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

NO. CGIT/LC/RC/16/2018
Present: P.K.Srivastava
H.J.S..(Retd)

1. **B. Triuptayya,**
   S/o Late B. Ramyya,
   Aged about 43 years,
   R/o Anusuiya Park, Line No. 5,
   Rakshak Nagar Gold, Phase-1,
   Kharadih, Pune (M.H.)

Petitioner/Workman

V/S

1. **Bhilai Steel Plant,**
   Through its Chief Executive Officer,
   Bhilai, District Durg (C.G.)

2. **General Manager,**
   Rail & Structural Mill,
   Bhilai Steel Plant, Bhilai,
   District Durg, Chhattisgarh

Respondents/Management

A W A R D

(Passed on this 18th day of March, 2026)

The petitioner has filed this petition ***u/s 2-A (2&3)*** of the ***Industrial Disputes Act, 1947*** as amended vide ***Amendment Act of 2010*** (in short '***The Act***") against termination of his services by way of punishment w.e.f. 16.09.2016, with a case that he was first appointed on 07.09.1996 and was granted permanent status on 07.03.2001. Unfortunately, he had some personal problems due to which he became mentally sick and was under the supervision and treatment of Dr. D.V. Neel, Psychotherapist at Pune from 09.11.2014 to 23.09.2017. After he recovered, he reported back to management and came to know that his service has been terminated by the management on charge of misconduct by way of unauthorizedly and wilfully absenting himself from work without any intimation to management or getting any leave sanctioned. He sought information under Right to Information Act and was given copies related to charge-

sheet, enquiry, enquiry report and other related documents including punishment order.

Case of management is that the workman is a habitual absentee, he absented himself in 2003, 2004 and 2011 for 70, 41 and 54 days respectively and was punished accordingly. A report regarding his unauthorized absent w.e.f. 16.06.2015 was received by management on 12.11.2015. He was issued a notice on his address advising him to report on his workplace. This notice returned back as he was not found on the address. He was against issued a charge-sheet dated 12.12.2015 no reply sent by him. Hence, management conduct an inquiry. Notice of inquiry was sent to him by registered post, which returned unserved as addressee not found. It was also pasted on the General Notice Board. The workman did not participate in the inquiry, though he was given sufficient opportunity to defend himself. The Inquiry Officer submitted his inquiry report. The workman was issued a show cause notice with a copy of inquiry report by way of registered post sent on his address, mentioned in his service records, but returned unserved with an endorsement addressee not found. The notice was also pasted on the notice board. Thereafter punishment order was passed and has further pleaded that the charges were rightly been proved and the punishment is also proportionate to the charges.

A preliminary issue was framed vide order dated 09.05.2022, which is as follows:-

Whether enquiry conducted against the workman is just, proper and legal?

The workman filed and proved documents regarding his sickness which are Ex-W/1 to Ex-W/13. Management filed photocopy documents with respect to enquiry and punishment.

On the basis of evidence, preliminary issue was decided vide order dated 29.01.2025. The departmental enquiry was held vitiated. Management was given opportunity to prove the charges before this Tribunal. Inspite, of many opportunities given to management, they failed to produce any witness or evidence in support of the charges.

I have heard argument of Learned Counsel for workman, Mr. Siddharth Verma and Mr. R.C. Shrivastava, 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.

On perusal of record in light of rival arguments, following Additional issues came up for determination:-

1. ***Whether, the petition itself is maintainable before this Tribunal?***

2. ***Whether, the charges are proved?***

3. ***Relief, if any to which the workman may be entitled to?***

Additional Issue No. 1:-

Learned counsel for management has challenged the maintainability of the petition before this Tribunal on two grounds, ***firstly***, on the ground that section 2-A(2&3) was inserted in the Act by way of Amendment Act, 2010 which itself has been repealed by Repeal & Amendment Act, 2016 (Act No. 23 of 2016). Hence, the amendment incorporated in the Act by way of Amendment Act, 2010, which has been repealed by Repealing & Amendment Act, 2016, also stood deleted/repealed and ***secondly*****,** the Union Government has implemented the Industrial Relations Code, 2020 by way of notification dated 21.11.2025 which provides that matters related to discharge, removal, termination will be heard and decided by a Division Bench of Tribunal consisting of Judicial Member and Administrative Member. Learned Counsel has relied on ***Judgment of Hon'ble Supreme Court in the case, Union of India v/s Heavy Electricals Factory Employees' Union, AIR (2026) SC 601***, paras 10.2 and 12 of the said judgment are being reproduced as follows:-

> ***"10.2 The aforesaid sections again do not empower the Central Government to issue any clarification or direction with reference to any provisions of the 1948 Act. None of the sections empowers the central government to even frame rules. The entire power is vested with the State Governments. All that the Central Government can do is, issue directions to the State Governments.***
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> ***12. Coming to the judgments cited by learned counsel for the respondents, this Court in Rajasthan State Industrial Development & Investment Corpn.'s case (supra), held that***

executive instructions which have no statutory force, cannot override the law. Any notice, circular, guidelines, etc., which run contrary to the statutory provisions cannot be enforced."

On the other hand, Learned counsel for petitioner has submitted that the Amendment Act, 2010, amending section 2A of the Industrial Disputes Act, 1947 by way of adding section 2-A (2&3) in the Act which provides that, when a dispute has been raised in case of discharge, dismissal, retrenchment or otherwise termination of service of workman within three years of the order and is not conciliated within 45 days, the aggrieved workman may also file a petition directly before the Tribunal against his discharge, dismissal, retrenchment or otherwise termination.

Learned counsel further submits that, these provisions have been incorporated in the Parent Act of 1947. Hence, repealing of the Amendment Act, 2010 will not have any effect on section 2-A of the Parent Act of 1947. He has referred to a ***Judgment of the Hon'ble High Court at Calcutta in the case, Krishnadas Bhattacharjee v/s The State of West Bengal & Ors., (2023) 0 Supreme(Cal) 663/2023 2 LLJ 370*** in this respect, the Hon'ble High Court at Calcutta has observed that when the amendment has been incorporated in the Parent Act, such amendment will not stand repealed/deleted from the Parent Act, if the Amendment Act itself is repealed later on reference of section 4 of the Repeal & Amendment Act, 2016 has also been taken in this judgment. The relevant paragraphs of this judgment are being reproduced as follows:-

"21. I find that primarily the advocates representing the workmen have, inter alia, contending that notwithstanding the Repealing Act being notified, and notwithstanding the whole of the Amendment Act of 2010 being repealed, the provisions introduced by way of the Amendment Act of 2010, continues to survive in the statute book, for the Labour Courts/Tribunals to exercise jurisdiction on the basis thereof. To substantiate the aforesaid contention, reliance has been placed on Section 4 of the Repealing Act and Section 6 and 6A of the General Clauses Act, 1897. By further referring to Section 4 of the Repealing Act, it has been contended that notwithstanding repeal of any of the enactments, the same shall not affect any other enactment in which the

repealing enactment has been applied, incorporated or referred to. It has also been, inter alia, contended that notwithstanding the aforesaid repeal, the same shall not affect any principle or rule of law. It has submitted that the Amendment Act of 2010, has been applied, incorporated and referred to in the said Act and as such notwithstanding repeal of the Amendment Act of 2010, the same is saved.

26. *In this case, the amendments introduced by the Amendment Act of 2010, have been incorporated and inserted in the principal Act. It would, apparent from a plain reading of Section 4 of the Repealing Act that the same provides that the repeal shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to; and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing; nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in or from any enactment hereby repealed. In view thereof by reasons of Section 4 of the Repealing Act, the amendments introduced by the Amendment Act of 2010 are saved. This has, however, not being considered by the learned advocates representing employers.*

27. *I also find that learned advocates representing the employers have strenuously argued that in order to remove the anomaly created, which was brought about by incorporation of the Amendment Act of 2010, the Repealing Act had been notified. I am afraid that I am unable to accept such contention. Although an attempt has been made to, inter alia, contend that the object*

of conciliation has been removed by the Amendment Act of 2010, I am afraid such is not the case. A perusal of Section 2A (2) of the said Act, would reveal that in order to invoke the provisions of the said section, an application to the Conciliation Officer is mandatory and it is only on the expiry of 45 days from the date of making such an application that a proceeding can be initiated before learned Labour Court. The said section read with the obligation of the conciliation Officer as provided in the Act, and rules framed thereunder, to initiate the conciliation proceedings, in my view, does not create any incongruity in the Scheme of the said Act. The object of the Repealing Act also does not in any way provide that the Amendment Act of 2010 has been removed by reasons of its incongruity.

28. *I find that it has also been argued that if it was the intention of the legislature, notwithstanding the Repealing Act being notified, to retain the amendments in the statute book, then the Repealing Act, would not have provided for repeal of only Section 2 and 3 of the Representations of People (Amendment and Validation) Act, 2013 (herein after referred to as the Amendment Act 2013), instead would have provided for repeal of the provisions of the Representation of People (Amendment and Validation) Act 2013, as a whole. The distinction made by the legislature in repealing an Act, as a whole, and in repealing a particular section of a certain act, clearly highlight the intention of the legislature. By placing reliance on the aforesaid, it has been contended that if the legislature wanted to repeal only a part of the Amendment Act of 2010, then it would have provided for the same, as has been done in the case of Representation of People (Amendment and Validation) Act, 2013. Before proceeding to deliberate further on this aspect it is necessary to refer to the provisions of the Amendment Act of 2013. The Amendment Act 29 of 2013, by which the Representation of People (Amendment and Validation) Act, 2013, was introduced is extracted hereinbelow:*

> *"1. (1) This Act may be called the Representation of the People (Amendment and Validation) Act, 2013.*

(2) It shall be deemed to have come into force on the 10th day of July, 2013.

2. In the Representation of the People Act, 1951 (hereinafter referred to as the principal Act), in section 7, in clause (b), after the words "or Legislative Council of a State", the words "under the provisions of this Chapter, and on no other ground" shall be inserted.

3. In section 62 of the principal Act, after the proviso to sub-section (5), the following proviso shall be inserted, namely:- "Provided further that by reason of the prohibition to vote under this sub-section, a person whose name has been entered in the electoral roll shall not cease to be an elector.

4. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the provisions of the Representation of the People Act, 1951, as amended by this Act, shall have and shall be deemed always to have effect for all purposes as if the provisions of this Act had been in force at all material times."

29. *A perusal of the Amendment Act of 2010 and Section 2 and 3 of the Amendment Act of 2013, would in no uncertain terms clarify that by the aforesaid amendments only section 2 and 3 have been inserted in the principal Act. While in the case of the Amendment Act 2010, all the sections seek to insert the respective amendments in the principal Act, in the case of Amendment Act, 2013, only Section 2 and 3 seeks to amend the provision of the Representation of Peoples Act, 1951. Insofar as sections 1 and 4 of the Amendment Act 2013, are concerned the same do not seek to insert and or in way amend any of the existing provisions of the principal Act. The aforesaid contention raised by employers, thus cannot be sustained and is accordingly, rejected."*

Hence, in light of these facts the first submission of Learned counsel for management with regards to maintainability of this petition is liable to

be rejected and is rejected Accordingly, the petition is held maintainable before this Tribunal.

The **second submission** with respect to maintainability of this petition before this Tribunal as regards section 44 of the Industrial Relations Code, 2020 is being reproduced as follows:-

> ***"44. Industrial Tribunal.***—*(1) The appropriate Government may, by notification, constitute one or more Industrial Tribunals for the adjudication of industrial disputes and for performing such other functions as may be assigned to them under this Code and the Tribunal so constituted by the Central Government shall also exercise the jurisdiction, powers and authority conferred on the Tribunal, as defined in clause (m) of section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) by or under that Act.*
>
> *(2) Every Industrial Tribunal shall consist of two members to be appointed by the appropriate Government out of whom one shall be a Judicial Member and the other, an Administrative Member.*
>
> *(3) A bench of the Tribunal shall consist of a Judicial Member and an Administrative Member or single Judicial Member or single Administrative Member.*
>
> *(4) The qualifications for appointment, method of recruitment, term of office, salaries and allowances, resignation, removal and the other terms of conditions of service of the Judicial Member and the Administrative Member of the Tribunal constituted by the Central Government shall be in accordance with the rules made under section 184 of the Finance Act, 2017 (7 of 2017): Provided that a person who has held a post below the rank of Joint Secretary to the Government of India or an equivalent rank in the Central Government or a State Government, shall not be eligible to be appointed as an Administrative Member of the Tribunal.*
>
> *(5) The term of office of the Judicial Member and the Administrative Member of a Tribunal constituted by the State Government under sub-section (1), their salaries and allowances, resignation, removal and other terms and conditions of service shall be such as may be prescribed by the State Government.*
>
> *(6) The salary and allowances and the terms and conditions of service of the Judicial Member or Administrative Member referred to in*

sub-section (2) and appointed by a State Government shall not be varied to his disadvantage after his appointment.

(7) The procedure of the Tribunal (including distribution of cases in the benches of the Tribunal) shall be such as may be prescribed, provided a bench consisting of a Judicial Member and an Administrative Member shall entertain and decide the cases only relating to—

(a) the application and interpretation of standing order;

(b) discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen dismissed;

(c) illegality or otherwise of a strike or lockout;

(d) retrenchment of workmen and closure of establishment; and

(e) Trade Union disputes, and the remaining cases shall be entertained and decided by the bench of the Tribunal consisting either a Judicial Member or an Administrative Member of the Tribunal.

(8) The Judicial Member shall preside over the Tribunal where the bench of the Tribunal consists of one Judicial Member and one Administrative Member.

(9) ……

(10) ……

The notification of Government of India dated 21.11.2025 provides that from the date of notification i.e., 21.11.2025 the provisions of said code shall come into force.

Vide another notification, the Union of India, Ministry of Labour has provided that till the Industrial Tribunals are constituted under the Code, the Central Government Industrial Tribunals constituted under the Industrial Disputes Act, 1947 will discharge of the functions under the Industrial Relations Code, 2020.

Here two points are significant ***first***, the impugned order was passed before implementation of the Industrial Relations Code. Hence, the Industrial Relations Code, 2020(in short the Code) will not apply retrospectively. ***Secondly***, the Industrial Tribunal constituted under the Code will consist of two Members in Bench which shall decide the cases of

discharge, dismissal, retrenchment or otherwise termination as mentioned above, has not yet been constituted and the functions of that Tribunal are being discharged by the Central Government Industrial Tribunal constituted under the Industrial Disputes Act, 1947 by way of notification as mentioned above. Since, the Central Government Industrial Tribunal constituted under the Industrial Disputes Act, 1947 consists of only one member who is the Presiding Officer, there is no occasion of such cases decided by a Division Bench till Industrial Tribunals under the Industrial Relations Code, 2020 are constituted. Hence, on this discussion, these arguments from the side of management also fail. **Accordingly, the petition is held maintainable before this Tribunal i.e., Central Government Industrial Tribunals constituted under the Industrial Disputes Act, 1947.**

Issue No. 1 stands answered accordingly.

Issue No.-2 :-

After the enquiry has been held vitiated in law, management has failed to adduce any evidence in proof of the charges. Learned counsel for management has referred to enquiry papers and documents as proof of charges, But, his this argument cannot be accepted in light of ***Judgment of Hon'ble Supreme Court in case of Neeta Kaplish v/s Presiding Officer, Labour Court & Anr. (1999) 1 SCC 517***, in this case, the departmental enquiry against the workman was held vitiated. Hon'ble Apex Court held that the evidence collected during the enquiry which was vitiated will not be looked into for proof of charge. Hence, any evidence collected during the enquiry will not be looked into, this case also have proof of charge in absence of any other evidence from the side of management, the charges are held not proved against the workman.

Issue No. 2 stands answered accordingly.

Issue No.-3 :-

Reference of the ***Judgment of Hon'ble Supreme Court in the case, Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & others (2013) 10 SCC 324*** is required, the relevant portion of the Judgment is being reproduced as under:-

"The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that

the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/ illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the

course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

In light of the proposition of law laid down by the Hon'ble Supreme Court and Hon'ble High Court as stated above, the impugned order of punishment is liable to be set aside and workman is held entitled to be reinstated. But, since he himself has admittedly not worked during the period of absence as mentioned above, relying on the principles of 'No Work No Pay', he will not be entitled to back wages and consequential benefits for the period of his absence though, he will be entitled to back wages and consequential benefits from the date of his punishment order, deeming himself to be in continuous service of management.

Issue No. 3 stands answered accordingly.

No other point was pressed.

On the basis of above discussion and findings, following order is passed.

ORDER

Petition Allowed.

The termination of the petitioner workman w.e.f 16.09.2016 is set aside; he is reinstated from the date of his termination with back wages as well all the consequential benefits from the date of his termination, treating him to be in regular service.

No order as to cost.

DATE: 18-03-2026

(P.K. SRIVASTAVA)
PRESIDING OFFICER