THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, JABALPUR

NO. CGIT/LC/R/39/2022
Present: P.K.Srivastava
H.J.S..(Retd)

Shri Om Prakash Tiwari,
At - Village – Kamrid,
Via – Bamni, Thana – Saragaon,
Distt. Janjgir – Champa (CG) - 495660

Workman

Versues

The Superintendent of Post Master,
Head Post Office, Tilak Nagar,
Bilaspur, Distt. Bilaspur (CG) -

Management

(AWARD)

(Passed on this 17th day of February, 2026)

As per letter dated 17/30.08.2022 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act')as per Notification No. **RP-8(1-1)/2022-ES.III** dt. 17/30.08.2022. The dispute under reference relates to:

"***Whether the action on the part of the Management of Superintendent of Post Bilaspur, Head Post Office, Bilaspur (Chhattisgarh) in terminating the services of workmen Shri Om Prakash Tiwari, Branch Post Master (BPM) Kamrid without giving any prior notice and Retrenchment Compensation is legal and justified? If not, to what relief the workman is entitled to?***"

Case of the workman is mainly that, he was appointed on 17.08.1998 by Management as Branch Post-master and continuously worked till 09.11.2020 for more than 240 days in every year. His services were terminated by the Department after 22 years of continuous service on 04.03.2014. He filed a petition before the Central Administrative Tribunal which was Petition No. 203/002702/2014, allowed after hearing. His termination was set-aside. The Department ceased his salary payment from 04.09.2018. He filed another Petition No. 203/00853/2019 before the Central Administrative Tribunal. Department was directed to resume

salary payments during the petition. His services were again discontinued without any notice or compensation and without following any procedure under the Act which is unjust, illegal and arbitrary. He raised a dispute in this respect which could not be conciliated, hence this reference.

According to the Workman, this action of Management in terminating his services is unjust, illegal and arbitrary. He is out of job since the date of his termination, he has prayed that holding termination of his services by the Department from 09.11.2020 unjust and against the Act, he be held entitled to be reinstated with all back wages and benefits and also with continuity of service.

The Department has taken a case that one Laxmi Narayan Tiwari was working as Gramin Daak Sevak Branch Post-master. He was relieved for joining in Army Postal Services on deputation. The Workman is the brother of the Laxmi Narayan Tiwari and was engaged as a ***'Substitute'*** vide Superintendent Bilaspur order dated 17.08.1998 according to the provisions contained under GDS (Conduct and Employment Rules). It was specifically mentioned in the letter that it was a substitute arrangement, purely temporary till further orders and the Substitute will have no right over the post. Also that, his services could be dispensed with any time without notice. The Workman accepted these terms and joined as a Substitute GDS BPM. His services were dispensed with vide order dated 04.03.2014. He preferred a petition before Central Administrative Tribunal which set-aside his termination vide its order dated 25.08.2017 and directed the Department to continue him till regularly recruited BPM is appointed. The Department filed Writ Petition No. 3797/2018 before the Hon'ble High Court of Chhattisgarh at Bilaspur. This petition was dismissed with an observation that the ***Tribunal did not made any right in favour of the Respondent Workman and has given full freedom to the Department to fill up the post and then dispensed the services of the Respondent***. It is in compliance of the said order, the Workman was re engaged on 04.09.2018 as a Substitute BPM till a regularly recruited candidate joined.

It is further the case of the Department that, after conducting recruitment process for regular appointment, one Dinesh Kumar Dewangan has been appointed as Regular Post-master cum vide order dated 10.11.2020. Since, the regular appointee is available; the services of the Applicant Workman were rightly

dispensed with in the light of the aforesaid orders of Central Administrative Tribunal and Hon'ble High Court. It has also been pleaded that the Workman is not a '*Workman*' under the Act, hence the reference is not cognizable by this Tribunal. He was simply a 'substitute appointee' whose services were dispensed with after regular appointee came in. Hence, the action of the Management in dispensing his services is fully justified in law. Department has requested that the reference be answered against the Workman.

In evidence, the workman filed his affidavit as his examination-in-chief. He has been cross-examined by the Department. The Department has filed affidavit of its witness Vinay Kumar Prasad as his examination-in-chief. He has been cross-examined by the Workman side. The Department has also filed appointment letter dated 17.08.1998 of the Workman, order of Central Administrative Tribunal dated 25.08.2017, order of ***Hon'ble High Court of Bilaspur in W.P. No. 3797/2018*** passed on 31.07.2018, all admitted by the Workman, hence marked Exhibits. The Workman filed photocopy pass-book, order of his termination dated 09.11.2020.

I have heard arguments of Learned Counsel Mr. Sidharath Verma for Workman and Mr. S.K. Mishra Learned Counsel for the Department. Both the sides have filed written submissions & have gone through the written submissions as well records.

On perusal of record in the light of rival submissions, following issues came up for determination in the case in hand.

1. ***Whether, the applicant is a 'workman' under Section 2(s) of the Act?***
2. ***Whether, the termination of the services of the Applicant is just and legal and in accordance with the Act?***
3. ***Whether, the applicant is entitled to any relief in the case in hand?***

<u>Issue No. 1 & 2 –</u>

It has been submitted by the Learned Counsel for the Department that the Applicant is not a *workman* under the Act. He has referred to judgment of Hon'ble Supreme Court in the case of ***General Management, Telecom Vs. A. Srinivasa AIR (1998) SC 656*** and ***Sub-Divisional Inspector of Post Vaikam and Other Vs Theyyam Joseph and others (1996) Vol. 8 SCC 489*** in this respect. He submits

that though in the case of *General Manager Telecom (supra*) Hon'ble Supreme Court has over ruled its judgment in the case of *Theyyam Joseph (supra)* and has held that the Department of Telecommunication is an 'Industry' under the Act but *observation under Para 11 of the Judgment, is the Theyyam Joseph (supra) have not been overruled*. He has referred to following observations of Hon'ble Supreme Court in this respect.

"It would thus be seen that mode of recruitment, conditions of services, the scale of pay and conduct rules regulating service conditions of Extra Department Agents are governed by statutory regulation. It is now settled law of this Court that these employees are Civil Servants regulated by these Conduct Rules."

Therefore, by necessary implication, they do not belong to category of '*Workman'* attracting provisions of the Act. The approach adopted by Tribunal therefore is clearly illegal.

Learned counsel for Department has further referred to ***Judgment of Hon'ble High Court of M.P. in the case of Himanshu Shekhar Giri Vs. Postmaster General W.P. No. 3175/2016*** and ***Senior Superintendent of Post Offices Jabalpur Division V.s. Kishan Lal Mehra M.P. No. 3247/2024*** in which the aforesaid principle have been relied upon and the Extra Departmental Agents have been held not to be a workman under the Act.

On the other hand, the Learned Counsel for the Applicant has referred to Circular issued by the Government of India ***Circular No. 1730/2019-GDS Government of India, Ministry of Communication Department of Post GDS Section*** on 14.02.2020 which **is Gramin Daak Sevak (Conduct and Engagement Rules, 2020)**. According to ***Clause 1*** of these Rules, they shall come into force on and from the date of their Circulars.

Clasue 3(D) defines Gramin Daak Sevak as follows-

"Gramin Daak Sevak means –

(1) A Branch Postmaster;

(2) Assistant Branch Postmater;

(3) A Daak Sevak.

Clause 3-A mentions about the terms and conditions of engagement. Learned Counsel has referred to Clause 3A(5&6) which are being reproduced as follows –

"3(A) Terms and conditions of engagement –

5) A Centre shall be decide the Civil Servant of the Union.

6) A Centre shall not claim to be at par with Central Government Employees."

Learned Counsel further submits that, the law, which was laid down by Hon'ble Supreme Court in the *Theyyam Joseph case (supra)* and relied by Hon'ble High Court of M.P. in the cases referred to by the Department, was with respect to the position before 2020, which is now changed by the new Recruitment Rules of 2020. These Rules specifically mentions that a Gramin Daak Sevak shall not be Civil Servant of the Union and will claim no parity with Central Government employees.

Learned Counsel for Department has referred to the ***Department of Posts, Gramin Daak Sevak (Conduct and Engagement Rules, 2001)*** which also prescribe that the Gramin Daak Sevak shall be outside the Civil Service of the Union and shall not claim to be at par with Central Government employees and submits that these observations were even before in the Recruitment Rules of 2001 and earlier also.

Learned Counsel for Workman has also submitted that the judgment in the **Theyaam Case (Supra**) was overruled completely by Hon'ble Supreme Court in its three judge bench judgment in **Shriniwasa Case** (supra) and secondly, in the light of principles of law laid down by Hon'ble **High Court of MP in the Case of MP State Road Transport Corporation V.s. Hiralal Orchelal (1979) SCC Online MP 114.** It has been laid down in this case that, the Industrial Employment Standing Orders and statutory regulations both are applicable but when there is a

inconsistency between them, the standing order shall prevail over the service regulations. Learned Counsel has referred to another judgment of Hon'ble High Court of M.P.in the case of **Union of India V.s. P.O. CGIT (1994) MPLJ 1970** in which it has been held that, the Central Ordinance Depot is severable from the defense department and is an 'industry' under the Act. The Learned Counsel further submits that, workmen working in the aforesaid depot were also governed both by Central Services Temporary Service Rules as well as Industrial Disputes Act and in case of termination, both the rules are Act which required to be complied with. Further held, that the services rules as well the Act can co-exist without any conflict and normally because of workman is governed under Section 309 of Constitution, it does not exclude the applicability of the Act, hence, it is possible that the person holding a Civil Post may also be a Workman as defined under the Act.

The relevant portion of the said judgment, referred to, is being reproduced as follows: -

"7. *The second ground urged that the rules framed under Article 309 of the Constitution for the Central Government employees exclude the application of the provisions of the Industrial Disputes Act has little merit, if the provisions of the rules and the Act are examined critically. The learned counsel for the workmen is right in submitting that the Full Bench decision of the Kerala High Court (supra), which has applied the theory of implied exclusion of the Act by the rules, does now lay down the correct law and ignores the provisions of sections 9A and 25J of the Industrial Disputes Act which clearly indicate application of the provision of the Act to Central Government employees whose service conditions are also regulated by the rules framed under Article 309 of the Constitution. Before deciding the question raised of the applicability*

of the Industrial Disputes Act to the Central Government employees governed by the service rules framed under Article 309 of the Constitution, it would be necessary to examine the relevant provisions of the Act and the Rules. Rule 5 framed under Article 309 of the Constitution of India, on which action of termination of service of the workmen was based, reads as under:—

> *"**5.Termination of temporary service**. — (1)(a) The Services of a temporary Government servant who is not in quasi-parmanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant:*
>
> *(b) the period of such notice shall be one month:*
>
> *Provided that the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.*

***8.** Section 9A of the Act requires that an employer of an industry who proposes to effect any change in the conditions of service applicable to the workmen in respect of any matter specified in the Fourth Schedule, shall effect such change only after giving a notice of such change to the workman. Proviso (b) to section 9A of the Act, however, exempts service of such notice on the workman, if his services are governed by the statutory rule or rules framed under Article 309 of the Constitution of India. Section 9A of the Act reads:—*

*"**9A.Notice of change**. — No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change.*

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected, or

(b) within twenty-one days of giving such notice;

Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any settlement or award; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules, or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply".

***9.** Section 25-J of the Act as contained in Chapter VA on the subject 'Effect of laws inconsistent with this Chapter' was inserted by the Amendment Act in the year 1963, with effect from 24-8-1963. Section 25F lays down a condition precedent to the retrenchment of workmen and requires service of minimum one month's notice containing reasons for retrenchment or payment of wages in lieu of the said notice. It also*

requires payment of retrenchment compensation at the rate prescribed and also the service of notice on the appropriate Government in the prescribed manner. Section 25F of the Act is also quoted hereunder:

> *"**25F.Conditions precedent to retrenchment of workmen**.— No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*
>
> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
>
> *(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
>
> *(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette".*

The provisions of section 25J starts with non-obstante Clause and gives an over-riding effect to the provisions contained in Chapter VA of the Act, which includes section 25F, over all laws including the standing orders made under the Industrial Employment (Standing Orders) Act, 1946. Under the proviso to section 25J, provisions of any other Act or Rules, which provide for better benefit to the workman than those contained in Chapter VA of the Act, are saved. Section 25J is reproduced below for its proper understanding and interpretation:

*"**25J.**Effect of laws inconsistent with this Chapter. —(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1945 (20 of 1946):*

Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders, or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the lime being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers any workman in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter".

Having thus examined the relevant provisions quoted above, contained in the rules framed under Article 309 of the Constitution and contained in the Act, it is not possible for this Court to accept the contention, advanced on behalf of the employer, that the rules framed under Article 309 of the Constitution exclude the application of the provisions of the Act. As has been seen above, the opening part of sub-section (1) of section 25J containing non-obstante clause uses the

expression "notwithstanding anything inconsistent therewith contained in any other law".

10. *In the opinion of this Court, the above expression and, the use of the words 'any other law' would include the statutory rules framed under Article 309 of the Constitution of India to regulate the terms and conditions of the Government servants. The word 'law' has to be given general and wide meaning to include the rules framed under the constitutional provisions. The rules framed under Article 309 of the Constitution are legislative in character, and they are laws for all purposes. This Court also does not find any inconsistency in the provisions of rule 5 and the provisions contained in section 25F of the Act. Rule 5 requires service of notice or payment in lieu thereof for terminating the services of a temporary Government servant. Section 25F of the Act also provides for service of notice or payment in lieu thereof; but in addition, it also provides for payment of retrenchment compensation. The two provisions in the rules and the Act are not inconsistent; but both can be made applicable and are supplementary to each other. The theory of implied exclusion applied by the Full Bench of Kerala High Court cannot be accepted, in view of the express provisions of section 9A and section 25-J of the Industrial Disputes Act. The provisions contained in section 9A and particularly the proviso (b) thereunder show a clear legislative intent that a Government servant, if he falls within the definition of a 'workman', defined under the Act, would be governed both by the provisions of the rules framed under Article 309 of the Constitution of India or under any other enactment as also by the provisions of the Industrial Disputes Act. Dissenting from the view expressed by the Full Bench of Kerala High Court in the case of Director of Postal Services (supra). In the opinion of this Court, the service conditions of the workmen in this case are governed both by the*

rules framed under Article 309 of the Constitution and the provisions of section 25F of the Industrial Disputes Act.″

Since, the judgment in the Theyyam case (Supra) is by Hon'ble Supreme Court, the ***obiter dicta*** as well as *ratio decidendi* both shall be binding on this Tribunal.

In the light of above discussions, the Applicant is held not to a Workman under ***Section 2(s)*** of the Act.

Issue No. 1 is answered accordingly.

Issue No. 2 -

Learned Counsel also submits that even the person, who is said to be regularly appointed by the Department is not in fact a regularly appointed employee. His provisional engagement letter dated 10.11.2020 has been filed by the Applicant which shows that he has been provisionally engaged. Thus, according to Learned Counsel for Applicant, since the so called regular appointee is not a regular appointee then he is also provisionally engaged, the Department could not terminate the services of the Applicant in the light of aforesaid order of Central Administrative Tribunal and Hon'ble High Court, which provided that services of the Applicant could be terminated after regular appointee comes in. The Department has also not filed any appointment letter of the so called regular employee Dinesh Kumar Dewangan to show that he has been regularly appointed on the said post as claimed by the Department.

Hence, the case of the workman that the so called regular appointee Dinesh Kumar Dewangan is also a provisional appointee as his appointment letter speaks is held proved. Consequently, this action of Department in terminating the services of the Workman on the pretext of appointment of Dinesh Kumar Dewangan who is himself on provisional appointment is held in violation of direction of the Central Administrative Tribunal in the aforesaid petition and thus unjust in law.

Issue No. 2 is answered accordingly.

Issue No. 3-

In the light of findings recorded in Issue No. 1 and 2 the Applicant workman is held entitled to no relief because the reference itself is not cognizable by this Tribunal.

Issue No. 3 is answered accordingly.

In the light of above discussion and findings the reference is answered as follows.

AWARD

Holding that the Workman is not a 'workman' under the Act, the reference is held not cognizable by this Tribunal.

DATE:- 17.02.2026

(P.K.SRIVASTAVA)
PRESIDING OFFICER