

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
JABALPUR [M.P.]

NO. CGIT/LC/RC/32/2022

Present: P.K.Srivastava

H.J.S..(Retd)

1. Shambu Sharan Tiwari,
S/o Shri Laxmi Narayan Tiwari,
J.E. in & Terminal from
M/s Hindalco Industries Ltd.
Gare Palma Mines (IV/4 & IV/5),
Vill & P/o: Milupura, Tehsil: Tamnar,
Distt. Raigarh-496107, Chhattisgarh

Petitioner/Workman

v/s

1. M/s Hindalco Industries Ltd.
Gare Palma Mines (IV/4 & IV/5),
Vill & P/o: Milupura, Tehsil: Tamnar,
Distt. Raigarh-496107, Chhattisgarh,
Through it's the Chairman,
Hindalco Industries Ltd.
Century Bhawan, 3rd Floor,
Dr. Annie Besant Road,
Worli, Mumbai-400030
2. The Agent Mines,
Gare Palma Mines (IV/4 & IV/5),
Vill & P/o: Milupura, Tehsil: Tamnar,
Distt. Raigarh-496107, Chhattisgarh

Respondents/Management

A W A R D

(Passed on this 12th day of February, 2026)

The petitioner has filed this petition *u/s 2-A (2&3)* of the *Industrial Disputes Act, 1947* as amended by *Amendment Act of 2010* (in short '*The Act*') against termination of his services by the opposite parties/management, with a case that he first joined as contractual employee with management on 22 December, 2004 in the survey department. He was confirmed as regular employee by management from

14.08.2007, he worked to the satisfaction of management till 18th February, 2021. Thereafter, he was not allowed to work by the officials of the management. A letter dated 06.03.2021 terminating his service was issued by management, he filed many representations which were not heard. Lastly, he filed his representation through Watsapp on 01st March, 2021, the letter dated 06.03.2021 was communicated to him on 17.03.2021, his services were terminated by management on the basis of alleged misconduct said to be committed by him without any departmental enquiry which was unjust, illegal and arbitrary on the part of management. He raised a dispute in this respect which could not be conciliated within 45 days. Thereafter, he filed this petition seeking setting aside of his termination and his reinstatement with all back-wages and benefits.

According to the petitioner, the charges were frivolous and false, no opportunity of hearing was given to him to have his say on the charges, no departmental enquiry was conducted before passing the order of termination, his termination is stigmatic and without conducting any departmental enquiry hence, is unjust, illegal and arbitrary. He has prayed that setting aside his termination, he be reinstated from the date of his termination with all back-wages and benefits.

In its written reply/written submission of defense the opposite parties/managements have taken a case that **firstly**, the petitioner is not a workman as defined u/s 2(s) of the Act, on the ground that at the time of termination of his services on 06.03.2021 he was working in a supervisory capacity and was looking after the Installation & Commissioning as well Construction of Gabion Wall. Approximately 8 to 10 labours reported him on daily basis. He was Project In-charge with regard to daily progress and was paid salary of Rs. 15,899/- in October, 2020, Rs. 17,958/- in November, 2020, Rs. 27,508/- in December, 2020, Rs. 18,487/- in January, 2021 and Rs. 6,510/- in February, 2021, after all deductions. He also used to sanction leave of workers under him, he had sanctioned leave of 1 worker on 20.03.2020, he had sent letter dated 29.02.2020, in it he had mentioned himself as a Surveyor and has requested for his transfer. **Secondly**, it is the case of opposite parties that he was terminated for charges of misconduct. According to the charges, he had called the General Manager, Sanjay Kumar Jain on 08.10.2020 at about 10:00 pm representing himself as a representative of Ex-M.L.A. and abused Mr. Jain

on phone. He also threatened Mr. Jain to pick him for his house and kill him, a show cause notice was issued in this respect and he had filed his written reply on 22.10.2020 admitting the charges and unconditional apology. He was again issued a show cause notice on 27.10.2020 with a charge that on 19.10.2020 at about 06:45 hrs, he threatened to kill security personnel, Prem Kumar Barman and was in a state of intoxication. He again admitted the charges, demanded and tendered unconditional apology. His apology was found not sufficient and management decided to conduct an enquiry into the charges. He was intimated with respect to the enquiry vide letter of management dated 25.11.2020 and 03.11.2020, during enquiry, his statement was recorded, the enquiry officer submitted his report dated 26.10.2020. Thereafter, the opposite parties issued a consolidated show cause notice on 16.02.2021, in it all the charges and his previous conduct was mentioned with another charge that on 06.02.2021 at 06:00 pm he stopped Madhav Kumar (Mining Sardar) and demanded money from him, on his refusal, he threatened and caused serious injury to him. The petitioner did not reply the said notice and ultimately his services were terminated by opposite parties vide order dated 06.03.2021 on the basis of enquiry report submitted by the enquiry officer. Thus, according to the opposite parties they have committed no illegality or arbitrariness in their act, they have prayed that the petition be dismissed.

Following issues were framed vide order dated 18.12.2023:-

- 1. Whether, the petitioner is the workman u/s 2(s) of the Act?**
- 2. Whether, the action of management in terminating the petitioner without departmental enquiry is legal and proper?**
- 3. Whether the petitioner is entitled to relief claimed or any other relief sought?**

In evidence, the petitioner filed his appointment letter dated 31.08.2007 as chainman, letter of appointment as Process Associate dated 27.08.2015, letter of appointment dated 20.01.2018 issued by management promoting him to the post of Junior Engineer (Survey), letter of termination dated 06.03.2021, letter regarding vacation of house issued by management, character certificate issued by opposite parties, letter of conciliation officer to management, another letter of conciliation officer to

management on admission by the opposite parties and marked as Ex-W/1 to Ex-W/8 respectfully. The petitioner has further filed his affidavit as his Examination-in-chief, he has been cross-examined on behalf of opposite parties.

The opposite parties have filed documents which are pay slip of the petitioner for October 2020, November 2020, December 2020, January 2021 and February 2021, application of petitioner seeking transfer filed on 29.02.2020, letter of opposite parties appointing the petitioner as Process Associate, another letter of opposite parties regarding pay structure of petitioner on the post of Junior Engineer on which he was promoted from 01.01.2018, show cause notice issued by opposite parties on 10.10.2020, notice issued by enquiry officer to the petitioner on 25.11.2020, termination letter, notice for vacation of house, notice issued by conciliation officer to management on 13.01.2020 and 20.01.2021, the opposite parties have filed affidavit of Shamsul Hoda, Assistant General Manager as his Examination-in-chief, he has filed and proved show cause notice dated 27.10.2020, complaint of Prem Kumar Barman dated 20.10.2020, letter of security officer with respect to complaint of Prem Kumar Barman and enquiry report.

I have heard argument of Learned Counsel for petitioner, Mr. Manu V. John and Mr. Chandrahas Dubey for opposite parties/managements. Both the sides have filed written submissions which are part of record. I have gone through the written submissions and records as well.

Issue No. 1:-

The case of the opposite parties is that the petitioner is not a workman as defined u/s 2(s) of the Act, on the ground that **firstly**, he was in a supervisory capacity as a Junior Engineer and **secondly**, his salary was more than Rs. 15,000/- per month. The petitioner has taken a case that he did not have any supervisory or managerial authority over any workman or labourer working under him. He was not any leave sanctioning authority, no one reported to him and he was not any appointing authority.

As regards to the issue that whether the applicant is a workman as defined under the Act or not, **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**, may be referred in this respect. 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 Applicant 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 these 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.

The judgment of Hon'ble Supreme Court in the case of **S.K. Maini vs. M/s. Carona Sahu Company, (1994) 3 SCC 510**. Para 9, 10 & 11 of this judgment are being reproduced as follows :-

"9. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of

*the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burmah Shell Management Staff Assn.* [(1970) 3 SCC 378 : (1971) 2 SCR 758 : (1970) 2 LLJ 590] In *All India Reserve Bank Employees' Assn. v. Reserve Bank of India* [(1965) 2 LLJ 175 : AIR 1966 SC 305 : (1966) 1 SCR 25] it has been held by this Court that the word 'supervise' and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in Section 2(s) of the Industrial Disputes Act.*

*10. In *Mcleod and Co. v. Sixth Industrial Tribunal, W.B.* [AIR 1958 Cal 273] P.B. Mukharji, J. of the Calcutta High Court as the learned Chief Justice then was, observed that whether a person was a workman within the definition of the Industrial Disputes Act would be the very foundation of the jurisdiction of the Industrial Tribunal. The court further observed that in order to determine the categories of service indicated by the use of different words like 'supervisory', 'managerial' and 'administrative', it was not necessary to import the notions of one into the interpretation of the other. The words such as 'supervisory', 'managerial' and 'administrative' are advisedly loose expressions with no rigid frontiers and too much subtlety should not be used in trying to precisely define whether supervision ends and management begins or administration starts. For that would be theoretical and not practical. It has to be broadly interpreted from a common sense point of view whose tests will be simple both in theory and in their application. The learned Judge further observed that a supervisor need not be a manager or an administrator and a supervisor can be a workman so long as he did not exceed the monetary limitation indicated in the section and a supervisor irrespective of his salary is not a workman who has to discharge function mainly of managerial nature by reasons of the duties attached to his office or of the powers vested in him. The aforesaid decision of the Calcutta High Court was noted with approval by this Court in *National Engineering Industries Ltd. v. Shri Kishan Bhageria* [1988 Supp SCC 82 : 1988 SCC (L&S) 428 : AIR 1988 SC 329].*

*11. It may be noted in this connection that in view of the amendment of Section 2(s) enlarging the ambit of the classification of various types of workmen except managerial force, entire labour force has been included within the definition of workman under Section 2(s) as has been indicated by this Court in *S.K. Verma v. Mahesh Chandra* [(1983) 4 SCC 214 : 1983 SCC (L&S) 510 : (1983) 3 SCR 799]. But if the principal function is of supervisory nature, the employee concerned will not be workman only if he draws a particular*

quantum of salary at the relevant time as indicated in Section 2(s). In the instant case, it, however, appears to us that Shri Maini as Manager/In-charge of the shop was made responsible and liable to make good such amount of credit whether such sale on credit had been made by him or by any other member of the staff in employment under him with or without his knowledge. Under the terms and conditions of service, he was asked to take charge of the shop to which his service was transferred. Mr Maini, under the terms and conditions of service, was required to be held responsible and liable for any loss suffered by the Company due to deterioration of the quality of the stock or any part thereof and loss of any of the other articles lying in the shop caused by reason of any act of negligence and/or omission to take any precaution by the employees. Mr Maini was also required to notify the Company by trunk call and/or telegram not later than three hours after the discovery in the said shop of any fire, theft, burglary, loot or arson. He was required to investigate into the matter immediately and get the cause and amount of loss established by local authorities. Mr Maini as in-charge of the shop was required to keep and maintain proper accounts as approved by the Company indicating the exact amount to be paid from the receipts from the respective staff. Under Clause XIII of the terms and conditions of the service, Mr Maini would remain fully responsible to the Company for damages or loss caused by acts or commission of the loss of the employees of the shop. Under Clause XV of the terms and conditions of service, the shop in-charge was required to keep himself fully conversant with all the regulations in force which may come into force from time to time with regard to Octroi, Sales Tax and Shops and Commercial Establishments Act and/or any other local regulation applicable to the shop. Clause XXI indicates that non-compliance with any of the local or State Acts or Central Acts would be viewed seriously and Manager would be held responsible for any fine/penalty imposed and/or prosecution launched against the Company. It also appears that in the event of a salesman being absent, the shop in-charge is empowered to appoint temporary helper for the said period to work as acting salesman. Similarly, in the event of helper being absent, the shop manager is also empowered to appoint part-time sweeper and to entrust the work of a helper to a sweeper. Such functions, in our view, appear to be administrative and managerial. By virtue of his being in-charge of the shop, he was the principal officer-in-charge of the management of the shop. We therefore find justification in the finding of the High Court that the principal function of the appellant was of administrative and managerial nature. It is true that he himself was also required to do some works of clerical nature but it appears to us that by and large Shri Maini being in-charge of the management of the shop had been principally discharging the administrative and managerial work. A manager or an administrative officer is generally invested with the power of supervision in contradistinction to the stereotype work of a clerk. This Court in *Lloyds Bank Ltd. v. Panna Lal Gupta* [(1961) 1 LLJ 18 : AIR 1967 SC 428] has indicated that a manager or administrator generally occupies a position of command or decision and is authorised to act in certain matters within the limits of his authority without the sanction of his superior. In the instant case within the authority indicated in the terms and conditions of his service, Shri Maini was authorised to take decisions in the matter of temporary appointments and in taking all reasonable steps incidental to the proper running of the shop. Precisely for the said reason, Shri Maini had signed the statutory forms as an employer. It should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in a big set-up such power is not invested to a local manager but such power is given to some superior officers also in the management cadre at divisional or regional level. The unit in a local shop may not be large but management of such small unit may fulfil the requirements and incidences of managerial functions. On a close scrutiny of the nature of duties and functions of the Shop Manager with reference to the admitted terms and conditions of service of Shri Maini, it appears to us that the High Court was justified in holding that the appellant was not a workman under Section 2(s) of the Industrial Disputes Act. In the aforesaid facts, it is not necessary to go into the question as to whether or not domestic

enquiry had been properly conducted or the Enquiring Officer had acted with bias. It is also not necessary to decide for the purpose of the disposal of the appeal as to whether or not the Company was entitled to lead fresh evidence in support of the domestic enquiry before the Labour Court. The appeal is, therefore, dismissed without, however, any order as to cost."

In another case of Vandana Joshi vs. Standard Charter Bank MANU/MH/1391/2010, decided by Hon'ble High Court of Bombay it has been laid down that the question as to whether the employee is a applicant or not must be decided with reference to the dominant nature of the duties and responsibilities performed by employee.

In the case of Arkal Govind Rao vs. Ciba Geigy of India, reported in (1985) 3 SCC 371, it was held that the person concerned would not cease to be a applicant if he performs some supervisory duty but he must be a person engaged in supervisory duty and the test to be employed is what was the primary, basic or dominant nature of duties for which the person whose status is under inquiry was employed.

Undisputedly, the petitioner was a Junior Engineer at the time his services were terminated by opposite parties. His appointment letter dated 20.01.2018 by which he has been promoted as a Junior Engineer (Survey) in Band 14 w.e.f. 01.01.2018, states that his designated salary is Rs. 1,00,440/- p.a., it excludes House Rent Allowance, Conveyance Allowance, Special Allowance and Medical Allowance. This letter does not describe about his responsibilities and duties, nor has any circular or Certified Standing Orders been filed by the opposite parties to show as to what duties were assigned to the petitioner.

In his affidavit as his Examination-in-chief and cross-examination, he states that he was appointed as Process Associate on 27.08.2015, his designation of Assistant (Survey), he was promoted vide order dated 20.01.2018 and become senior worker, he was not promoted as a Junior Engineer but his this statement is in contradiction of his promotion letter dated 20.01.2018 which clearly states that he has been promoted as a Junior Engineer (Survey). He further admits in his cross-examination that his total salary on promotion became in between Rs. 25,000/- to Rs. 26,000/- but he denied that his work was supervisory, he also denied that he used to supervise the work of labourers under him, on being shown his application for transfer in it he has stated that he does the work of survey. He has explained that by this he meant, that he worked in survey department though, the opposite parties have taken a case that during his tenure as Junior Engineer he had sanction leave of one workman detailed

mentioned earlier, it cannot be taken that he was authorized to sanction leave of workers under him, one casual incident of sanction leave is not sufficient in this respect to show that his work was supervisory.

On the other hand, the witness from opposite parties side as though stated in his affidavit that the work of the petitioner was supervisory and managerial but in absence of any order in this respect or any certified standing orders detailed the duties and liabilities as well powers of Junior Engineer (Survey) or any such condition in his job letter, the case of the petitioner is held more reliable and his case that he did not work in supervisory or managerial capacity rather he was a workman under the Act is more creditworthy. **Accordingly, holding the petitioner workman u/s 2(s) of the Act, Issue No.-1 is answered accordingly.**

Issue No.-2 :-

Case of the workman is that no enquiry was conducted against him with respect to the charges, there is on record enquiry proceedings (copy filed by the management) and stated by the management in his affidavit, it goes to show that the workman appeared before the enquiry officer in the enquiry on 26.11.2020 when he was asked whether he admits the charges imposed against him in the notice, he admitted the charges and assured that he will not repeat such mistakes in future, this document bears the signature of the petitioner. Though, it has been submitted that his signatures were obtained under coercion, but there is no evidence in this respect. **Hence, the case of the petitioner that he was terminated without any enquiry is held not proved.**

Since, the petitioner admitted his misconduct during the enquiry, it was not incumbent on enquiry officer to proceed further with the enquiry. The charges have been held proved on the basis of admission hence, there is no perversity in the finding of the enquiry officer with respect to proof of charges.

As the proved charge of misconduct, is of misbehaviour with superior officer and colleagues, the punishment of dismissal from service cannot be held to be disproportionate to the charge proved.

Issue No.-2 is answered accordingly.

Issue No.-3 :-

In the light of findings on issue No. 1 and issue No. 2, is answered against the petitioner, he is held entitled to no relief.

No other point was pressed.

On the basis of above discussion and findings, the petition lacks merit and is liable to be dismissed.

ORDER



Petition dismissed.

No order as to cost.

DATE: 12-02-2026

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