

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New
Delhi.

Present:

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

INDUSTRIAL DISPUTE CASE NO. 78/2012

Date of Passing Award- 8th May, 2023

Between:

Sh. Sukhpal Singh,
S/o. Sh. Avtar Singh,
R/o: Village-Sadarpur,
PO: Khas, Ghaziabad, (UP)

Workman

Versus

1. The General Manager,
National Bicycle Corporation of India,
Hind Nagar,
Ghaziaad (UP)
2. The Managing Director,
National Bicycle Corporation of India,
250, Worli,
Mumbai

Managements

Appearances:- Shri Narender Singh , Ld .A/R for the claimant.

Shri Praveen Sharma, Ld. A/R for the management.

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of (i) The General Manager, National Bicycle Corporation of India, (ii) The Managing Director, National Bicycle Corporation of India, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/162/2011 (IR(DU)) dated 15.02.2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of National Bicycle Corporation of India, Ghaziabad in terminating the services of Shri Sukhpal Singh S/o Shri Avtar Singh without complying with Section 25 F,O, of the ID Act, is legal and justified? What relief the workman is entitled to?”

As disclosed in the claim statement the claimant Sukhpal Singh was in the employment of the mgt M/s National Bicycle Corporation of India Ltd. Ghaziabad U.P. since July 1979 in the post of Power Press Operator. His last drawn salary was Rs. 800/- per month. Though he was working honestly and sincerely, the mgt was not extending the legal benefits to him. On 22.05.1989 he was arrested and forwarded to the Jail in Meerut on some false allegations and in connection with a criminal case. He was detained in jail till 04.06.1990. He being unable to join duty, inform the mgt about the same in writing through his co-workers Chander Pal Singh, requesting to grant him the leave for the period of his detention in Jail. On 04.06.1990 he was released from jail and on the next day that is on 05.06.1990 he went to the factory of the mgt to resume duty. But he was not allowed to perform duty and was asked to file an affidavit stating about his detention in jail. The workman complied the direction by filing the affidavit on 02.07.1990. On that day, the mgt verbally informed him that his service has been terminated and his

name has been struck off from the muster rule with effect from 11.09.1989. But no order of termination was served on him. Before termination of his service, no notice pay or termination compensation was paid, not only that a domestic enquiry was also conducted against him before termination. Having no other alternate employment he kept on visiting the office of the mgt hoping that he would be reinstated into service. When all his efforts failed, he served demand notices on the mgt on 29.06.1989, 23.10.1990 and 21.01.1991. But none of his notices were replied by the mgt. The claimant then raised a dispute before the Assistant Labour Commissioner Ghaziabad and for failure of conciliation the dispute was referred to the Labour Court Ghaziabad and registered as ID no 171/1992. Before the said Labour Court the mgt filed application challenging the jurisdiction and accordingly the Labor Court Ghaziabad passed an order closing further proceeding of the matter. Left with no other option, the workman raised a dispute before the Assistant Labour Commissioner (Central Dehradun) and steps were taken for conciliation. But for the non cooperation of the mgt the conciliation failed and the appropriate Govt. referred the matter to this tribunal. Describing the order of termination as illegal and contrary to the provisions of ID Act, the claimant has made a prayer that an award may be passed directing the mgt to pay full arrear back wages, and compensation including other benefits to which he is entitled.

Being noticed the mgt appeared and filed written statement challenging the maintainability of the proceeding as barred by limitation. It has been stated that there is delay of 20 years and the claimant has not given out or explained the sufficient legal cause for the same. It has been stated that the National Bicycle Corporation was referred to BIFR u/s 15 of the Act as a sick industrial company and an order was passed proposing winding up of the company and recommendation to that effect was sent to the Hon'ble High Court of Bombay. Furthermore, as per the permission granted by Govt. of India Ministry of Labour, this company was finally closed with effect from 21.07.2001. Hence, no liability of any nature can be levied against a

closed company. So far as the claim of the claimant is concerned, it has been stated that he was a habitually irregular person and on many occasions, found involved in the acts of misconduct. Many warnings were issued to him asking him to mend his behavior. From 20.05.1989 the claimant remained unauthorizedly absent from duty. Notices by registered post with A.D were sent to him on 05.06.1989 and 20.07.1989. But he managed to evade the service. Thus on 20.07.1989 a show cause notice was issued to him. But the claimant did not submit any explanation and thus his service was terminated by order dated 11.09.1989. Thus the action of the mgt cannot be found with fault. Moreover, as per the entry in his service record the claimant had attained the age of superannuation on 18 .02.2010. Hence, no order of reinstatement or compensation with back wages can also be passed.

The claimant filed rejoinder denying the stand taken by the mgt. It has been stated that delay in this proceeding was not intentional but for the wrong forum chosen by him due to mistake. He has further stated that when the reference was made the claimant had not attained the age of superannuation.

On these rival pleadings the following issues are framed.

1. Whether delay of 2 years in raising the dispute frustrates his relief?
2. Whether closure of business activities of the mgt with effect from 21.07.2001 comes in the way of the claimant for seeking relief?
3. Whether order dated 11.09.1989 amounts to retrenchment?
4. As in terms of reference.

The claimant examined himself as ww1 and filed a number of documents as exhibit ww1/1 to ww1/12. He also examined his coworkers Chander pal as WW2. The documents filed by the claimants include the photocopy of the demand notices sent to the mgt, the order passed by the Labour Court Ghaziabad photocopies of the attendance register the representations made by him to the mgt and the written application dated 15.05.1989 submitted by him praying for grant of leave with effect from 13.05.1989. On behalf of the mgt one

of its ex-employee testified as mw1 who proved the documents marked in a series of mw1/1 to mw1/7. These documents include the correspondence made by the company with the claimant calling him to explain the misconducts committed by him and the photocopy of the police report dated 14.04.1985, photo copy of the letter written to the Superintendent of Police and several show cause notices issued to the claimant in the year 1980. Both the witnesses were cross examined at length by their adversaries.

Findings

Issue No. 1

The mgt has raised serious objection with regard to the delay in raising the dispute. Relying upon various pronouncements the ld. A/R for the mgt submitted that delay in initiation of proceeding causes prejudice to the mgt, since the later misses the opportunities of producing the documents in proof of its stand. But in this case the objection raised by the mgt does not sound convincing since the claimant has properly explained the delay in raising the dispute. From the oral and documentary evidence adduced by the claimant including the order of the Labour Court Ghaziabad it clearly appears that the stand of the mgt with regard to the delay is not acceptable as it was for a situation beyond the control of the claimant. This issue is accordingly answered in favour of claimant and it is held that the delay in filing of the dispute shall not affect the reliefs sought for.

Issue no. 2,3 4

These issues being interconnected are taken up for consideration together. The claimant has stated that he was appointed in the mgt in July 1979 and continued to work as such till his service was illegally terminated on 11.09.1989. It has been stated that his last drawn salary was Rs. 800 per month. Though the mgt while filing the W.s has stated that the claimant was not appointed in 1979 as claimed by him, no evidence to that effect has been filed. The mgt witness

mw1 has admitted during cross examination that the claimant was a regular employee of the mgt. The mgt has not disputed the last drawn salary as stated by the claimant. Now, it is to be seen if the claimant's service was illegally terminated or not. The claimant has stated that on 22.05.1989 he was arrested and remanded to jail in connection with a criminal case falsely registered against him. Due to such detention, he could not report for duty and through a co-worker Chander Pal ww2, sent intimation to the mgt. Chanderpall examined as ww2 has corroborated the statement of the claimant in this regard. The said ww2 has further added that the wife of the claimant obtained the signed leave application of the claimant from Jail and handed over to him. He then produced the same in the office of the mgt which was accepted. The representation of the claimant after release from the jail has been filed by the mgt which reveals that the claimant had intimated this fact of absences to the mgt. The workman has further stated that after his release from jail on 04.06.1990, he reported for duty on 05.06.1990. But mgt did not allow him. On the contrary, asked him to file an affidavit which was complied. The witness examined on behalf of the mgt has stated that for the unauthorized absence the mgt had issued show cause notice to the claimant by registered post with A.D. But the same were not received and returned unserved. During cross examination of the claimant it came out that the residential address of the claimant available with the mgt was never changed. This leads to a conclusion that the mgt having knowledge about the detention of the claimant in Jail custody went on issuing show cause notices and for non receipt of reply, terminated his service with effect from 11.09.1989 when the claimant was in jail custody. Evidence on record clearly establishes that the mgt, in a haste, took action against the claimant when he was in jail custody by termination his service. Before doing so no domestic inquiry for unauthorized absent was held nor the provisions of 25 F of the ID Act were complied. The said action of the mgt amounts to unfair labour practice.

The admitted position is that the national bicycle company has been completely closed and the claimant has attained the age of superannuation. In such a situation, it is not felt proper and legal to issue a direction to the mgt for his reinstatement. But for the unfair legal practice meted to the claimant, who is litigating since 32 years to get justice, he deserved to be compensated for the loss sustained by him along with 50% of the back wages based on the principle that during this period he has not discharged any kind of duty. These issues are accordingly answered in favour of the claimant. Hence ordered.

Order

The reference be and the same is answered in favour of the claimant it is held that the service of the claimant was illegally terminated by the mgt in gross violation of the provisions of ID Act. The claimant since has attained the age of superannuation it is directed that the mgt shall grant 50 % of the back wage in accordance to his last drawn salary for the period from 11.09.1989 till 18.02.2010, when he attained the age of superannuation. This amount shall be paid without interest along with 1 Lakh towards litigation expenses within 2 months from the date of publication of the award failing the amount so accrued shall carry interest at the rate of 6% per annum form the date of accrual and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
8th May, 2023

Presiding Officer.
CGIT-cum-Labour Court.
8th May, 2023