

**BEFORE CENTRAL GOVT. INDUSTRIAL-TRIBUNAL CUM-  
LABOUR COURT NO-II, NEW DELHI**

**I.D. No. 85/2022**

**Sh. Sunil Kumar,**

R/o – 150, Pocket-01, Paschim Puri, New Delhi-110063.

Versus

The Managing Director,

**National Co-Operative Consumer's**

**Federation of India Ltd. (NCCF)**

3-Siri Institutional Area, NCUI Building Complex,

Hauz Khas, New Delhi-110016.

1. This is an application U/s 2A of the I.D Act (herein after refer as an Act). Claimant in his claim statement had stated that he is an ex-employee of **National Cooperative Consumer's Federation of India Ltd, [NCCF]**, an autonomous body under the Ministry of Consumer Affairs and Public Distribution, Krishi Bhawan, New Delhi. The NCCF has its own staff Regulations (Service Rules) besides the decisions; instructions and rules of Govt. of India. He has joined as an Accountant on 08.11.1978 and rose to the level of Dy. Manager (A/cs) with sincere, honest hard work during entire period of thirty-seven years. His record are blameless. Though, he was designated as Dy. Manager (A/cs) but, he has been doing same accounting work irrespective of his promotions.
  
2. It is his case that unfortunately, due to miscarriage of justice, he was convicted by a Trial Court in a personal and non departmental case. After his conviction, he was placed under suspension with effect from 11.07.2012 till further orders, he was given subsistence allowance at the flat rate of 50% from 11.07.2012 to 28.05.2015. After released on bail, he requested the NCCF for reinstatement in

service vide application dated 13.04.2015. However, a newly joined Managing Director of the respondent arbitrarily imposed the major penalty on the applicant on account of his conviction and terminated him from the services under Rule-30 (b) (ii) read with Rule-31 of Staff Regulations-2014 vide office order dated 28.05.2015. He submits that the management cannot terminate his service as well as Managing Director has not been empowered for that. He had filed the appeal but, he had withdrawn the appeal. He was due to retire upon superannuation on 31.08.2016 but, his services were terminated on 28.05.2015. The retirement dues was settled after 31.08.2016 in a period of more than four years, as such he had filed the claim stating that respondent be directed to consider enhancement of Subsistence Allowance w.e.f. 11.01.2013 under **Rule 68 (C) (i)** of Staff Regulations and settle the arrears with due interest and his termination dated 28.05.2015 be set aside and he be deemed in continuation of his service.

3. Respondent had filed the counter affidavit. He had taken the number of preliminary objection stating that petition is not maintainable as his services were terminated on 28.05.2015. He attained the age of superannuation on 31.08.2016, after which the retiral benefit have also released to him. After almost four years he has been raising new pleas challenging his termination. Moreover, Sunil Kumar is not a workman as envisaged under the **Industrial Disputes Act, 1947**. He was working on a managerial post. He received a salary in the scale of Rs. 15600-39100 with the grade pay of Rs. 6600/-. He was suspended w.e.f. 11.07.2012 after he was convicted by the CBI Special Judge-II, Rohini (Prevention of Corruption, 1988) on a criminal charge under Section 419, 420, 467 and 471 read with Section 120B of the Indian Penal Code for forgery of valuable security. On merit, the management admitted that claimant is his employee. He also admitted that he was kept under the suspension. He also admitted that he was terminated without holding any enquiry, because he had lost the confidence. He had justified the termination order.

After completion of the pleadings following issues have been framed vide order dated 02.03.2023 i.e.-

1. Whether the proceeding is maintainable being barred by limitation?
2. Whether the claimant is a workman as defined U/s 2(s) of the ID Act?

3. Whether the service of the claimant was illegally terminated by the management?
4. To what relief to workman is entitled to, and from which date?

4. Both claimant and the workman have filed their respective affidavits, however, none of the party has chosen to cross-examine their counterpart.

5. Workman counsel had reiterated that the proceeding is maintainable as the Hon'ble Supreme Court held that there is no limitation prescribed under the Industrial Disputes Act for referring the dispute. On the other hand, counsel for the management stated that claim is barred by limitation because Section 2A in which the claim petition has been filed has set out the limitation for three years from the date of dismissal. Here in this case, the petition has been filed on 2022 while his termination was effected on 2015 just after seven year of his termination which is beyond limitation.

6. In the light of above argument my issue-wise finding are as follow-

7. **ISSUE No.-1: Whether the proceeding is maintainable being barred by limitation?**

8. Before we proceed further, it is necessary to produce the text of section 2-A:

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

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

9. A perusal of the aforesaid section would go to show that a dispute connected with or arising out of discharge, dismissal, retrenchment or otherwise termination of services of the workman can be directly agitated by workman U/s 2-A of the act and it is not necessary that such disputes should be sponsored by the trade union or a substantial number of workmen. However, what is required is that workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of section 2-A can make an application directly to Labour Court or Tribunal for adjudication of his individual dispute after expiry of 45 days from the date he has made an application to conciliation officer of appropriate government for conciliation of dispute. Sub-section 3 of section 2-A lay down the time limit for making such application to Labour Court or the tribunal. It provides that such application to Labour Court or tribunal shall be made before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of

services as specified in sub-section-1. This right is available to the workman without any effect upon remedy available in section 10 of the act.

10. Ld. AR of workmen has relied upon the judgments **Ajayab Singh Vs Sirhind Cooperation** and **Raghubir Singh Vs General Manager, Haryana Roadways, Hissar** passed on 08.04.1999 and 03.09.2014 respectively by Hon'ble Supreme Court of India and submitted that limitation act is not applicable in the Industrial Dispute Act. He submitted that in both of the said judgments, it was held as such.
11. On the other hand, Ld. AR for management relied upon the judgments **Balwan Singh and Ors. Vs. Sahara India Parivar and Ors., W.P. (C) 4357/2013** and **Sh. Lal Chand Vs. Himachal Pradesh State Electricity Board Limited and Ors., CWP No. 3058/2023** and stated that the case is barred by limitation as set out in clause 3 of section 2-A of act.
12. Judgments relied by AR of claimant are not relevant in the present case. The Apex Court in both the judgments passed in 1999 and 2014 had held that the limitation act is not applicable to the references made under Industrial Dispute act, 1947 and those judgments had been delivered in respect of section 10 (1) (C) of the act. Section 10 (1) of the act enables the appropriate government to make reference of an industrial dispute which exists or is apprehended at any time to one of the authorities mentioned in the section. How and in what manner or through what machinery, the government is apprised of the dispute is hardly relevant. The only requirement of taking action U/s 10 (1) is that there must be some material before the government which will enable the appropriate government to form an opinion that an industrial dispute exists or is apprehended. This case in hand is not referred by the appropriate government by making the reference to this tribunal. The case relied by AR of the claimant is not in reference to section 2-A of the act where the limitation is set out for approaching Labour Court or tribunal directly after expiry of 45 days of approaching the conciliation officer in respect of their termination, retrenchment, discharge or dismissal of the services.

13. Reading of section 2-A (3) would lead to an irresistible conclusion that time stipulated for invoking jurisdiction of Labour Court or the tribunal as the case maybe, has to be necessarily before expiry of three years from date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1). It is mandatory, not directory.
14. Here admittedly workman services were terminated in the year 2015 and he has filed the application U/s 2A of the I.D. Act in the year 2022 which is beyond the period of three years set out in the above said section.
15. In view of the above discussion, Issue no.-1 is decided in favour of the management and against the workman.
16. Now, come to the second issue. Again the management had taken the objection that the claimant has not come within the definition of the workman because, admittedly he was working at the time of his termination as Dy. Manager (A/cs) at pay matrix 11 which is the senior position. Even, the documents suggest that he was having control over his subordinate.
17. For countering the averment, claimant had stated that he was deputed as a Dy. Manager (A/cs), however, his job is only for clerical in nature i.e. writing of books of account manually/computerize; other allied accounts work; Audit work; banking work etc.
18. Before proceeding further, it is necessary to go through the definition prescribed under Section 2 (s)-

Section 2 (s) of the Industrial Disputes Act define the workman, it reads as under:

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward,

whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties, attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

19. The document MW1/1 suggest that Sunil Kumar, the claimant was exercising the managerial power as he had given the charge of Pritam Dass, Field Officer, who was transferred to Hari Niwas, Sr. A/cs Clerk. During the course of argument, this tribunal had stated that when he himself had stated that he was got promoted from account clerk to Dy. Manager then, how could he say that he is a

workman and having no control. His answer is that he is Dy. Manager, but, it does not mean that he is exercising the control.

20. Moreover, the workman has been admittedly working at the time of his suspension at the post of Dy. Manager (A/cs) and under his subordination many person have been working i.e. Senior Accountant, Accounts Clerk and Assistant Accountant etc. By saying that his task is the same as the as the work of Accounts Clerk does not mean that he has no supervising or managerial function upon his subordinate. If the plea of the workman is taken as true than hierarchy of the officers has no meaning. Each and every person from lower level to top has to work the same function. The difference is only that top has to get work done through subordinate. Herein in this case, the claimant job is how to work get done through other beside the same function he has to perform. All the available evidence herein, it has been safely concluded that claimant does not come within the definition of the workman.

21. In view of the above discussion, issue no.-2 is decided in favour of the management and against the workman.

22. **ISSUE No. 3 & 4**

In view of the discussion on the issues no. 1 & 2 there is no need to decide the issue no. 3 regarding the illegal termination. This tribunal has already held that the claim is time barred being filed after seven years U/s 2A of the I.D Act and it has further been held that the claimant does not come within the definition of Section 2 (s) of the I.D Act, therefore, no relief can be awarded to the workman. Award is accordingly passed. A copy of this order is sent to the appropriate government for notification U/s 17 of the I.D. Act.

Date 04<sup>th</sup>, September, 2024

ATUL KUMAR GARG  
Presiding Officer.  
CGIT-cum-LabourCourt-II