



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-सा.-11022021-225098
CG-DL-W-11022021-225098

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 05] नई दिल्ली, जनवरी 31—फरवरी 6, 2021 शनिवार/ माघ 11— माघ 17, 1942
No. 05] NEW DELHI, JANUARY 31— FEBRUARY 6, 2021, SATURDAY/MAGHA 11—MAGHA 17, 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, 18 नवम्बर, 2020

का. आ. 83.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53(1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा, यह घोषणा करती है कि उक्त अधिनियम की धारा 10 की उप-धारा (1) के खण्ड (ग) के उप-खण्ड (i) के उपबंध इंडियन बैंक पर लागू नहीं होंगे, जहां तक इसका संबंध इंडियन बैंक की प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी, सुश्री पदमजा चुंदरू को दिनांक 31.8.2021 तक की अवधि के लिए अर्थात् उनकी अधिवर्षिता की आयु तक या अगले आदेशों तक, जो भी पहले हो, यूनिवर्सल सोम्पो जनरल इश्योरेंस कंपनी लिमिटेड के बोर्ड में नामिती निदेशक/गैर-कार्यकारी अध्यक्ष के पद पर नियुक्त करने से है।

[फा. सं. 13/5/2018-बीओ-I]

एस. आर. मेहर, उप सचिव

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

New Delhi, the 18th November 2020

S. O. 83.—In exercise of the powers conferred by Section 53(1) of the Banking Regulation Act, 1949 (10 of 1949), Government of India on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-clauses (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Indian Bank in so far as it relates to the nomination of Ms. Padmaja Chunduru, Managing Director and Chief Executive Officer, Indian Bank to the Board of Universal Sampo General Insurance Company Limited as a nominee Director/Non-executive Chairperson, for a period up to 31.8.2021, *i.e.*, the date of her superannuation, or until further orders, whichever is earlier.

[F. No. 13/5/2018-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 18 नवम्बर, 2020

का. आ. 84.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा, यह घोषणा करती है कि उक्त अधिनियम की धारा 10 की उप-धारा (1) के खण्ड (ग) के उप-खण्ड (i) के उपबन्ध इण्डियन ओवरसीज बैंक पर लागू नहीं होंगे, जहां तक इसका संबंध बैंक के प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी, श्री पार्थ प्रतिम सेनगुप्ता के दिसम्बर 2022 के 31वें दिन तक की अवधि के लिए यूनिवर्सल सोम्पो जनरल इश्योरेंस कंपनी लिमिटेड के बोर्ड में अतिरिक्त निदेशक के पद पर बने रहने से है।

[फा. सं. 13/4/2020-बीओ-I]

एस. आर. मेहर, उप सचिव

New Delhi, the 18th November 2020

S. O. 84.—In exercise of the powers conferred by sub-section (1) of section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of section 10 of the said Act shall not apply to Indian Overseas Bank in so far as it relates to its Managing Director and Chief Executive Officer Shri Partha Pratim Sengupta being on the Board of Universal Sampo General Insurance Company Limited as its additional Nominee Director for a period up to the 31st day of December, 2022.

[F. No. 13/4/2020-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 2 फरवरी, 2021

का. आ. 85.—भारतीय जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय जीवन बीमा निगम के प्रबंध निदेशक श्री सिद्धार्थ मोहन्ती को तत्काल प्रभाव से उनकी अधिवर्षिता की तारीख (अर्थात् 30.6.2023) तक अथवा अगले आदेशों तक, जो भी पहले हो, उक्त निगम में सदस्य के पद पर नियुक्त करती है।

[फा. सं. ए-15011/02/2020-बीमा-I]

विनोद कुमार, अवर सचिव

New Delhi, the 2nd February 2021

S. O. 85.—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, Managing Director, Life Insurance Corporation of India as member of the said Corporation, till the date of his superannuation (i.e., 30.6.2023), or until further orders, whichever is earlier, with immediate effect.

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

VINOD KUMAR, Under Secy.

विदेश मंत्रालय**(सी.पी.वी. प्रभाग)**

नई दिल्ली, 21 जनवरी, 2021

का. आ. 86.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, यांगोन में श्री विशाल कुमार सिंह, सहायक अनुभाग अधिकारी को दिनांक 21 जनवरी 2021 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2015]

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

MINISTRY OF EXTERNAL AFFAIRS**(CPV DIVISION)**

New Delhi, the 21st January, 2021

S.O. 86.—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 Vishal Kumar Singh, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Yangon to perform the Consular services with effect from 21 January, 2021.

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

VISHANU KUMAR SHARMA, Director (CPV)

नई दिल्ली, 22 जनवरी, 2021

का. आ. 87.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, कुवैत में श्री परशोत्तम कुमार और बिरमा राम, सहायक अनुभाग अधिकारी को दिनांक 22 जनवरी 2021 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2019]

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

New Delhi, the 22nd January, 2021

S.O. 87.—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 Parshotam Kumar and Shri Birma Ram, Assistant Section Officer as Assistant Consular Officer in Embassy of India Kuwait to perform the Consular services with effect from 22 January, 2021.

[F. No. T-4330/01/2019]

VISHANU KUMAR SHARMA, Director (CPV)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 28 जनवरी, 2021

का.आ. 88.—केंद्र सरकार, राजभाषा [संघ के शासकीय प्रयोजनों के लिए प्रयोग] नियमावली, 1976 (यथा संशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में कार्मिक और प्रशिक्षण विभाग के अधीनस्थ कार्यालय केंद्रीय अन्वेषण ब्यूरो के अधीन निम्नलिखित कार्यालयों, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी भाषा का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:-

1. विशेष अपराध शाखा, केन्द्रीय अन्वेषण ब्यूरो, लखनऊ
2. विशेष अपराध शाखा, केन्द्रीय अन्वेषण ब्यूरो, चंडीगढ़
3. भ्रष्टाचार निरोधक शाखा, केन्द्रीय अन्वेषण ब्यूरो, धनबाद
4. भ्रष्टाचार निरोधक शाखा, केन्द्रीय अन्वेषण ब्यूरो, गाजियाबाद
5. भ्रष्टाचार निरोधक शाखा, केन्द्रीय अन्वेषण ब्यूरो, कोच्चि
6. भ्रष्टाचार निरोधक शाखा, केन्द्रीय अन्वेषण ब्यूरो, जयपुर
7. भ्रष्टाचार निरोधक शाखा, केन्द्रीय अन्वेषण ब्यूरो, जोधपुर
8. भ्रष्टाचार निरोधक शाखा, केन्द्रीय अन्वेषण ब्यूरो, रांची
9. भ्रष्टाचार निरोधक शाखा, केन्द्रीय अन्वेषण ब्यूरो, पोर्ट ब्लेयर

[फा. सं. ई-15023/1/2020-हिंदी]

रश्मि चौधरी, अपर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 28th January, 2021

S.O. 88.—Central Government in pursuance of Sub-Rule (4) of Rule 10 of official languages [Use for official purpose of union] Rules, 1976 (as amended in 1987, 2007 and 2011) hereby notifies the following offices under the Central Bureau of Investigation, a subordinate office of Department of Personnel and Training whose more than 80 percent staff has acquired working knowledge of Hindi language:—

1. Special Crime Branch, Central Bureau of Investigation, Lucknow
2. Special Crime Branch, Central Bureau of Investigation, Chandigarh
3. Anti Corruption Branch, Central Bureau of Investigation, Dhanbad
4. Anti Corruption Branch, Central Bureau of Investigation, Ghaziabad
5. Anti Corruption Branch, Central Bureau of Investigation, Kochi
6. Anti Corruption Branch, Central Bureau of Investigation, Jaipur

7. Anti Corruption Branch, Central Bureau of Infestigation, Jodhpur
8. Anti Corruption Branch, Central Bureau of Infestigation, Ranchi
9. Anti Corruption Branch, Central Bureau of Infestigation, Port Blair

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

RASHMI CHOWDHARY, Addl. Secy.

संस्कृति मंत्रालय

नई दिल्ली, 28 जनवरी, 2021

का.आ. 89.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालयों को जिसमें 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है जिनका व्यौरा निम्नानुसार है: -

1. उप अधीक्षक पुरातत्व रसायनज्ञ, भारतीय पुरातत्व सर्वेक्षण, पंडित दीनदयाल उपाध्याय पुरातत्व संस्थान, नॉलेज पार्क-2, ग्रेटर नोएडा, उत्तर प्रदेश
2. निदेशक, भवन सर्वेक्षण परियोजना, भारतीय पुरातत्व सर्वेक्षण, पंडित दीनदयाल उपाध्याय पुरातत्व संस्थान, ग्रेटर नोएडा, उत्तर प्रदेश
3. उप अधीक्षण उद्यानविद, भारतीय पुरातत्व सर्वेक्षण, उद्यान मंडल-द्वितीय, 6 तल, डी-ब्लॉक, जी.पी.ओ. कॉम्प्लेक्स, पुरातत्व भवन, आई.एन.ए., नई दिल्ली
4. वरिष्ठ संरक्षण सहायक का कार्यालय, भारतीय पुरातत्व सर्वेक्षण, पावागढ़ उप मंडल, पावागढ़, गुजरात

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[फा. सं. ई-13016/1/2019-हिंदी]

संजुक्ता मुदगल, संयुक्त सचिव

MINISTRY OF CULTURE

New Delhi, the 28th January, 2021

S.O. 89.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Govt. hereby notifies the following offices of Ministry of Culture wherein more than 80% officers/staff have acquired the working knowledge of Hindi. Details are given as below:-

1. Dy. Superintending Archaeological Chemist, Archaeological Survey of India, Pt. Deendayal Upadhyaya Institute of Archaeology, Knowledge Park –II, Greater Noida, UP.
2. Director, Building Survey Project, Archaeological Survey of India, Pt. Deendayal Upadhyaya Institute of Archaeology, Greater Noida, UP.
3. Dy. Superintendent Horticulturist, Archaeological Survey of India, Horticulture Circle, 6th Floor, D-Block, G.P.O. Complex, Puratatve Bhawan, I.N.A., New Delhi.
4. Office of the Senior Conservation Assistant, Archaeological Survey of India, Pawagarh Sub circle, Pawagarh, Gujrat.

This notification shall come into force from the date of publication in the Official Gazette.

[F. No. E-13016/1/2019-Hindi]

SANJUKTA MUDGAL, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 22 जनवरी, 2021

का. आ. 90.—पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962, (1962 का 50) (इसके बाद उक्त अधिनियम कहा गया है) की धारा 2 की उप-धारा (ए) के अनुसरण में, केन्द्र सरकार उक्त अधिनियम के अधीन निम्न तालिका के कॉलम (2) में उल्लिखित क्षेत्रों के संबंध में कॉलम (3) में उल्लिखित प्रचालनरत पेट्रोलियम पाइपलाइनों के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड हेतु उक्त अधिनियम के अंतर्गत सक्षम प्राधिकरण के कार्यों के निष्पादन के लिए निम्न तालिका के कॉलम (1) में उल्लिखित व्यक्ति को प्राधिकृत करती है : -

व्यक्ति का नाम और पता	क्षेत्राधिकार का क्षेत्र	पेट्रोलियम पाइपलाइन (न्स) का नाम	परिवहन किए जाने वाले उत्पाद / उत्पादों
(1)	(2)	(3)	(4)
श्री जयदेव मन्ना उप महाप्रबंधक (प्रचालन), इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पूर्वी क्षेत्र पाइपलाइन	पश्चिम बंगाल राज्य	हल्दिया बरौनी पाइपलाइन	एमएस, एसकेओ, एचएसडी, पीसीके, रिफॉर्मेट
		पारादीप हल्दिया दुर्गापुर एलपीजी पाइपलाइन	एलपीजी
		गुवाहाटी सिलीगुडी पाइपलाइन	एमएस, एसकेओ, एचएसडी, पीसीके
		कोलकाता एटीएफ पाइपलाइन	एटीएफ
		पारादीप हल्दिया बरौनी पाइपलाइन	कूड ऑयल

इससे पूर्व दिनांक 24 सितंबर 2016 के भारत के राजपत्र में प्रकाशित दिनांक 21 सितंबर 2016 के का.आ. 3055 (अ) के अंतर्गत पश्चिम बंगाल राज्य में इंडियन ऑयल कॉर्पोरेशन लिमिटेड के लिए अधिसूचित सक्षम प्राधिकारी, श्री मलय सरकार, मुख्य प्रचालन प्रबंधक, एचएमआरबीपीएल को डी-नोटिफाइड समझा जाए।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर-11025(11)/19/2018-ओआर-I/ई-27024]

पी. सोमाकुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 22nd January, 2021

S.O. 90.—In pursuance of sub-section (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of Users in Land) Act, 1962 (50 of 1962), (hereinafter called the said Act), the Central Government hereby authorizes the person mentioned in column (1) of the table given below to perform the functions of the Competent Authority under the said Act for Indian Oil Corporation Limited in respect of areas mentioned in column (2) for the operational petroleum pipelines laid under the said Act mentioned in Column (3) of the said Table:-

Name and Address of the Person	Area of Jurisdiction	Name of Petroleum Pipeline(s)	Product/products being transported
(1)	(2)	(3)	(4)
Shri Jaydeb Manna Deputy General Manager (Operations),	West Bengal state	Haldia Barauni Pipeline	MS, SKO, HSD, PCK, Reformate
		Paradip Haldia Durgapur LPG Pipeline	LPG

Indian Oil Corporation Limited Eastern Region Pipelines	Guwahati Siliguri Pipeline	MS, SKO, HSD, PCK
	Kolkata ATF Pipeline	ATF
	Paradip Haldia Barauni Pipeline	Crude Oil

Earlier notified Competent Authority for Indian Oil Corporation Limited in the State of West Bengal, Sh. Malay Sarkar, Chief Operations Manager, HMRBPL vide S.O. 3055(E) dated 21st September 2016 published in the Gazette of India dated 24th September 2016 stands de-notified.

This notification will be effective from the date of its issue.

[F. No. R-11025(11)/19/2018-OR-I/E-27024]

P. SOMAKUMAR, Under Secy.

नई दिल्ली, 22 जनवरी, 2021

का. आ. 91.—पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962, (1962 का 50) (इसके बाद उक्त अधिनियम कहा गया है) की धारा 2 की उप-धारा (ए) के अनुसरण में, केन्द्र सरकार उक्त अधिनियम के अधीन निम्न तालिका के कॉलम (2) में उल्लिखित क्षेत्रों के संबंध में कॉलम (3) में उल्लिखित प्रचालनरत पेट्रोलियम पाइपलाइनों के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड हेतु उक्त अधिनियम के अंतर्गत सक्षम प्राधिकरण के कार्यों के निष्पादन के लिए निम्न तालिका के कॉलम (1) में उल्लिखित व्यक्ति को प्राधिकृत करती है :-

व्यक्ति का नाम और पता	क्षेत्राधिकार का क्षेत्र	पेट्रोलियम पाइपलाइन (न्स) का नाम	परिवहन किए जाने वाले उत्पाद / उत्पादों
(1)	(2)	(3)	(4)
श्री आशीष वर्णवाल अनुरक्षण प्रबंधक, इंडियन ऑयल कॉर्पोरेशन लिमिटेड उत्तरी क्षेत्र पाइपलाइन्स, पानीपत	हरियाणा और पंजाब सेक्टर	मथुरा जालंधर पाइपलाइन	एमएस, एसकेओ, एचएसडी, पीसीके, नेफ्था, एटीएफ, ईबीएमएस, डीएचपीपी
		पीएजे ऊना शाखा पाइपलाइन	एमएस, एसकेओ, एचएसडी, पीसीके
		पानीपत जालंधर एलपीजी पाइपलाइन	एलपीजी
		पानीपत भटिंडा पाइपलाइन	एमएस, एसकेओ, एचएसडी, पीसीके
		सलाया मथुरा पाइपलाइन	कूड ऑयल
		मुंद्रा पानीपत पाइपलाइन	कूड ऑयल
		पानीपत बिजवासन एटीएफ पाइपलाइन (पीबीएपीएल)	एटीएफ
		जयपुर पानीपत नेफ्था पाइपलाइन	एमएस, एसकेओ, एचएसडी, पीसीके, नेफ्था
		सोनीपत मेरठ पाइपलाइन (एसएनएमपीएल)	एमएस, एसकेओ, एचएसडी, पीसीके
		कुरुक्षेत्र रुड़की नजीबाबाद (केआरएनपीएल)	एमएस, एसकेओ,

व्यक्ति का नाम और पता	क्षेत्राधिकार का क्षेत्र	पेट्रोलियम पाइपलाइन (न्स) का नाम	परिवहन किए जाने वाले उत्पाद / उत्पादों
(1)	(2)	(3)	(4)
			एचएसडी, पीसीके
		पानीपत रेवाड़ी पाइपलाइन	एमएस, एसकेओ, एचएसडी, पीसीके

इससे पूर्व दिनांक 9 सितंबर 2017 के भारत के राजपत्र में प्रकाशित दिनांक 4 सितंबर 2017 के का.आ. 2093 के अंतर्गत हरियाणा और पंजाब क्षेत्र में इंडियन ऑयल कॉर्पोरेशन लिमिटेड के लिए अधिसूचित सक्षम प्राधिकारी श्री राकेश सिंह, मुख्य प्रचालन प्रबंधक, इंडियन ऑयल कॉर्पोरेशन लिमिटेड को डी-नोटिफ़ाइड समझा जाए।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. स. आर-11025(11)/19/2018-ओआर-I/ई-27024]

पी. सोमाकुमार, अवर सचिव

New Delhi, the 22nd January, 2021

S.O. 91.—In pursuance of sub-section (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of Users in Land) Act, 1962 (50 of 1962), (hereinafter called the said Act), the Central Government hereby authorizes the person mentioned in column (1) of the table given below to perform the functions of the Competent Authority under the said Act for Indian Oil Corporation Limited in respect of areas mentioned in column (2) for the operational petroleum pipelines laid under the said Act mentioned in Column (3) of the said Table:—

Name and Address of the Person	Area of Jurisdiction	Name of Petroleum Pipeline(s)	Product/products being transported
(1)	(2)	(3)	(4)
Shri Ashish Varnawal Maintenance Manager, Indian Oil Corporation Limited Northern Region Pipelines, Panipat	Haryana and Punjab sector	Mathura Jalandhar Pipeline	MS, SKO, HSD, PCK, Naptha, ATF, EBMS, DHPP
		PAJ Una Branch Pipeline	MS, SKO, HSD, PCK
		Panipat Jalandhar LPG Pipeline	LPG
		Panipat Bhatinda Pipeline	MS, SKO, HSD, PCK
		Salaya Mathura Pipeline	Crude Oil
		Mundra Panipat Pipeline	Crude Oil
		Panipat Bijwasan ATF Pipeline (PBAPL)	ATF
		Jaipur Panipat Naptha Pipeline	MS, SKO, HSD, PCK, Naptha
		Sonepat Meerut Pipeline (SnMPL)	MS, SKO, HSD, PCK
		Kurukshetra Roorkee Najibabad (KRNPL)	MS, SKO, HSD, PCK
		Panipat Rewari Pipeline	MS, SKO, HSD, PCK

Earlier notified Competent Authority for Indian Oil Corporation Limited in the Haryana and Punjab Sector, Sh. Rakesh Singh, Senior Operations Manager, Indian Oil Corporation Limited, vide S.O. 2093 dated 4th September 2017 published in the Gazette of India dated 9th September 2017 stands de-notified.

This notification will be effective from the date of its issue.

[F. No. R-11025(11)/19/2018-OR-I/E-27024]

P. SOMAKUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 25 जनवरी, 2021

का.आ. 92.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, सुदर्शन सुविधाएं प्राइवेट लिमिटेड, श्री जगदीश डोगरा के माध्यम से, नई दिल्ली और 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, नई दिल्ली -1 के पंचाट (संदर्भ संख्या 328/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को हार्ड और सॉफ्ट कॉपी 21.01.2021 को प्राप्त हुए थे।

[सं. एल-42012/129/2018-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 25th January, 2021

S.O. 92.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 328 /2018) of the Central Government Industrial Tribunal cum-Labour Court New Delhi-1 as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Sudershan Facilities Pvt Ltd., through Shri Jagdish Dogra, New Delhi & worker which were received by the Central Government With Hard and soft Copy on 21.01.2021.

[No. L-42012/129/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE COURT OF MS. PRANITA MOHANTY, PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1 NEW DELHI

ID No. 328/2018

Shri Pankaj Kumar Sharma S/o Shri Lokesh Kumar Sharma,
Village Sikroad, near Raj Nagar Extension,
Meerut Road,
Ghaziabad, Uttar Pradesh 201 003

...Workman

Versus

M/s. Sudershan Facilities Pvt. Ltd.,
Rep. through Shri Jagdish Dogra, General Manager,
At 18, Local Shopping Centre, 2nd Floor,
Madangir, New Delhi 110 062

...Management

AWARD

Central Government, vide letter No.L-42012/129/2018-IR(DU) dated 05.11.2018, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the claim of Shri Pankaj Kumar Sharma employed through M/s Sudershan Facilities Pvt. Ltd., New Delhi, a contractor of TKDL, CSIR, New Delhi over illegal termination from service with effect from 31.12.2016 (stated to be working for last 9 years) and non-payment of bonus for the period

2014-15 and 2015-16 is legal and justified? If so, what relief he is entitled to and to what extent and what directions are necessary in the case?"

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Pankaj Kumar Sharma, the workman, opted not to file his claim statement with the Tribunal.

3. Further, on receipt of the above reference, notice was also sent to the workman as well as the management. Neither the postal article, referred above, was received back undelivered nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman. Despite service of the notice, the workman opted to abstain from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the claimant, Shri Pankaj Kumar Sharma, from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 11, 2020

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 जनवरी, 2021

का.आ. 93.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष, दिल्ली मेट्रो रेल कॉर्पोरेशन लिमिटेड (पी.ई.) नई दिल्ली और एसीएमई उत्कृष्ट प्रबंधन प्राइवेट लिमिटेड (ठेकेदार), नई दिल्ली उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नई दिल्ली -1 के पंचाट (संदर्भ संख्या 136/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को हार्ड और सॉफ्ट कॉपी 21.01.2021 को प्राप्त हुए थे।

[सं. एल-42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th January, 2021

S.O. 93.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 136/2017) of the Central Government Industrial-Tribunal cum-Labour Court New Delhi -1 as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman, Delhi Metro Rail Corporation Ltd. (P.E.) New Delhi and ACME Excellent Management Pvt. Ltd. (contractor), New Delhi & worker which were received by the Central Government With Hard and soft Copy on 21.01.2021.

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

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE COURT OF MS.PRANITA MOHANTY, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, NEW DELHI****DID No. 136/2017**

Shri Samshad Ahmad,
S/o Shri Abdul Rehman,
R/o S-189/225, JJ Camp,
Okhla Phase II,
New Delhi – 110020

...Workman

Versus

1. M/s. Delhi Metro Rail Corporation Ltd.(P.E.)
Through its Chairman, Mr. Mangoo Singh,
Metro Bhawan, Fire Brigade Lane,
Barakhamba Road, Connaught Place, New Delhi

2. M/s. ACME Excellent Management Pvt. Ltd.(contractor).,
E-5, LGF, LSC, DDA Market, MOR Land,
New Rajender Nagar, New Delhi – 110 060

...Managements

AWARD

Present dispute has been raised by Shri Samshad Ahmad(in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Claimant has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of her service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. Claim statement was filed by the claimant herein averring therein that he was engaged by the above managements on 01.11.2013 as housekeeping staff. His last drawn wages were Rs.7,000.00. He worked honestly and diligently and never gave chance of complaint to his superiors. The claimant was not paid minimum wages as per the Minimum Wages Act not were the provisions of Contract Labour Regulation and Abolition Act, 1970 adhered to. The claimant was deprived of genuine benefits as per the labour laws, i.e appointment letter, bonus, overtime, dearness allowance, ESI , EPF etc. When he raised demand for the same, management felt offended and started exploitation of the claimant and his services were terminated on 10.02.2016 without any reason/charges, show cause notice and without issuing any termination letter, contravention of the provisions of Section 25-F of the ID Act. A demand notice was sent to the management but the management neither responded to the same nor took back the claimant in service/paid any retrenchment compensation. He is unemployed since the date of his termination. He claims reinstatement in service of the contractor/principal employer with continuity and full back wages.

3. Written statement was filed by Delhi Metro Rail Corporation taking preliminary objections of non-existence of relationship of employer and employee between the them and the claimant, claimant not being a workman, not clarified as to from which of the two managements he is seeking relief etc. Delhi Metro Rail Corporation has also submitted that the claimant has already settled an earlier dispute with M/s All Services Global Pvt. Ltd. and an award was earlier passed by this Tribunal. Hence the present application is wrong and misleading. The management has denied the other material averments contained in the statement of claim. Finally, it has been prayed that the claim may be rejected.

4. M/s. ACME Excellent Management Pvt. Ltd. also filed statement of defence wherein various preliminary objections, inter alia of the claim not being maintainable as wages were being paid as per Minimum Wages Act, ESI and EPF were being deducted and all the facilities as per labour laws were being granted to the workman. It has also been wrongly stated by the claimant that he is unemployed from the date of his termination. The contractor has also denied the other material averments contained in the statement of claim. Finally, a prayer has been made for dismissing the claim made by the claimant.

5. Rejoinder was filed on behalf of the claimant wherein the material averments contained in the statement of defence of the management and the contractor have been denied and the facts contained in the statement of claim have been reiterated.

6. Against this factual background, based on the pleadings of the parties, following issues were framed on 02.02.2018 and the case was listed for evidence of the claimant:

- (i) Whether the termination of the service of the claimant is illegal and against the provisions of law?
- (ii) Whether the claimant is entitled for reinstatement in service with back wages?
- (iii) Whether the claim is not legally maintainable, in view of the preliminary objections.

7. The claimant filed his affidavit in evidence on 14.08.2018 and the case was listed for his examination on 09.10.2018. However despite affording a number of opportunities, i.e. on 09.10.2018, 08.01.2019, 12.03.2019, 21.05.2019, 23.07.2019, 15.10.2019 and 18.02.2020, the claimant failed to put in his appearance. On various dates, the A/R for the claimant put in his appearance and it was stated at the bar by Shri Dilip Kumar, the A/R for the claimant, that the claimant is not in touch with him and despite his best efforts he could not contact the claimant and hence requests that the case may be disposed of. In view of the above, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the claimant, Shri Shamshad Ahmad, from seeking relief afresh as there is no adjudication of the case on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 27, 2020

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 जनवरी, 2021

का.आ. 94.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष और प्रबंध निदेशक मद्रास फर्टिलाइजर्स लिमिटेड, मनाली, चेन्नई एवं श्री वी थ्यालन, कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 22/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.01.2021 को प्राप्त हुए थे।

[सं. एल-42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th January, 2021

S.O. 94.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2018) of the Central Government Industrial-Tribunal-cum Labour Court Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman & Managing Director Madras Fertilizers Limited, Manali, Chennai & Sri V. Thayalan, worker which were received by the Central Government on 25.01.2021.

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

D. K. HIMANSHU, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
CHENNAI

ID No. 22/2018

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 30.09.2019

Sri V. Thayalan
 No. 18/1A, Bharathi Street
 Thirupathi Nagar Extension
 Kolathur
 Chennai-600099

...1st Party/Petitioner

AND

The Chairman & Managing Director
 Madras Fertilizers Limited
 Manali
 Chennai-600068

...2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : In Person

For the 2nd Party/Respondent : Advocates, M/s. Aiyar and Dolia

AWARD

This is an Application under 2A (2) of the Industrial Dispute Act.

The Applicant's case in brief is that he joined on 18.07.1996 as Assistant Company Secretary on Probation under the Respondent, the Madras Fertilizers Ltd., a Public Sector Undertaking under Government of India incorporated under the Companies Act, 1956. He was terminated by the Respondent on 17.07.1997 on the ground of his performance not satisfactory to the Authority.

2. Being aggrieved with the order of termination the Applicant raised the dispute before the Conciliation Officer-The Assistant Labour Commissioner (C), Chennai vide his application dtd. 15.04.2017. The matter in dispute was taken up by the Conciliation Officer who directed the Respondent to represent its comment on 09.05.2017. The Respondent neither pay a heed to it nor turn up to cooperate the Proceeding. Thus, the dispute though raised by the Applicant, before the Conciliation Officer was in vain. Since the dispute could not be resolved Despite of sincere efforts, the Conciliation Officer preferred to issue a Certificate to the effect enabling the petitioner to approach this Forum of Industrial Tribunal for redressal of his grievance. The Applicant accordingly filed the Application under 2A(2) challenging the termination order dtd. 17.07.1997 of the Respondent and to direct it to release the unpaid arrears of salary for the period from 01.01.1997 to 18.07.1997 and other consequential reliefs.

3. The Respondent entered appearance by filing its Counter denying almost all the claims averred in the Application. The Counsel for the Respondent raises strenuous objection on Admission of the dispute on the point of Limitation. The main plank of contention is that the Application is not maintainable as barred by Limitation and liable for dismissal. Attention was drawn on the prescribed provision of law under 2A(2) and (3) of the Act. On perusal of the Office Note and relevant documents on record, it reveals that as required under the provision under the Act, the Applicant approaches this Forum by filing this Application under 2A(2) after expiry of 45 days from the date it raised dispute before the Labour Machinery but not before expiry of 3 years from the alleged date of his termination..

4. In order to bring the instant Application within the ambit of the amended provision under 2A Act, it is to be seen if the Applicant approaches this Forum-The Industrial Tribunal after exhausting all pre requisite conditions contemplated under required provisions of the Act. Admittedly the amended insertion under 2A of the ID Act is a beneficiary legislation for the workmen, which provides a right in favour of the workmen to approach directly to the appropriate Forum under the Act for redressal of grievance in an expeditious manner even before the dispute is referred by the appropriate Government. Section 2A sub clause (2) of the ID Act reads as follows :

“Notwithstanding anything contained in Section 10 any such workmen as is specified in Sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudication upon the dispute, xx xx xx xx xx xx xx xx xx xx

Section 2A of sub clause (3) reads as follows “The application referred to in Sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in Sub-section (1)”

5. In combined reading of both the sections it needs to be seen if the Applicant has raised the dispute before the Labour Machinery and after expiry of 45 days approached the Tribunal under 2A within a period of 3 years from the alleged date of termination.

6. Admittedly, the Applicant raised the dispute before the Labour Machinery, the Assistant Labour Commissioner (C), Chennai on 05.04.2017. Even after all sincere efforts taken by the Conciliation Officer, the dispute could not be resolved owing several reasons, which occasioned the Applicant to request the Conciliation Officer to issue a Certificate enabling him to approach this Forum on expiry of 45 days. The Certificate issued by the Conciliation Officer is produced by the Applicant which reveals after expiry of 45 days, the Conciliation Officer issued the Certificate enabling the Applicant to approach this Forum. But instead of issuing such Certificate the Failure Report could have been sent to the Appropriate Government which on examination if finds any Industrial Dispute exists therein could have referred the dispute to the Central Government Industrial Tribunal for adjudication. In such case, the Applicant might have benefitted under the beneficiary legislation under the ID Act. As such, the issuance of Certificate enabling the Applicant not being in correct direction certainly defeats the interest of justice so far the provision under 2A(2) and (3) of the Act is concerned.

7. It reveals after expiry of 45 days and being armed with the Certificate of Conciliation Officer, the Applicant filed this Application under 2A on 11.09.2018 (as reveals from the Court Seal affixed on the Application Set and the Petition filed by the Applicant-Petitioner for hearing on Admission) which is necessarily beyond the period of limitation of 3 years from the date of the alleged termination of him from job. At the cost of repetition, it is worthwhile to mention that the Applicant's case in brief that he joined as Assistant Secretary on Probation on dtd. 18.07.1996. He was terminated from service on 17.07.1997. He approaches the Conciliation Officer only on 05.04.2017 and expiry of 45 days thereafter approaches this Forum of Industrial Tribunal on 11.09.2019, almost after a period of 21 years. On bare perusal of the Application as well as his Petition it appears the Applicant misconceived the spirit of the legislation under the Act as in such case the provision of Law as contemplated in 2A(2) and (3) of the Act needs strict adherence by the Applicant. Reliance is placed in the judicial verdict propounded by the ***Hon'ble High Court of Madras (Madurai Bench) in WP (MD) 15552/2015 in the case of Prince Packianathan Vs. General Manager, Tamil Nadu Transport Corporation, Nagercoil Division.***

8. In view of the discussion held in preceding paragraphs the Application 2A(2) of the ID Act filed by the Applicant almost after 21 years, deserves no merit for consideration.. The Application is not sustainable under the eye of Law. In the result, the Application in ID 22 of 2018 under 2A(2) stands dismissed.

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 30th Sept., 2019)

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 28 जनवरी, 2021

का.आ. 95.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 01/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.01.2021 को प्राप्त हुआ था।

[सं. एल-39025/01/2021-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 28th January, 2021

S.O. 95.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore 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 28.01.2021.

[No. L-39025/01/2021-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 12TH JANUARY, 2021**PRESENT** : JUSTICE SMT. RATNAKALA, Presiding Officer**ID 01/2014****I Party**

Mr. Narayanaswamy T M
C/o L R Manjunatha,
Nanjundeswara provision Stores,
NNT Road,
Chintamani - 563 125.

II Party

The Chairman and Managing Director,
Bank of Baroda
Head Office, Trinity Circle,
Bangalore – 560 001.

Appearance :

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. P Udayashankar Rai

AWARD

This is a petition filed under section 2-A of the Industrial Disputes (Amendment) Act, 2010 by an individual workman / former employee of the, then Vijaya Bank, presently Bank of Baroda.

The 1st Party workman was appointed as sub-staff on 14.10.1983 and promoted as Clerk on 23.05.1995. While working at Kolar branch of the 2nd Party, he was kept under suspension vide order dated 29.05.2009 followed by a charge sheet dated 28.06.2010. The 1st Party denied the charges. The 2nd Party was not convinced with the reply of 1st Party and initiated Domestic Enquiry against the workman by appointing the Enquiry Officer. On conducting a full-fledged Enquiry, the Enquiry Officer submitted his report holding that the charges 1,2,3 and 4 are proved. The 1st Party submitted his remarks to the Enquiry Report. The 2nd Party proposed the punishment of “dismissal from the services of the Bank with immediate effect”. 1st Party submitted his representation to the proposed punishment and sought for personal hearing with the Disciplinary Authority and the same was granted. 1st Party made both oral and written representation during the personal hearing and sought to reconsider the proposed punishment and pass any other punishment instead of dismissal from service. However, the Disciplinary Authority proceeded to confirm the proposed punishment vide its order dated 05.09.2011. The appeal filed thereon before the Appellate Authority was also rejected. In the claim petition, the 1st Party challenged the procedure of Enquiry, Enquiry Report and legality of the punishment order imposed on him. He contends that it is their sole bread-winner of the family and has no source of income: he is not gainfully employed, hence sought reinstatement and other consequential benefits.

2. The claim is contested by the 2nd Party. In their objection statement, they have sought to endorse the correctness / fairness of the Domestic Enquiry and to justify the action against the workman.

On the rival pleadings, touching the fairness of Enquiry, a preliminary issue was raised. The 2nd Party examined the Enquiry Officer to discharge the burden of proving the issue. Unfortunately, the Domestic Enquiry records was not produced by the witness. In his affidavit evidence, he has averred that "...1st Party workman along with the statement of claim has produced the charge sheet dated 28.06.2010, the report of the findings dated 21.10.2010 and exhibits M-Ex 1 to 4 and M-Ex 9 produced in the Enquiry." The witness produced the Photostat copies of proceedings of 21.10.2010 which is the Cross-Examination Evidence of MW-1 and Evidence of MW-2, evidence of 1 defence witness. The 1st Party workman adduced rebuttal evidence and produced documents W-1 to W-21. They are the certificates by Conciliation Officer, suspension letter, communications inter-se parties, charge sheet, enquiry report, remarks to the enquiry report, dismissal order, the representation of the employee to the proposed punishment, the proceedings of personal hearing, punishment order, appeal memo, order by the Appellant Authority, investigation report and 4 documents which were marked during the Domestic Enquiry as M-Ex 2 to 4 and M-Ex 9. When the matter was set down for argument on the Domestic Enquiry, learned Counsel for 1st Party submitted to the effect that the Enquiry Officer acted on the hearsay evidence of MW-1 and has held charges proved, de-hors this point, he has no other grievance about the procedure adopted by the Enquiry Officer in conduct of the Enquiry. On that, the preliminary issue was answered in affirmative keeping open the legal questions to be considered at the time of final arguments on merit. Now, it is time to examine the findings of the Enquiry Officer on the sufficiency of the evidence adduced to reach the findings etc.

3. As per charge sheet dated 28.06.2010, charges against him were,

Firstly, he debited various amounts of the customers without having supporting cheques / instruments and incorporated same cheques / instrument number in various accounts, which have already been debited to the account. Details of 6 transactions and the account number were mentioned in the charge sheet.

Secondly, on 26.05.2009, he obtained a cheque for Rs. 20,000/- from M/s Varun Pharma as a loan in his favour. The amount of the cheque was credited to the account of his son for which he was the authorised signatory: subsequently, he transferred this amount to SB account 18313 by way of credit transfer slip without a cheque / or authority letter.

Thirdly, he failed to take print out of the cash scroll of the day and handover the same to supervisory staff along with day's vouchers for checking / authorisation.

Fourthly, (a) on 27.05.2009, he received Rs. 13,250/- from the account holder (A/c No. 1244, M/s. Amrutha Pharma) for depositing the same in their Current Account. He mis-utilised the amount on 28.05.2009, transferred the amount from SB A/c No. 21206 standing on his son's name to the Current Account No. 1244.

(b) he received Rs. 20,000/- from Current Account holder (No. 1077, M/s Deepti Mahal) to deposit the same in their Current Account but he mis-utilised the amount: on 28.05.2009, he transferred the amount of Rs. 20,000/- from SB A/c no. 21206 of his son to the credit of the Current Account of the party.

The defense as set out in his reply to the charge sheet (Marked as Ex D3 during the Domestic Enquiry, Ex W8 before this Tribunal during the Enquiry on Domestic Enquiry) was, on 15.05.2009, there was a shortage of Rs. 80,000/- while closing the cash transaction. 1st Party apprehended that he would be made responsible for the shortage, so, he contacted his friends to close the books of account for the day, called his friends operating SB a/c no. 18313, who advised him to debit from this account for Rs. 40,000/- and they would come and sign the next day. Another Current Account holder Srikantha Gargesh sent Rs. 20,000/- and advised him to debit the account in debit slip from the accounts - Current Account no. 895 and 1155. The customer of Current Account no. 1163, M/s. Chowdeshwari Agencies advised him to debit his account for Rs. 20,000/-. He requested both parties to give him time for 10 to 15 days to pay their money and subsequently deposited their respective amounts through joint SB account belonging to his son and himself on 26.05.2009. He was verbally permitted over phone by Mr. Venkata Chalapathy to withdraw Rs. 20,000/- from the SB a/c no. 14470. The account holder received the cash from the 1st Party and authenticated the loose cheque immediately. On 26.05.2009, he received Rs. 20,000 from M/s. Varun Pharma and credited the cheque to the joint account maintained by him with his son. He has remitted back the amount to M/s. Varun Pharma on 28.05.2009.

With regard to 3rd charge, his reply was he was not acquainted with the system, officer used to take the print outs and check the same accordingly. As against the charge no. 4, his defence was on 27.05.2009, M/s. Amrut Pharma / Current account holder handed over cash at 5.45 pm along with Credit voucher. He was on leave that day but incidentally had come to the branch in the evening and was unable to deposit the amount to the account on the same day. Hence, he deposited Rs. 45,000/- and Rs. 19,000/- to his son's a/c no. 21206 on 28.05.2009 and transferred Rs. 13,250/- to the credit of Current Account no. 1244 of M/s. Amrut Pharma. On

22.05.2009, M/s. Deepti Mahal account holder handed over cash of Rs. 20,000/- and he deposited the same in the Current a/c no. 1077 at the close of business hours. In the meantime, he requested M/s Deepti Mahal to permit him to remit this amount on 28.05.2009. Accordingly, he transferred the amount from his son's account to Current Account on 28.05.2009.

4. During the preliminary enquiry, nine documents were marked for the prosecution as M-Ex 1 to 9: M-Ex 1 was the investigation report along with 40 annexures. The Investigation Officer was the 1st witness. He gave statements corroborating the charge sheet allegations. During the cross examination, it emerged that the investigation was concluded within 2 days: the Branch Manager had verified the transactions: CSE was not the cashier on 27th and 28th of May 2009. The 2nd witness was the present Branch Manager: in reference to the attendance register he stated that originally signatures were put on 27th, 28th and 29th May 2009 and subsequently altered with letter 'L'. The sole defence witness was the holder of the SB Account no. 14470. He had given statements before the Investigating Officer which was taken as Annexure 40 to the Investigation Report. As per the said statement, he had contacted CSE over phone and requested for cash of Rs. 20,000/-: CSE told him to request the Branch Manager and he will get the cheque / withdrawal slip next day: he (witness) gave the withdrawal slip and collected the cash. The investigation report marked as M-Ex 1 during the Domestic Enquiry is borne on Record as Annexure 16 to the claim petition. Unfortunately, the 40 annexures to the investigation report are not made available, though, the description of those documents is produced as Annexure B. During the Enquiry, the CSE has produced the copy of the letters addressed by him to the Branch Manager admitting the withdrawal of the amount from the respective accounts. Though, the annexures to the Enquiry Report are not placed before me, having regard to the nature of defence taken by the CSE, I hold that the Enquiry Report is based on documentary proof coupled with evidence of investigation officer.

5. Now, coming to the question of proportionality of punishment, in my considered opinion, it is too harsh and severe. It is not the case of the 2nd Party that the 1st Party has past history to his credit. It is not shown that he was previously tried for any misconduct. As such, there was no complaint against the workman from any quarter. Since, the 1st Party contended that he has no experience in taking the print out of the cash scrolls and the Manager himself was taking out the print of the cash scroll and examine the same, the prosecution was obliged to examine then Manager to find out the truthfulness or otherwise of his defense to charge No. 3. The misconduct has no financial implication on the 2nd Party and if any of the concerned customers was aggrieved by the withdrawals made by the 1st Party, definitely, those customers would have been examined as witnesses by the prosecution. Their statements given before the Investigation Officer is not made available. The 1st Party himself before the Disciplinary Authority had pleaded to impose any other punishment in lieu of the dismissal order. He has lost about 10 years of service. Having admitted the charge of withdrawals without supporting documents, he cannot plead total innocence and failure on the part of the 2nd Party to produce all the documents marked in evidence during the Enquiry shall not be encashed by him. Taking a holistic view of the matter, I hold that the dismissal order modified to termination with all terminal benefits and pension benefit would do justice in the matter.

AWARD

The petition is allowed.

The Order passed by Disciplinary Authority / Deputy General Manager - Per(IRD) dated 05.09.2011 in imposing the punishment of "DISMISSAL FROM THE SERVICES OF THE BANK WITH IMMEDIATE EFFECT" is modified as follows "THE 1st PARTY WORKMAN IS TERMINATED WITH IMMEDIATE EFFECT WITH SUPERANNUATION BENEFITS i.e. PENSION AND/OR PROVIDENT FUND AND GRATUITY".

The monetary benefits shall be paid to him within 40 days of publication of the award

(Dictated to LDC, transcribed by him, corrected and signed by me on 12th January, 2021)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 28 जनवरी, 2021

का.आ. 96.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मोरमुगांव पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, पणजी, गोवा के पंचाट (आई. टी/21/14) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.01.2021 को प्राप्त हुआ था।

[सं. एल-36011/1/2014-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 28th January, 2021

S.O. 96.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. IT/21/14) of the Industrial Tribunal and Labour Court, PANAJI, GOA as shown in the Annexure, in the industrial dispute between the management of Mormugao Port Trust and their workmen, received by the Central Government on 28.01.2021.

[No. L-36011/1/2014-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI

(BEFORE MR. VINCENT D'SILVA, HON'BLE PRESIDING OFFICER)

Ref. No. IT/21/14

Shri Laximan S. Harmalkar,
Rep. by the Mormugao Waterfront
Workers' Union,
Mukund Building, P.O. Box 90,
Vasco-da-Gama, Goa.

...Workman/Party I

V/s

The President,
Mormugao Port Trust,
Bharatratna Dr. Babasaheb Ambedkar
Vocational Centre, Headland, Sada,
Vasco-da-Gama, Goa -403804.

...Employer/Party II

Workman/Party I represented by Ld. Adv. Shri. V. A. Palekar

Employer/Party II represented by Ld. Adv. Shri. A. C. Navelkar

AWARD

(Delivered on this the 15th day of the month of January of the year 2021)

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 (Central Act 14 of 1947), (for short 'The Act') the Government of India/Bharat Sarkar, Ministry of Labour/Shram Mantralaya, New Delhi by Order dated 01.08.2014 bearing No. L-36011/1/2014-IR(B-II), has referred the following dispute for adjudication.

"Whether the action of the management of Mormugao Port Trust Bharatratna Dr. Babasaheb Ambedkar Vocational Centre, Headland Sada, Vasco-da-Gama, Goa in terminating the services of Shri L. Harmalkar is legal and justified? What relief the workman is entitled to?"

2. Upon receipt of the reference, IT/21/14 was registered and registered A/D notices were issued to both the parties. Upon appearance, Party I filed a Claim statement at Exhibit 6 and Party II filed a Written Statement at Exhibit 8.

3. In short, the case of Party I is that the Party I workman was employed with the Party II for 18 years. The Party II, Vocational Centre is part and parcel of parent organization, Mormugao Port Trust. The Vocational Centre has been floated by the Port Trust with their employees being the office bearers of the said Vocational Centre to provide and implement the provisions of Dock Safety, Health and Welfare Regulations, 1979 under the Major Port Trust Act. The Party II has seven numbers of employees which includes the Party I in the

category of caretaker as well as other employees. The Vocational Centre is situated in the port area. The Party I was appointed on 29.11.1993 by Party II and has been employed in highly skilled category as a caretaker and the nature of job included maintenance of accounts involving cash transactions, maintenance of records of students, preparation of certificates and distributing the same to the students, etc. The Party I was paid less than the minimum wages at the time of appointment and he continued to receive less than minimum rates of wages. The Party I requested the Party II by his letter dated 17.3.1998 to increase the wages and regularize him in service and grant wages comparable to other employees of the Port Trust, however there was no response whatsoever. This was followed by other representations, however the Vocational Centre failed to increase the salary and regularize him in the service.

4. The committee of the Party II in its meeting on 24.7.2008 decided that the salary of the staff working on full time basis such as caretaker should be increased and that the Party I being caretaker category be paid Rs. 150/- per day as highly skilled category of clerical and supervisory staff. However, inspite of the resolution, the wages of the Party I were not revised. The Party I thereafter made representation for increase in wages and as there was no response from Party II, the Mormugao Waterfront Workers' Union on behalf of the Party I by letter dated 26.12.2011 raised an industrial dispute in the matter of wages before Assistant Labour Commissioner (Central). There was no increase in the wages and on the contrary by letter dated 30.12.2011, the Party I was informed that his services as caretaker has been terminated with immediate effect on 30.12.2011 on the false ground for misappropriation of Party II Vocational Centre fund. The termination was not preceded by a domestic or departmental enquiry nor the Party I was granted any hearing or given an opportunity to represent his case prior to termination. The termination was in haste and is in violation of item No. 5(a) and 5(b) of the Fifth Schedule of the Industrial Disputes Act and therefore it is an unfair labour practice. The termination of the Party I is illegal, bad and null and void. The termination was motivated by the representation on behalf of the Party I made to the Assistant Labour Commissioner (Central) by the Mormugao Waterfront Workers' Union. The termination is purely by way of victimization. The Party I is therefore entitled to be reinstated with full back wages, continuity in service and all other consequential benefits.

5. The Party II filed the written statement inter-alia contending that MPT's Dr. Babasaheb Ambedkar Vocational Centre is registered under Co-operative Societies Act, 1960 for providing Vocational training/courses to the port employees, their dependents and people staying in the surrounding areas as a welfare measure to increase their knowledge, skill, etc. The Vocational Centre is opened only in the evenings for conducting various vocational courses such as tailoring, embroidery, etc. The various institutions like Deepvihar Primary School, Secondary School, etc. Port Employees Consumer Society as also other Societies of the Port employees have been established under the Societies Act to provide certain facilities and benefits to the Port employees and their family members and they are functioning independently and their salary, wages, appointment of the staff/service and day to day activities are being monitored by the respective management committees regularly. The Mormugao Port Trust is only providing certain amount as financial help/assistance to the Vocational Centre from the Welfare Funds based on the request made by the Managing Committee. The Executive Committee of Party II has been nominated by the Port Administration in the year 2008 and the Vocational Centre is taken over by the Committee. The Committee has been managing the entire activities very systematically and in a transparent manner by conducting regular meetings.

6. There is a Hall which is given on rental basis for day to day functions of Port employees and local people. The availability of the Hall has to be confirmed by the Caretaker who has no right to collect the booking money directly from the Party. The Party has to deposit the booking amount in the cash Section of Finance Department of the Port. The Party I was appointed as Caretaker purely on temporary basis with the break in service as an unskilled worker. The Party I collected full booking charges of the Hall on two occasions namely, on 04.12.2011 and 20.12.2011 without the permission of the Committee. The Party-I was trapped by the President with regards to incident on 20.12.2011 and the same was brought to the notice of the Managing Committee who thereafter convened a meeting on 22.12.2011 to conduct a detailed inquiry of fraud committed by Party I. The Party I was called for the meeting and questioned by the Committee members and he admitted that he had given the bookings on two occasions on his own without the permission of the Concerned Authorities and that he apologized to the Committee for misusing the money for his own use. The Committee thereafter called a meeting on 30.12.2011 and discussed the matter in detail and took a serious note of the fraud committed by Party I and decided that his temporary services as a Caretaker should not continue and terminated his services with effect from 30.12.2011. The Party I is not entitled to any back wages or any re-instatement in service or any relief claimed by him.

7. In the Rejoinder at Exh. 10, Party I has denied the case set up by Party II in its defense.

8. Based on the above averments of the respective parties, the following issues were framed at Exh. 12.

- (1) Whether the Party I proves that the he was the employee of Party II and that termination of his service as caretaker was not preceded by a Domestic or Departmental Enquiry and that the termination was in violation of item 5(a) and 5(b) of the Fifth Schedule to the Industrial Disputes Act.?
- (2) Whether the Party I proves that the termination is illegal, bad and null and void and therefore Party I was entitled to reinstatement with full back wages, continuity of service and other consequential benefits?
- (3) Whether the Party II proves that the present dispute is not maintainable as Party I was appointed as caretaker for Mormugao Port Trust's Dr. Babasaheb Ambedkar Vocational Centre purely on the temporary basis with the break in service as an unskilled worker?.
- (4) What Award? What Order?

9. In support of the case, the Party I examined Shri Francisco X. Rodrigues as witness and produced on record a copy of Appointment Order dated 29.11.1993 at Exh.18, a copy of Order dated 01.08.2014 at Exh.19, a copy MPT (Welfare Fund Regulations, 1966) at Exh.20, a copy of Annual Administration Report 2011-12 at Exh.21, a copy of letter from Mr. Harmalkar dated 17.03.1998 along with tentative list of duties and responsibilities at Exh.22 colly, a copy of letter dated 22.02.2000 at Exh.23, a copy of letter dated 26.04.2000 at Exh.24, a copy of letter from the office dated 11.04.2006 at Exh.25, a copy of letter dated 17.01.2007 at Exh.26, a copy of letter dated 1.06.2008 at Exh.27, a copy of minutes of the meeting held on 24.7.2008 at Exh.28, a copy of letter dated 21.6.2011 at Exh.29, a copy of letter dated 22.12.2011 at Exh.30, a copy of letter dated 26.12.2011 at Exh.31, a copy of dismissal letter from MPT addressed to Party I workman dated 30.12.2011 at Exh.32, a copy of Certificate dated 25.01.1993 at Exh.33 and a copy of letter dated 23.9.2013 along with documents at Exh.35 colly. In the cross examination, the Party II produced through this witness a copy of letter dated 22.12.2011 addressed to members and committee members by Party I at Exh.36. The Party I also examined himself as witness and produced on record a copy of letter dated 02.01.2012 addressed to the Dy. Secretary & President, AVC Headland Sada at Exh.41. In the cross examination, the Party II produced through this witness copies of booking forms along with the receipts at Exh.42 colly and 43 colly, a copy of complaint dated 20.8.2011 by Sunita K. Varik to the President and its explanation at Exh.44 colly. The Party II examined Shri Jaiwant Dhawale as witness and produced on record a copy of Extension Orders dated 8.6.2000, 2.1.2001, 26.6.2001, 25.1.2002, 28.6.2002, 29.1.2003, 13.6.2003, 15.12.2003, 7.7.2004, 27.12.2004, 13.7.2005, 20.12.2005, 1.6.2006, 16.1.2007, 1.8.2007, 4.1.2008, 7.7.2008, 6.1.2009, 30.1.2010, 24.7.2010 at Exh.47 colly, a copy of appointment order dated 29.11.1993 at Exh.48, copies of minutes of the meetings dated 22.12.2011 and 30.12.2011 at Exh.49 colly, a copy of dismissal letter dated 30.12.2011 at Exh.50 and a copy of minutes of meeting dated 25.9.2008, 12.1.2009 and 15.9.2009 at Exh.51 colly.

10. Heard arguments.

11. I have gone through the records of the case and have duly considered the arguments advanced. My answers to the above issues are as follows:

Issue No. 1	...	In the Negative
Issue No. 2	...	In the Negative
Issue No. 3	...	In the Negative
Issue No. 4	...	As per final order

REASONS

ISSUE NO. 1:

12. Learned Advocate Shri Vijay Palekar for Party I has stated that the Party I was employed with Party II for 18 years as a Caretaker in a highly skilled category which includes maintenance of accounts, preparation of certificates, etc. The Party I was paid less than minimum wages and therefore he requested Party II to increase his wages and to regularize him in service by way of various representations. However, the Party II failed to increase his salary or to regularize him in service or to grant him parity in wages. The Party-II thereafter through Marmagoa Waterfront Workers' Union raised an Industrial dispute vide letter dated 26.12.2011 in the matter of wages before Assistant Labour Commission (Central). There was no response with regards to increase of wages but were informed that services of Party-I has been terminated with immediate effect on 30.12.2011 on the false ground of misappropriation of the fund of Party II. The termination of Party I was not preceded by a domestic or departmental inquiry nor was he granted any hearing or opportunity to represent his case prior to termination. He further submitted that Party-I was wrongfully terminated when Party-II had engaged Party I for work against

the post which was permanent in nature with oblique motive to deprive his statutory rights by giving him artificial breaks which is an unfair labour practice as defined under Item No.5(a) and 5(b) of the Fifth Schedule of the Industrial Dispute Act and in support thereof, he relied upon the case of **Bhuvnesh Kumar Dwivedi v/s M/s. Hindalco Industries Ltd, 2014 II SCC 85**. He further submitted that when two units form part of the same establishment, unity of ownership, unity of management and control, unity of finance, unity of labour, unity of employment and unity of functional integrality were the tests and as the said tests are squarely applicable to the case at hand, Mormugao Port Trust is the employer of Party I and in support thereof, he relied the case of **Management of Pratap Press v/s Secretary, Delhi Press Workers Union, 1960 1 LLJ 497**.

13. Learned Advocate Shri Vijay Palekar has further submitted that rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedures. The witness of Party II Shri Jaiwant Dhawale was the President of Vocational Centre and that he conducted the inquiry in the present case and as such committed bias as evident from the record. He further submitted that where the error, irregularity or illegality touching jurisdiction or procedure is committed which is patent and loudly obstructive in a manner which is contrary to the rules or natural justice and which offends the sense of fair play, the Court should exercise its power and term the enquiry as nullity and in support thereof, he relied upon the case of **Rattan Lal Sharma v/s Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School, 1993 2 LLJ 549**. He further submitted that the Committee had given an assurance to Party I that no action would be taken if he admits his guilt and accordingly, the Party I had given a letter of apology. He further submitted that if any inducement was held out by any one in authority, it would be improper to take an admission of a gullible workman and throw him out of employment and in support thereof, he relied upon the case of **Board of Trustees of the Port of Mormugao, Goa and another v/s Yamunappa C. Gaudar, 2009 2 MhLJ 337**.

14. Learned Adv. Shri A. C. Navelkar for the Party II has submitted that the Committee of Party II had taken a serious note of the incidents committed by Party I after he was called for the meeting and the Committee members inquired about the incident of the misappropriation of the fund and that the Party I admitted that he had given the bookings on 04.12.2011 and 20.12.2011 on his own without prior permission of the concerned authorities and kept the money of the Hall booking with him and utilized the said money for his own purpose and that he apologized for his act of forgery and gave in writing his apology to the Committee for misusing the money and that thereafter, at the meeting called on 30.12.2011 the Committee discussed the matter in detailed and as the dishonesty and indiscipline shown by Party I was not tolerable and the same would set as a bad example and taking serious note of fraud committed by Party I, the Committee decided not to continue the temporary service of Party I as a Caretaker and decided to terminate him from service. He further submitted that no formal inquiry was required to be conducted before dispensing with the services of Party I but based on the materials on record including the apology, the Committee has passed the order as Party I admitted his guilt and in support thereof, he relied upon the case of **Deputy Commissioner, KVS & Ors v/s J. Hussain** passed in **Civil Appeal No.8948/2013 dated 4th October, 2013**.

15. There is no dispute that Party I was employee of Party II as a Caretaker and that he was terminated on account of misappropriation of funds. There is also no dispute that no formal domestic or departmental inquiry was conducted, however he was called and explained about the allegations pursuant to which he tendered an apology and deposited the said amount. Party I has claimed that his termination was in violation of 5(a) and 5(b) of Fifth Schedule of the Industrial Dispute Act and that it is illegal, bad and null and void and therefore, he is entitled for the relief claimed. It is well settled that if no formal inquiry is conducted, the Party II is entitled to lead evidence in support of termination of the Party concerned. The Party I has alleged that he has been terminated on false ground for misappropriation of funds and had quoted item 5(a) of Fifth Schedule namely, by way of victimization and 5(b) not in good faith but in the colourable exercise of the Employer's right. There is no evidence led by Party I that he has been victimized by Party II or that he has been dismissed in colourable exercise of right by the Employer. Shri Laximan Harmalkar has nowhere in his Affidavit-in-Evidence claimed that he was victimized by Party II. The statement of claim alleges that he was paid less than minimum wages and that he requested to increase the wages and regularize him in service and made various representations to Party II and that on account of his representations, he was terminated from service. Curiously enough, he makes no reference to the alleged incidents in which he tendered an apology and deposited the said amount, knowing very well that his services were terminated on account serious lapses of fraud and misappropriation.

16. The Hon'ble Apex Court in the case of **Messrs Bharat Iron Works V/s Bhagubhai Balubhai Patel and Others, (1976) I SCC 518** has held that 'Victimization is a serious charge by an employee against an employer, and therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The onus of establishing a plea of victimization will be upon the person pleading it. Since a charge of victimization is a serious matter reflecting, to a degree, upon

the subjective attitude of the employer evidenced by acts and conducts, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the tribunal and a conclusion should be reached on a totality of the evidence produced.' The Party I workman has not pleaded any persecution/victimization giving any material particulars in the claim statement, rejoinder or the Affidavit-in-evidence nor any materials have been produced on record that he was been victimized or the Party II had not acted in good faith as it was a serious charge giving particulars nor he has proved the said charge. The charge was vague nor supported by any evidence. There were also no allegation of alleged victimization besides quoting the provisions of law by Party I. It is therefore, the case of Party-I of victimization/bad faith falls.

17. The next question is whether the Party I was not afforded a fair hearing to represent his case and whether his termination is illegal and bad in law and whether the Party II has proved the misconducts. The Party I has examined Shri Francisco S. Rodrigues, General Secretary of Marmagao Waterfront Workers' Union. He has claimed that Party I was paid less minimum wages and that they made several representations, however there was no response nor there was increase in wages and that services of Party- I as Caretaker has been terminated on the false ground of misappropriation of Vocational Centre fund. He also claimed that termination was motivated by the representations made to the Assistant Labour Commissioner by the Union on behalf of Mr. Harmalkar and that it was purely by way of victimization. He also claimed that there was an allegation of misappropriation at the time of termination and the termination was malafide as Party I through the Union raised the issue of payment of minimum wages and other claims. However, the above case of witness is nowhere reflected in the Claim Statement or the Rejoinder filed by Party I. Be that as it may, Shri Francisco in the cross-examination has admitted that he does not know the minimum wages paid in the year 1998 but he was paid Rs.1,700- per month in the said year. He also admitted that the amount collected by Mr. Harmalkar on 04.12.2011 and 20.12.2011 for booking of the hall has not been deposited with MPT because the President did not sign the challan. He also admitted that Mr. Harmalkar was called for the meeting on 22.12.2011 and asked for the explanation and that Mr. Harmalkar admitted the so called misappropriation of 04.12.2011 and 20.12.2011 at the meeting held on 22.12.2011. The witness therefore admits the fraud committed by Mr. Harmalkar for which Party I has been terminated from services.

18. The Party I, Shri Laximan has also examined himself. He has claimed that he was paid less than minimum wages and that he requested to increase his wages and as there was no response, he made several representations. He also stated that as there was no response from Party II, he raised the dispute through the Union before the Assistant Labour Commissioner (Central). He also claimed that on 22.11.2011 he was called in the meeting room where all members were present and was told that he should submit apology in writing and if he admits the allegation, he will be let off with the Memo/Warning. Surprisingly, there are no pleadings to that effect, which shows that it is a creature of an afterthought and therefore lacks any approval. He also stated that the President Mr. Dhawale dictated to him his statement and he was threatened that in the event he does not write the statement as dictated by the President and sign the same, the Party II would have no option but to call the Central Industrial Security Force and that the statement was obtained under threat, pressure and coercion. The above averments are also not reflected anywhere in his pleadings and therefore have to be taken with a pinch of salt.

19. The Party I also admitted in the cross examination that he does not know what were the minimum wages in the year 1998, 2000, 2006, 2007 and 2008. He denied the suggestion that he was caught red-handed while accepting the money for the booking of the Hall on 04.12.2011 and 20.12.2011 but admitted that he was called for the meeting on 22.12.2011 in AVC premises and he was asked for explanation regarding accepting money for Hall booking on the above two dates and that he gave a letter dated 22.12.2011 to the President tendering apology for the said act but he claimed that he was forced to tender the apology by the President. Be that as it may, Shri Francisco Rodrigues has admitted that the amount collected by Mr. Harmalkar on 04.12.2011 and 20.12.2011 for the booking of the Hall has not been deposited and that he was called to give the explanation. Shri Harmalkar has admitted that he had deposited the money collected on 20.12.2011 for the booking on 23.12.2011. He also admitted that the booking of the Hall was done after the approval from the Committee and that amount towards the booking was to be paid directly in the MPT office. He also admitted that the President of the Committee had orally informed him not to accept the booking amount and that he was sending people who were coming to book the Hall to the Office of MPT for depositing the amount.

20. The Party I also admitted that on 20.12.2011 he accepted the money for the booking which was to be deposited in the MPT's Office through Kalashi. He stated that he gave the letter of apology at Exb.36 on 22.12.2011 at around 8.30 p.m. and he handed over the said letter to the Committee member. He also stated that he protested against the said letter by his letter dated 02.01.2012 and that he addressed the said letter to the Dy. Secretary and President of AVC but had not given a copy of the said letter in the Office of AVC. He admitted that the said letter at Exb.41 was issued by him after termination order received by him. Be that as it

may, he has not explained as to why he had not filed protest letter immediately after he gave a letter of apology allegedly under pressure and coercion. He admitted that he had taken Rs.4200 for the purpose of booking of the Hall on 20.12.2011. He also admitted the receipt of Rs.4412 at Exb.42 colly from one Nishan Arolkar and a receipt dated 23.12.2011 for Rs.4,412 towards booking of Hall from F. Fernandes on 04.12.2011 at Exh. 43 colly. The witness has not explained why the amounts received by him on 04.12.2011 and 20.12.2011 were only deposited by him on 23.12.2011 after the inquiry/apology letter dated 22.12.2011 at Exh 36. When the witness was shown the Letter of Apology, he admitted that the letter was written by him with his signature at point 'X' and that the meeting was held on 22.12.2011 and was called at around 7.30 to 7.45 p.m. and that he wrote the said letter at around 8.30 p.m. He also admitted that one Sunita Varik filed a complaint against him which is at Exb.44 Colly.

21. The witness of Party II, Shri Jaiwant Dhawale has reiterated the contents of the Written Statement in his Affidavit-in-Evidence. He claimed that inspite of knowing clear laid down policy and procedure, the Party I collected full booking charges of the Hall on two occasions on 04.12.2011 and 20.12.2011 without the knowledge of the Committee and that the Party I was trapped by him on 20.12.2011 on a surprise visit and that he had also manipulated the booking amount of 04.12.2011 which was verified and confirmed and that immediately thereafter on 22.12.2011 they conducted a detailed inquiry of the fraud committed by Party I of the two bookings and the Committee members were of the opinion that it was a serious offence and that he was called for the meeting and that the Party I admitted that he kept the money of the Hall booking and apologized for the said act and gave in writing an apology to the Committee and that in the meeting called on 30.12.2011, the Committee discussed the matter in detail and decided that the temporary service of Party I should not continue and accordingly was dismissed. In the cross-examination, he admitted that no charge-sheet or a formal inquiry was conducted and in the said meeting they disclosed to Party I the misconduct leveled against him. He also stated that Party I was explained the procedure of inquiry and he was held guilty after he gave a Letter of Apology. He denied the suggestion that the Party I was told to give a Letter of Apology failing which they would call industrial security force and cause his immediate arrest. The evidence of the above witness coupled with the documents adduced on record clearly indicate that the Party I was given a reasonable opportunity to defend his case by the committee and that the Party I tendered an apology which has not been challenged by him in the present proceedings.

22. Be that as it may, the materials on record clearly indicate that the Party I was working as a Caretaker at the Vocational Centre and that as a Caretaker, he had no right to collect the Hall booking amount directly from the parties as admitted by Party I as the party concerned had to deposit the booking amount in the Cash Section of the Finance Department of the Port and only cleaning charges, sound system charges, chair charges, etc have to be collected by the Caretaker which have to be deposited in the Vocation Centre Account on the same day and inspite of that, the Party-I collected full booking charges of the Hall on two occasions on 04.12.2011 and 20.12.2011 without the permission of the Committee and that he was trapped on 20.12.2011 which was verified and confirmed. The Party I was called for the meeting and after giving him an opportunity to explain about the incident, he admitted of the said misconduct and further apologized for his act of misconduct in writing. The Apology letter at Exb.36 clearly shows that he had committed the said act and deposited the said amount on 23.12.2011. The Committee took a serious note of the said incident and terminated his services. There were also other incidents of complaints by one Ms. Sunita Varik and others. The Party I was working on temporary basis with break in service and was paid minimum wages as per the decision of the Committee. The temporary workers cannot be compared with regular employees of MPT nor Party I can be regularized. The representations made by Party I were examined and rejected. The Party I has committed serious acts of misconduct and therefore the decision of the Committee to terminate his services cannot be faulted. It is thus clear that the Party I was afforded a fair hearing to represent his case and that his termination is legal as the Party II has proved the misconducts. The submission of Ld. Adv. Shri Palekar and reliance placed on the above citations pales into insignificance as the said cases turned on their own facts. It is therefore, Party I has failed to prove that he was a regular employee of Party II and that the termination of his services as Caretaker is bad and illegal and in violation of Item 5(a) and 5(b) of the Fifth Schedule of the Industrial Dispute Act. Hence, issue No.1 is answered in the negative.

ISSUE NO. 2:

23. The Party I has failed to prove that he was a regular employee of Party II and that the termination of his services was by way of victimization and not in good faith but in colourable exercise of the Employer's right. The Party I having failed to prove that the termination is illegal, bad and null and void, is not entitled for any relief including re-instatement with full back wages, continuity of service and other consequential benefits. Hence, issue No.2 is answered in the negative.

ISSUE NO. 3:

24. Discernibly, the Party II has claimed that the present dispute is not maintainable as according to it, the Party I was appointed as a Caretaker by Party II on temporary basis, however it cannot be said that the dispute is not maintainable on the above ground nor there are any materials on record that the dispute is not maintainable and therefore, issue No 3 has to be answered in the negative.

ISSUE NO. 4

25. The Party I workman has failed to prove that the termination of his services by Party II was in violation in Item No.5(a) and 5(b) of the Fifth Schedule of Industrial Dispute Act and that the termination of his services is illegal and unjustified. The Party I having failed to prove the above issues No. 1 and 2, no reliefs as claimed by Party I could be granted. It is therefore issues No. 4 is answered accordingly.

26. In the result, I pass the following:

ORDER

- (i) It is hereby held that action of the management of Mormugao Port Trust Bharatratna Dr. Babasaheb Ambedkar Vocational Centre, Headland Sada, Vasco-da-Gama, Goa in terminating the services of Shri L. Harmalkar is legal and justified.
- (ii) The Party I/Workman is therefore not entitled to any reliefs.
- (iii) No order as to costs.
- (iv) Inform the Government of India/Bharat Sarkar, Ministry of Labour/ (Shram Mantralaya), New-Delhi accordingly.

Panaji, dated: 15.01.2021

VINCENT D'SILVA, Presiding Officer

नई दिल्ली, 29 जनवरी, 2021

का.आ. 97.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, श्रम और रोजगार मंत्रालय के प्रशासकीय नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है:

1. गोदी सुरक्षा निरीक्षणालय, जे.एन.पी.टी, मुंबई।
2. गोदी सुरक्षा निरीक्षणालय, तूतीकोरीन।

[सं. ई-11016/1/2017-रा.भा.नी.]

गोपाल प्रसाद, आर्थिक सलाहकार

New Delhi, the 29th January, 2021

S.O. 97.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for official purposes of the Union) Rules, 1976 (as amended, 1987) the Central Government hereby notifies the following offices under the administrative control of the Ministry of Labour & Employment, more than 80% Staff whereof have acquired working knowledge of Hindi:-

1. Inspectorate Dock Safety, JNPT Mumbai.
2. Inspectorate Dock Safety, Tuticorin.

[No. E-11016/1/2017-RBN]

GOPAL PRASAD, Economic Adviser

नई दिल्ली, 1 फरवरी, 2021

का.आ. 98.—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., जयपुर, (राज) और अन्य एवं श्री देवानंद उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, भीलवाड़ा के पंचाट (संदर्भ संख्या 03/2017 एल.सी.आर.) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.02.21 को प्राप्त हुए थे।

[सं. एल-42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st February, 2021

S.O. 98.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2017 L.C.R.) of The Labor Court - Bhilwara, (Raj) as shown in the Annexure, in the Industrial dispute between the employers in relation to The Manger, M/s. Tiger 4 Security and Detective India Private Limited, Jaipur, (Raj) and Shri Devanand, worker which were received by the Central Government on 01.02.2021.

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

D. K. HIMANSHU, Under Secy.

अनुबंध

मु. नं. 3 सन् 2017 देवानन्द बनाम टाईगर फोर सिक्यूरिटी

श्रम न्यायालय, भीलवाड़ा

पीठासीन अधिकारी : श्री अजीत कुमार हिंजर, आर.जे.एस. (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या : 3 /2017 एल.सी.आर.

श्री देवानन्द पुत्र श्री धन्नालाल भांबी, निवासी—
म.नं. 517/ 330, लेबर कोलोनी, 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 अधि० 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 दिनांक 23.8.2012 से भीलवाड़ा स्थित भारतीय स्टेट बैंक, शाखा —पुर रोड, भीलवाड़ा के ए.टी.एम. पर सिक्योरिटी गार्ड—केयर टेकर के पद पर दिनांक 11.1.2016 तक काम किया। प्रत्येक कलेण्डर वर्ष में 240 दिवसों से अधिक कार्य किया। अधि. 1947 की धारा 25—बी के तहत उसका नियोजन नियमित नियोजन है। वह दिनांक 12.1.2016 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 12.1.2016 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 पृथक्करण 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।

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

हमें यह देखना है कि क्या प्रार्थी व विपक्षी के मध्य श्रमिक—नियोजक के संबंध हैं एवं क्या विपक्षी ने प्रार्थी को दिनांक 12.1.2016 को अवैध रूप से सेवा पृथक् कर दिया? यदि हां, तो प्रार्थी क्या अनुतोष प्राप्त करने का अधिकारी है?

साक्ष्य में प्रार्थी देवानन्द 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 सिक्कोरिटी गार्ड—केयर टेकर के पद पर 23.8.2012 में नियोजित किया, तब से ही उसने लगातार दिनांक 11.1.2016 तक वहां संतोषप्रद सेवाएं दी। 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 12.1.2016 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 पृथक् 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 पृथक् किया गया है। वह पुनः नियोजित होने का अधिकारी है।

प्रार्थी के गवाह कुलदीप सिंह 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 सिक्कोरिटी 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 2 के अवलोकन से यह प्रकट होता है कि प्रार्थी, विपक्षी के यहां अगस्त 2012 से कार्यरत रहा है। विपक्षी संस्थान द्वारा सिक्कोरिटी एवं डिटेक्टीव का काम करना उक्त पहचान पत्र से प्रकट होता है। प्रार्थी ने स्वयं का विपक्षी के यहां सिक्कोरिटी 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 1.9.2016 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 3742 रु. दिनांक 14.2.2015 को प्राप्त होने का अंकन है। इन सभी से यह स्पष्ट है कि प्रार्थी विपक्षी के यहां बताये अनुसार विसिक्कोरिटी गार्ड — केयरटेकर के पद पर कार्यरत रहा है। उसके पहचान पत्र में उसका नियोजन अगस्त 2012 से होने का उल्लेख है तथा उसने विपक्षी द्वारा दिनांक 12.1.2016 को सेवा पृथक् करने का जो अभिवचन व साक्ष्य पेश किया है, इसका कोई खंडन हमारे समक्ष नहीं है। इस प्रकार प्रार्थी की साक्ष्य अखंडित है। अगस्त 2012 से 12.1.2016 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 12.1.2016 को अवैध तौर पर सेवा पृथक् 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 पृथक् 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 देवानन्द पुत्र श्री धन्नालाल भाम्बी व प्रबंधक, मै. टाईगर 4 सिक्कोरिटी एंड डिटेक्टिव इंडिया प्रा. लि. के मध्य श्रमिक—नियोजक के संबंध रहे हैं। प्रार्थी श्रमिक को दिनांक 12.1.2016 से सेवा पृथक् 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 पृथक्करण की तिथि 12.1.2016 से पुनर्नियोजन की तिथि तक उसे सेवा पृथक् 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।

पंचाट आज दिनांक 21.10.2019 को खुले न्यायालय में सुनाया गया।

अजीत कुमार हिंगर, न्यायाधीश

नई दिल्ली, 2 फरवरी, 2021

का.आ. 99.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, हिंदुस्तान एरोनॉटिक्स लिमिटेड, सुनबेधा, कोरापुट, (ओडिशा) और महासचिव, हिंदुस्तान एरोनॉटिक्स मजदूर संघ, सुनबेधा के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, भुवनेश्वर के पंचाट (संदर्भ संख्या 18/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.01.2021 को प्राप्त हुआ था।

[सं. एल-42011/116/2012-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd February, 2021

S.O. 99.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 18/2013) of the Central Government Industrial Tribunal-cum Labour Court, Bhubaneswar-2 as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Sunabedha, Koraput (Odisha) and The General Secretary, Hindustan Aeronautics Mazdoor Sangh, Sunabedha (Odisha) which was received by the Central Government on 25.01.2021.

[No. L-42011/116/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

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

INDUSTRIAL DISPUTE CASE No. 18 OF 2013

Dated Bhubaneswar, the 15th December, 2020

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

Between:

The General Manager,
Hindustan Aeronautics Limited, Sunabedha,
District-Koraput (Odisha).

...1st Party Management

-Versus-

The General Secretary,
Hindustan Aeronautics Mazdoor Sangh,
Sunabedha.

...2nd Party Union

Appearances:-

Shri S. K. Mishra, Advocate : For 1st Party Management

Shri : For 2nd Party Union

AWARD

The Government of India in the Ministry of Labour and Employment have referred the present dispute in exercise of the power conferred under clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947 (herein after referred to as “the Act”) vide their letter No. L 42011/116/2012-IR(DU) dated 25.2.20013 to this Tribunal for adjudication and the schedule and term of reference is :-

“Whether the action of the Management of Hindustan Aeronautics Limited in treating the recruited W.W. Guard in the year 2004 are treated junior to the W.W. Guard recruited in the year 2006 & 2008?

Whether the circular of HAL Corporate Office No.HAL/P&A/27(30)/08/22-dated 10th November,2008 in considering the past service of W. W. Guard in conformity with the directives of the Government is legal and justified ? If so, what benefit the 35 W.W. Guards recruited in 2004 at Hindustan Aeronautics Ltd., Sunabedha is entitled to ?”

2. The case of the 2nd Party Union, as emerging from its statement of claim and during hearing of the reference, is that 35 numbers of Ex-Service Men were given appointment on contract basis on 17.05.2004 on a consolidated salary. They were subsequently absorbed permanently in the year 2006 in the post of W.S.Guards and at that time they were inducted to different Pay Scales depending upon their past service experience in defence. In the year 2007 the 1st Party Management released an advertisement for recruitment of 21 posts of W.W.Guards in Scale-III. Pursuant to such advertisement 8 numbers of Ex-Service Men were recruited and they were inducted against the post of Scale-VI in the year 2008 after completion of their training. It is the claim of the 2nd Party Union that advertisement was totally silent as to the induction of the candidates in higher promotional scales including Scale -VI designated as Zamadar. Those 8 numbers of candidates were promoted to Scale-VI as Zamadar on account of their length of service in defence even though, there is no service condition as well as in the advertisement that the recruits would be inducted in higher scale or given promotional posts. As a result the newly recruits are in senior position than the earlier recruits who are holding junior position. It is the case of the 2nd Party Union that as per settled position of law persons appointed as a result of an earlier selection is always placed as Senior to those appointed as a result of subsequent selection. The newly recruited 8 persons are inducted and given promotion in Scale-VI due to the circular of HAL Corporate Office No.HAL No.HAL/P & A/27/30/18/22 dated.10th November,2008 and they have been placed as seniors to 35 numbers of persons appointed and absorbed prior to them. According to the 2nd Party Union representation of individual workman affected by such induction of the subsequent appointees to permanent higher posts is not paid any attention by the 1st Party Management as a result of which the 2nd Party Union raised a dispute before the labour machinery resulting in the reference since conciliation attempt initiated by the labour machinery could not be materialized .

3. The 1st Party Management has resisted the claim of the Union refuting the allegation raised by the Union pleading inter alia that the 1st Party Management being a Central Public Sector Undertaking involving defence production is under direct control of the Ministry of defence. As such the Management (the unit) cannot be brought under the ambit of definition of “Industry” as defined U/s.2(j) of the I.D. Act and as such the reference is not maintainable. It is also the stand of the 1st Party Management that it is one of the units of the Central Public Sector Undertaking involved in defence production having its corporate office at Bangalore and the Public Sector Undertaking at various Complexes /Divisions/Offices at Nasik, Hyderabad, Lucknow, Kanpur and Sunabedha and service conditions of the employees engaged in different complexes /Divisions under the Corporate offices are the same and being controlled and regulated by the Corporate Office of the Company constituted at Bangalore. The Company is having a common service condition and Gradation of its employees through out the country. Since the Circular of the Corporate Office is under challenge in the dispute and any finding on the same has a consequences in Offices/Complexes situated in different States, the dispute should have been adjudicated by the National Industrial Tribunal and therefore, the reference deserves to be returned to the appropriate Government. That apart, it is the contention of the 1st Party Management that formulation of any policy towards promotion or fitment on scale of pay in any grade cannot be construed as a condition of service. As such any dispute arising out of such policy matter is not subject of being adjudicated in the Tribunal. Under the said Circular/guide line the disputant workmen were also inducted in different pay scales depending upon the length of service rendered by them as Ex-Service men. Since the disputants have availed the benefit of up gradation and fitment of higher scale by virtue of

the same guide line of the circular of the Corporate Office, they cannot challenge the said circular. They are estopped to reopen the issue in form of the present reference. It has been asserted by the Management that the Circular under dispute is formulated by the Corporate office at Bangalore keeping in view the re-employment of Ex-Servicemen and their engagements in different cadres of posts including W.W. Guards. The recruits/appointees are inducted to the posts of different scales depending upon their length of service as Ex-Service men. Such induction in higher scale of pay is no way connected with the determination of interest seniority between the recruits of different batches/years. According to the Management the disputants 35 numbers of workmen were engaged on contract basis in the year 2004 and they were regularized in the year 2006. While being regularized they were up graded and their pay scales were re-fixed depending upon their experience as Ex Service Men. Similarly, eight numbers of newly recruits were appointed as Watch and Ward Guards in the year 2007 and on completion of their training they were absorbed and accommodated in higher grade/pay scales according to the length of their services as Ex-Service Men. It is the specific stand of the 1st Party Management that interest seniority between the disputant workmen and the recruits of the year 2007 is not changed or affected. The circular is applicable to all offices under the control of the Corporate Office. Induction to the post of higher scale on the basis of past service experience is not a promotion and the same is permitted being enumerated in the policy of fitment of scale. There is no anomaly in such fitment vis-a-vis interest seniority between the recruits of different years. Therefore, the statement of claim being devoid of any merit should be rejected.

4. To substantiate its case the 2nd Party Union has examined two witnesses namely Sri Jagatbehari Mohapatra and Sri Soroj Kumar Panda, who were appointed on contractual basis in the year 2004 and permanently absorbed in the year 2006. That apart, the documents like Xerox Copies of offer of engagement Letter dated.17.5.2004, absorption letter of 29 Ex-servicemen dated.17.8.2006, advertisement of the Management in the year 2007, Elevation Order of eight Ex-Servicemen to Scale-6, copies of Grievance Petitions of the employees, Grievance petition of the Union, copy of dispute raised before the RLC(c), Bhubaneswar, copy of proceeding reports of RLC(C), Bhubaneswar, copy of information obtained under RTI Act, and letter of the Management dated.5.12.2012 which are marked as Ext.1 to 11. On the other hand the 1st Party Management has examined its Manager HR Smt. Samita Mohapatra and filed documents like Xerox Copy of Appointment letter of the Workman Jagat bihari Mohapatra, Copies of acceptance letters of appointments, Copy of Letter of Appointment in B-4 Scale, letter of elevation to B-5 Scale, copy of joining letter dated.1.1.2012, Letter relating to appointment of Watch and Ward Guard on contractual basis, letter regarding confirmation of Grade, letter of promotion and letter of acceptance of the workman S. K. Panda, letters dated. 17.5.2004, Circular dated. 14.2.2000 issued by HAL, Corporate Office, Circular dated. 10.4.2000, 19.4.2001, 10.10.2008 of the Management, Order dated. 17/21-08-200 of the Management, order dated. 30.1.2009, 12.6.2009, 29.7.2009 and memorandum of Settlement dt.6.8.2010, copy of advertisement in the Samaj, letter of the Management dt. 24.3.2004, 26.3.2004, 18.3.2006, 17/21-8.2006, circular dated.22.1.2003 and 17.3.2008 of the Corporate Office of HAL, Circular dated.10.11.2008, Copy of Tripartite Settlement dt. 6.8.2010, Copy of Comparative Statement regarding seniority and basic pay of Ex-Service men, Promotion order dt. 30.12.2017 for the post of Security Subedar B-7 along with joining and acceptance letter of the workman, Promotion order dt. 1.1.2004 to Security Subedar B-6, with letter of acceptance and joining of the workman, Order dated. 1.1.2014 promoting to the post of Subedar B-7 along with joining and acceptance letter of the workman which are marked as Ext. A to Ext. AR to refute the claim of the 2nd Party Union.

5. On the aforesaid pleading of the parties the following issues have been settled for adjudication of the dispute.

ISSUES

- 1) Whether the 1st Party Management is covered under section 2(j) of the Industrial Disputes Act and this Court has jurisdiction to decide the reference?
- 2) Whether the circular of HAL Corporate dated.10th November,2008 in considering the past service of W.W. Guard in conformity with the directives of the Government is legal and justified ?
- 3) Whether the present reference is bad in view of the Tripartite Settlement dated.6.8.2010 made between the Management of HAL,Engine Division, Koraput and the 2nd Party Union?
- 4) If so, to what relief the 35 W.W. Guards represented by the Union are entitled to ?

6. Issue No.1:- The 1st Party Management has challenged the maintainability of the reference taking a stand that the Management being an establishment of defence production unit under the Ministry of Defence is not an “Industry” as defined U/s. 2(j) of Act. But, at the time of hearing of the case no serious stress is given on the issue by both the parties. Further it can not be overlooked from the pleadings of the Management that the 1st Party Management is a public Sector undertaking involved in defence production having its corporate office at Bangalore and other complexes /Divisions/Offices at Nasik, Hyderabad, Lucknow, Kanpur and Sunabedha. Thus, it is not disputed that it is a Manufacturing unit. Hence as per the term of “Industry” as defined under 2(j) of the Act the 1st Party Management is undoubtedly is an “Industry”. That apart, if the principles set out by the Hon’ble Apex Court in a catena of decisions including the case in the case of Bangalore Water Supply and Sewerage Board is taken into consideration, there would be no other conclusion than that the 1st Party Management is an Industry on being a defence production undertaking where there is (i) Systematic activity, (ii) organized by cooperation between the employer and the employees, (iii) for production of defence goods. Absence of profit motive or gainful objective is irrelevant. In the above back drops it can be safely held that the 1st Party Management is an industry covered under 2(j) of the Act.

7. Issue Nos. 2 and 3:- Since both the issues are inter related to each other, they are taken into consideration simultaneously for the sake of convenience. It is apparent from the pleadings, evidence and contentions (arguments) advanced by the parties during the adjudication of the dispute that induction of the workmen employed in the 1st Party Management as W.W. Guards in the year 2007/2008 was revised keeping in view the circular of the Corporate Office of the 1st Party Management i.e. Circular No. HAL/P & A/27(30)/08 dated. 10.10.2008. It is the claim of the 2nd Party Union that the workmen employed as W.W. Guards in the year 2008 are juniors to the disputed workmen employed in the year 2004 on contractual basis and absorbed to the regular cadre of W.W. Guards in the year 2006. The appointment of W.W. Guards of the year 2008 was made pursuant to an advertisement under Ext. AE wherein no condition/stipulation was furnished in the advertisement that the appointees would be inducted in higher scale or grade in accordance to their length of past service in defence.. The advertisement was only confined to the employment/appointment against the post of W.W. Guards is Grade B-(III) . In absence of any specific condition in the advertisement that the inducted employees as W.W. Guards can be adjusted in higher post than the Grade-B-III scale, action of the Management in revising the induction of those appointees of the year 2008 in higher grade or scale is contrary to the service law. Due to such induction in higher posts pursuant to the Corporate Circular, the disputants, who joined earlier in the cadre of W.W. Guards, have become junior to the appointees of the batch of 2008. In that view of the matter the circular of HAL Corporate Office dated. 10.11.2008 is not in conformity with the settled principles that date of entry in to a particular service is considered to be the safest rule to follow while determining the interse seniority between the employees recruited in different years. Admittedly, interse seniority is always determined by the date of appointment and not on the basis of experience. There is no serious issue that disputant workmen joined in the cadre of W.W. Guards on being regularized in the year 2006 whereas the beneficiaries due to revised induction joined in the cadre of W.W. Guards subsequent to the joining of the disputants i.e. they joined in the year 2008. Therefore, the disputant workmen 35 in numbers employed in the year 2004 shall be placed/treated senior to the workmen engaged as W.W. Guards in the year 2008 besides, candidates in both the selections were aspirants for the posts of W.W. Guards in Grade –B(III) category at the time if their initial appointment in the establishment of the 1st Party Management.

8. It is the stand of the 1st Party Management that the Trainees of the year 2007-2008 were inducted in different grade/scale and pay after completion of their training keeping in view their past experience as Ex-Service Men and the Circular dated. 10.11.2008 of the Corporate Office whereby Ex-Service Men appointed as W.W. Guards are entitled to higher grade/scale as per their period of service in defence. Such induction of W.W. Grade of the batch 2008 in higher scale/grade is not a promotion and thereby there is no change of interse seniority between candidates of two batches. The Circular was introduced pursuant to a settlement between the Corporate Office and the Unions representing the workmen engaged in various Divisions/Offices. According to the Management there is no violation of settled principles of service law and the contentions raised by the 2nd Part Union has no merit for consideration.

9. On a close scrutiny of the evidence advanced by the parties and documents relied upon by them it is emerging as well as not disputed that advertisement inviting application for appointment as W.W. Guards in the year 2008 is totally silent as to the revised induction as provided in the Circular

dated.10.11.2008. The Appointees of the year 2008 were inducted as trainees for the post of W.W.Guards. On completion of training period they were inducted in different grade of "B" Category posts. They were initially appointed in Grade-B-III scale as trainees and after completion of training period their induction was revised and they were adjusted in between Grade-B-III to B-VI Scales. It is admitted by the witness of the 2nd Party Union that the disputant workmen 35 in numbers were also adjusted in different scale/grade of "B" Category posts being posted as W.W.Guards in accordance to their period of past service in defence when their service were regularized in the year 2006-2007.

On a close reading of the Circular dated.10.11.2008 it is seen that Ex-Servicemen are eligible for grant of service weightage for their next promotion/elevation to the next higher scale keeping in view provisions of Corporate Office Circular dated.1.10.2008. Such promotion/elevation to the next higher scale is confirmed under the presumption that the employee had possessed the requisite years of service in the Armed Forces for grant of higher scales of pay on induction. Pursuant to such direction vide Corporate Office Letter dated. 10.11.2008 the W.W. Guards recruited in the selection of 2007/2008 are stated to have been inducted in promotional/elevated higher scale. It is seen that due to such induction the W.W.Guards recruited in the selection of the year 2007-2008 are placed in higher posts and designated as Zamadar whereas W.W.Guards appointed in the year 2004 and regularised in the year 2006 are stated to have been continuing in the post below the promotional post given to the appointees of 2008. Undoubtedly, the intention of the Circular dated.10.11.2008 is to grant higher scale of pay to W.W.Guards appointed in 2008 giving weightage to their past service in defence. The W.W.Guards appointed in the year 2004 (the disputants) are Ex-Servicemen and after their regularisation as W.W.Guards they are also inducted in higher scale due to their past service in defence. But, their induction was in lower scale due to less period of service in defence in comparison to the length of past service of 2008 batch.

10. As per service law granting of higher pay scale or any other incentive for past experience, if any, is permissible at the time of joining or induction in a particular cadre/post provided it does not affect the interse seniority of the employees appointed in similar cadre or post. The date of entry into a particular service is considered to be the safest rule to follow while determining the interse seniority between the employees/officers or between one group of officers and the other recruited from different sources. Such principle for fixing interse seniority is consistent rule which meets the requirement of Article-14 and 16 of the Constitution. At the same time it is permitted in service law that a group of person can be treated a class separate from the rest due to certain circumstance and they can be extended preferential or beneficial treatment but, in the said situation their fixation of seniority has to be decided subject to such special classification by statutory rules or rules framed under Article-209 of the Constitution. The far reaching implication of such rules need not be impressed because they purport to affect the seniority of persons, who are already in service. As per the settled principles in matter of promotion or promotional posts, generally the rule of merit and ability or seniority-cum-merit is followed. Keeping the above settled principles in view now it is to be examined whether the induction of W.W.Guards appointed in 2007/2008 in promotional scale or elevated scale pursuant to the circular dated.10.11.2008 is legally permissible and sustainable in eye of law.

There is no serious dispute as emerging from the pleadings and evidence of the parties that by revised induction due to Corporate Office Circular dated.10.11.2008 the appointees of W.W. Guards of the year 2008 are able to hold the post of scale-VI and above. They have been designated as Zamadar due to revised induction. It is not specifically denied by the Management that the post of Zamadar is a promotional/elevated post and superior to the post of W.W. Guards. It is also not disputed seriously that due to such induction in higher post W.W.Guards recruited in the year 2008 are placed in superior rank than the disputants appointed and regularised in the year 2006. Thereby the interse seniority between the recruits of two different batches is found to have been affected despite the revised induction of the disputants in higher scale is due to their past service experience. Evidence is wanting to establish that the Circular dated.10.11.2008 is issued or formulated as a statutory rule framed under Article-209 of the Constitution to treat the appointees of 2008 a separate class. On the other hand the appointees of both the batches were initially posted as W.W. Guards Scale-III. The advertisement for the recruits of 2008 was also for the post of W.W.Guards and there was no clause in the advertisement about the revised induction. The disputant workmen having been selected and joined earlier in the post of W.W.Guards should be placed senior to the recruits of 2008 batch. Thus, it is found that revised induction of W.W. Guards of 2008 has affected the seniority of the W.W.Guards appointed earlier and thereby caused prejudice to them.

11. The relative seniority between the appointees to a particular cadre or post is determined by order of merit in which they are selected. Persons appointed as a result of an earlier selection are being senior to those appointed as a result of subsequent selection. Therefore, general principle of seniority envisages that the candidates appointed through an earlier selection stand senior to those appointed through a subsequent selection. In the case at hand the disputants were appointed in the year 2004 and regularised in the year 2006 whereas, the appointees of 2007/2008 were recruited for the post of W.W.Guards and joined as such on the date of their appointments. Revised induction was made either after their regularization or the period of trainee. The alleged induction was not on account of seniority-cum-merit or merit-cum-seniority. By such induction appointees of 2008 batch are placed in higher posts having higher scale due to more past service in defence despite they were junior to the disputants. The purpose of the circular dated.10.11.2008 and instructions issued from time to time is to rehabilitate the Ex Servicemen and to give them monetary benefit due to length of their service in defence. But, the same cannot place them in seniority to the disputants, who undisputedly joined in the same cadre earlier to them. Therefore, the action of the 1st Party Management holding or changing the seniority of the batch of 2008 making the disputed W.W.Guards junior to them is not permissible in the eye of law. The Circular of the Corporate Office dated.10.11.2008 for considering the past service of W.W.Guard does not seem to be in conformity with the settled principles of the Service Law as well as directive of the Government in regard to fixation of interse seniority between recruits of different selections to a cadre. The anomaly arising out of revised induction could have been removed by stepping up rank or post as well as pay scale of the disputants and making them senior to the subsequent recruits.

12. Therefore, the 1st Party Management is directed to adjust and place the disputants in equivalent to promotional/elevated post in which their juniors are inducted after their joining as W.W. Guards by adopting principle of step up and the disputants are to be placed in seniority in the said post with effect from the date on which their juniors were promoted or elevated to higher scale ignoring the interse seniority of the disputants. The disputants are also entitled to financial benefits if, any, due to their placement in the higher posts from the date on which their juniors pre-inducted in promotional/elevated scale. The direction is to be implemented within two months of the Gazette Notification of the award failing which they are entitled to 6.5% interest on the financial benefits accrued to them due to readjustment/stepping up their rank/post. Accordingly the award is answered.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 2 फरवरी, 2021

का.आ.100.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, बीईएमएल सौधा कॉर्पोरेट कार्यालय, बेंगलोर (कर्नाटक), एवं श्री आर निकसन फ्रैंक, 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, बेंगलोर के पंचाट (संदर्भ संख्या 10/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.01.2021 को प्राप्त हुए थे।

[सं. एल-42025/07/2021-आईआर (डीयू)]

डी. के. हिमांशु, अवसर सचिव

New Delhi, the 2nd February, 2021

S.O. 100.—In pursuance of Section 17 of the Industrial Dispute Act 1947, (14 of 1947), The Central Government hereby publishes the award (Ref. No. 10/2012) 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 Managing Director, BEML Soudha Corporate Office, Bangalore, (Karnataka), and Sh. R. Nikson Frank, worker which were received by the Central Government on 25.01.2021.

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

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 20TH JANUARY, 2021**PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer****ID 10/2012****I Party**

Sh. R Nikson Frank,
No. 770, 7th A Main,
1st Block, HRBR Layout,
Kalyannagar,
BANGALORE – 560 084.

II Party

The Managing Director,
BEML Soudha Corporate Office,
23/1, 4th Main, SR Nagar,
Bangalore – 560 027.

Appearance

Advocate for I Party : Mr. Shiva Reddy T N

Advocate for II Party : Mr. N. S. Narasimha Swamy

AWARD

It is a petition under Section 2-A of the Industrial Disputes Act, 1947, (for Brevity ‘the Act’).

2. The Petitioner herein (1st Party) is the former employee of the 2nd Party, who is removed from service w.e.f 23.01.2012, on certain charges came to be proved against him in Domestic Enquiry. Having been appointed on 10.06.2002, he was working as Technician (Fitter / Welder) in the Wage Group ‘B’ in Pre-treatment and Painting Department as on the date of his dismissal. His grievance is, that he was suffering from back pain and spinal problem and was taking treatment at Medical Centre BEML. He was referred to St. John’s Medical Hospital on 04.06.2009 and was treated for Polyarthralgia and Multiple Somatic complaints and Psychogenic till 13.08.2009 and advised to do light job but the 2nd Party without heeding to the advice of the Doctor, assigned him heavy work that resulted in severe pain all over the body. St. John’s Medical College Hospital referred him to Bangalore Baptist Hospital and they certified the same problem. His request for light job was not considered by the Management. The Management dismissed him from service inhumanely, though he had produced all the medical documents before the Enquiry Officer. His plea is for reinstatement with back wages etc.

3. The claim is contested. In the counter statement, it is contended that, he was issued charge sheet dated 26.08.2011, wherein he was alleged of unauthorised absence without leave or permission for a period of 53 days between 15.01.2010 to 14.07.2011 and habitual late coming and early leaving of the work for a duration of 538 hours between 05.01.2010 to 15.07.2011. The reply submitted by him to the charge sheet was not satisfactory. Enquiry was held by appointing Enquiry Officer. Before the Enquiry Officer, he admitted both charges. He did not produce any medical certificates in support of his illness, though he contended that because of his health, he remained unauthorizedly absent and used to come late and leave early. The Enquiry Officer held the charges against him are proved. He submitted his reply to the Enquiry Report to the Disciplinary Authority. His reply was not satisfactory. His past records and various punishments for his past acts of misconducts were perused by the Disciplinary Authority before imposing punishment. He never submitted any letter issued by the Doctor nor did he express difficulty in carrying out the assigned job. The Disciplinary Authority imposed the punishment of “removal from service which does not disqualify for future employment”: along with the order, 1-month salary by way of cheque was sent to his last known address but same returned undelivered. He is not dismissed but removed from service, which shall not disqualify for the future employment.

4. Though the 1st Party in his claim petition had not disputed fairness of Domestic Enquiry held in respect of charges, my learned predecessor however framed issues touching the fairness of Domestic Enquiry: same is adjudicated as preliminary issue by holding “*the Preliminary Issue is answered in the affirmative i.e. the Domestic Enquiry held against the Applicant by the Respondent is fair and proper*” vide order dated 16.01.2015.

1st Party thereafter adduced evidence stating that the Enquiry Officer failed to consider his medical records and he was not furnished with copy of the enquiry findings: he had enclosed all the medical records / reports to the HR Department but the Management failed to verify those records.

Written argument is submitted by 1st Party, oral argument from Sh. NSN for 2nd Party. Perused the records.

5. The allegation against the workman in the charge sheet dated 26.08. 2011 was Firstly,

- a) Unauthorised absence without leave or permission for 53 days during the period 15.01.2010 to 14.07.2011.
- b) Habitually coming late to work and leaving work spot before due time in the assigned shift for 538 hours during the period from 05.01.2010 to 15.07.2011.

Secondly,

Above-mentioned unauthorised absence and late coming/early going has adversely influenced production / discipline and is a cause of concern for the fellow workmen staff...

The above misconduct if proved amounts to misconduct under Section 21.3, 21.20 to 21.21 of the Certified Standing Orders.

Along with the charge sheet, attendance details of the workman in respect of the period in question was also annexed. In his reply to the charge sheet, he admitted the charges but projected his health condition as a ground. During the preliminary hearing of the Enquiry itself, he categorically admitted the charges in total. He sought permission to submit his statements and to take the assistance of a trade unionist for the same, which was allowed. The prosecution examined one witness / Jr. Supervisor from Pre-treatment and Painting department. He deposed in corroboration to the charge sheet allegation. The 1st Party and his defense counsel did not cross examine the witness but sought for permission to present defense statement.

The statement of the 1st Party was he admits the charges but his absence was not intentional but due to health problems – he is suffering from spinal cord problem and multiple joints problem. He is diabetic and has nervous problems since many years – now he has realised his mistake and is determined to be sincere and regular in duties - he assures the Management to be more vigilant in duties and will not give room for such absence in future..

No wonder the Enquiry Officer, on the admission of the charges by the workman, submitted Enquiry finding holding the charges proved. The Disciplinary Authority proposed the punishment of “removal from service which does not disqualify from future employment” and called for his representation. After availing some time, he gave his representation that his absence is due to his illness etc. Along with his explanation, he had annexed Photostat copies of medical certificate from St. John’s Medical Hospital and case summary pertaining to his treatment between 04.06.2009 to 29.06.2009, along with Photostat copy of a letter in the letter Head of Bangalore Baptist Hospital stating that he has been under regular follow-up in the last 1 year and needs regular treatment: he is under Neuro-treatment since 2008. The medical sickness certificate from St. John’s Medical Hospital is in respect of the period 04.06.2009 to 26.06.2009. These documents even if accepted have nothing to do with the period of his unauthorised absence between 15.01.2010 to 14.07.2011 and habitual late coming and early leaving between the period from 05.01.2010 to 15.07.2011. In the written argument, he has submitted that the BEML Medical Centre gave him wrong treatment when he suffered from pain all over the body and nerves weakness, they referred him to St. John medical hospital.

As per the well-established procedure, when a Departmental Enquiry is held properly and fairly, the next effort is to see whether the Enquiry Report is on proper evaluation of the material evidence produced during the Enquiry: if so, whether the punishment imposed commensurates with the gravity of the misconduct proved. Having categorically admitted the charges before Enquiry Officer and the preliminary issue having been adjudicated by upholding the Domestic Enquiry, it was expected of the 1st Party to adduce evidence on his unemployment, discrimination / victimisation, if any, made against him from the Management side. But no such evidence is adduced by him before this Tribunal. He has produced the medical certificate dated 29.10.2016 as Ex W1 according to which he was under treatment for 5 years in Bangalore Baptist Hospital and he is fit to work subject to management of his health by local doctor. The charges against the workman having been tried in duly held Domestic Enquiry and the Enquiry Report since based on the evidences produced during the Enquiry which

has gone uncontroverted, same amounts to misconduct within the description of sec 21.3, 21.20 and 21.21. But, the Certified Standing Order does not draw distinction as to which of the misconduct attracts major punishment or minor punishment. However, the 1st Party is inflicted with major punishment of removal from service which does not disqualify him for his future employment. He is unable to point any circumstance, which may mitigate the gravity of the offence established during the Enquiry. As such, it is not the punishment of Dismissal as claimed by him in his claim statement but of removal from service. In the counter statement, the 2nd party has referred to his past records whereby he was inflicted minor punishments on 5 occasions on identical charges. The 2nd Party has not produced corroborating material in support of his said contention, at the same time, 1st Party has not chosen to deny his past punishments as contended by the 2nd Party. However, I do not find any mitigating circumstance to interfere with the punishment order in exercise of the jurisdiction under section 11 A of 'the Act', he is not entitled for any relief.

AWARD

The petition filed by Sh. R. Nikson Frank under Section 2-A of the Industrial Disputes Act is rejected.

(Dictated to LDC, transcribed by him, corrected and signed by me on 20th January, 2021)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 2 फरवरी, 2021

का.आ.101.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटका ग्रामीण बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट (संदर्भ संख्या 15/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.02.2021 को प्राप्त हुआ था।

[सं. एल-12012/70/2012-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 2nd February, 2021

S.O. 101.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court-Bangalore as shown in the Annexure, in the industrial dispute between the management of Karnataka Gramin Bank and their workmen, received by the Central Government on 02.02.2021.

[No. L-12012/70/2012-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

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

DATED : 22ND JANUARY, 2021

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 15/2013

I Party

Sh. T. S. A. Swamy,
S/o T. R. Siddappa,
Parvathi Nilaya, 8th Main, 5th Cross,
'B' Block, Vidyanagara,
Harihara - 577 601.

II Party

The Chairman,
Karnataka Gramin Bank,
P.O No. 55, Gandhinagar,
Bellary - 583 103.

Appearance

Advocate for I Party : Mr. R. Nagendra Naik

Advocate for II Party : Mr. B. C. Prabhakar

AWARD

The Central Government vide Order No. L-12012/70/2012-IR(B-I) dated 21.03.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Pragathi Gramin Bank, in dismissing the services of Sh. TSA Swamy, workman is proper and justified? If not, to what relief and other benefits is the workman entitled to?”

1st Party is the former employee of Erstwhile Pragathi Gramin Bank presently Karnataka Gramin Bank who is dismissed from service as a measure of punishment by 2nd Party Management vide order dated 22.09.2011. The punishment was imposed on certain charges came to be proved against the workman in the Domestic Enquiry held by the 2nd Party. He was appointed on 31.01.1984 as a Clerk cum Cashier and has worked in various branches of the erstwhile Chitradurga Grameena Bank which was subsequently merged with Pragathi Gramin Bank.

2. In his claim petition, the 1st Party claims that, he was issued notice dated 16.12.2009 calling for his explanation to the allegations contained in the Preliminary Investigation Report: he replied to the notice denying the allegations and requested to furnish better particulars. Without complying to his request 2nd Party issued a Charge Sheet on 28.01.2010. 2nd Party issued modified Charge Sheet on 21.07.2010: he replied to the charge sheet denying the allegations: the Domestic Enquiry conducted against him is in gross violation of principles of natural justice: as per the Charge Sheet allegation 1st Party colluded with the Branch Manager, since the allegations are joint and common, common enquiry should have been held against himself and Branch Manager: he has been singled out and victimized. The Branch Manager who faced similar allegation is still working in the Branch: his dismissal is illegal: he had demanded number of documents for his defence: same is neither denied nor acceded to by the Disciplinary Authority: without considering his request the entire enquiry is completed. In his absence Enquiry continued, even before he submitted his written brief the finding of Inquiry Officer was recorded: though the witnesses had deposed contrary to the charge, same was not considered. The punishment imposed is disproportionate, arbitrary and illegal. He is not gainfully employed anywhere.

3. The 2nd Party contested the claim, denied the claim statement averments regarding the procedure of enquiry, legality of the punishment order etc., and sought to justify the action taken against the 1st Party workman.

4. On the rival pleadings of the Parties a Preliminary Issue touching the validity of the Domestic Enquiry was framed.

The 2nd Party submitted their documents and same were marked with the consent of the 1st Party. It was submitted for the 1st Party that after receipt of the Charge Sheet 1st Party participated in the enquiry along with his defence representative and cross examined all the three management witnesses: on that the Preliminary Issue was answered affirmatively in favour of 2nd Party Management endorsing the validity of Domestic Enquiry.

5. 1st Party workman adduced further evidence about his unemployment. He produced judgment passed by Criminal Court on 26.05.2020 whereby he was acquitted of the offences punishable under Sec 420, 409 and 465 r/w 34 of IPC (on identical charges as that of disciplinary proceedings). In the criminal case the then Branch Manager was a co-accused with him.

6. The epitomise the allegation in the Charge Sheet, while working at Chikka Yemmiganoor Branch of the 2nd Party as Clerk cum Cashier between 04.06.2004 to 18.07.2009,

Firstly, on maturity of a fixed deposit No. 08/04 for Rs. 2,602/- which was held for collateral security for a loan bearing No. PSE3/02 (there was no lien / discharge): without crediting the amount to the loan, he credited the amount to the loan holder / Smt. Prema Shilpachar's SB Account No. 1465 on 05.03.2005: he withdrew Rs. 2,100/- from the account through a forged withdrawal slip which was prepared and posted by him in the system: to suppress the transaction from the knowledge of the Account holder he did not enter the transaction in the Passbook, though the later transactions in the account are noted in the Passbook. He entered the balance in the Passbook on 23.06.2005 as Rs. 961/- by noting it as Corrected Balance.

Secondly, on 16.09.2002 sum of Rs. 11,755.20 being the Crop Insurance settled amount was credited to SB A/c bearing No. 2492 of Sh. Mahadevappa but information of credit was not informed to the Customer. On 19.07.2005 the Account Holder had availed PKCC 34/05 of Rs. 45,000/-: out of the loan proceeds of Rs. 45,000/- the customer was paid Rs. 34,000/- and a KDR receipt for Rs. 11,000/- was issued to the Customer

but without accounting in the Books of the Bank Rs. 11,000/- was transferred from the Account of the Customer to KDR, he transferred the SB Debit and KDR Credit slip into the System, as he was the Cashier on the day and also had performed the function of Clerk at the counter. To hush up the fraudulent transactions, new Passbook was issued to the customer though it was without any specific official reason. The old Passbook obtained from the Customer was destroyed. In connivance with the Manager / Sh. Guheshwar he defrauded the customer of Rs. 11,000/-, falsified the official records and destructed the evidence.

Thirdly, Rs. 11,755.20 being the Crop Insurance settled amount was credited to the Account of Sh. Rangappa SB 227 on 16.09.2004 but the information was not provided to the customer. On 22.11.2004 Sh. Rangappa remitted Rs. 4,000/- in cash with a request to invest the same in KDR: though he gave KDR receipt signed by Sh. Guheshwar to the Customer did not account in the books of Bank and misutilised the same. He obtained the signature of the Customer fraudulently on Blank withdrawal slip and transfer debit slip. Sh. Guheshwar, Manager filled in the Blank debit slip for Rs. 4,000/- and got transferred Rs. 4,000/- to KDR instead of accounting the cash remitted by the Customer. On 22.11.2004 previously obtained withdrawal slip was filled up for Rs. 7,750/- and the amount was fraudulently withdrawn from the SB Account: on 31.07.2006, the Customer was asked to close SB 227 without any specific official reason and signature of the customer was obtained on the request letter for closure of the SB: accordingly SB 227 was closed on 31.07.2006 and a New SB 6133 was opened. The current Passbook was collected from the customer and is destroyed. Thus, amount of Rs. 11,750/- being the Crop Insurance claim settled amount is misappropriated by CSE and Sh. Guheshwar, Manager with mutual connivance.

Fourthly, in connivance with Sh. Guheshwar / Manager CSE has defrauded another customer K. B. Ramesh SB 1306 of Rs. 8,900/- out of Rs. 8,933/- / Crop Insurance Settled amount.

Fifthly, he has misappropriated Rs. 7,053.10 with the accrued interest of Rs. 446.90 which was the Insurance Settled amount of the Account Holder T Rajappa SB 2238.

7. During the enquiry the 1st Party availed the assistance of a co-employee as Defence Representative.

8. The first witness was Sh. K B Ramesh / MW-1, the Account Holder of SB 1306 pertaining to Charge No. 4. He deposed that he has not received Crop Insurance settled amount of Rs. 8,933.90 which was settled during 2004: when he came to know through other customers about the Crop Insurance Settlement he enquired with the Bank officials but they did not reply. This fact was not displayed on the notice board, he believed that there was no Insurance Settlement. On coming to know of the Insurance Settlement he lodged a complaint. The withdrawal slip is signed by him but he has not received the amount nor is aware of the transaction. He doubts that the withdrawal slip is obtained from him without his knowledge in the bank as the customer obliged to the officers to put signature accordingly to their instructions in normal course.

During the cross examination it was elicited that no injustice or fraud is caused to him by the CSE. But during re-examination he admitted that he has given the complaint to the Investigating Officer.

MW-2 / Smt. Prema Shilpachar SB Account Holder bearing No. 1465 (pertaining to Charge No.1) was the next witness. She deposed that in the year 2004 she deposited an amount of Rs. 2,602/- under Fixed Deposit, but this amount is not received by her so far. During her cross examination it was elicited that she has not lodged complaint about the Crop Insurance against the CSE and further states that no injustice is caused to her by the CSE. However, during her re-examination she stated that she lodged a complaint as per ME-4 on coming to know from the investigating Officer about settlement of Crop Insurance which is not received by her, she came to know about the missing entries in her Pass Book through the Investigating Officer.

The third witness was Sh. M Guruprasad Rao / Investigating Officer, he deposed to the effect that fraud in the branch came to light on 19.02.2009, during the course of field visit by Internal Inspectors: out of 71 Crop Insurance Settlement, 28 cases were thoroughly investigated based on written complaints of the Customers: the modus operandi was - fraudulent withdrawal of Crop Insurance settled amount - customer was unaware of credit of the crop insurance amount, since the same was not entered in the Passbook: in case of deposits fraudulently drawn and misappropriated - the matured proceeds were withdrawn through pre-obtained withdrawal slips - amount drawn in excess of the remittance made to the KCC account where the principal amount is adjusted by the Bank Staff. The Investigation Report along with the material documents were marked as exhibits. The documents pertaining to Charge No. 2, 3 and 5 were also marked through him. The statements given by the Account Holders namely Sh. Mahadevappa, Sh. Rangappa and Sh. T Rajappa recorded by the witness corroborating the Charge Sheet allegations were also got marked through him. By that time the customer Sh. Rangappa had already expired. During his cross examination he stated that, though there was no written complaint from the parties on the basis of the special report submitted by Internal Inspectors that during his spot Inspection / field visit many customers made allegations against CSE and Sh. Guheshwara, the Investigation was entrusted to him. He further stated that the Internal Inspector Narasa Reddy submitted his

Report regarding Crop Insurance Amount settled in the year 2004: during his Investigation, the Branch did not make available the documents pertaining to Display of the details of Crop Insurance Settled Accounts – in 71 cases Crop Insurance was settled in the year 2004. He admits that the statement of the CSE is not recorded during his investigation.

9. On conclusion of the evidence of the Management, the CSE did not opt to adduce rebuttal evidence neither did he submit his written brief. The Enquiry Officer appreciating the evidence of the Management witness coupled with the documentary proof as held that the charge is proved.

10. It is a fact from records that, the 1st Party had not submitted his reply to the Charge Sheet nor did he adduce rebuttal evidence within the time stipulated by the Enquiry Officer. In the given circumstances his defence has to be inferred from the tone of his cross examination to the Management witnesses. During the cross examination of MW-1 and MW-2, defence had successfully elicited that no injustice was done to them. Neither of them had any specific allegation against the 1st Party workman.

11. In the body of his Report, the Enquiry Officer in respect of each charge has considered the relevant Investigation Report, documents pertaining to the specific charge and the evidence of the witnesses. Out of the five instances of fraudulent withdrawals, one of the customers Sh. Rangappa was no more and two customers namely Sh. Mahadevappa and Sh. T Rajappa were not examined.

12. It was the case of the prosecution that in the regular Inspection of the Branch conducted by Sh. Narasa Reddy/Inspecting Officer, investigation was initiated which ended in the Investigation Report by MW-3. During the course of investigation the Investigating Officer had received the complaints from all the five customers: MW-2 Smt. Prema Shilpachar had alleged that the Manager had obtained her signature on blank cheque: Sh. K B Rameshappa and Sh. T Rajappa did not point out the 1st Party workman specifically for not crediting the Crop Insurance Settlement to their Accounts. Probably that made the Enquiry Officer to observe that “....they would not know what goes after they remit money or before they get money, if a prudent customer is not expected to be well versed in the nuances of Banking: what is done, who done it, how do they do it, what happens then etc. Naturally they look upon to the Manager for all their needs and they complain against the Manager”.

However, the Enquiry Officer has not imported any extraneous material to record his finding. That prompts me to endorse the Enquiry Report as not perverse or arbitrary.

13. Before the Disciplinary Authority the 1st Party in response to the Enquiry Report submitted a 35 page brief. The Disciplinary Authority proposed the punishment of dismissal with an opportunity of personal hearing. The Disciplinary Authority dealt with his defence in a chronological order. His grievance to the Enquiry Report was - not examining three of the customers, so that he could have cross examined them. MW-1 and MW-2 did not dispute their signatures on the withdrawal slips - neither the old nor the new Passbook were produced - there was no proof about destroying the old Passbook - the slips referred to in the Charge No. 3 was genuine and the counter foils were not produced - customers named above admitted that Crop Insurance amount is withdrawn by them - the complaints were prepared at the instance of the Investigating Officer - the Presenting Officer chorused with the Enquiry Officer and the Investigating Officer - Sh. Guheshwar was not summoned to the enquiry, except the evidence of Investigating Officer there was no other evidence to the Enquiry Officer to record the finding of guilt - the Investigating Officer's contention that without mentioning each transaction the CSE had put current balance in the Passbook which does not amount to fraud - the complainants had not blamed the CSE, it's merely after 5 years the complaints were made.

The Disciplinary Authority addressed the above defence points convincingly and proceeded to impose the punishment of dismissal. The Appellate Authority gave its audience in a personal hearing held on 22.09.2011. The Appellate Authority also addressed the grounds of appeal but did not find any merit.

14. The 1st Party before the Disciplinary Authority among other things had contended that Sh. J. S. Guheshwar has paid the amount involved in fraud, and hence it is evident that he alone has swindled the money: the case against Sh. J. S. Guheshwar has been viewed very leniently and this case merits a similar treatment without discrimination. The Disciplinary Authority brushed aside his contention on the ground that, punishment imposed on Sh. J. S. Guheshwar was on the facts and circumstances of the case against him. In my opinion, by introducing the above contention for the first time before the Disciplinary Authority, the 1st Party indirectly admits that there were fraudulent transactions during his tenure in the Branch. Since Sh. J. S. Guheshwar is of managerial cadre rightly the Disciplinary Authority has dealt their cases separately.

15. During his argument the 1st Party had produced the certified copy of the judgment from the Criminal Court wherein he was prosecuted on the very same allegation for the offences punishable under Sec 420, 409 and 465 r/w 34 of IPC. He was arrayed as second accused along with first accused Sh. J S Guheshwara. The

Investigating Officer of the present case, Sh. M Guruprasad Rao was examined as PW-30 and 19 victims of the incident were examined as PW-8 to PW-27: PW-8 to 27 turned hostile to the prosecution case, the evidence of PW-31 was not trusted by the learned Court and both the accused were found not guilty and acquitted of the charges. However, acquittal from the Criminal Court need not have any bearing on the Departmental Enquiry. The parameter for adjudication in a criminal case is “*proved beyond all reasonable doubt*” whereas the Disciplinary Action is founded on the parameter of “*preponderance of probabilities*”.

In the judgment of Karnataka Power Trans. Corp. Ltd. ... vs Sri C Nagaraju on 16 September, 2019 Civil Appeal No. 7279 of 2019 (Arising out of SLP (C) No. 25909 of 2013) it was held that, “.... *the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal [13] Court, is justified and needed no interference by the High Court*”.

The recent judgment of the Apex Court reported in (2018 1 SCC 285) Management of Bharat Heavy Electricals Ltd vs. M Mani, rules contrarily. In the said case, the Departmental Enquiry was held in accordance with law independently of criminal case and the charge against the delinquent employees was proved. The Apex Court in the given circumstances stated “*this Court has consistently held that in a case where the Enquiry has been held independently of Criminal proceedings, Acquittal in criminal court is of no avail....*”

16. The 2nd Party Banking Institution being a creation of the statute under RRB Act, 1976 thrives on honest and indefatigable efforts, good management and co-operation of the employees. The Bank is handling public money, high degree of honesty, integrity, devotion to duty, promptness in discharging the duties and high sense of discipline is expected from the employees. Any deviation from the above qualities renders an employee unacceptable to the Institution.

17. Though I endorse the Enquiry Report, while coming to the question of punishment I have difficulty to say the same. Having allowed Sh. J S Guheshwar to continue in service who is a Party to the alleged misconduct with the 1st Party workman the action of the Disciplinary Authority smacks victimization and discrimination. The financial implication from the alleged misconduct having been mitigated by Sh. J. S. Guheshwar, the 2nd Party ought not have imposed the capital punishment of dismissal from service against the 1st Party workman alone.

18. In that view of the matter, I am inclined to hold that, the action of the Management is not proper and justified and calls for interference in exercise of jurisdiction vested with this Tribunal under Sec 11-A of ‘the Act’.

19. In the usual course whenever the punishment of dismissal is held illegal, the eventuality would be reinstatement with or without back wages, but in the case on hand, I have observed from the record that before the Disciplinary Authority during the personal hearing he had stated that “*I am not financial bad, I have been doing philanthropic activities by educating few children. I have a good social status....*” In his claim statement he had stated that after his dismissal he is dependent on the salary of his wife. That persuades me to hold that reinstatement is not a dire necessity for him, that apart he is already aged 58 years. In the given circumstances in my considered opinion if the order of dismissal modified to order of Termination with all terminal benefits towards 17 years of service rendered by him to the 2nd Party, would suffice to meet the ends of justice.

AWARD

The Reference is accepted.

The action of the Management of erstwhile Pragathi Gramin Bank Presently Karnataka Gramin Bank in dismissing the service of Sh. T S A Swamy 1st Party workman is not proper and not justified.

The dismissal order is modified to termination order with terminal benefits towards the services rendered by him to the 2nd Party.

2nd Party is directed to release the monetary benefit within 40 days from the date of publication of the Award lest it shall carry future interest at the rate of 6% p.a.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 22nd January, 2021)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 2 फरवरी, 2021

का.आ. 102.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटका ग्रामीण 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 14/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.02.2021 प्राप्त हुआ था।

[सं. एल-12012/03/2017-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 2nd February, 2021

S.O. 102.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court-Bangalore as shown in the Annexure, in the industrial dispute between the management of Karnatka Gramin Bank and their workmen, received by the Central Government on 02.02.2021.

[No. L-12012/03/2017-IR(B-1)]

D. GUHA, Under Secy.

ANNAXURE

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

DATED : 22ND JANUARY, 2021

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 14/2017

I Party

Sh. J. N. Murthy,
S/o. K. Narayanappa,
Jarabandahally village,
Manchenahally (Hobli),
Gowribidanure Taluk,
Chikkabalapur - 562 101.

II Party

The Chairman,
Karnataka Gramin bank,
P. B. No. 55, No. 32,
Sangakal Road,
Gandhinagar,
Bellary - 583 103.

Appearance

Advocate for I Party : Mr. B.M. Madhava

Advocate for II Party : Mr. B. C. Prabhakar

AWARD

The Central Government vide Order No. L-12012/03/2017-IR(B-I) dated 08.05.2017 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Pragathi Krishna Gramin Bank, Bellary, in dismissing the services of Sh. J. N. Murthy, workman, w.e.f. 04.03.2011 is legal and justified. If not, what relief the workman is entitled to?”

The 1st Party is the former employee of the erstwhile Pragathi Krishna Grameena Bank, presently Karnataka Grameen Bank, who is dismissed from service, on certain charges of misconduct came to be proved against him in a Department Enquiry. In his claim petition, he challenges his dismissal order on the ground that

the internal Domestic Enquiry and the Police Enquiry on the same allegation started simultaneously against him, violating the guidelines of the Higher Court – the Enquiry was held without providing him fair opportunity – Enquiry Report is biased. Though, he appeared before the Enquiry Officer at a later stage, fair opportunity to cross examine the Management Witness was denied to him. The Enquiry Report has not considered his defence. The punishment order based on such Enquiry Reports is liable to set aside.

2. The 2nd Party contested the claim, denied the allegations against the procedure of Enquiry, Enquiry Report and sought to justify the action taken against the workman.

3. On the basis of the pleadings, a preliminary issue was raised pertaining to the procedure of Enquiry. The Enquiry Records including the D.E. records produced by the 2nd Party were marked as Ex M1 to M10. On hearing both the parties, the issue was answered in the affirmative upholding the fairness and correctness of the Domestic Enquiry. Both parties have submitted written arguments.

4. The 1st Party was charge sheeted in respect of 8 misconducts. The misconduct with the details of alleged shady transactions was narrated in the Charge sheet.

To epitomise the allegation against him,

While working as the Clerk-cum-Cashier at Yellodu Branch between 19.07.2003 till his suspension on 21.04.2008,

- i) He misappropriated an amount of Rs. 30,000/- he fraudulently withdrew from the account of the customer Sh. Sendi Narayanappa, SB A/c. No 773 and withheld Rs. 63,000/- cash received from the account holder from accounting in the books of the Bank and destroyed the credit challans through which he had remitted the amount, he deliberately made fictitious entries in the passbook, thus, tampered the official records of the Bank.
- ii) He received Rs. 2,149/- on 04.09.2006 and Rs. 5,970/- on 27.10.2006 from the customer of the Branch Ishwarya Mahila SHG, Bullasandra, SB 3319. He issued the counterfoils and made entries in their passbook and initialled the entries he had posted in the passbook. He failed to account the same in the books of the Bank. Thereafter, he destroyed the foils of the credit challans through which the SHG remitted the amount for crediting into their SB account.
- iii) The customer Sh. Narayana Swamy, SB A/c No. 167, remitted an amount of Rs. 3,000/- on 14.01.2008 and Rs. 9,500/- on 01.02.2008. The remittances were handed over to CSE while he was at the cash counter. He issued counterfoils and made entries in the passbook. On 20.03.2008, the account holder remitted Rs. 1000/- at the cash counter. Though the CSE received the same and made entry in the passbook, did not give him counterfoil. The entries he had made in the passbook do not match with the entries found in the ledger sheet of the account. Thus, he has misappropriated Rs. 13,500/- received from the customer, destroyed the credit challans, made entry in the passbook of the customer to make him believe that amount is duly credited to his account.
- iv) Indira Priyadarshini Stree Shakthi SHG, Bandameeda Tanda remitted cash of Rs. 2,210/- on 17.08.2007 to their SB A/c 2897. CSE returned the passbook duly making a credit entry in the passbook and authenticated the said entry. He also issued the counterfoil. He did not account the money so received in the books of the Bank and misappropriated the money and destroyed the foil of the challan.
- v) The account holder Sh. B.A. Nagaraj Reddy remitted Rs. 24,000/- to his SB A/c No. 296 on 17.12.2007. CSE received the cash, entered the same in the passbook but did not account the money so received in the books of the Bank and made credit entries in the passbook of the customer with ulterior motive. Out of Rs. 24,000/- he has remitted Rs. 2,500/- + Rs. 1,200/- + Rs. 5,500/- + Rs. 1000/- + Rs. 1,200/- on even dates. The pay in challans for the credits are made in CSE's hand writing and is remitted to his SB A/c no. 296. He has misappropriated a net sum of Rs. 13,800/- out of the amount of Rs. 24,000/-.
- vi) The account holder Sh. N laxmipathi Reddy remitted Rs. 55,000/- on 06.07.2007 and Rs. 40,000/- on 31.12.2007 for credit into his SB A/c no. 2619. The CSE received the amount and gave counterfoils and made entries in the passbook. The customer approached CSE on 21.05.2007 for withdrawal of Rs. 13,000/-. However, CSE debited Rs. 20,000/- to his account using a forged withdrawal slip and paid Rs. 13,000/- only to the customer and withheld balance of Rs. 7,000/- and falsely entered the debit entry in his passbook as Rs. 13,000/-. Further, CSE transferred sum of Rs. 8,000/- to his SB A/c No. 4043, which does not belong to the customer, unauthorizedly on 05.06.2007, forging the signature of the customer on the debit slip. On 23.08.2007, CSE unauthorizedly credited a sum of

Rs. 5,000/- to make up for the amount of loose leaf (Rs. 10,000/-) that customer had presented for payment. CSE has shown inflated balance in the passbook of the customer to mislead him. He made two personal payments to the customer – Rs. 60,000/- on 09.02.2008 and Rs. 20,000/- on 26.02.2008 and made entries in the passbook as though they are the payments made from his SB account, thus, falsified the official records of the Bank.

- vii) On 14.02.2008, Sh. Yama Reddy, SB A/c No. 818, remitted Rs. 10,000/- at cash counter: CSE issued a counterfoil to him and entered the impugned transaction in the passbook. But, CSE has not accounted the above amount in the books of the Bank and misappropriated the amount, destroyed the main foil of the challan and made fictitious entries in the passbook.
- viii) The Kalki Bhagavana Geetha Stree Shakthi SHG, Kambalpalli, SB A/c no. 3471 remitted Rs. 1,520/- on 04.09.2006, Rs. 3,205/- on 07.05.2007, Rs. 3,820/- on 14.06.2007 and Rs. 4,450/- on 25.03.2008. CSE received the cash, issued counterfoil to them for the amount and made entries in the passbook, but did not account the amount in the books of the Bank and intentionally destroyed the credit challan. Though, they did not remit any amount on 18.01.2008, he made an unauthorised credit of Rs. 8,545/- to the customer's account to make up the balance in the ledger so that cheque they had presented that day could be passed. He has misappropriated a sum of Rs. 12,995/- of the customer and out of the said amount, credited Rs. 8,545/- to the account and permanently misappropriated Rs. 4450/-.
- ix) The account holder of SB 1681, CN Adinarayanappa remitted Rs. 10,000/- on 13.12.2007 at cash counter and CSE issued counterfoil to him, entered the transaction in the passbook but did not account the amount in the books of the Bank and misappropriated the amount. He has destroyed the main foil of the challan and made fictitious entries in his passbook.
- x) The account holder of SB 2903, Jyothi Stree Shakthi SHG, Yellodu, remitted Rs. 10,300/- on 13.03.2008 and Rs. 3,180/- on 24.03.2008 at the cash counter, CSE issued counterfoils to them and entered the impugned transactions in the passbook, but did not account the amounts in the books of the Bank and misappropriated the amount. He has destroyed the main foils of the challans but made fictitious entries in the passbook.

His above acts are in contravention within the meaning of Regulation No. 17 and 19 of Pragrathi Gramin Bank (Officer and Employees) Service Regulation 2005, punishable under Regulation No. 38(II) (b) of the said Service Regulation.

5. During the Enquiry, prosecution examined 15 witnesses and produced documents M Ex-1 to M Ex-120. The witnesses were cross-examined by the defence. Neither any rebuttal evidence was let in nor any defence document was marked. Both parties submitted their written pleas.

The Enquiry Officer has given his elaborated finding in his own handwriting. For each charge, he has given his finding with a separate table detailing the supporting oral and documentary evidences adduced, dates of enquiry. However, all the charges were held proved.

The 1st Party's response was called for to the Enquiry Report. The CSE gave his brief response that Enquiry Officer was totally biased and requested to consider the contentions raised in the defence brief submitted by him before the Enquiry Officer.

6. The Disciplinary Authority vide confidential letter dated 29.01.2011 on analysis of the relevant records, proceedings of Enquiry, findings of the Enquiry Officer and submission of the 1st Party regarding findings of Enquiry, concurred with the views of the Enquiry Officer and held that he is guilty of charges and proposed the punishment of 'Dismissal' in terms of Regulation No. 39 (2) (b) (vi) of Pragrathi Gramin Bank (Officers and Employees) Service Regulations, 2010: opportunity of personal hearing was also granted by scheduling the hearing date but the 1st Party pleaded that he is in his rest period on the advice of his doctor. The 2nd Party scheduled another hearing date for the personal hearing, same was served on him but he did not avail the said opportunity.

The Disciplinary Authority concluded that he is not desirous of availing opportunity of personal hearing and making submissions on proposed punishment and confirmed the punishment of dismissal already proposed.

7. In the Written argument, the 1st Party has taken exception on the procedure of the Enquiry. He alleges that the Enquiry Officer was biased for not examining the witnesses afresh in his presence.

It is noticed from Records that 1st Party since did not attend the Enquiry, the Enquiry Officer had recorded the statements of the 15 Management Witnesses ex parte.

After the appearance of CSE, he cross-examined all the prosecution witnesses with the assistance of his defence representatives.

8. Before this Tribunal during Enquiry on preliminary issue in respect of fairness of Domestic Enquiry that was held against him, the 1st Party consented to mark the D.E. records and not let any evidence venting out his grievance in respect of procedure of the Enquiry. On taking note of the fact that, he had availed all opportunity to contest the charge, had cross examined all the Management Witnesses and had submitted his written plea, the preliminary issue was held in the affirmative, holding that 2nd Party has conducted the Domestic Enquiry in a fair and proper manner. In that view of the matter, at this stage, the 1st Party cannot reiterate his allegations regarding the procedure of Enquiry.

9. During the Enquiry, the Management examined 2 witnesses, each on behalf of Self Help Groups: those witnesses were the office bearers who were the joint custodians of the accounts of their respective Association in the Bank. Interestingly, the Enquiry Officer recorded their joint depositions. Recording the joint statements though is unknown to the law, we shall be reminded that it is the Domestic Enquiry where strict rule of procedure contemplated by Civil Procedure Code, 1908 or Evidence Act, is not expected to be followed verbatim.

Another fold of 1st Party's argument is, original documents were not delivered to him on the ground that they were in the police custody.

In this regard, he has to be reminded that he was entitled for copy of the original documents, not the original documents itself, the Photostat copies of the documents were marked prior to his appearance before the Enquiry Officer. But during the cross examination of management witnesses, no where it was suggested that the management exhibits are concocted documents. He had every opportunity to produce rebuttal evidence questioning the veracity of the Management documents, which he did not avail. He is also pointing on the Hand-writing expert's report for not examining him during the enquiry. The witnesses / aggrieved customers have appeared before the Enquiry Officer and had categorically denied the signatures, which were forged. The Manager of the Branch / MW-14 had identified the handwriting of the CSE. Handwriting Expert's Report was one of the circumstances which contributed for Investigating Officer's Report. The Enquiry Officer's Report is founded on independent evidence adduced by witnesses before him.

10. Further, the defence argument in respect of the findings of charge no. 1 is, there was no evidence to prove that the credit slip challans were destroyed by CSE: the original passbook were not produced during the Enquiry: in respect of the transaction between the period June 2006 to June 2007, the complaint was given only during September 2009, only at the request of Branch Manager. The cash Receipt and Payment Register (shroff) of the transaction date was not produced to prove the allegation.

But, when MW-1 was subjected for cross-examination, there was no question denying the charge allegations, his cross examination evidence further asserted that while withdrawing the cash, CSE used to fill up the form and also passbook for him. He asserts his complaint is true and signature borne on it is his own. He suspects CSE for the difference in the entries since he was the cashier. It is noticed from proceedings of Domestic Enquiry that during the proceedings of 10.03.2010 on CSE's request, he was furnished the cash receipt scrolls of 20.03.2008, 06.07.2007, 11.03.2008 and 21.05.2007. Nothing prevented him to confront the relevant cash scrolls to the Investigating Officer or the Bank Manager during their cross examination to contradict the charge allegations. Throughout, the allegations against him was, he has destroyed credit challans since he had not posted the credit entries in the Book of Accounts. Then where is the question of production of credit scrolls?

His grievance in respect to the finding on Charge no. 2 is, the witnesses had no authorisation to remit the cash, the counterfoil was not purposely produced, the entries in the passbook and the Bank account not tallying is a common error, the credit receipt slips and the cash receipt register was not produced.

The witnesses are MW-8 / one Smt. Y. Laxmi Devamma and Smt. Varalaxmi. During the cross-examination also, there was no suggestion disputing the charge allegations. It appears the defence was convinced by the answers of the witnesses that they are in receipt of the amounts alleged to have been misappropriated.

As regards Charge no. 3 is concerned, the allegation is, while the ledger pass sheet shows the balance of Rs. 34,362/-, as per the passbook, it is Rs. 48,830/-. Thus, he misappropriated Rs. 13,500/-. As per the ledger pass sheet, Rs. 6500/- is withdrawn by the party on 21.02.2008 and Rs. 1000/- on 20.03.2008, which is not entered in the passbook. But, the customer has not commented in this regard.

If that is so, still he is responsible for the difference in the entries, which is posted by him in the ledger sheet and entered in the passbook. Even after withdrawing Rs. 6,500/- by the customer, still he was to answer

about Balance Rs. 4,000/-. During the cross examination of Narayana Swamy / MW-4, there was no specific question to him about the transactions posted in the ledger sheet and entered in the passbook.

In respect of Charge No. 4, the pith of the allegation is recording joint statement and delay in filing the application and not producing the cash receipt slip.

In the preceding Para's, the allegations of non-production of cash receipts are already addressed.

The procedure of Enquiry having already held fair and proper, reasons for delay in lodging the complaint ought to have been extracted during the cross examination of the witness.

Regarding Charge No. 5, the grievance on the Enquiry finding is, recording of statement by the Investigating Officer in a question and answer form: there is variance between the statements given by him on 22.04.2008 and 23.04.2008.

It is noticed from the evidence before the Enquiry Officer, and above fact was brought to the notice of MW-7, he stated that he has clarified the matter in his complaint. Though, now the 1st Party contends that it was MW-7 himself who had remitted the amounts, no such question was put to MW-7 during the cross examination.

Regarding Charge No. 6, the allegations is, the statement given by the customer Sh. N Lakshmipathy Reddy / MW-5 before the Investigating Officer is not in his handwriting and it is in a printed format in question and answer form. Credit receipt slips given by the Cashier to the party are not produced: the handwriting in his Passbook is not proved to be that of CSE. It was for the Manager to verify the cash paid cheques everyday at the time of closing the cash and to tally the cash.

In this regard, one has to be reminded that the investigation material is not a statement taken on oath, in this case since the customer Sh. Lakshmipathy Reddy is examined as witness, no objection can be entertained to the manner in which the probe was conducted. During the cross examination, MW-5 stated that he had given complaint on an appropriation that the difference was Rs. 40,000/-, however, subsequently the Manager and officials on verification informed him that the difference is Rs. 25,000/-: he had clearly stated that during his Bank visit, he used to hand over the cash to the CSE and also further stated during re-examination that the challan and withdrawal slip used to be filled up by the CSE. He pointed towards CSE for the discrepancy in his SB Account. Surprisingly, there was no cross examination to the witness.

Regarding Charge no. 7, 8, 9 and 10, very same defence as regarding the earlier charges is taken.

11. The Enquiry Officer has recorded his general observation on the deposition of the Investigating Officer /MW-15 that, on receiving complaint from S Venkatachalapathy, he had issued a letter to the CSE to give him one opportunity, though, the letter was served on the CSE, he did not co-operate and did not appear before the Enquiry Officer: in the said circumstances, the Investigating Officer considered the complaints of the 42 aggrieved customers, interacted with them, obtained their statements, related cheques, counterfoils and passbooks: he also collected the documents, which bear the original signature of the CSE: he collected the Bio-data cum Casual Leave Register Extract from the Bank for comparing the specimen signature and initials of CSE. The modus of mis-appropriation done by the CSE is deposed by MW-15: considering all the relevant material in his Investigation Report, he arrived at the gross mis-appropriation of Rs. 15,58,184/- from 42 cases. Out of this amount, Rs. 8,51,985/- is already made good by the CSE himself by debiting to Sundry Assets Account. MEx-86 is the documentary proof whereby CSE made good the misappropriated amount of Rs. 7,78,019/-. The customers have deposed that they have received the misappropriated amount from the Bank. The Enquiry Officer also had noticed that during the entire period of 28 months from January 2006 to April 2008, CSE had not availed any sick leave / PL nor attended any trainings and was not sent on any deputation either: he availed only 9 days CL during 28 months – he avoided taking leaves just to hide his misdeeds which may get exposed if he avails leaves and some other staff gets access to the transaction in the Branch.

The Enquiry Officer further referred to the evidence of MW-12 the Manager of the Branch wherein he had deposed that entries in the SB passbook do not tally with the actual entries in the Bank's Book.

The evidence of MW-14, the previous Manager of the Branch, is relied whereby he identified the handwriting of CSE in the SB Passbook, withdrawal slips, SB Paying slip, SB Debit and credit slips.

The Enquiry Officer has also taken note of the delay tactics adopted by the CSE, he appeared before the Enquiry after about 10 months for cross examination of the witnesses, though cross examination was done after a lapse of 10 months from the date of their examination in chief evidence, the witnesses had deposed correctly. The CSE had not disputed their depositions and the veracity of any of the material evidence marked as Management Exhibit. The act of misappropriation of funds was not at all disputed by the defence

representative and he did not take initiation either to bring any defence witness or any material evidence as defence exhibit. Thus, he concluded that all the charges are proved.

12. I am convinced that the Enquiry Officer has founded his finding on analysis of the documents supported by the evidences of customers / complainants, the Bank Manager and the I.O. / MW 15. 1st Party's handwriting is identified by MW-14 who had worked in the Branch between 2003 to 2005. The allegation is that of fraudulent withdrawals and misappropriations of customers' money. It has come in the evidence of Management Witnesses that the misappropriated amount is made good to the complainants by the Bank. The 2nd Party being a Rural Bank, handling the public money, thrives on the absolute honesty, integrity and reputation of its employees. 1st Party is found to have forged the customers' signature, withdrawing their amounts fraudulently, meddled with the Bank's public documents, thereby made himself unbecoming of Bank employee. Rightly the Enquiry Officer has held that all the charges are proved. For recording his finding, he has not borrowed any extraneous material. He has considered the defence version as mentioned in the written brief submitted by the 1st Party. I hold the enquiry report is accurate and does not suffer from perversity or arbitrary findings. Since, the misconduct proved is severe and grievous, the punishment of dismissal is not exorbitant and commensurates to the gravity of the offence alleged and proved during the Enquiry.

AWARD

The Reference is rejected.

(Dictated to LDC, transcribed by him, corrected and signed by me on 22nd January, 2021)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2021

का.आ. 103.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 03/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.02.2021 को प्राप्त हुआ था।

[सं. एल-12012/82/2010-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3rd February, 2021

S.O. 103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of India, and their workmen, received by the Central Government on 03.02.2021.

[No. L-12012/82/2010-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

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

DATED : 22ND JANUARY, 2021

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 03/2011

I Party

Smt. C Nagaveni,
W/o Sh. Shivana,
No. 34, "Shiva Krupa"
Anand Badavane,
Near Canara Bank Layout,
Kodigehalli,
Bangalore - 560 092.

Appearance

II Party

The Zonal Manager,
Bank of India,
Karnataka Zone,
No. 11, Kempe Gowda Road,
Bangalore - 560 009.

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. Pradeep S Sawkar

AWARD

The Central Government vide Order No. L-12012/82/2010-IR(B-II) dated 04.01.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Bank of India, Karnataka Zone, Bangalore Karnataka in dismissing Smt. C Nagaveni, Ex-Staff Clerk, CTO, Karnataka Zonal Office, Bank of India Bangalore Karnataka without notice w.e.f. 20.07.2009 is legal and justified? What relief Smt. C Nagaveni is entitled for?”

The present Industrial Dispute is raised by the former employee of the 2nd Party / Bank of India aggrieved by the punishment of Dismissal from service imposed on her vide order dated 20.07.2009, on certain allegations came to be proved against her in a Domestic Enquiry. Her claim is, she joined the service of the 2nd Party as Cash cum Accounts Clerk on 24.04.1986: while working at Zonal office of the 2nd Party she was kept under suspension and issued Memorandum dated 22.05.2008 with certain allegations. She submitted her reply, without considering her reply Domestic Enquiry was held and Enquiry Report was submitted: she submitted her remarks to the Enquiry Report. The 2nd Party held that findings recorded by the Enquiry Officer were factually incorrect and perverse: fresh enquiry was ordered. After holding Enquiry, Enquiry Officer submitted his Enquiry Report holding her guilty of all the charges levelled against her: she submitted her representation to the Enquiry Report, the Deputy Zonal Manager issued show cause notice dated 01.07.2009 proposing the punishment of Dismissal from Service without notice: she gave her explanation to the show cause notice dated 07.07.2009, which was followed by personal hearing on 10.07.2009. Without regard to the defective enquiry and without considering her unblemished record of service and also her submissions, the Disciplinary Authority imposed the punishment of Dismissal from Service vide order dated 20.07.2009. The appeal preferred by her was rejected by the Appellate Authority. The order of dismissal is arbitrary and illegal. The Enquiry Report is unjust, unreasonable and perverse. The Dismissal Order is passed without application of mind, the punishment of dismissal from service without notice is far disproportionate to the gravity of charges made against her: she has lost means of her livelihood in an arbitrary and capricious manner and has no other source of income to eke out a living.

2. The claim is contested by the 2nd Party. In the counter statement the allegations made by the 1st Party in her claim statement in respect of irregularity of procedure of enquiry, perversity of enquiry finding, illegality in imposing the punishment etc., are all denied and the action taken against her is sought to be justified.

3. On rival pleadings by the Parties, my learned predecessor framed Preliminary Issue, first one being fairness of the De-novo Domestic Enquiry held against the 1st Party workman and the second one questioning the legality of holding the De-novo enquiry.

After a full-fledged trial my learned predecessor answered the second issue in the negative and opined that, in view of his finding to the second Preliminary Issue, the first issue does not survive for consideration. It was ordered that the 2nd Party has to establish the charges by leading necessary evidence.

4. To establish the charges, 2nd Party examined one witness (MW-2), the present Senior Manager of the 2nd Party and produced documents Ex M-26 and Ex M-27, he also identified one document which was already marked during the enquiry on Preliminary Issue as Ex M-7.

The 1st Party workman gave rebuttal evidence and produced one document Ex W-1.

5. Both learned advocates have addressed their arguments and submitted written arguments that apart 2nd Party has filed additional written arguments.

6. The allegation against the 1st Party workman is,

she transferred the funds from the Savings Bank Accounts of the Customers to her Personal account by using plain set of Transfer vouchers (the transactions are detailed in charge No. 1 and 2).

She has transferred funds from the Customers' SB Account to her SB Account No. 7614 on the basis of cheques issued by the Account Holders (transactions are detailed in the charge sheet).

On 12 occasions she transferred the funds from the customers' accounts to her SB Account by means of cheques/withdrawal slips (transactions are detailed in the charge sheet).

7. MW-2 produced statement of account of the 1st Party maintained at the 2nd Party Bank evincing that she transferred the funds from customers' Account to her SB Account No. 7614 (Ex M-26): he has also produced 3 representations submitted by 1st Party dated 05.06.2008, 27.01.2009 and 28.05.2009 (Ex M-27).

Her representation dated 05.06.2008 is in response to the Memorandum issued calling for explanation, the tone of her explanation is, due to family necessities she was forced to borrow money from customers: the customers asked her to transfer funds from their account to her account and the transfer was done as per their knowledge and also branch officials were aware of it. In respect of the transactions of cheque returns issued by her in her SBA/C & O/D A/c, some of her friends had presented the cheque without her knowledge: she understands lapses on her part and seeks pardon in this regard: she undertakes that she will not commit such misconduct in future.

Her representation dated 27.01.2009 is in addition to the explanation submitted by her vide letter dated 05.06.2008. In this letter she has stated to the effect that, she had already taken permission from the Bank officers in respect of transfer of funds from her friends account to her account including some of her colleagues.

In her letter dated 28.05.2009 filed in response to the letter of the 2nd Party dated 22.05.2009 (subsequent to submission of Enquiry Report). She reiterated her earlier stand, sought to condone her lapses, and further stated that 'Authority letter' was given by some of the customers to debit their accounts and credit to her account which was properly authenticated and properly verified by the officials. She referred to a representation given by one of the customer Mr. Nagesh (in respect of charge No. 3-a) thereby bailing her out of charge No. 3.

During cross examination he fairly admits that he has not seen the registers pertaining to the alleged transactions at Charge No.3 and he does not know who gave the withdrawal slip / cheque in respect of the transaction cited at Charge No.4 and he has not seen the concerned instruments. However, he admits that the transaction at Charge No. 4 are taken place either by genuine withdrawal slips or genuine cheques given by the customers.

8. The 1st Party while denying the allegations levelled against her vide charge sheet dated 07.10.2008, in her affidavit evidence she has further stated that, amounts from the customer's account is transferred to her account with due authorisation by them and also by Competent Officers of the Bank: there was no complaint by any of the customers in this regard, there is no financial loss to the Bank. She produced Photostat copy of the representation given by the customer dated 29.04.2009 which is said to have been submitted at the Branch. It is a Photostat copy of a letter by one Sh. K Nagesh with SB Ac No. 5995 stating that the 1st Party workman requested for a loan of Rs. 20,000/- from him on 01.01.2008, he agreed to lend the amount, went to the Branch obtained the loose leaf from the officer, signed the same and has drawn the amount. At the request of the management on 02.07.2008 he is submitting this letter. Interestingly this letter does not bear the seal or signature of the Bank.

During the cross examination she admits that Sh. K Nagesh had given a letter dated 02.07.2008 marked as Ex M-7 during the enquiry on Preliminary Issue which was given by him during the De-novo Domestic Enquiry.

9. On a perusal of Ex M-7, it is a letter by Sh. K Nagesh dated 02.07.2008 (much earlier to Ex W-1 dated 27.04.2009). In this letter he alleges that on 01.01.2008 the 1st Party contacted him through phone and requested for loan of Rs. 20,000/- and he agreed for the same but by the time he reached the Bank she had withdrawn the amount by filling and signing a loose leaf, thereafter he has signed on the very same loose leaf. Subsequently she has returned the amount on 10.04.2008, in this regard he has given a letter to the Bank.

Markedly, the contents of Ex W-1 and Ex M-7 contradict each other.

10. If at all the original of Ex W-1 was produced at the Bank it should be bearing the acknowledgment seal of the Branch, for want of any such proof, Ex W-1 cannot be given evidentiary value. If the author of Ex W-1 was produced before this Court, there would have been some scope to endorse the transaction of 01.01.2008. Of course, there is no complaint against the 1st Party from any of the customers of the Bank. There is no financial implication on the Bank from the transactions alleged and admitted. Before this Court 2nd Party confronted Photostat copy of the transfer vouchers, cheques, credit vouchers which were allegedly used by her in respect of the transactions cited in the charge sheet but she refused to identify them. All the transactions are done with the due authorisation from the transferors and under the surveillance of the officers of the Bank.

What is highlighted during the cross examination of WW-1 is, one of the customer Sh. K. Nagesh SB A/c No. 5995 had given letter Ex M-7 to the Branch that 1st Party had withdrawn an amount of Rs. 20,000/- from his account on 01.01.2008 by filling up the withdrawal slip and also signed the same to withdraw Rs. 20,000/- which is subsequently ratified by signing the said instrument. It is an irregularity on the part of the

1st Party workman in withdrawing the amount from the account of a customer, if such irregular transactions by the officials of the Bank are endorsed without dealing with iron hand, it may lead to further repercussions in the administration. However, the stray act of irregular withdrawing of amount pertaining to one customer is not a grave misconduct liable for capital punishment of dismissal from service. The punishment imposed on the workman is shockingly disproportionate when compared to the gravity of the misconduct proved against her. Except the transaction in respect of Sh. K Nagesh / Charge No. 3, 2nd Party has not produced documentary proof that she has withdrawn the amount by using plain set of transfer vouchers on the basis of the cheques issued by the Account holders or by means of cheques and withdrawal slips from the customers. The transactions at Charge No. 4 pertain to withdrawal slips given by customers and third party transfers are made to her account contrary to the Bank laid down instructions. Having not produced the original instrument, this Tribunal is at a loss to hold that the admitted transactions go to prejudice the interest of the Bank amounting to misconduct within the meaning of Para 5(j) of the Bipartite Settlement dated 10.04.2002.

11. The 2nd Party has relied on several judgments of the Hon'ble Higher Courts, these judgments could be of assistance for them, if the employee was found guilty of misconduct, but on facts I have found that the 2nd Party failed to establish the charges against the 1st Party workman.

12. Now 1st Party has crossed the age of superannuation any relief that can be moulded in her favour in view of the above finding is by way of monetary compensation only. No evidence is placed by the 2nd Party to demonstrate that she was previously punished for any misconduct. By the impugned order she lost about 10 years of her valuable service. In the given circumstances granting 50% back wages with continuity of service and all eligible terminal benefits will do complete justice in the matter.

AWARD

The Reference is accepted.

The punishment of dismissal imposed on the 1st Party workman Smt. C Nagaveni by the 2nd Party dated 20.07.2009 without notice with immediate effect is not legal and not justified.

2nd Party is directed to treat the 1st Party workman Smt. C Nagaveni as on continuous duty till the date of her superannuation and pay her 50% of her Back wages from the date of her suspension till the date of her superannuation, with continuity of service.

The amount received by her towards subsistence allowance during her suspension period and also before this Court at the rate of Rs. 13,000/- per month since 01.02.2015 towards interim relief shall be adjusted while calculating the above monetary benefit.

The Award shall be implemented within 40 days from the date of publication of the Award otherwise it shall carry future simple interest at 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 22nd January, 2021)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2021

का.आ. 104.—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. 16/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.02.2021 को प्राप्त हुआ था।

[सं. एल-38011/4/2015-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3rd February, 2021

S.O. 104.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2016) 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 03.02.2021.

[No. L-38011/4/2015-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT :
BHUBANESWAR

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

INDUSTRIAL DISPUTE CASE NO. 16 OF 2016

Dated Bhubaneswar, the 23rd December, 2020

Between:

1. The Chairman
 Paradip Port Trust,
 Administrative Building,
 Management Committee (CFH Scheme)
 Jagatsinghpur.

2. The Chairman,
 Paradip Port Trust,
 Paradip, Jagatsinghpur.

3. The Secretary,
 Paradip Port Stevedores Association,
 Trade Centre (Ground Floor),
 Paradip Port,
 Jagatsinghpur-754142.

...First Party Managements

AND

1. The General Secretary,
 Paradip Port Workers Union,
 Badapadia, Paradip Port,
 Jagatsinghpur.

2. The Secretary,
 Utkal Port & Dock Workers' Union,
 H/17, Shramik Bhawan, 'V'
 Point Paradip Port, Paradip,
 Jagatsinghpur.

3. The General Secretary,
 Paradip Port & Dock Mazdoor Union,
 Old Post Office, Qr. No.C-1,
 Paradip Port, Jagatsinghpur.

... Second Party Workmen-Unions

Appearances:

... For management No. 1

Shri Ch.S. Prasad Rao,
 Dy. General Manager,
 Authorised Representative
 Sudhaka Mantry
 Working President

...For the management No. 2

...For and on behalf of the workman/Union

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No.L-38011/4/2015 (IR(B-II)) in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (here in after referred to as 'the Act') and the terms of reference reads as follows:

“Whether the demand of the Unions namely, PPWU, UPDWU & PPD MU for regularisation of existing 740 workmen working as Coal & Fertilizer Workmen (C & FH) of Management Committee (MC) under the management of Paradip Port Trust, after option was exercised by opting VRS by 320 workmen out of 1112 workmen, from the date of their joining is legal and/or justified? If, not what relief the workmen are entitled to?”

2. In nut shell the case of the second party workmen-Unions as culled out from their statement of claims and during adjudication is that the Paradip Port being one of the 11 major ports governed by the Major Port Trusts Act, 1963. There are two categories of workers in Paradip Port Trust to handle import and export of cargos. The operation of cargo handling from shore to vessel (ship) & vessel to shore in the course of landing or shipment and inter-port transportation is handled by workers known as Cargo Handling Workers (in short “CH worker”). The other operation of cargo handling on the point of receipt or despatch is carried out by the workers known as clearing, forwarding and handling workers (in short “CF & H Worker”). According to the second party unions keeping in view “Dock Work and Dock Worker” as defined in section 2(d) and section 2(e) of Dock Workers (Safety, Health and Welfare) Act, 1986 as well as Dock Workers as defined in section 2(b) of Dock Workers (Regulation of Employment) Act, 1948 both the workers as noted above are Dock Workers and they are to perform dock work i.e. work in or within the vicinity of a Port in connection with, or required for, or incidental to the loading, unloading, movement of storage of cargos into or from ship or other vessel, port, dock, storage place or loading place which also includes work in connection with preparation of ships or the vessels for receipt or discharge of cargo and leaving port. The only difference between these categories of workers is their place of working site. In the port site the CH workers are governed by Paradip Port Trust Cargo Handling Workers (Regulation of Employment) Scheme, 1979 (in short “the scheme 1979”) whereas service condition of CF & H workers are governed by Paradip Port Trust Clearing, Forwarding and Handling Workers (Regulation of Employment) Scheme, 1994 (in short “the scheme 1994”). It is the claim of the second party Unions that both categories of workers are performing their duties under the control of Paradip Port Trust. The CF & H Workers being engaged at shore i.e. in the working site other than cargo berths for loading/unloading of import and export of cargo thereby they are also engaged in dock work as defined in Dock Workers Act, 1986. Initially the CH workers were also unlisted and the Scheme of 1979 was enforced to decasualise such unlisted CH Workers. The CH Workers numbering 1235 under the Scheme of 1979 have been granted employee status of the Port by Govt. of India, Ministry of Shipping on 14.12.2004 from the date of their joining and the same was resolved in Paradip Port Trust Board on 25.01.2005, as a result of which services of such CH Workers under the Scheme of 1979 have been regularised.

It is the stand of the second party unions that prior to the decasualisation of CF & H Workers under the Scheme of 1994 their employment was regulated under a private pool which started operation from 5.5.1984 with 1479 workers. When there was a labour unrest amongst such CF & H Workers in regard to payment of wages, variable dearness allowance, ex-gratia in lieu of bonus, paid holidays, etc. and their decasualisation, an attempt was made to resolve the dispute by holding a joint meeting attended by labour Unions, Chairman of PPT and Chief Labour Commissioner (central) being presided by the then Chief Minister. When the said dispute could not be resolved the second party Union No.4 filed a writ in the Hon’ble High Court of Orissa seeking a direction to the Chairman, PPT to decasualise and fix service conditions of unlisted CF & H Workers. The writ was disposed of with a direction that a committee under the Chairmanship of the Chairman, PPT shall look into the question of settling the problems of datum to be fixed, ascertaining the optimum workforce and determining the number of unlisted workers to be brought to listed category etc. Thereafter, the Paradip Port Trust preferred a SLP in Hon’ble Supreme Court. Other second party Unions joined as interveners before Hon’ble Supreme Court and ultimately in its order dtd.15.3.1990 in Civil Appeal No.1422 of 1990 the Hon’ble Supreme Court constituted a high power committee (in short “HPC”) under Chairmanship of Justice H.R Khana (Retired Supreme Court Judge) and two members nominated by the Govt. of India, Ministry of Surface Transport. As per the said order of the Hon’ble Court the committee was to work out the way for decasualisation of CF & H Workers in the light of recommendation made in paras-13.2 to 13.8 of the report of Abraham Committee and in accordance to the Scheme of 1979. The committee was also directed to work out a scheme in the light of Scheme of 1979 to mitigate the unemployment of surplus CF& H workers. Accordingly, the committee was constituted by the Govt. of India, Ministry of Surface Transport. The HPC submitted its report before the Hon’ble Supreme Court recommending for working out a scheme in the light of scheme of 1979 which would be operated by a management committee consisting of three representatives of employers and three representatives of workers. The committee is to be headed by a whole time Chairman to be appointed by PPT who shall have right to vote. In addition to this the committee shall have a whole time Secretary. Both the Chairman and the Secretary shall be Officers of PPT and shall draw their pay and allowance from PPT. All decisions in regard to the administration of the proposed scheme shall be taken by the management committee with approval of the Chairman, PPT. The management committee shall frame a scheme in the light of Scheme of 1979 looking to the requirements of CH & F workers. The recommendations having been accepted by the Hon’ble Supreme Court in toto in the Civil Appeal direction was given to the PPT to implement the recommendations.

It is the case of the Unions that the recommendations of HPC was based on the recommendations made in paras-13.7 and 13.8 of Abraham Committee Report. In the said report it was recommended that the PPT in course of time would consider sympathetically and favourably the absorption of CF & H Workers under the

scheme of 1979. Keeping in view such recommendation in Abraham Committee Report as well as recommendations made in the report of HPC, the CF & H workers are entitled to all benefits that are being extended to the CH Workers. When the CF & H workers private pool started functioning on 5.5.1984 for unlisted workers, it was also decided that the workers under the said category would be entitled to wages at par with the National Wage Settlement as done for the category of Mazdoor and Supervisors of 1979 Scheme. Mere reading of the provisions of both the Schemes of 1979 and 1994 there are no remarkable differences in the schemes so far service conditions of the workers are concerned except the authority in charge of implementation of the scheme and place of work site. It is the stand of the second party unions that the Scheme of 1994 is formulated on final approval of the Chairman, PPT and the Management Committee is kept in charge of administrator of this scheme under direct control and supervision of the Chairman, PPT. It is clear from the report of HPC that purpose of the scheme was to protect the interest of the workers as well as the Port and the PPT is responsible for protecting the interest of the workers. The Chairman, PPT has been given supervisory role in the scheme considering the spirit of the report of HPC and direction was given by the Hon'ble Supreme Court to the Chairman, PPT for implementation of the recommendations. The CF & H workers have equal contribution like CH Workers for the growth and prosperity of PPT. When services of a set of workers i.e. CH Workers are regularised under PPT the right, of other set of workers i.e. CF & H Workers cannot be ignored. Any special treatment to one group of workers without extending same facility to other set of workers engaged in dock work continuously for a long period without regularisation would constitute unfair labour practice which is prohibited under the provisions of ID Act. Hence, a demand was raised by the 2nd Party Union in the year 2014 for extending service benefits to CF & H Workers as per CH Workers i.e. for regularisation of service of such workers under the PPT. In anticipation of labour unrest the management of PPT appealed to the RLC(C), Bhubaneswar to intervene in the matter. Consequently a conciliation meeting was convened by RLC wherein all the parties agreed that proposals would be given to the Board of Trustee and in turn the PPT would send the proposal to the Ministry of shipping for approval of the regularisation. The Ministry had responded the proposal and agreed that the PPT would allow funding of 49 Crores as a grant to the Management Committee for allowing VRS of 320 workers. It was also suggested for introduction of SSP(Special Severance Package) to other workers for a period of one year and allowed the PPT to grant 127 Crores towards SSP. In the process a large number of workers have already availed VRS/SSP in phased manner and staff/workers under the Management Committee has been reduced to 548 numbers. It is the claim of the second party unions that looking into the correspondences and proposals moved by PPT it can be safely inferred/concluded that the CF & H Workers are employees of PPT like CH workers under the Scheme of 1979. According to the second party Unions the legal right of an individual is acquired either under a contract or under a statute and as per an instrument having the force of law and in certain situations a right can also be acquired under the principle of promissory estoppels as well as under legitimate expectation. In the above backdrops such workers being covered under the term Dock Workers like CH Workers are under employment of the PPT and they have a right of being absorbed as employees of PPT. The conciliation proceeding mentioned earlier having been failed culminated into the present reference as mentioned earlier.

3. Both the first party managements have resisted the case by filing a common written statement wherein stands are taken that two schemes relate to two different categories of workers one group belonging to the PPT under the scheme of 1979 whereas the other group working for their employers is under the management committee which is a body independent of the PPT exclusively in charge of administering the scheme formulated for the purpose of decasualisation to regulate better employment to CF & H Workers as intended in the recommendations of the HPC as well as in the scheme. The scheme is the self financing scheme. According to the first party managements cargo handling operations on Board the vessel and shore in the course of landing or shipment and intra port transportation are being handled by the CH workers under the scheme of 1979 which came into operation w.e.f.16.2.1980. A list of workers prepared under the scheme was called the main list and a subsidiary list of workers was there being called standby list. As there was no sufficient work for CH Workers of the main list, the HPC in its report at para-15.21 directed enrolment of the workers of subsidiary list in the upcoming scheme of CF & H Workers provided those standby workers desire to come under the scheme of 1994. As per a tripartite agreement the CH workers in the main list are extended employees status after approval of the Govt. of India vide letter dtd.24.12.2004.

In the year 1983 Paradip Port Trust issued gate passes to some casual workers engaged by the clearing and forwarding agents and handling contractors against their individual requisitions for the purpose of unloading iron ore for MMTC. Thereafter, on the requisition of the Agents gate passes were also issued to labourers handling loading and unloading coal etc. When there was insufficient work for such clearing and forwarding workers/labourers and they were not paid properly by the CF Agents and Handling Contractors, there was labourer unrest which ultimately culminated into the constitution of HPC on the direction of the Hon'ble Supreme Court. It is the stand of the managements that on the strength of HPC report the management committee has been constituted and the scheme is formulated by the said management committee. As per the

scheme the C & F Agents and Handling Contractors are the employers of the CF & H workers. The management committee is only in charge of implementation of the scheme. The CF Agents and Handling Contractors are also registered under the scheme being the employers and on their prior requisitions for specific number of CF & H workers are being supplied to them for handling of their cargos i.e. for loading and unloading of cargos on the point of receipt or despatch. The said employers deposit the wages of CF & H workers engaged by them and certain percentage of levy on such wages for the purpose of administration of the scheme and for welfare scheme of the workers. Paradip Port Trust is no way concerned in the implementation of the scheme as well as payment of wages to the CF & H Workers or supervision of their duty/work. The PPT has no direct role in the administration of the scheme except deputing its two officers to work as Chairman and Secretary of the management committee as per the recommendation of HPC and as per the direction of the Hon'ble Supreme Court. When the employers i.e. CF Agents and Handling Contractors were unwilling to extend the benefits of guaranteed wages and attendance allowance to the CF & H Workers as provided in the Scheme of 1994 and there was no sufficient work for engagement of all listed workers, a discontentment was started amongst such workers. Therefore, the management committee decided to downsize the number of workers by adopting VRS vide resolutions dtd.10.5.2012 and 19.6.2012. In response to such scheme workers numbering 209 had availed VRS in the year 2014. There was again shortage of sufficient work for CF & H Workers and due to discontentment a strike notice was given by the workers demanding regularisation of their services & extending of service benefits at par with Cargo Handling Workers of PPT and compassionate appointment to legal heirs of the workers who died in accident in course of their duty. Anticipating labourer unrest the port management approached the Regional Commissioner, Central, Bhubaneswar to intervene in the matter. Accordingly, series of conciliation proceedings were held on different dates before RLC (C), Bhubaneswar to arrive at an amicable settlement. On 16.6.2015 the port management and union representatives were agreed before RLC (C), Bhubaneswar that the PPT would examine the regularisation of existing CF & H Workmen working under the management committee with existing service conditions extended to Cargo Handling Workers of the PPT subject to approval of Central Government and such regularisation would be taken up after offering VRS to the interested workmen working under the management committee. In case management committee is not able to meet the amount required from VRS offer to the workmen, the PPT would bear the same. The above issue of regularisation of CF & H Workers was placed in the meeting Board of Trustees and a sub-committee was constituted to go through the issues in detail and to furnish its report. The report of the sub-committee was placed before the Board and it was decided on 01.10.2015 to consider the request of management committee for financial support as one time grant to implement VRS for 320 workers. A comprehensive VRS proposal along with financial liability towards regularization of balance CF & H Workers was prepared and submitted. Thereafter, it was decided that the Chairman, PPT would take up the issue with appropriate authority for implementation of the demand raised by the Unions. But, the Ministry of Shipping, Govt. of India did not agree with the proposal of regularisation taking a stand of ban on fresh recruitments and suggested for mechanisation of loading and unloading work by implementing special package of VRS(SSP) by funding from the PPT. In the meanwhile manual operation of cargo handling is changed to mechanisation handling to maintain competitive involvement in port sector activities. The managements have prayed for rejection of the statement of claim pleading, inter alia, that CF & H Workers were employed directly under the Handling Contractors in the initial stage and then they worked under private pool before coming under the scheme of 1994. The scheme has been introduced only for decasualisation of unlisted workers to regulate better employment to them and it is a self financing scheme. The Handling contractors or CF Agents are the real employers of CF & H Workers. Neither the management committee nor the Paradip Port Trust is their employer in any form. When there is no employer-employee relationship between the CF & H Workers and the PPT in any form, scope does not arise for the PPT to take up the liability of regularisation as demanded by the second party Union. Hence, prayer is made for the rejection of the claim statement.

4. On the pleadings of the parties following issues have been settled for adjudication of the dispute :-

ISSUES

- (i) Whether the reference is maintainable under the Industrial Disputes Act?
- (ii) Whether the demand of Unions namely, PPWU, UPDWU & PPDMU for regularisation of existing 740 workmen working as Coal & Fertilizer Workmen (C & FH) of Management Committee under the Management of Paradip Port Trust, after option was exercised by opting VRS by 320 workman out of 1112 workmen, from the date of their joining is legal and/or justified?
- (iii) If not, what relief the workmen are entitled to?

5. In order to substantiate their case the second party Unions have examined one witness, namely Brundaban Nayak as WW No.1 and proved documents such as Xerox copy of Paradip Port Cargo Handling

Workers (Regulation of Employment) Scheme, 1979, Xerox copy of the High Power Committee Report, Xerox copy of Paradip Port Clearing Forwarding and Handling Workers (Regulation of Employment) Scheme, 1994, Xerox copy of the joint petition of CF & H Workers dtd.26.08.2014 & letter of the Union dtd.28.08.2014, Xerox copy of letter from Dy. Secretary to Govt. of India, Ministry of Shipping dtd.18.09.2014 issued to Chairman PPT, Xerox copy of the proceedings of the Board Meetings, Xerox copy of the letter issued by the Secretary to PPT to RLC(C), Xerox copy of the letter of RLC(C), Xerox copy of the conciliation proceedings from 13.11.2014 to 7.12.2015, Xerox copy of the minutes of discussion with members of management committee held in the Board Room of PPT dtd.03.11.2014, Xerox copy of the PPT Board Resolution dtd.01.10.2015, Xerox copy of the letter of the Chairman, PPT dtd.13.11.2015 to Secretary, Ministry of Shipping & Xerox copy of Trustee Sub-committee report, Xerox copy of the letter dtd.21.12.2015, Xerox copy of the reply letter from Secretary, PPT to Secretary vide letter dated 2.1.2016, Xerox copy of the letter of the Ministry of Shipping dtd.22.03.2016, Xerox copy of the minute of emergency meeting dtd.4.4.2016, Xerox copy of the minute of emergency meeting resolution dtd.5.5.2016, Xerox copy of the letter of the Chairman, Management Committee dtd.6.6.2015, Xerox copy of the letter of PPT Chairman to Secretary dtd.16.08.2016 and Xerox copy of the letter of the Ministry of Shipping letter dtd.14.12.2004 (Regularisation of the service of Cargo Handling Workers as Port employees & Tripartite settlements, Memorandum of settlement in presence of R.L.C(C), Chennai which are marked as Exts.1 to 18 whereas to refute the claim of the second party Unions, the first party managements have examined two witness as MW No.1 and MW No.2 and relied upon documents like Xerox copy of Abraham Committee's Report, Xerox copy of the para-15.23 of the High Power Committee recommendation, Xerox copy of the Trustees Sub-committee Report, Xerox copy of the letter dtd.13.11.2015 to Ministry of Shipping, Govt. of India, Xerox copy of letter of PPT dtd.2.6.2016 to Ministry of Shipping, Government of India, copy of letter dtd.22nd March, 2016 received from Ministry of Shipping, Government of India, regarding SSP to C.F. H workers, Xerox copy of the Agreement between members representing workers and employers of the Management Committee, letters of PPT to Ministry regarding regularisation of C.F.H Workers/employers of Management Committee under PPT and Xerox copy of para-14.17 of HPC recommendation which are marked as Ext.A to J.

FINDINGS

ISSUE NOS. I to III

6. For the sake of convenience and to avoid repetition, all the issues are taken up together for discussion and consideration. As it appears from the pleadings and submissions of the parties during argument that the Unions have given main thrust on the points of nature of duties performed by CH Workers and CF & H Workers claiming they are identical except the place of work. Both of them were paid wages as per settlement of National Wage Board and both of them are covered under term "Dock Worker" as defined under section 2(d) of Dock Workers (Safety, Health and Welfare) Act, 1986 as well as Dock Workers as defined in section 2(b) of Dock Workers (Regulation of Employment) Act, 1948. Both the workers being Dock Workers are to perform dock work i.e. work in or within the vicinity of a Port in connection with, or required for, or incidental to the loading, unloading, movement of storage of cargos into or from ship or other vessel, port, dock, storage place or loading place. Both the set of workers are paid wages by the PPT and they worked under the direct control and supervision of PPT. Though, both the categories of workers are working under two separate schemes, both the schemes were worked out under the provision of Section 42 of Major Port Trusts Act. If the recommendations of the HPC, report of Abraham Committee and various provisions of the Scheme of 1994 more particularly provisions under clause-1.1, clause-6(i)(b) clause-6(ii)(b), clause- 6(iv)b, clause-6(v) and clause-7(ii) are taken into consideration it can be safely concluded that ultimately the PPT is implementing the scheme through the management committee and **therefore, the PPT is the employer of CF & H Workers in real sense.** It is forcefully submitted that going through the recommendations of paras-13.7 & 13.8 of the report of Abraham Committee, recommendations of HPC & Scheme of 1994, proposal given by the management committee to the Board of Trustees for regularisation of services of CF & H Workers, proceedings of the PPT and correspondences made between the PPT and the Ministry it can be safely concluded that the PPT had moved the Ministry for regularisation of services of CF & H Workers due to its responsibility as employer of those workers. It is the contention of the second party Unions that the Abraham Committee Report in its paras-13.7 & 13.8 intended that the Scheme of 1979 should also be extended to the workers CF & H Pools. As per the direction of the Hon'ble Supreme Court the HPC was required to make recommendations taking into consideration the recommendations made by the Abraham Committee and the Scheme of 1979. The recommendation of HPC was that the scheme for CF & H Workers is to be formulated in the light of the Scheme of 1979 meant for Cargo Handling Workers. Ministry of Shipping has also admitted in its correspondence under Ext.5 that the function of the CF & H Scheme is accountable to PPT. When there was discontentment and likelihood of labour unrest, the PPT requested RLC(C), Bhubaneswar for intervention. In the proceeding of the Trust Board of the Paradip Port dtd.1.10.2015 it was decided for introduction of VRS so as

to consider the demand of regularisation of minimum number of CF & H Workers under the PPT. It is the contention of the Unions that unless employer-employee relationship exists, the Board would not have taken into consideration the demand of regularisation and the PPT was not expected to move the Ministry giving various proposals for accepting the demand of regularisation and simultaneously the Ministry was not expected to give their suggestions. The Ministry was not expected to ask for clarification on the proposals of the PPT. According to the second party Unions, the proceeding under Ext.8, a communication of PPT to secretary of Govt., Ministry of Shipping under Ext.9; Govt. of India's letter under Ext.10 seeking clarification on certain proposals in respect of the scheme; its communication to the Chairman under Ext.12; management committee's letter to the Chairman, PPT under Ext.15 requesting for considering the demand of regularisation of CF & H Workers for their multi decades contribution for the growth and prosperity of the Port and the request of the PPT to Govt. of India to consider issue of regularisation of balance of 540 workers for the long association with the Port Trust are the credible materials/evidence to show or to establish the existence of relationship of employer and employee between the parties. Taking into consideration of the above documents the management of Paradip Port Trust is estopped from pleading and saying that the CF & H Workers are not its employees and the said management cannot shirk its responsibility to regularise the casual workers who had rendered more than 30 years service to the PPT for its growth and prosperity. Secretary to the Chairman, PPT moved the Central Government on 6.6.2016 for regularisation of left out CF & H Workers assigning reason that CF & H Workers had contributed for the growth of the Port by their long association. The job/work discharged by these workers are permanent, perennial and incidental for the smooth running of the Port. When daily rated workers are allowed to work for a considerable length of time it would be hard and harsh to deny them confirmation as set out by the Hon'ble Supreme Court in 206 Vol-2 LLI 722 (SC). Further, it is argued that when CH Workers are counted as employees of PPT, denying such facility to CF & H Workers amount to violation of articles 14, 16 and 21 of the Constitution.

Per contra, it is the argument of the first party managements that the provisions of Dock Workers (Safety, Health and Welfare) Act, 1986 and Dock Workers (Regulation of Employment) Act, 1948 are not applicable to Paradip Port Trust since there is no Dock Board as provided in the Acts for implementation of those Acts. If the terms "Dock Worker" and "Employer" as defined in section 2(b) & (c) are taken into consideration there is no employer-employee relationship between PPT and CF & H Workers since "Dock Worker" means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargos or work in connection with the preparation of ships or other vessels for the receipt or discharge or cargos or leaving port, whereas the "Employer" in relation to a dock worker means the person by whom he is employed or to be employed as aforesaid. It is the contention of the first party managements that the CF & H Workers are engaged by the CF Agents or Handling Contractors for loading and unloading of the cargos on their behalf at the point of receipt and despatch and they have no role to play inside the Port i.e. the vicinity of the Port. The PPT has no connection or responsibility for loading and unloading of cargos on such point of receipt and despatch. It is further contended that since Dock Labour Board as contemplated in the Act of Dock Workers is not constituted in PPT and as such the above terms are not applicable in the case to determine the employer-employee relationship. The provisions of the scheme more particularly the aim and object of the scheme as mentioned in the scheme itself as well as in the observation made in the recommendation of HPC go to show that the management committee is constituted only to implement the scheme on behalf of the CF Agents or Handling Contractors who are the real employers. The work of loading and unloading is being carried out under the supervision of the contractors or agents and the wages of the CF & H workers are met from the amount realised from those agents and contractors. Both the above conditions deciding the relationship of employer-employee between the parties being absent, the PPT cannot be said the employer in regard to CF & H Workers and as such it has absolutely no liability to regularise the CF & H Workers as its permanent employee. Mere proposals and correspondences as highlighted by the second party Unions neither confers any right on the CF & H Workers for regularisation as PPT employees nor the same has established that the PPT has ever accepted the CF & H Workers as its employees. So far the argument of similarity of the Schemes of 1979 and 1994 is concerned it is the stand of the managements in course of argument that the Scheme of 1994 is not formulated with a view that CF & H Workers are to work under the direct control and supervision of the PPT like CH Workers under the Scheme of 1979. The direction of the Hon'ble Supreme Court as well as the recommendation of the HPC was only to formulate a scheme keeping the Scheme of 1979 as a model. There was nothing specific either in the report of Abraham Committee, in the recommendation of the HPC or in the direction of the Hon'ble Supreme Court in its order dtd.15.3.1990 in Civil Appeal No.1422 of 1990 that PPT would constitute the management committee and formulate the scheme being the employer of the CF & H Workers in any form. That apart, it is their contention that PPT has its own recruitment rule and procedure for appointment of its employees and keeping in view the principle set out by the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and Others Vrs. Uma Devi** the Tribunal has no jurisdiction to direct the managements to regularise the workers in violation of the

recruitment rule when those workmen are engaged by CF Agents/Handling Contractors and sanction posts are not available for their absorption. It is also contended that the Hon'ble Supreme Court have set out that regularisation cannot be a mode of recruitment in violation of mandatory provisions of the statute and in particular ignoring the minimum educational qualifications which would be wholly illegal.

On the aforesaid arguments of the parties it is felt necessary to find out first whether the Tribunal has any authority to give a direction/an Award for regularisation of the workmen in the industry if such dispute arises and referred to for adjudication. As per the 5th Schedule of the Act employing workmen as casual or temporary and to continue them as such for years with the object of depriving them of the status and prevelage of permanent workmen is an unfair labour practice. In this regard the judgment of the Hon'ble Apex Court in the case between **ONGC Ltd. Vrs. Petroleum Coal Labour Union & Ors. in Civil Appeal No.3727 of 2015** arising out of SLP (C) No.5532 of 2012 can also be referred to. According to the Hon'ble Court the decision of the Hon'ble Court in the case of Uma Devi would not deter the industrial Tribunals/Labour Courts from issuing such direction of regularisation, which the industrial adjudicators otherwise possess having regard to the provision of industrial Disputes Act. Specifically conferring such powers the Hon'ble Court have further observed that such power of the Industrial Tribunal is itself recognised by the Hon'ble Court in the judgment of Uma Devi Case. The Case does not denude the Industrial Tribunal and Labour Courts of their statutory power to order permanency of the workers who have been victimised of unfair labour practice on the part of employer. The case of Uma Devi cannot be held to have overridden the powers of the Industrial Tribunals and Labour Courts in passing appropriate order once unfair labour practice on the part of employer is established. In the above backdrop the argument advanced on behalf of the first party managements has no merit for consideration and in my considered view the Tribunal has conferred the power to pass appropriate direction/Award in favour of the disputed CF & H Workers provided unfair labour practice on the part of the employer is established.

Coming to the argument whether relationship of employer-employee exists between the PPT and the CF & H Workers it is vital to go through the provisions of both the schemes as well as backdrops under which the Scheme of 1994 has come to existence. On scrutiny of the Scheme of 1979 (Ext.1), the report of HPC as marked as Ext.2 and the Scheme of 1994 under Ext.3 it is crystal clear as well as not disputed by the parties that the Scheme of 1979 was framed by the PPT under the provision of Section 42 of the Major Port Trust Act.1963 and the Scheme is directly handled by the PPT through its Traffic Department. The Traffic Manger is entrusted to carry out day to day administration of the scheme under the supervision and control of the Chairman of the PPT. As per clause-2(a) of the Scheme the PPT will engage directly the workers for carrying out the operation of cargo handling from ship to shore and vice versa and it is the Port Trust to supply the CH Workers at a prescribed rate to the licensed stevedores for all operations of loading and unloading on board the vessel and it is the look out of the Trust to maintain the pool of such CH Workers. There was no provision in the said scheme in the heading of "listing of employers" which is found in clause-14 of Scheme 1994. The clause-14 of Scheme 1994 mandates that the management committee shall maintain a list of employers, to whom the scheme applies. The provision in this clause and objectivity of incorporation of such provision cannot be over looked while deciding the existence of relationship of employer and employee between the parties. On a mere perusal of the provisions of 1979 Scheme clearly indicates that CH Workers were enlisted on being selected by the PPT directly and their work/duty is being under the direct control and supervision of the officers of the PPT. The CH Workers were receiving wages from the PPT before their regularisation. In the said scheme financial liability towards engagement of workers in cargo handling operation lied with the PPT. Coming to the Scheme of 1994 it is not disputed that it is a self financing scheme which is incorporated itself in the scheme as well as in the recommendation of HPC. The report of HPC as well as the Scheme of 1994 does not disclose that the Scheme has been framed under the provision of Section 42 of the Major Port Act. Had it been covered by Section.42 of the said Act the Hon'ble Supreme Court or the HPC could have specifically given direction to formulate the Scheme under the said provision of Major Port Act instead of making a recommendation to have a Scheme in the model of 1979. There is neither in the recommendation of the Abraham Committee nor in the recommendation of HPC that PPT would have to discharge its responsibility or liability as an employer while forming the management committee or implementing the Scheme of 1994. The report of Abraham Committee reveals that the recommendation was made sympathetically to consider the demand of CF & H Workers to bring them under the Scheme of 1979. Close reading of the recommendations of the HPC reveal that it had given guidelines as to how a scheme for CF & H Workers is to be framed by taking 1979 Scheme as a model one. Neither the report nor the recommendations have any suggestion or desire that the CF & H Workers would perform or discharge their duty being treated as employees of the PPT directly or impliedly. Close reading of the recommendations and provisions of the scheme go to show that it is the registered CF Agents/Handling Contractors who are to bear the wages of the CF & H Workers on being their employers for the purpose of clearing and forwarding the cargos on the point of receipt and despatch. The management committee is

constituted on the recommendation of the HPC only to implement the scheme with an intention of having better coordination between the registered employers and the CF & H Workers.

From the recommendations of the HPC and various provisions of the schemes, 1994 it is evident that the management committee is constituted with duty of administering the scheme, the object of which is to ensure greater regularity of employment to CF & H Workers and to secure that an adequate number of dock workers are available for efficient performance of cargo operation. The committee is an autonomous body having three representatives of the employer and three representatives from the workers with an officer of the PPT as Chairman of the committee. When the recommendation of HPC as well as the scheme provides for accommodating three representatives of employers, in no stretch of imagination it can be said that the PPT is the employer of CF & H workers in any form. Further, when there is a provision of obligation of employer in clause-15 of the Scheme of 1994 envisaging the responsibility and liabilities of the employers registered under the scheme, it is difficult to accept that the PPT is the employer of CF & H Workers. The said clause further provides that every employer shall maintain gears, supervisory staff and other personnel as required under law. Clause-28(3) provides that a CF & H worker shall not engage himself for employment under any of the employers unless he is allotted to that employer by the management committee. Co-reading of both the provisions clearly goes to establish that the employee-employer relationship exists between the workers and the agent and the management committee is only required to regulate the employment of such worker under the provision of scheme. The registered employer pay the wages due to the workers to the management committee and the management committee in turn makes payment of the wages to the worker.

In the above backdrop it is not acceptable that the documents on which much stress has been given by the second party unions are anyway helpful to establish that relationship of employer-employee exists between the parties. In fact, the various provisions of the schemes clearly show that the registered agents to whom the workers are allotted by the management committee are the real employers for the purpose of loading and unloading of cargos on the point of receipt and despatch. The provisions of the management committee taking approval of PPT on certain policies and matters as well as the provisions of taking departmental action by the management committee for the misconduct of the CF & H Workers do not establish the relationship of employer-employee between the PPT and such CF & H Workers. The work of CH Workers on the board of the vessels or shore is supervised and controlled by the PPT through its Traffic Officer whereas the work of CF & H Workers is under supervision and control of the Handling Contractors and CF Agents.

Taking into consideration the observation of the Hon'ble Supreme Court in the case of **Trinath Harichandan and Others Vrs. Chairman, Paradip Port Trust reported in AIR (1998) 3 Supreme Court Cases 113** it has been contended on behalf of the second party Unions that as per the Hon'ble Apex Court the report of HPC is fully binding on the PPT and the recommendations cannot be tinkered with in connection with its basic recommendations by virtue of which the management committee and the scheme of 1994 have come into existence. It was the direction of the Hon'ble Supreme Court to the PPT to implement the recommendations. Undoubtedly the report of the HPC being comprehensive is binding on all concerned. The PPT being a party to the Civil Appeal was directed to implement the recommendations. But, on a close reading of the recommendations there appears nothing substantial from which it can be held directly or impliedly that the PPT either being the immediate employer or principal employer is to constitute the management committee as well as frame and implement the scheme as an employer to facilitate better employment to CF & H Workers. On the other hand, the report of the HPC in its objectivity is specific that the scheme would be a self financed one. Keeping in view the direction of the Hon'ble Supreme Court as well as the recommendations of the HPC provisions relating to employer under clauses-14, 15 and 16 are incorporated in the scheme of 1994 which are not the features in the Scheme of 1979. The observation in paras-13.7 & 13.8 of the Abraham Committee Report had no mandate to the PPT to accept the CF & H Workers under the Scheme of 1979 and it was only a sympathetic suggestion given in the recommendation.

Mere perusal of Para.15.22 of the report of the HPC reveals that financial burden of the Scheme is to be borne by Clearing & Forwarding Agents. The PPT had taken an unequivocal stand before the HPC that it would not take any financial liability relating to the scheme of C F & H Workers. The Committee has categorically recommended in Para.15.23 that the financial liability of working the proposed scheme shall be borne by C&F Agents and not by the Port Trust. For the smooth and effective working of the Scheme, the Committee recommended that it should be operated by the Management Committee. In view of such specific observation in the report it is hard to believe that it was mandate of Hon'ble Supreme Court in the Civil Appeal No.1422/1990 or the HPC that PPT would play the role of employer while being directed to implement the Scheme. Section 42 (d) of the Major Port Trust Act provides "receiving and delivering,

transporting, booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways or vice versa, ...” Reading of the proviso indicates that the Major Ports have to under take the service of receiving and delivering etc. of goods originating in the vessels in the Port and intended for carriage by the neighbouring railway. It does not mandate that the Port is to facilitate service for loading and unloading of Cargos on the point of receipt and despatch. Had it been the responsibility of the Port the report of HPC or the direction of the Hon’ble Supreme Court would have mandated that the Scheme should be framed under the Provision of Section-42 of the Major Port Trust Act. In Para-15.26 it is stated that employment to CF&H Workers may come to end in case of mechanisation of Cargo Handling and in order to meet the expenditure on terminal benefits and any other dues, required by law, payable at that stage, the Management Committee should build up a separate fund from the CF&H Agents by means of a separate levy which is necessary otherwise it would not be possible for those Agents to meet the entire expenditure at one stroke. From the above recommendations it can be safely held that the PPT was not directed or proposed to work out the implementation of the Scheme either being a direct employer or as a principal employer of such CF&H Workers.

On the other hand, in the recommendation of the HPC it is provided as to how the management committee is to be constituted. As per the recommendation, the management committee would be constituted by having three representatives of the employers and three representatives of the workers with an officer of the PPT as its Chairman having right of vote. If the term “employer” and “worker” as used in the mandate of the report towards constitution of the management committee is taken into consideration, it can be safely inferred that the CF Agents/Handling Contractors are the employers and the CF & H Workers are the employees. The recommendations as mentioned in paras-15.22 & 15.23 of the report of HPC clearly indicate that the financial liability of proposed scheme shall be borne by CF & H Agents and not by the Port Trust. The Scheme of 1979 would only operate as a model scheme for working out the scheme of 1994. The management committee is to be constituted for effective working of the scheme. Therefore, there is nothing substantial in the report of the Abraham Committee and the report of the HPC as well as in the direction of the Hon’ble Supreme Court in Civil Appeal from which it can be construed or inferred that CF & H Workers being the employees of PPT either directly or indirectly would discharge their duty under the pay roll and supervision of PPT.

Law is well settled that in order to establish employer and employee relationship the burden lies on the workman to establish that he was employed/engaged and paid by the particular employer and he works under his direct control and supervision. Coming to the case at hand in no point of time the PPT either engaged or employed the CF & H Workers nor it had paid wages to them. The workers have been registered on decasualisation by virtue of the recommendation of the HPC and as per the provisions of the scheme under the management committee. The management committee is not constituted by the PPT and it has come to existence as per the recommendation of HPC. Apparently the management committee is independent of PPT and formed only to implement the scheme. PPT might have contributed funds for the VRS. But, the same does not lead to a conclusion that it is the employer of CF & H Workers. It is already discussed and held that the PPT neither controls nor supervises the work of the CF & H Workers except giving some approvals to the decisions of the management committee as per the recommendations and provisions in the scheme. When both the conditions of employer-employee are wanting the PPT has no obligation to fulfil the demand raised by the unions or the workers.

Parity on the basis of facility or service conditions extended to CH Workers cannot be claimed from the PPT on the ground of unfair labour practice since CH Workers were on the direct pay role and under supervision of the PPT as per the Scheme of 1979 whereas the CF&H workers under the scheme of 1994 are under the pay roll of C&F agents and supervision of those employers through Management Committee constituted as per mandate of Hon’ble Supreme Court passed in the order arising out of Civil Appeal No.1422 of 1990 and as per mandate of the report of High Power Committee.

Undoubtedly, there are agreement before RLC(C), Bhubaneswar, proposals of the management committee, proceedings of the Trustees of Board and correspondences between the PPT and the Ministry in regard to implementation of VRS under SSP and for regularisation of CF & H Workers. The same cannot act as an estoppel to the PPT from raising the issue of employer and employee relationship since in any of the above matters the PPT has conceded or admitted that it being the employer of those workers had agreed to absorb them as its employees. The agreement and the proposals seem to have been made taking into consideration the long association and contribution of those workers in the growth and prosperity of the Port and to avoid labour

unrest, for which agreement between the parties arrived at in the intervention of RLC(C), Bhubaneswar. Undoubtedly, the Authority of PPT has its own limitation and without approval of the Central Government it cannot take its own decision to regularise or absorb the disputants-workers as its employees. At the same time the Industrial Tribunal has to act within the provisions of the ID Act. When there is no relationship of employer and employee between the PPT and the CF & H Workers any direction on the part of the Tribunal to the PPT to regularise or absorb the workmen as its employees would not stand in the eye of law. In this regard the term “industrial dispute” as defined in the Act and the settled principle/position of law cannot be over sighted. Unless a relationship of employer and employee is worked out between the parties it cannot be said that there is an industrial dispute between them which needs to be adjudicated under the provisions of the Act. Therefore, doubt can also be entertained on the maintainability of the reference. For the reasons and discussions made above in my considered view the statements of claim filed by the second party Unions have no merit for consideration. At the same time it can be clarified that the Award would not stand as a hindrance if there would be any amicable settlement between the parties towards the claim raised by the Unions on account of long association and contribution on the parts of the CF & H Workers in the growth and prosperity of the Port.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 3 फरवरी, 2021

का.आ. 105.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 59/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.02.2021 को प्राप्त हुआ था।

[सं. एल-12012/72/2013-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3rd February, 2021

S.O. 105.—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, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank Trust, and their workmen, received by the Central Government on 03.02.2021.

[No. L-12012/72/2013-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

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

DATED : 20TH JANUARY, 2021

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 59/2013

I Party

Sh. Manmohan Churya,
5-5-371 Near Sterling Chambers,
P.V.S Kala Kunj Road, Kodialbail,
Mangalore - 575003.

II Party

The General Manager (P),
Canara Bank,
Personnel Department (W),
Head Office, Manipal,
Dakshina Kannada Distt. - 576 119.

Appearance :

Advocate for I Party : Smt. Latha C. S. Holla

Advocate for II Party : Mr. Ramesh Upadhayaya

AWARD

The Central Government vide Order No. L-12012/72/2013-IR(B-II) dated 18.10.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Syndicate Bank in dismissing Sh. Manmohan Churya from their services with effect from 28.09.2011 is legal and justified? What relief he is entitled for?”

The 1st Party workman herein is the former employee of erstwhile Syndicate Bank Presently Canara Bank who is dismissed from service on certain allegations: he was tried during the Domestic Enquiry and found guilty of the misconduct he was charged. The claim of the workman is,

he joined the service of the 2nd Party as an Attender in the year 1980 and thereafter promoted to clerical cadre in the year 2003: while working at Bejai, Mangalore Branch of the 2nd Party he was kept under suspension on certain allegations, followed by a Charge Sheet and a full fledged Domestic Enquiry into the charges. The Enquiry Officer held that the Charge No. 1 i.e. the charge of gross misconduct of doing acts prejudicial to the interest of the Bank vide clause No. 5(j) of the Memorandum of Settlement dated 10.04.2002 levelled against the 1st Party in charge sheet dated 25.01.2010 is proved. The Charge No.2 in respect of gross misconduct of engaging the Trade or Business outside the scope of the duties of the 1st Party without permission of the Bank...was held not proved. The Disciplinary Authority disagreed with the findings of the Enquiry Officer with regard to Charge No. 2 and offered personal hearing on the proposed punishment of Dismissal from Service of the Bank without notice with immediate effect for both the gross misconduct. The Disciplinary Authority after the personal hearing affirmed the proposed punishment by accepting the Report of Enquiry Officer in respect of first charge and disagreeing with the finding on the second charge. His Appeal before the 2nd Party did not survive.

2. 1st Party in the first place challenged the fairness of the Domestic Enquiry and questions the correctness of the Enquiry Report as perverse and biased. He challenges the legality of the order of the Disciplinary Authority for not issuing show cause notice prior to passing the Dismissal Order. His contention is,

he is totally innocent and has not caused any financial loss to the Bank: his past record was unblemished. Both the Disciplinary Authority and the Appellate Authority did not assign sufficient reason for disagreeing with the Enquiry Officer in respect of second charge: he is unemployed, due to punishment order he along with his family members is put to untold misery and hardships. He had reimbursed the entire amount of alleged misappropriation much before investigation commenced. No evidence was placed during the enquiry about any Business activities carried on in his name.

3. 2nd Party has contested the claim, denying all his allegations against Procedure of Enquiry, Enquiry Report, legality of the Punishment Order passed by the Disciplinary Authority and they have sought to justify the action taken against the 1st Party.

4. Based on the rival pleadings a Preliminary Issue was raised in respect of fairness of the Domestic Enquiry, tried and adjudicated by answering the Issue in the affirmative, thus endorsing fairness and correctness of enquiry procedure.

5. Thereafter the 1st Party workman adduced evidence in respect of his unemployment. Both parties have addressed oral and written argument.

6. Following were the misconducts alleged against the 1st Party workman in the Charge Sheet of 25.01.2010,

Firstly, while working as Clerk at Bijai Branch, Mangalore of the 2nd Party he transferred amounts aggregating to Rs. 2,40,000/- from SB Account of late Sh. Ganapathy Nayak (Ex-employee of the 2nd Party) at Puttur Main Branch to the Accounts of M/s Sai Business Associates at Mangalore Car Street Branch and Sh. Ramachandra Kamath at Mangalore Bijai Branch. Sh. Ganapathy Nayak had expired on 28.02.2008 and his brother submitted a letter intimating his death along with Death Certificate on 28.02.2008 on noting that the death of the depositor was not made in the Account by attaching a memo in the system, he got transferred Rs. 1,65,000/- on 18.07.2008 without any vouchers to the Current Account Number 01033071483 of M/s. Sai Business Associates: the transaction was put through / under Teller password of Sh. Ashok Moodabidri,

Assistant Manager and Authorised under Supervisory Password of Sh. M Prashanth Bhat, Assistant Manager: on 22.07.2008 sum of Rs. 1,61,000/- was withdrawn in cash from the Account of M/s Sai Business Associates through cheque No. 203052 favouring Sh. Pandurang Churya. The transaction was put through under Teller Password of CSE and authorised under Supervisory Password of Sh. Ashok Moodabidri, Assistant Manager: in the same manner on 06.12.2008 a sum of Rs. 75,000/- is transferred from the SB A/c of late Sh. Ganapathy Nayak at Huttur Branch to SB A/c No. 019222045029 of Sh. Ramachandra Kamath at Mangalore Bijai Branch without vouchers under the Teller Password and Authorised under Supervisory Password of Sh. Ratnakar Devadiga, Assistant Manager. On 10.12.2008 Rs. 75,000/- is withdrawn in cash from the Account of Sh. Ramachandra Kamath without any cash voucher and was put through CSE's Teller Password and was Authorised under Supervisory Password of Sh. Ratnakar Devadiga. On observing that the amount is withdrawn from the Account of Sh. Ganapathy Nayak without the knowledge of family members, his mother lodged a Complaint on 18.02.2009 with the Regional Office, Mangalore. Since, he was the Cashier / Teller at the relevant point of time, CSE was questioned, he confessed the above fraudulent transaction and submitted a letter dated 02.03.2009, on the same day CSE reimbursed Rs. 2,40,000/- and credited the amount to the Account of late Sh. Ganapathy Nayak. In this regard a Complaint is lodged to the jurisdictional Police and he is charge sheeted. The Puttur Branch settled the claim over SB A/c of late Sh. Ganapathy Nayak to Smt. Shyamala Nayak.

The above transaction amounts to gross misconduct of “doing acts prejudicial to the interest of the Bank” vide clause No. 5(j) of Memorandum of Settlement dated 10.04.2002.

Secondly, it is found that there are huge credits in cash aggregating to Rs. 8.11 lakhs within a span of 13 months, which is quite unusual in nature and disproportionate to his known source of income, indicating his engagement in some business activities / objectionable activities outside the scope of his employment, which amounts to gross misconduct of “engaging in trade or business outside the scope of your duties without written permission of the Bank” vide clause No. 5(a) of Memorandum of Settlement dated 10.04.2002.

7. The workman in his reply to the charge sheet responded that there is no financial loss to the Bank: whatever the management informed as financial loss is reimbursed by him. In respect of the second charge his contention was, he might have given some hand loans to his friends and well-wishers by withdrawing from his OD Account: as soon as the same was returned to him, he might have credited the same to his OD Account: he had lent amount free of interest and never considered the same as source of profit. The amount is in his ODC limit and he has not earned additional income by helping his friends.

8. During the Domestic Enquiry, the Investigating Officer was examined as the first Management Witness, through him the materials collected during the Investigation and the Investigation Report were marked as Ex MEX-1 to Ex MEX-68. These are all the statements of the witnesses and undisputed official documents generated during the course of business of the 2nd Party.

During the cross examination it was highlighted that there was no written complaint to the Bank against the CSE about engaging in any trade or business outside the scope of employment and much before the investigation commenced, on 02.03.2009 the amount was re-credited to the account of late Sh. Ganapathy Nayak.

The second witness was Chief Manager, Syndicate Bank, Bejai Mangalore Branch of the 2nd Party: He identifies Mex-24 which is a statement of Sh. V S Kamath from whose account without his knowledge Rs. 75,000/- was credited and withdrawn. This statement is given in the presence of both MW-1 and MW-2. He further identified his communications to the Investigating Officer.

During the cross examination instead of contradicting the witness on the basis of the documents identified by him, it was suggested that CSE was a good worker and mobilised deposits and NPA recovery.

9. After the closure of the Management witness, CSE gave his oral statement that, he had withdrawn the amount from the account of late Ganapathy Nayak to help his brother who was in grave financial difficulty, as soon as he realised his mistake, he reimbursed the amount by pledging his wife's jewels. He outrightly denied his involvement in business transactions and states that all the entries in his OD Accounts are bonafide transactions which are personal in nature.

10. In view of the undisputed evidence brought in, the Enquiry Officer without much effort recorded his finding that the first charge is proved.

In the Charge Sheet itself the prosecution has detailed 51 suspicious transactions, cash credits of Rs. 5,000/- and above in his ODC Account which aggregated to Rs. 7.51 lakhs within a span of 13 months. Except the statement of his ODC Account, no documentary proof was placed by the prosecution about his engagement in any business or trade outside his duty that led the Enquiry Officer to hold that the second charge is not proved.

11. On receipt of the Enquiry Report the Disciplinary Authority called for reply to the Enquiry Report from the CSE, it was pointed out that,

“In this connection it is observed that the volume of cash transactions in your account does not suggest that it was from the known source of income and the EO has stated as established that the credit received in your account is unusual in nature and is disproportionate to your known source of income. Given this back ground, it is clearly and circumstantially evident that you are engaged in business or trade beyond the scope of your employment at the Bank and as such this charge under clause 5 (a) can be held as proved as against the finding of EO in this regard.”

12. The workman gave his reply to the Enquiry Report as called for by the Disciplinary Authority stating that, *he was sanctioned with an OD of Rs. 2.67 lakhs, frequent withdrawal upto the limit on many occasions and re-crediting of certain amount to reduce the burden of interest at regular interval lead to the allegation of unusual credits. If the OD Account is being operated briskly, it does not mean that I engaged in any trade or business.... I had not engaged myself in any trade or business and all the entries in my OD Account are bona-fide transactions which are personal in nature...*

The reply did not convince the Disciplinary Authority. Punishment of Dismissal without notice was proposed to him with an opportunity of personal hearing by indicating that he is guilty of both the charges.

During the personal hearing CSE sought for leniency on the ground that, he was left with 9 years of service and he was the sole bread earner of the family.

13. The Disciplinary Authority proceeded to pass the final order dated 28.09.2011 by confirming the punishment already proposed. In the body of the order the Disciplinary Authority upheld the finding of the Enquiry Officer in respect of charge No. 1 – in respect of charge No. 2 it was observed that cash credits received in his OD A/c amounting to Rs. 7.51 lakh within a short span of 13 months is huge, unusual in nature and disproportionate to the known source of his income: the continuity and series of transactions circumstantially establishes charge No. 2 also. Thus, he was **Dismissed from the services of the Bank without notice with immediate effect**. The finding of the Enquiry Officer on the first charge and the finding of the Disciplinary Authority on the second charge are both based on the materials brought in Record and they are not disputed during the enquiry. The limited question was, whether these materials amounted to misconduct within the meaning of clause 5(j) and clause 5(a) of the Memorandum of Settlement dated 10.04.2002. In the meantime, the 1st Party workman is acquitted of the offences punishable under Sec 406, 408, 409, 420 of IPC from the Criminal Court.

14. He has placed reliance on the judgment of the Apex Court reported in 2007 LLR 96 in the matter of Jasbir Singh vs Punjab and Sind Bank and others to contend that, *the Departmental proceedings and criminal case are based on identical set of facts, evidence in both the proceedings since common, consequent upon acquittal from the criminal case, the order of his dismissal deserves to be set aside.*

I am unable to subscribe to the said contention. Nowhere in the above judgment, the Apex Court laid a Rule of Thumb to set aside a dismissal order on the acquittal of the employee of charges from a Criminal Court. In the said case, apart from the criminal complaint, the Bank had filed a money recovery suit against the employee in respect of the alleged embezzled amount. The civil suit was dismissed by the Appellate Court. The Apex Court took exception that the Hon'ble High Court failed to *take note the decision of the civil court but solely relied on clause 19.3 (c) of the Bipartite Settlement* - the judgments of both Civil Court and Criminal Court established that the Appellate was treated very unfairly and unreasonably. The finding of the Criminal Case was there before the Apex Court, to the effect that confession was extracted from the employee by the Bank Officers in a very cruel manner. But that is not the circumstance in the case before us, right from the beginning until the matter reached finality before the Appellate Forum the 1st Party consistently admitted the transaction and was projecting as to under what circumstances these transactions occurred.

15. Though the allegations before the Criminal Court and the Domestic Enquiry were identical the difference lies in looking at the matter from different perspective. The criminal justice system looks for proof beyond reasonable doubt to constitute an offence while the Industrial adjudication deals with the consequence / eventuality of the alleged misconduct from the point of view of the Employer. The very fact that knowing fully well that the Account holder is deceased, 1st Party has withdrawn the money and when enquired has credited the amount, not only amounts to temporary misappropriation of customer's money but also puts the employer / the Branch in a questionable position in the eye of its customers. Such incidents will have long lasting repercussion on the Business of the Bank. In respect of the transactions in his ODC Account which was beyond the known source of income though there was no tangible material about his involvement in any other trade or business, it probablises that such transaction was unusual to his known source of his income. Rightly the Disciplinary Authority has drawn inference against him by holding that he is engaged in trade or business outside the scope of his duties without permission of the Bank vide clause 5(a) of the Memorandum of Settlement dated 10.04.2002.

16. Though I find the finding of the Enquiry Officer on charge No. 1 and finding of the Disciplinary Authority on charge No. 2 are based on the material available on record still, there is one more hurdle to be crossed i.e. proportionality of the punishment order. By the time of his dismissal order he had served for 31 years: it appears he had no history of misconduct to his credit, otherwise same would have been cited in his charge sheet or placed in evidence before this Court. The benefit of long service of 31 years shall not be denied for him keeping in view his liability and responsibility he owes to his family, hence I hold instead of Dismissal he shall be considered for Removal from Service with all monetary benefits.

AWARD

The Reference is accepted.

The order passed by the Disciplinary Authority against the 1st Party workman Sh. Manmohan Churya dated 28.09.2011 thereby dismissing him from services of the Bank without notice with immediate effect is modified.

Instead of Dismissal, the 1st Party shall be terminated from service with terminal/monetary/pension benefit in respect of the service rendered by him with the 2nd Party and release his terminal benefits.

The 2nd Party is directed to comply the Award within 40 days from the date of publication of the Award, otherwise the monetary benefit shall carry future interest at 6% per annum till the date of payment.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 20th January, 2021)

Justice Smt. RATNAKALA, Presiding Officer