

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
JABALPUR (M.P.)

NO. CGIT/LC/RC/02/2019

Present: P.K.Srivastava

H.J.S..(Retd)

Pramod Baghel
S/o Shri VS. Baghel
Aged about 37 years,
R/o 42-B, Kunwar Maharaj Nagar,
Behind Ram Vatika,
Sachin Tendulkar Marg,
New Govindpuri, Gwalior (M.P.)

Workman

Versues

1. **Bharti Infratel Ltd. / Indus Towers Limited**
Through its Chairman
Registered Office- Bharti Crescent 1,
Nelson Mandela Road,
Vasant Kunj Phase-II New Delhi 110070
2. **Chief Executive Officer,**
Bharti Infratel Ltd. / Indus Towers Limited
901, Park Central, 9th Floor,
Sector 30, Gurgaon - 122001.
3. **Circle HR Head**
Bharti Infratel Ltd. / Indus Towers Limited
H-3, Metro Tower, 4th Floor, Scheme No. 54,
Near Vijay Nagar Square,
A.B. Road Indore M.P.
4. **Zonal Manager**
Bharti Infratel Ltd. / Indus Towers Limited
Royal Height Building, Ist Floor, In front of HDFC Bank, A.B.
Road Guna M.P.
5. **Indus Towers Limited,**
Through its Executive Officer
Registered Office - Bharti Crescent-1,]
Nelson Mandela Road Vasant Kunj,
Phase II New Delhi - 110070

Management

(JUDGMENT)

(Passed on this 08th day of December - 2025)

This petition under Section 2 (A) (2&3) of the Industrial Disputes Act, 1947 as amended by the Amendment Act, 2010 filed by the petitioner workman against his termination with the case that he was first appointed as Cluster Incharge with the Management vide order dated 25.02.2015 and was posted at Guna (M.P.). He successfully completed his probation period and thereafter, he was transferred from Guna to Shivpuri. As his work was nowhere supervisory or Managerial in nature, the Respondent No. 4 was the immediate Boss of the petitioner made some illegal demands which the petitioner showed inability to fulfil, he threatens the petitioner to spoil his career. The petitioner was transferred from Shivpuri to Bhatpara vide communication on e-mail received on 28.06.2017. He was directed to report at Bhatpara on 03.07.2017. The petitioner was sick at that time and was not in a position to join at the new place of his posting. He submitted his application for medical leave which was sanctioned by Authorities and he also requested for cancellation of his transfer which was not accepted. Since, his transfer was mala fide and in form of his victimization, he raised a dispute before the Conciliation Officer in State Government. The Management terminated his services vide order dated 27.09.2017 on the ground that they have lost confidence in the petitioner which amounts to misconduct. This termination was without any show cause notice or any charge sheet initiating Departmental Enquiry, hence it is unjust, illegal and arbitrary. This act of Management amounts to retrenchment of services of the petitioner. Hence is in violation of Section 25F and 25G of the Act. The petitioner has prayed that setting aside his termination as it is vitiated in law, he be reinstated with back wages and consequential benefits.

Due to absence of Management, the petition proceeded ex-parte against them. The petitioner had filed affidavit as his examination-in-chief and proved Exhibit W-1 to W-9 to be referred to as and when required.

During the proceedings, the Management appeared and on their application, order to proceed ex-parte was set-aside on cost. Their written statement of defense was taken on record and case proceeded.

The Management has taken a case that, **firstly**, the petitioner is not a workman under Section 2-S of the Act because he was a cluster in-charge drawing wages more than 40,000/- per month and was responsible for execution, operation and maintenance in Managerial and administrative capacity and **Secondly**, he was absenting himself un authorizedly and wilfully without permission of the Management and did not report on the place which he was transferred, hence Management was left with no option but to terminate his services.

The petitioner did not appear for cross-examination by Management, in the light of his affidavit examination in chief. Management did not file any affidavit rather they filed the appointment letter and termination letter of the petitioner.

At the stage of argument also, none appeared for petitioner. I have heard argument of Learned Counsel Mr. Jaideep Bansal for Management and have gone through records.

It is worth mentioning that during the proceedings, the Management for Bharti Infratel was taken over by Indus Towers Limited and they were substituted in place of Bharti Infratel during the proceedings.

The main objection raised by Management with regards to Maintainability of the petition is that, the petitioner is not a Workman as defined under Section 2(s) of the Act.

The relevant provisions are being reproduced as under:

2(s) “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.*

Learned Counsel for Management has relied on judgment of Hon'ble High Court of Bombay in the case of Union Carbide (India) Ltd. V.s. Ramesh Kumbha and Others reported in MANU/MH/0073/1999 and another judgment of the same High Court in the case of Union Carbide (India) Ltd. V.s. D. Samuel and Others reported in MANU/MH/1713/1998. In these two cases, after analyzing the judgment of various High Courts and Hon'ble Supreme Court, the Single Bench of Hon'ble Bombay High Court has summarized the principles on the basis of which it is to be decided whether the Workman is in supervisory capacity or not. These tests mentioned in **Para 34 and 35** of the Judgment are being reproduced as follows:

Para-34. In so far as the Apex Court is concerned, some of the tests laid down are:

- (1)** Designation is not material but what is important is the nature of work.
- (2)** Find out the dominant purpose of employment and not any additional duties the employee may be performing.
- (3)** Can he bind the Company/employer to some kind of decisions on behalf of the Company/employer.

- (4) Has the employee power to direct or oversee the work of his subordinates.
- (5) Has the power to sanction leave or recommend it; and
- (6) Has he the power to appoint, terminate or take disciplinary action against workmen.

Para-35. From the judgment of this Court and the other High Courts some of the tests apart from what the Apex Court has stated are:

- (a) Whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not;
- (b) Does the employee have powers of assigning duties and distribution of work;
- (c) Can he indent material and distribute the same amongst the workmen;
- (d) Even though he has no authority to grant leave does he have power to recommend leave;
- (e) Are there persons working under him;
- (f) Has he the power to supervise the work of men and not merely machines;
- (g) Does he mark the attendance of other employees;
- (h) Does he write the confidential reports of his subordinates.

Though, in his petition, the petitioner has alleged that he was not working in supervisory or Managerial capacity as he stated in his affidavit as his examination in chief but he never appeared for cross-examination with respect to his affidavit, hence his affidavit will never be read in support of his allegations on this petition.

As it is evident from his appointment letter, his job has not been specified. He was appointed as Cluster In-charge in the Operation and Maintenance Department as Senior Executive Band F. There is no circular or

standing order applicable with the Management, filed from the side of petitioner as regards to the responsibilities for the said post, hence keeping in view his pay structure he cannot be held to be workman under Section 2(s) of the Act.

Since, the petitioner has been held not to be a workman under Section 2(s) of the Act; his claim is not cognizable by this Tribunal in this Act.

Accordingly the petition fails.

ORDER

Petition dismissed.

No order as to cost.

DATE:- 08/12/2025



**(P.K.SRIVASTAVA)
PRESIDING OFFICER**