensation to the 1st Party workman Sh. Muniyappa as per the provisions of Sec 25-F of 'the Act' along with interest at 12% to be calculated in respect of the period 27.10.1981 to 27.08.2011.

The order shall be complied within 30 days of publication of the Award otherwise it shall carry future interest at 6% per annum.

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

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 20 जनवरी, 2021

का.आ. 74.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. हीरी माइन्स, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 72/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.01.2021 को प्राप्त हुआ था।

[सं. एल-27011/1/2016-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 20th January, 2021

S.O. 74.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2016) 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. Hirri Mines, and their workmen, received by the Central Government on 20.01.2021.

[No. L-27011/1/2016-IR(M)]

NAVIN VAIDYA, Dy. Director

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

NO. CGIT/LC/R/72/2016

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

The General Secretary,
Samyukta Khadan Mazdoor Sangh
Hirri Mines,
Bilaspur (Chhattisgarh)

...Workman

Versus

The Deputy General Manager
M/s. Hiri Mines
Bilaspur (Chhattisgarh)

...Management

AWARD

(Passed on this 7th day of –December 2020)

1. As per letter dated 1-9-2016 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-27011/1/2016-IR(M). The dispute under reference relates to:

“Whether Censure action on the part of the Secretary & President of of Samyukta Khadan Mazdoor Sangh, Hirri Mines (SAIL), Hirri in issuing censure notice to the above named Union representatives by Hirri Mines Management as per standing order is appropriate and justified? If not, what relief both the Union representatives are entitled to?”

1. After registering the case on the basis of reference, notices were sent to the parties.
2. The workman side was never present inspite of service of registered notice. The counsel for Management appeared and filed their statement regarding the case.
3. The case was ordered to proceed ex-parte against the workman/Union on 8-1-2020.
4. The Management filed affidavit of its witness Surendra Kumar Nayak with documents which are M-1 to M-7.
5. Heard arguments of learned counsel for Management Shri A.K. Shashi. None appeared for workman.
6. **The Reference is the point for determination in the case in hand.**
7. The primary burden to prove its case lies with the workman side in which they have utterly failed. On the other hand the Management has proved its case as pleaded in its written statement through cross-examined affidavit and documents Exhibit M-1 to M-7.
8. In the light of the above mentioned facts, holding the case of the workman not proved, the reference deserves to be answered against the workman. Accordingly as ex-parte award is passed as follows:-

A. The Censure action on the part of the Secretary & President of Samyukta Khadan Mazdoor Sangh, Hirri Mines (SAIL), Hirri in issuing censure notice to the above named Union representative by Hirri Mines Management as per standing order is held appropriate and justified.

B. The Union Representative are held entitled to no relief.

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

DATE: 7.12.2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 जनवरी, 2021

का.आ. 75.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. भारत पेट्रोलियम कोरपोरेशन लिमिटेड, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, मुम्बई के पंचाट (संदर्भ सं. 16/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.01.2021 को प्राप्त हुआ था।

[सं. एल-30011/8/2019-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 20th January, 2021

S.O. 75.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of Bharat Petroleum Corporation Limited and their workmen, received by the Central Government on 20.01.2021.

[No. L-30011/8/2019-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI****Present :** JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer**REFERENCE NO. CGIT-1/16 OF 2019****Parties:** Employers in relation to the management of Bharat Petroleum Corporation Limited**And**

Their workmen

Appearances:

For the first party/ Management : Mr. Anand Pai, Adv.

For the second party/ Union : Mr. Prasad S. Samant, Dy. Gen. Secretary

State : Maharashtra

Mumbai, dated the 28th day of November, 2020**AWARD**

1. The present reference has been made by the Central Government by its order dated 10.05.2019 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

“Whether the action of the management of M/s Bharat Petroleum Corporation Limited (BPCL), Mumbai for obtaining ‘declaration forms’ in respect of members of Petroleum Karmachari Navnirman Union (PKNU) for the year 2018 is fair & just? If not, what relief the union is entitled to?”

2. By the order dt.01/07/2019, passed by the Tribunal, Notice was directed to be issued to the parties.

3. On 13.8.2019, Mr. R.S. Pai, Learned counsel for the management was present but none was present on behalf of the Union. In the circumstances, the case was fixed for 25.10.2019.

4. On 23.11.2020, Mr. Prasad S. Samant, Dy. General Secretary filed an application for disposal of the reference proceedings and stated that the Union is not interested in pursuing the reference proceedings as number of workmen have been retired under VRS and no industrial dispute of any kind now exists and prayed for disposal of the reference for want of prosecution.

5. On receipt of the application, the matter was taken up today i.e. 27.11.2020 through video conferencing. Mr. Anand Pai learned counsel for the management and Mr. Prasad S. Samant, General Secretary of the Union were present.

6. Mr. Prasad S. Samant, General Secretary of the Union reiterated the same as stated in the application and Mr. Anand Pai, learned counsel for the management had ‘No Objection’.

7. In view of the above, it is apparent that there is no pleading or evidence filed on behalf of the second party / Union in support of its claim. In the circumstances, no relief can be granted to the second party / Union.

8. The Reference made to this Tribunal is, therefore, disposed of for want of prosecution as prayed by the Union.

9. Award is passed accordingly.

Justice RAVINDRA NATH KAKKAR, Presiding Officer

नई दिल्ली, 20 जनवरी, 2021

का.आ. 76.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार किरीबुरु आयरन ओर माइन, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 327/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.01.2021 को प्राप्त हुआ था।

[सं. एल-26011/12/2000-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 20th January, 2021

S.O. 76.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 327/2000) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Kiriburu Iron Ore Mine, and their workmen, received by the Central Government on 20.01.2021.

[No. L-26011/12/2000-IR(M)]

NAVIN VAIDYA, Dy. Director

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. 327/2000

Employer in relation to the management of Kiriburu Iron Ore Mine

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Iron

Dated 29.12.2020

AWARD

By Order No.L-26011/12/2000-IR(M) dated 25/10/2000 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 Kiriburu Iron Ore Mine in withholding promotion of Shri Kanuram Jerai is justified? If not, to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were noticed but neither the union/ workman nor the management appeared before the Tribunal. Now Case is pending since 21/11/2000 and workman/union as well as management 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, 22 जनवरी, 2021

का.आ. 77.—राष्ट्रपति, श्री राधा मोहन चतुर्वेदी, पीठासीन अधिकारी, केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, जयपुर को सौंपे गए केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, अहमदाबाद के पीठासीन अधिकारी के अतिरिक्त प्रभार की अवधि दिनांक 15.01.2021 से छः माह तक अथवा नियमित रूप से पद भरे जाने तक अथवा अगले आदेशो तक, इनमे जो भी पहले हो तक बढ़ाते है।

[सं. अ-11016/08/2020-सीएलएस-II]

सतीश चन्दर, अवर सचिव

New Delhi, the 22nd January, 2021

S.O. 77.—The President is pleased to extend the period of additional charge of the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad entrusted to Shri Radha Mohan Chaturvedi, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jaipur for a further period of six months with effect from 15.01.2021 or till the post is filled up on regular basis, or until further orders, whichever is the earliest.

[No. A-11016/08/2020-CLS-II]

SATISH CHANDER, Under Secy.

नई दिल्ली, 25 जनवरी, 2021

का.आ. 78.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 22/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-20012/436/2000-आई आर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 25th January, 2021

S.O. 78.—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. 22 of 2001) 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 18.01.2021.

[No. L-20012/436/2000-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. 22/2001**

Employer in relation to the management of Moonidih Area, Western Jharia 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 30.12.2020

AWARD

By Order No.L-20012/436/2000-(C-I) dated 25/01/2001 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. BCCL in terminating the services of the workman Sri Rasraj Mohali EX-Security Guard, Western Jharia Area, Moonidih M/s BCCL, is justified and legal? If not, to what relief is the workman entitled?”

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workman left appearing before the Tribunal. Thereafter again regd. notice was issued to concerned union/workman and the said notice returned with endorsement of “insufficient address”. Now the Case is pending since 01/03/2001 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, 25 जनवरी, 2021

का.आ. 79.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 30/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-20012/501/2001-आई आर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 25th January, 2021

S.O. 79.—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. 30 of 2002) 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 18.01.2021.

[No. L-20012/501/2001-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. 30/2002

Employer in relation to the management of Sijua Area 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 29.12.2020

AWARD

By Order No.L-20012/501/2001-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 RCMS is justified in demanding the following benefits from the management of BCCL, Sijua Area in respect of Sh. Sidhi Chouhan: i) That the workman should be given Grade “E” from the date of his deployment in OCP and Grade “D” 4 years thereafter. ii) That the workman should be given SPRA increment w.e.f. 1987. iii) That the workman should be given interim relief denied to him. iv) That the workman should be given protection of wages of Group VA before he was given Cat-II wages in 1997?” If so, to what relief (s) is the 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 union/workman left appearing before the Tribunal. Thereafter again regd. notice was issued to both the parties but even then no one appeared on behalf of the workman/union. 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, 25 जनवरी, 2021

का.आ. 80.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.—1, धनबाद के पंचाट (संदर्भ संख्या 34/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-20012/549/2001-आई आर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 25th January, 2021

S.O. 80.—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. 34 of 2002) 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 18.01.2021.

[No. L-20012/549/2001-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. 34/2002

Employer in relation to the management of Block-II OCP 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 28.12.2020

AWARD

By Order No.L-20012/549/2001-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 management of Block-II OCP of M/s BCCL is justified in not regularizing Sri Majnu Ram to the post of head Mechanic. If not, to what relief is the 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 union/workman left appearing before the Tribunal. Thereafter again regd. notice was issued to both the parties but even then no one appeared on behalf of the workman/union. 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, 25 जनवरी, 2021

का.आ. 81.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2ए के अनुसरण में, केन्द्रीय सरकार मैसर्स एयर इंडिया सत्स एयरपोर्ट सर्विसेज प्राइवेट लिमिटेड, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, नई दिल्ली के पंचाट (संदर्भ संख्या 88/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-20013/02/2021-आई आर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 25th January, 2021

S.O. 81.—In pursuance of Section 2A 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, New Delhi (Ref. No. 88 of 2014) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Sats Airport Services Private Limited, New Delhi and their workmen, which was received by the Central Government on 18.01.2021.

[No. L-20013/02/2021-IR (CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: NEW DELHI

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

INDUSTRIAL DISPUTE CASE No. 88/2014

Date of Passing Award : 23rd November, 2020

Air India Sats Airport Services Private Limited,
Through its Asstt. Vice President (HR and Admn.)
MS/ Ruby Sethi.
A-63, IGI Airport Road,
NH-8, IGI Airport Road,
NH-08, Mahipalpur,
New Delhi-110037

...Management

Versus

Sh. Kalu Ram & 182 Others

...Opp. Parties

Appearances :-

Shri Anuj Aggarwal : For the Management

Shri Maya Ram : Opp. Parties

AWARD

This order deals with the application filed by the management of Air India SATS Airport Services Pvt. Ltd, invoking the provision of sec 33(2) (b) of the I D Act 1947, seeking approval for the Termination of Service of it's 183 employees notice of the petition being served on the said workmen they entered appearance through their AR and contested the proceeding. During the pendency of the proceeding the applicant Management filed one petition praying deletion of names of 153 workmen out of the list of 184 workmen appended to the petition on the ground that after a sympathetic consideration the management reinstated them in to service. The said stand not being opposed by the respondent workmen the list filed by the applicant has been taken on record.

The contention raised by the applicant Management is that the opposite parties are the fixed term employees of the management engaged in different capacities as the management is engaged in providing public utility service in Air port as defined u/s 2(n) of the ID Act. The workmen are the members of the Air India SATS Employees Union.,

On 10.9.14, the management received a letter addressed by the Air India SATS Employees Union addressed to the Assistant Labour Commissioner, wherein it was declared that the workmen who are the members of the Union would agitate from the morning shift of 11.09.2014, as per notice dated 14.02.2014 responding to the said letter the applicant Management intimated to the Union that the agitation proposed is illegal in terms of sec 22 and 24 of the ID Act. In spite of that the workmen went into agitation /strike on 11.9.2014. According to the provisions of sec 22(1)(a) of the ID Act the notice of strike is only valid for six weeks and that count only the strike and agitation exhibited by the work men was illegal. It has also been stated that prior to the notice dated 14.2.2014, some workmen had indulged in strike and agitation for which the management had informed the conciliation officer and Asst. Labour Commissioner soliciting their intervention to restore peace. Accordingly efforts were made for resolution of the grievance of the workmen and several rounds of meetings were held. But for the adamant attitude of the workmen and the Union no fruitful purpose could be served. When the conciliation officer intervened in the matter, it was agreed that a Bipartite Committee shall be constituted having equal no of representatives from the Management and Union, to discuss and find out a solution on issues like wage Revision, service condition, welfare measures etc. There after the strike was called off. But the committee failed to find a resolution of the grievance for the adamant attitude of the workmen and their union. In order to serve their own motives the workmen again started agitation/strike on 11.09.2014, in an illegal manner violating the procedure laid u/s 22 and 24 of The ID Act. The notice dt14.02.2014 has lost it's validity after six weeks and the workmen having knowledge of the same again resorted to agitation on 11.09.2014. The workmen created disturbance in the work place and their act caused disruption in the ground handling service rendered by the management in the Airport. The situation when became worse, information was given to police for maintenance of Law and Order. Apprehending that the workmen may continue resorting to other illegal act including violence, the Management approached the Hon'ble High Court of Delhi for grant of permanent Injunction against such activities of the workmen and their union. The Hon'ble High Court were pleased to grant ex parte- ad -interim injunction. Since agitation and connected activities has substantially affected the business of the applicant Management and in total violation of the provisions of sec 23 of the ID Act, in view of the fact that at that time ID No 145/2013 was pending before the Industrial Tribunal and another dispute pertaining to violation of sec 9A was pending before the conciliation officer. For the atmosphere of threat and terror created in the workplace by the workmen the Management could not conduct a regular Departmental Inquiry. However following the principles of natural justice show cause notices were served on the individual workman, calling upon them to justify as to why their services shall not be terminated for the misconduct shown by them. The workmen did not file any reply and the services of the workmen as per the list appended to the petition were terminated w.e.f. 15.09.2014, and while doing so, the Management fully and consciously complied the provisions of sec 25 F of the ID Act. Hence this application for approval in terms of sec 33(2)(b) of the ID Act.

In their reply the workmen have challenged the maintainability of the application on various grounds. The main ground of objection is that the termination of such a big no of employees amounts to unfair labour practice and suppression of Union Activities. More over, the termination was made without any domestic inquiry, merely by serving a show cause notice in which sufficient and reasonable time was not allowed to the workman to take his defence. It has also been pleaded that the belated application moved by the Management on 16.10.14, seeking approval is liable to be rejected. The workmen have also stated that the Management while serving the order of retrenchment/termination never complied the provisions of sec 25 F of the ID Act as the cheque issued was not specifically for one month pay as the notice pay. The Management has not paid the duty pay, leave salary and other financial entitlements to the workmen toward their full and final settlement. Hence the belated application filed by the management is liable to be rejected.

In it's replication the Management has stated that the termination was effected on 15.09.2014 and the present application was filed on 16.10.2014, i.e one month after the order of termination. The delay occurred as there was no presiding officer in the Tribunal and management took one month time in preparing the records to be placed before the Tribunal in respect of 183 workers. While relying upon the judgment of the Hon'ble SC in the case of **Straw Board Manufacturing Co. VS Govind (AIR 1962 SC 1500)**, it has been pleaded that the delay cannot be made a ground for rejection of the application. It has also been stated that the Tribunal if comes to hold that delay has been caused in filing the petition, the same may be condoned in the interest of justice.

Considering the rival stand taken by the parties to the proceeding the following points were formulated for adjudication

- (1) whether the approval application is maintainable
- (2) whether the Management has complied the provisions of sec 33(2) (b) of the ID Act
- (3) whether the strike resorted to by the workmen on 11.09. 2014 was illegal / unjustified.

On behalf of the management one of its officer testified as AW 1. Besides that several documents have been placed on record which include the copies of the notices dt13.02.2014 and 10.09.2014, reply by the management to the letter dated 10.09.2014, copy of the settlement dated 6.6.2014, copies of the show cause notices, copies of the termination order and photo copies of the cheques for the notice pay given to the workmen. Three of the workmen namely Sunil, Gopal and Rakesh Kumar testified as WW 1,2,&3 respectively.

The facts which are not disputed by the parties are that the workmen were employed by the Management /Applicant as fixed term employees indifferent categories. There were disputes pending between them relating to pay and other service conditions. On 10.09.2014 the workmen resorted to agitation/strike and the management served show cause notice on them on 11.09.2014 and served the order of termination on 15.09.2014. Whereas the Management has pleaded that the strike was illegal for want of proper notice in terms of sec 22 and 23 of the ID Act, the workmen have stated that the order of termination is illegal for non compliance of the provisions of sec 25 F of the Act in as much as no domestic inquiry was conducted for the alleged act of misconduct.

The witness examined by the management stated that the workmen never served notice on the Management about the proposed strike and the said strike being adhered to after more than six weeks from the notice date i.e14.2.2014 is illegal. Attention of the Tribunal was drawn to the said notice. On behalf of the workmen no rebuttal evidence has been adduced. Be that as may be, the Management also served show cause notice on the workmen giving them 48 hours time to show cause as to why their services shall not be terminated. That period as seen from the notices placed on record was ending on 13.09.14 and the termination orders were passed on 15.09.14. Describing the time allowed as unreasonable the workmen have pleaded that they being made victim of unfair labour practice, the petition for approval be rejected.

The object of sec 33 of the ID Act is that the condition of service will remain unchanged during pendency of the industrial dispute to ensure the interest of healthy growth of Trade union Movement. Thus application for permission u/s 33 is necessary only when industrial dispute is pending. Before granting or refusing approval the Tribunal is required to allow both the parties to adduce evidence in support of their respective stand. In this proceeding the management has placed documentary evidence to prove compliance of the requirements of sec 33 of the Act. Copies of the show cause notice and cheques showing payment of notice pay have been filed. But the workmen have disputed the acceptability of those documents on the ground that a notice to show cause within 48 hours cannot be accepted as following the principles of natural justice before termination. This argument advanced by the workmen sounds convincing against the stand of the Management that for the chaos created by the workmen domestic inquiry was not possible before Termination. As per the pleading of the Management police was informed to maintain Law and Order. No evidence has been adduced to prove the action taken by police against the agitating workers, which leads to a conclusion that the workmen were agitating peacefully. Not only that the workmen have stated that they were peacefully agitating against the in action of the Management in resolving their grievance, though a committee was constituted for the same. A letter written by the management to the authority requesting not to grant entry pass to the workmen has been placed on record. Drawing attention to the same workmen have argued that the Management prevented them from working and gave it a colour of illegal strike. From this evidence it cannot be concluded that the workmen were indulged in an illegal strike. But the Management without adhering to proper procedure, in a hurried manner served the show cause notice on them giving minimum time to show cause and justify their stand. Hence it is held that the workmen were not involved in an illegal strike.

The workmen have also disputed the stand of the Management that provisions of sec 33(2)(b) was complied by the management. It has been stated that the cheques given to the workmen nowhere discloses that the same were towards notice pay. Though the workmen had to receive other monetary benefits like leave salary etc. those were never paid by the management at the time termination. The witness examined on behalf of the Management though stated about the money paid through cheques, nowhere stated that the same was towards notice pay. On the contrary the witnesses examined by the workmen have disputed in clear terms that the same was not notice pay as they had to get other monetary benefits from the management. Management has not produced any other document like sanction order to rebut the stand of the workmen.

The other challenge advanced against the approval is belated filing of the application. The order of termination were passed on 15.09.2014 and the application has been filed on 16.10.2014, i.e after one month. Provision of sec 33 requires simultaneous filing of the application with the act of termination. It has been explained by the Management that the post of the Presiding Officer of the Tribunal was then lying vacant for

which delay occurred. This explanation of the Management is not accepted since the Presiding Officer has no role to perform in filing of the application. It is pertinent to mention that the post of Presiding Officer when remains vacant the link officer designated by the Ministry of Labour & Employment remains in complete charge of the Tribunal. Hence this explanation is not worthy of acceptance. The learned counsel for the Management by placing reliance in the case of Complete Dewatering System Pvt. Ltd Vs. Govt of NCT Delhi, decided by the Hon'ble High Court of Delhi submitted that delay in filing the application cannot be the sole ground for rejection of approval. He further argued that the law requires the action of dismissal and application for approval to be made simultaneously. But that does not mean that both the action should be made at a time. He thus submitted that the Tribunal has to examine if both the acts form same transaction or not.

The Hon'ble SC in the case of **Straw Board Manufacturing vs Govind** referred supra have held that:

“seeking approval of an action by dismissing or discharging an employee should be made simultaneously with the offer of the wage to the employee. The same did not mean that filing of application should be on the same date of payment of wage. But the conduct of the employer should be such, so as to make the filing of the application apart of the same Transaction. It depends upon the facts of each case.”

In this case the employer as in the case of **Complete Dewatering** referred supra has not filed any separate application for condonation of delay. Further the plea that filing was delayed for the vacancy created in the post of the presiding officer of the Tribunal or in preparing voluminous documents, is not worthy of acceptance and it is held that the Management has not filed the application for approval simultaneously with the action of dismissal of the workmen. The materials placed on record also do not justify the action of the management in terminating the services of the workmen after following due procedure and principle of natural justice. Hence ordered.

ORDER

The application filed by the Management Applicant seeking approval of its action in terminating the services of all the 183 workmen is held devoid of merit and stands rejected. Since approval has not been granted it is immaterial to delete the names of 153 workmen who have been re employed. The petition filed u/s 33(2)(b) of the ID Act is accordingly disposed of.

Dictated & corrected by me.

23rd November, 2020

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 जनवरी, 2021

का.आ. 82.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.—1, धनबाद के पंचाट (संदर्भ संख्या 234/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2021 को प्राप्त हुआ था।

[सं. एल-20012/119/2000-आई आर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 25th January, 2021

S.O. 82.—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.234 of 2000) 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 18.01.2021.

[No. L-20012/119/2000-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. 234/2000

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

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For Employer : Sri N.M. Kumar, Advocate

For workman : Sri S.N. Goswami, Advocate

State : Jharkhand.

Industry:- Coal

Dated 30.12.2020

AWARD

By Order No.L-20012/119/2000- IR(C-I) dated 09.08.2000, 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 in dismissing Sri Nanku Sao M/Loader dt. 12.6.93 is justified and legal? If not to what relief or reliefs is the dependent of the workman is entitled?”

“Whether the action of the management in not employing Sri Munib Sao in place of his father under compassionate ground is legal, proper and justified? If not to what relief or reliefs is the dependent of the workman is entitled?”

2. After receipt of the reference, both the parties were noticed. The Vice President of C.M.E.W.A has filed his written statement of claim on 30/08/2001 and the management Kustore Colliery of M/s. BCCL has filed its written statement on 11/12/2001.

The Vice President of C.M.E.W.A. has filed rejoinder to the written statement of the management on 01/02/2002.

3. The claim of the concerned workman as per written statement filed by Vice President C.M.E.W.A. is as follows:-

That the concerned workman namely Late Nanku Sao was permanent employee of Kustore Colliery and he was sick in course of service, so he was under treatment of Central Hospital, Kustore since 15/03/1989 to 30/12/1990. The concerned workman had informed the management regarding his treatment and subsequently he died on 25/12/1991. The dependent son of the deceased workman was minor at the time of his death and the wife was mentally retarded, so the information of death of the deceased workman could not be given in the time to the local management. The dependent son of the concerned deceased workman after acquiring the age of maturity submitted the requisite forms for his employment in the year 1998 but the management denied the employment to the dependent of the concerned deceased workman on the ground that his father was dismissed in the year 1993. The management after gap of three years had charge-sheeted the workman in the year 1993 and subsequently after holding enquiry passed the order of dismissal against the dead person, so the action of the management in dismissing the deceased workman is illegal and unjustified.

A prayer has been made to pass an award in favour of the concerned workman.

4. On the other hand the case of the management of Kustore Colliery Area of M/s. BCCL as per its written statement is as follows:-

That the Nanku Sao, the concerned workman was working at Kustore Colliery and he was charge-sheeted for unauthorised absence w.e.f. 01/07/1989 vide letter dated 13/01/1993 and subsequently a domestic

enquiry was held in which the concerned workman did not turn up on the dates fixed for enquiry. Thereafter a notice was published in daily newspaper on 21/02/1993 and subsequently a registered letter was issued to the concerned workman on his home address but the concerned workman did not appear before the Enquiry Officer, so the Enquiry Officer conducted the enquiry Ex-parte and found the charges levelled against the concerned workman fully proved. After that the Enquiry Officer submitted its report to the Project Officer Kustore Colliery and subsequently with the approval of the competent authority the concerned workman was dismissed from service vide letter no. 1284, dated 12/06/93. Later on, after lapse of five years Sri Munib Saw said to be the son of Nanku Saw the concerned workman, applied for employment in place of his father stating therein that his father Late Nanku Sao died on 25/12/1991 but his application was not considered by the management as Nanku Sao was already dismissed from service. The dependant son of Nanku Sao is neither entitled for employment on compassionate ground nor he is entitled for any relief under NCWA as dismissal order of his father is just and legal.

A prayer has been made to hold the action of the management as legal and justified.

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

6. The management has also filed the rejoinder to the claim of the concerned workman in which it has been mentioned that with regard to contents of Para no. 1 of written statement of the workman, it has been stated that it is terms of reference, with regard to the contents of Para no. 2 and 3 of written statement of concerned workman, it has been stated that the concerned workman, after holding Ex-Parte enquiry was dismissed from company vide letter, dated 12/06/1993, with regard to the contents of Para no. 4 to 6 of written statement, it has been stated that the dependent son of concerned workman namely Munib Sao had applied for employment after five years on 13/06/1998, with regard to the contents of the Para no. 7 it has been stated that it is matter of record, and with regard to contents of Para no. 8, 9 and 10 it has been stated that they are denied.

7. The concerned workman has examined only one witness in support of its case. He is WW-1, Munib Saw.

8. The WW-1, Munib Saw has deposed before the Tribunal that his deceased father was a permanent employee of the Kustore Colliery, under Area-VIII of M/s. BCCL working as Minor Loader having P.02332716 CMPF. A/C No. D/527555 and in course of his employment his father was suffering from acute Tuberculosis. He has also stated that his father was under treatment at Colliery Hospital, Kustore and he was referred to Central Hospital, Dhanbad for better treatment, so his father could not attend his duty due to his illness. He has further stated that his father had availed sick leave from 09/04/1989 to 30/12/1990 and further availed leave on medical grounds for treatment but he died on 25/12/1991. He has also stated that the death certificate of his father had been submitted to the management on 10/01/1992 for information and at that time his mother namely Gomti Devi was suffering from mental disease. He has also stated that he had submitted application for employment under Para-9.3.2 of NCWA-V on the ground of death of his father in harness while in service on compassionate grounds with all supporting documents. He has further stated that after death of his father charge-sheet vide dated 27/02/1993 had been issued by the Project Officer, Kustore Colliery and thereafter the management had issued dismissal letter vide dated 12/06/1993, after death of his deceased father which is illegal and unjustified.

In the cross-examination he has deposed that his father died in the village and at that time he was 12 years old. He has also deposed that his father was absent from duty from 1989 and he was dismissed in the year 1993.

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

Exhibit W-1- Photo copy of the I.Card of Late Nanku Saw.

Exhibit W-2- Photo Copy of Service Excerpt Form.

Exhibit W-3 Series- Photo Copy of three treatment prescriptions showing treatment of Late Nanku Saw starting from 16/03/1989 and on 30/12/1990 the Nanku Saw was referred to Central Hospital, Dhanbad for admission and further treatment.

Exhibit W-4- Photo copy of letter dated 12/02/1998 of Project Officer, Kustore addressed to Munib Sao regarding refusal of providing employment to him.

Exhibit W-5- Photo copy of letter dated 10/4-02-1999 written by Project Officer, Kustore Colliery to General Secretary, Coal Mines Engineering Workers Association regarding refusal to provide employment to son of Late Nanku Saw as Nanku Saw was dismissed from service..

Exhibit W-6- Carbon Copy of letter dated 13/06/1992 of Munib Saw addressed to Project Officer, Kustore Colliery for providing him job.

Exhibit W-7- Carbon Copy of letter dated 10/01/1992 of Munib Saw addressed to Project Officer, Kustore Area regarding death of his father on 25/12/1991.

Exhibit W-8- Original copy of Certificate issued by Dr. P.K. Narayan mentioning therein that Nanku Sao son of Late Biphan Sao of Village Raharia P.S. Pratappur Dist. Chatra died on 25/12/1991 due to long illness..

Exhibit W-9- Death certificate issued by Panchayat Sevak.

10. The management has filed an affidavit of Arshad Jalali under order XVIII Rule 4 of the CPC but he has not appeared before the Tribunal for cross-examination. Since the examination in chief of MW-1, Arshad Jalali has not been tested on cross-examination, so his examination in chief has got no value in the eyes of law.

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

Exhibit M-1- A show cause notice/chargesheet dated 13/01/1993 to Nanku Sao for his non appearance since 01/07/1989..

Exhibit M-2- A carbon copy of notice dated 17/02/1993 addressed to Nanku Sao regarding holding of enquiry by Enquiry Officer namely A. Jalali.

Exhibit M-3 series- Original copy of a notice sent to the concerned workman by registered post, copy of news paper showing publication of notice in Amrit Bazar Partika on 21/02/1993 and copy of publication of tender notice dated 20/02/1993.

Exhibit M-4- Original copy of the enquiry report and enquiry proceeding..

Exhibit M-5- Original copy of the note sheet dated 07/04/1993 for approval for dismissal of Nanku Sao.

Exhibit M-6- Copy of the order dated 11/06/1993 regarding dismissal of Nanku Sao.

12. The learned lawyer of the sponsoring union has submitted before the Tribunal that the concerned workman namely Late Nanku Saw was a permanent Underground Miner Loader working at Kustore Colliery Area-VII of M/s. BCCL and he had been suffering from Acute Tuberculosis as the result he was referred to Central Hospital, Dhanbad of M/s. BCCL for better treatment. He has also argued that the concerned workman was granted sick leave from 09/04/1989 to 30/12/1990 and subsequently granted special leave as he was suffering from T.B. and because of that he could not report his duty during the course of medical treatment. He has also argued that the concerned workman died on 25/12/1991 in course of his service, leaving behind his son Munib Saw and wife who was suffering from mental illness. He has further argued that the management had been informed by Munib Sao son of Late Nanku Saw on 10/01/1992 but the management issued charge-sheet against the deceased workman and after holding Ex-Parte enquiry dismissal order dated 12/06/1993 was issued against him. He has also argued that the dismissal order issued against dead person is illegal, arbitrarily and unjustified and the penalty imposed of dismissal against dead person is shockingly, disproportionate in the eye of law. He has further argued that the dependent son of deceased workman namely Munib Saw had submitted his application for his appointment as his father was in roll of service at the time of his death under medical treatment but his case was not considered by the management. He has further argued that the dependent son of the concerned workman is legally entitled for employment as per clause 9.5.0 (iii) of NCWA-V and his wife is entitled for monetary compensation since the death of the concerned workman as per clause 9.5.0 (ii) of NCWA-V.

13. On the other hand the learned lawyer appearing on behalf of the management has submitted that the Late Nanku Saw was a permanent employee of BCCL but he was unauthorised absent from his duty since 01/07/1989 without any information and permission of the management as a result management had issued charge-sheet vide letter dated 13/01/1993 but the concerned workman had not submitted his reply to the charge-

sheet. He has also argued that the concerned workman did not turn up in the enquiry proceeding, so the notice was published in two local newspapers and thereafter registered notice was issued on his home addressed but even then the concerned workman did not appear in the enquiry proceeding. He has also submitted that the enquiry was conducted Ex-Parte and after submission of the enquiry report the concerned workman was dismissed from the service vide letter no.1284, dated 12/06/1993. He has also argued that the Munib Saw alleged son of Nanku Saw had applied for employment after 5 to 6 years of his dismissal on compassionate grounds which was not considered by the management as his father was dismissed from the service. He has also argued that the dismissal of concerned workman Nanku Saw is in accordance with the principles of natural justice, so his dependent son is not entitled for any relief.

14. Now the only point of determination in this case is whether the action of the management in dismissing Sri Nanku Saw Miner Loader is justified and legal and to what relief the dependent of the workman is entitled for.

FINDINGS

15. At the outset of discussion it is required to mention here that it is an admitted fact that Late Nanku Saw was a permanent employee of Kustore Colliery Area-VII of M/s. BCCL, Dhanbad and he was dismissed from service on 12/06/1993.

16. It is the claim of the concerned workman that the concerned workman namely Late Nanku Saw was sick and was under treatment of Central Hospital, Kustore since 15/03/1989 to 30/12/1990 and in course of treatment he died on 25/12/1991. It is further claim of the concerned workman that the management had charge-sheeted the concerned workman in the year 1993 and after holding ex-parte enquiry the order of dismissal against the dead person was passed which is illegal.

17. On the other hand it is the case of the management that the concerned workman Late Nanku Saw was charge-sheeted for his unauthorised absence w.e.f. 01/07/1989 to 13/01/1993 and after holding domestic enquiry the concerned workman was dismissed from service vide letter no. 1284, dated 12.06/1993. It is also the case of the management that Munib Saw applied for employment in place of his father after five years of death of his father but his case was not considered by the management as he was not entitled for employment on compassionate ground as well as any relief whatsoever as per NCWA.

18. Now, in the light of pleadings of the both the parties the Tribunal will analyse oral and documentary evidences of both the parties available on the record in the light of the schedule.

19. The WW-1, Munib Saw has deposed that his father was suffering from acute Tuberculosis and was under treatment at Colliery Hospital, Kustore from he was referred to Central Hospital, Dhanbad for better treatment, so his father could not report to his duty. He has also deposed that his father had availed sick leave from 09/04/1989 to 30/12/1990 and further availed leave on medical ground for treatment but he died on 25/12/1991. He has also deposed that death certificate of his father had been submitted to the management on 10/01/1992. He has also stated that he had applied for appointment on compassionate ground on death of his father in harness while in service but his case was not considered. He has also stated that the management after death of his father had issued charge-sheet on 27/02/1993 and after holding enquiry dismissed his father on 12/06/1993 which is illegal and unjustified. In the cross-examination he has stated that at the time of death of his father, he was 12 years old. He has also stated that his father was absent from duty from 1989 and he was dismissed in the year 1993.

20. Now, coming to the documentary evidence of the sponsoring union it appears that the Exhibit W-1 is the photo copy of the I.Card of Late Nanku Saw. Exhibit W-2 is service extract of Late Nanku Saw. Exhibit W-3 series are three treatment prescriptions showing treatment of Late Nanku Saw from 16/03/1989 to 30/12/1990 and on 30/12/1990 he was referred to Central Hospital, Dhanbad for admission and further treatment, Exhibit W-4 is the photo copy of letter written by Project Officer Kustore Colliery to Munib Sao regarding refusal of providing employment to him as his father was dismissed from service. Exhibit W-5 is the letter written by Project Officer, Kustore Colliery to General Secretary, Coal Mines Engineering Workers Association regarding refusal to provide employment to son of Late Nanku Saw as Nanku Saw was dismissed from service. Exhibit W-6 is a Carbon Copy of letter dated 13/06/1998 written by Munib Saw to Project Officer, Kustore Colliery for providing him job. Exhibit W-7 is the Carbon Copy of letter of Munib Saw dated 10/01/1992 addressed to Project Officer, Kustore Area regarding death of his father on 25/12/1991. Exhibit W-8

is a certificate issued Dr. P.K. Narayan mentioning therein that Nanku Sao son of Late Biphan Sao of Village Raharia P.S. Pratappur Dist. Chatra died on 25/12/1991 due to long illness, and Exhibit W-9 is the death certificate issued by Panchayat Sevak of Gram Panchayat.

21. On the other hand the documentary evidence of management shows that Exhibit M-1 is a show cause notice dated 13/01/1993 issued to Nanku Sao for his non appearance since 01/07/1989. Exhibit M-2 is a notice dated 17/02/1993 for holding enquiry by Enquiry Officer namely A. Jalali. Exhibit M-3 series are copy of notices sent to the concerned workman. Exhibit M-4 is the enquiry report and enquiry proceeding. Exhibit M-5 is the note sheet dated 06/04/1993 for approval of dismissal of Nanku Sao and Exhibit M-6 is the order dated 11/06/1993 of dismissal of Nanku Sao.

22. It is required to mention here that the domestic enquiry conducted by the management had been held as fair and proper vide order dated 27/01/2016.

23. At this stage it is relevant to mention **Section 11A of I.D. Act. The Section 11A of I.D. Act** reads as follows:-

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

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

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

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

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

26. In the present case the concerned workman was dismissed from service for his unauthorised absence of his duty since 01/07/1989.

27. At this stage it is required to mention here that the Exhibit W-3 series are prescriptions of medical department of BCCL, Dhanbad and the first prescription was of 16/03/1989. Further the Exhibit W-3 also shows that the concerned workman was regularly treated in outdoor department of BCCL Ltd., Kustore Area. Moreover it also appears that on 30/12/1990 the concerned workman was referred to Central Hospital, Dhanbad for admission and further treatment. The Exhibit W-8 is a death certificate issued by Dr. P.K. Narayan, M.B.B.S in which it has been mentioned that Nanku Sao died on 25/12/1991. Further the Exhibit W-9 is a death

certificate issued by Panchayat Sevak which shows that Nanku Sao the concerned workman died on 25/12/1991. The medical report/prescriptions of BCCL shows that the concerned workman was under the treatment since 16/03/1989 and had continued till his death on 25/12/1991.

28. In view of above discussion the Tribunal finds and holds that the concerned workman namely Nanku Sao was under medical treatment since 16/03/1989 and he died on 25/12/1991 in course of treatment.

29. It appears surprising that the management had issued a charge-sheet to the concerned workman on 13/01/1993 (Exhibit M-1) for his absence since 01/07/1989 whereas the concerned workman died on 25/12/1991. It also appears surprising that the management had conducted departmental/domestic enquiry after death of the concerned workman and subsequently dismissed him from service vide order dated 11/06/1993 (Exhibit M-6).

It is relevant to mention here that the Munib Saw son of concerned workman Nanku Sao had informed the management on 10/01/1992 regarding the death of his father on 25/12/1991 and even then the domestic/departmental enquiry was conducted against the concerned workman which reached at its conclusion of dismissal of the concerned workman with immediate effect.

30. In view of above discussions the Tribunal finds that the punishment of dismissal awarded to the concerned workman Nanku Sao for his absence from 01/07/1989 from duty, while he was under medical treatment and consequently he died on 25/12/1991, is disproportionate to the gravity of the misconduct and there is existence of mitigating circumstances which requires reduction of punishment.

31. Hence, the Tribunal comes to the conclusion that the order of dismissal of concerned workman is not justified and the punishment of dismissal order vide letter no. 1284 dated 11/06/1993 is set aside.

32. Now, the concerned workman namely Nanku Sao had died on 25/12/1991 and subsequently he was dismissed vide order dated 11/06/1993 which was set aside by this Tribunal, so dependent of the concerned workman is entitled for receiving all the death benefit of deceased workman namely Nanku Sao.

33. The, next point of consideration in this case is whether Munib Saw son of deceased Nanku Sao is entitled for appointment on compassionate ground or if not to what relief he is entitled to?

34. In this regard it is required to mention here that Munib Saw son of the deceased Nanku Sao had submitted an application before the Project Officer, Kustore Colliery on 10/01/1992 that his father died on 25/12/1991 while in service and he was under 18 years of age, so after completion of 18 years he would be given employment in the colliery (Exhibit W-7). Further Munib Saw again submitted representation on 13/06/1998 for employment on the ground that he had reached the age of 18 years.

35. Further the management had taken decision that since Nanku Sao had been dismissed from service on the ground of misconduct, so Munib Saw is not entitled for employment in Kustore Colliery (Exhibit W-4 and Exhibit W-5).

36. At this stage it is relevant to mention here that the order of dismissal order of Nanku Sao passed by the management of Kustore Colliery vide letter no. 1284 dated 11/06/1993 had been set aside by this Tribunal, so the Tribunal will examine whether the dependent of the deceased workman namely Nanku Sao is eligible for appointment on compassionate ground or not?

37. At this stage it is relevant to mention here that clause 9.5.0 (i), (ii) and (iii) of chapter-9 of Social Security under NCWA-V reads as follows:-

- (i) In case of death due to mine accident, the female dependent would have the option to either accept the monetary compensation of Rs. 3000/- per month or employment irrespective of her age.
- (ii) In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under clause 9.4.0 if the female dependent is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 2000/- per month or employment.
- (iii) In case of death either in mine accident or for other reasons or medical unfitness under clause 9.4.0, if no employment has been offered and the male dependent of the concerned worker is 15 years and above in age, he will be kept on a live roster and would be provided employment

commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependent is on live roster, the female dependent will be paid monetary compensation as per rates at paras (i) & (ii) above.

38. It is important to mention here that the WW-1, Munib Saw has deposed in his cross-examination that at the time of the death of his father he was 12 years old. Moreover he has also stated that he had informed the management by submitting an application regarding death of his father on 10/01/1992.

However, the management in his argument has submitted that WW-1, Munib Saw in his affidavit has mentioned his age as 33 years on 15/07/2015, so after making calculation his age comes to eight years on 25/12/1991.

39. Now, there is categorical evidence of WW-1 Munib Saw that he was twelve years old at the time of death of his father, the concerned workman and as per clause 9.5.0 (iii) of Social Security under NCWA-V there is requirement that the male dependent of concerned workman should be 15 years and above in age.

40. In view of above discussion the Tribunal finds and holds that Munib Saw depended son of deceased Nanku Saw was aged about 12 years at the time of the death of Nanku Saw on 25/12/1991, so as per clause 9.5.0 (iii) of NCWA-V he was not eligible for employment in place of his father. However as per clause 9.5.0 (ii) of NCWA-V the dependent wife of the concerned deceased workman is entitled for monetary compensation of Rs. 2000/- per month since 25/12/1991.

41. Now, in view of above discussion the Tribunal renders the following the Award:-

“The action of the management in dismissing Sri Nanku Sao M/Loader by order dated 12/06/1993 is not justified and legal and the action of the management in not employing Sri Munib Sao in place of his father under compassionate ground is legal, proper and justified.”

42. Hence, the dependent of the deceased concerned workman is entitled for following relief:-

- (a) The dependent of the concerned workman is entitled for receiving all death benefits of the deceased workman namely Nanku Sao.
- (b) The wife of the deceased concerned workman is also entitled for monthly compensation as per NCWA-V since the death of concerned workman and she is further entitled for revision of monthly compensation as per subsequent NCWA.

43. The management of Kustore Colliery of M/s. BCCL is directed to pay all the death benefits to the dependent of the concerned workman and to pay the monetary compensation to the wife of deceased concerned workman since his death as per NCWA-V and as per subsequent NCWA within one month after publication of the Award in the Official Gazette.

This is Award of the Tribunal.

D. K. SINGH, Presiding Officer