

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT DELHI NO.1 NEW DELHI.
ID NO. 60/2011**

Presiding Officer: **Justice Vikas Kunvar Srivastava (Retd.)**

Sh. Jagbir Singh,
B-48, Gali No. 4, Raja Puri,
Jyoti Colony, Shahdra,
New Delhi-110032

Claimants...

Versus

The General Manager,
The Deutsche Bank AG,
New Delhi Branch,
Tolstoy House, 15-17 Tolstoy Marg,
New Delhi-110001

Managements...

Dr. M.Y. Khan (Adv), A/R for the Claimant.

Ms. Raavi Birbal (Adv), A/R for the Management.

Reference of the industrial dispute

1. This Industrial Dispute case (ID No. 60/2011) directed against the management of 'Deutsche Bank' is referred by the Appropriate Government i.e. Government of India/Ministry of Labour, New Delhi under Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) which shall hereinafter be called as "The Act" only. The reference mooted the said dispute for adjudication to this Central Government Industrial Tribunal No. 1, New Delhi *vide* order no. L-12012/13/2003-IR(B-I) dated 21.03.2003 by the Government of India. The reference schedules the industrial dispute in following terms-

"Whether the action of management of Deutsche Bank, AG, New Delhi paying the compensation etc. amounting to Rs. 68117.70 on the basis of his designation as sub staff instead of clerk to Sh. Jagbir Singh is justified. If not, to what relief the workman is entitled to?"

Factual Matrix

2. Brief facts as emerged out from the statement of claim as well as the written statement in defense are as follows :-

The claimant states, he was appointed as a Sub-Staff on contract in the services vide an appointment letter dated 02.07.1993. He continuously

served without any break w.e.f 02.01.1994 vide bank's letter dated 03.01.1994. He was assigned duties of cleaning and dusting of the office premises, delivery of mail/documents within the bank and to other locations within India, and other duties assigned from time-to-time. By letter dated 01.11.1998 the bank had restructured the existing grading system of all the staff in India and had moved to the new levels of responsibility. As per the letter, the claimant was placed in the level of responsibility as LoR-08, but no other terms and conditions of his appointment were changed. In a letter dated 07.04.1999 it was clearly stated by the bank that all 'clerical staff' are under LoR-08. Consequent there upon, the management requested the RBI to allow the claimant w.e.f. 02.01.1999 as a clerical staff under LoR-08 to lodge the morning clearing/high value/normal clearing/return clearing in which signature of the claimant were attested. In every communication addressed by the bank, he was referred as a clerk. Even in his ID card issued, he was referred as a clerk.

3. The claimant was terminated vide letter dated 02.01.2002 on the ground, his services as sub-staff had become surplus. It is claimed to be ex-facie bad and illegal in violation of section 25F of "the Act". A sum of Rs.36,544.50/- was paid as retrenchment compensation which the claimant alleges arbitrary and clear violation of the retrenchment procedure. The claimant submits that the entire action of termination by paying compensation of Rs. 68,117.70/- on the basis of designation as sub-staff instead of clerk is unjustified and illegal. It is firmly stated by the claimant that the RBI itself has stated that procedure under rule 12 of Uniform Rules and Regulations have to be strictly followed whereby each member bank shall be represented in the clearing house by a representative who shall deliver and receive the documents. Such representatives have to be either an officer or a clerical staff but not class-IV staff or courier agency etc. The advocate of the claimant sent a notice challenging the said termination and called upon the management to reinstate him immediately.

4. On the basis of above facts and material the claimant has prayed it is to declare that the services of the claimant was illegally terminated w.e.f. 02.01.2002 without resorting to the provisions of Section 25F and even otherwise the action of the management paying compensation etc. amounting to Rs.68,117.70/- given as ex-gratia amount on the basis of his designation as sub-staff instead of a clerk was not justified as per provisions of Section 25-F and was thus illegal. It is prayed that the claimant be reinstated immediately, and be held entitled to receive back wages from the bank and the bank be directed to pay the arrears w.e.f. 02.01.2002.

5. The management says the claims to be misconceived, ill-conceived and liable to be dismissed. Management admits that in the year 1998 they had restructured some then existing system for its staff members. The level of responsibility of the claimant as it was at that time changed to the level of responsibility named as 'LoR-08' w.e.f. Nov 1, 1998 and which was duly informed to him. According to the Management the said change was not

promotion of the claimant to the clerical cadre as alleged by the claimant before the tribunal. Even after Nov 1, 1998 salary of the claimant remained the same as was earlier. No letter of promotion was ever issued to or served upon the claimant including revised salary, grade, scale etc. The nature of duties having been discharged by the claimant remained as such of a sub-staff. Management has further clarified that the duties assigned to the claimant after the said change were lodging cheques, drafts, and clearing instructions received by the bank from its customers and clients for getting cleared with the clearing house. The management has already issued the retrenchment compensation and all the formalities of retrenchment have been complied with and he has already received the said amount. The pay scale for the sub-staff cadre is 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and for clerical grade is 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years).

6. According to the management on the basis of the initial appointment and salary permissible to the post of sub-staff against which the claimant was appointed, he was paid his salary as sub-staff. Since there was no need for full-time sub-staff and his services became surplus, the same were terminated w.e.f. 02.01.2002 issuing the termination letter to him and a payment of Rs.68,117.70/- made to him alongwith statement of account. He was further directed to approach the trustees of the Provident Fund for his superannuation benefits, the PF. Management has denied in its pleading that thus erroneously showing the claimant as sub-staff and was paid less than. The management pressed on that the salary of the claimant from Dec 2001 till termination was Rs. 7038.20/- per month which he was rightly paid alongwith Rs. 50/- per month as washing allowance. His termination of services is legal, valid and justified.

7. On the basis of above facts pleaded by the parties to the present industrial dispute, following issues were settled on 30.05.2006 for adjudication of the dispute:

1. Whether the workman is employee of the management as clerk or sub-staff? Whether the services of the workman were terminated as per law?
2. As in terms of original reference which is as under after corrigendum dated 08.10.2005:
“Whether the action of the management of Deutsche Bank, AG, New Delhi in terminating the services after paying the compensation etc. amounting to Rs.68117.70 on the basis of his designation as sub-staff instead of clerk to Sh. Jagbir Singh is justified. If not to what relief the workman is entitled to?”
3. Whether the payment of said amount of compensation is appropriate and given as per law?
4. Relief.

Obviously, no issue of the jurisdiction of the Tribunal over the matter as to the dispute being an ‘industrial dispute’, as to the claimant being a ‘workman’ and management an ‘industry’ as defined in the Industrial Disputes Act, 1947 are involved in the present matter in hand. However, this tribunal finds the matter

under reference an 'industrial dispute', which worth to be adjudicated to answer the reference and passing of an Award in accordance with law.

EVIDENCE

8. Claimant produced himself as witness before the tribunal, his cross-examination in-chief was recorded on 27.04.2012 and further he pleaded himself for cross-examination also. Number of documents in evidence are also placed and proved by him which are marked as:

Ex.WW1/1 - The letter dated 02.07.1993 issued by the management offering him appointment as sub-staff specifically mentioning therein the date and salary with other emoluments and a probationary period for 6 months from the date of joining. Endorsed/admitted by the management.

Ex.WW1/2 - The letter dated 03.01.1994 is of confirmation in pension w.e.f. 02.01.1994.

Ex.WW1/3 - dated 01.11.1998 is also a letter addressed by the bank to the claimant regarding the move of bank whereby it had restructured and the then existing grading system for all the staff to the new level of responsibility. Both endorsed/admitted by the management.

Ex.WW1/4 addressed by the management bank to the Reserve Bank of India dated 02.01.1999 informing and requesting to allow Jagbir Singh as representative of bank which is 'LoR 08' (all clerical staff are under LOR 08).

Ex.WW1/5 – a letter dated 08.02.2001 addressed to the Reserve Bank of India requesting identity card to Jagbir Singh which is 'LOR 08' (all clerical staff are under LOR 08).

Ex.WW1/6 - it is also a letter dated 02.07.2001 to the Reserve Bank of India sent by the bank.

Ex.WW1/7 - is a photostat identity card of Jagbir Singh issued by the Deutsche Bank on 21.12.1993 and then on 04.07.2001.

Ex.WW1/8 is an application (dated 03.02.1999) of General Manager seeking permission to represent at the clearing house by the clerical staff and to issue entry pass to him.

Ex.WW1/9 - is an office circular regarding instructions to banks to depute those staff only who have even the entry pass of NCC of New Delhi. The said document is dated 04.05.2000.

Ex.WW1/10- payment receipt of the claimant.

Ex.WW1/11- is a document mentioning performance review of the claimant.

Ex.WW1/12 –to the same effect. it is also a letter dated 07.04.1999 addressed to the Manager NCC Reserve Bank of India, New Delhi sent by the Head Customer Service of the Bank to allow Jagbir Singh (clerical employee of our office).

The management also in support of their pleading adduced oral and documentary evidences which are drafted herein below:

Ex.MW1/1 -- The letter dated 02.07.1993 issued by the management offering him appointment as sub-staff specifically mentioning therein the date and salary with other emoluments and a probationary period for 6 months from the date of

joining. Endorsed/admitted by the management. (The same produced by the claimant as Ex.WW1/1).

Ex.MW1/2- agreement of employment dated 02.07.1993.

Ex.MW1/3- a letter dated 03.01.1994 is a letter of confirmation w.e.f. 02.01.1994.

Ex.MW1/4- termination letter dated 02.01.2002 stating services of the claimant to be terminated w.e.f. 02.01.2002.

Ex.MW1/5- statement of pay order for Rs.68,118.70/- enclosed with terminated letter.

Ex.MW1/6- attendance sheet.

Ex.MW1/7- payment of bonus paid.

Ex.MW1/8- seventh bipartite settlement on wage revision and other services.

9. In oral evidence the workman Sh. Jagbir Singh has produced himself before the tribunal for oral examination as WW1 and proved all his documentary evidences whereupon exhibits are marked. Most of the documentary evidences are endorsed/ admitted by the management/ opposite party. After proving the documentary evidences with regard to his status at the time of initial appointment on probation as sub-staff (subordinate staff) and confirmation of services after a successful completion of period of probation. He proved through documentary evidences with the management on restructuring the level of responsibility (LoR) and raising of his responsibility to the clerical cadre (LoR-08). In cross examination done by the AR for the management on various deferred dates the workman witness affirmed and proved orally that on 01.11.1998 he was promoted to the post of clerk vide letter dated 01.11.1998. however, he stated that his pay was not increased. He further stated in cross examination on Dec, 1998 that he asked for enhancement of salary. He further asserted that after 01.11.1998 he was not in the cadre of subordinate staff. He stated in cross examination that his scale of pay was 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and in Dec 2001 he was paid Rs.10,088.20/- towards wages including a sum of Rs.3050/- towards arrears of washing allowance.

10. In another round of cross examination on March 27, 2014 the workman witness admitted that he was appointed as sub-staff in New Delhi branch and a sum of Rs. 68117.70/- was paid to him at the time of termination of his services which he received under protest. He further stated that when he was placed in the level of responsibility-08 he was told that he is to work as a clerk for which position he would be paid remuneration. However, he answered in cross examination that he had not demanded wages of clerk in writing. He denied that in LoR-08 he was doing the duty of sub-staff and not of a clerk. The WW1 further denied by stating that it is incorrect, the work of clearing cheques is being performed by sub-staff / was informed / told to have been promoted as a clerk as the rules of the management.

11. The management has also produced a number of documents and evidence marked as Ex.MW1/1 to MW1/8 respectively- an agreement of employment dated 02.07.1993, a letter of probation, the restructuring and change in the

grading system by the opposite party, the termination of services of the claimant by reason of his becoming surplus, the termination letter etc. of the documentary evidences and in fact are proved in oral evidences for which one Jagdeep Paul, the Vice-President for the management is produced for oral examination as MW1. In Para 6 of the affidavit with regard to the Ex.MW1/A marked on 27.04.2017, MW1 states orally that the claimant was not in the clerical cadre but was in the cadre of sub-staff. The pay-scale for the sub-staff cadre at the relevant time was 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and at clerical cadre at the relevant time was 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years). In Para 10 of the same affidavit is also may be noted at this stage which runs as follows:

Para 10. The management is a signatory of 'Seventh Bipartite Settlement' on wage revision and other service conditions' dated 27th March, 2000, which, inter alia, revises as well as classifies the wages and allowances provided to employees of sub-staff and clerical cadre. The claimant in the scale rate of sub-staff. The said settlement has been exhibited as MW1/8 (Colly).

12. Though, management has endorsed/ admitted the documentary evidence filed by the workman, a letter dated 01.11.1998 addressed to the workman by the management is denied by the MW1. He says, "I have seen Ex. WW1/3 is the document issued by the management. I cannot say regarding the Ex.WW1/4." The letter addressed to the RBI by the Management to the effect that, "Please allow our representative Mr. Jagbir Singh who is LoR-08 (all clerical staff are under LoR-08). Ex.WW1/4 is also endorsed as denied by the management which clarifies the LoR-08 as of clerical cadre. In cross examination the witness MW1 put vehemence, "the claimant was deputed to Reserve Bank of India for clearing duties." The entire cross examination is cited hereunder for the purpose of easy reference:-

"I have seen Ex.WW1/3 is the document issued by the management. I cannot say regarding the Ex.WW1/4. It is correct I am intentionally denying the document as it clarifies that employees under LOR 8 (level of responsibility) are clerical cadre. Management has not issued Ex.WW1/5. I cannot say whether Ex.WW1/7 has been issued by the management. The claimant was deputed to Reserve Bank of India for clearing duties. I have seen guidelines of RBI Ex.WW1/8 which are to be followed by banks. I cannot say whether Ex.WW1/6 has been issued by the management to RBI for issuing regular clearing pass to the claimant. I have seen circular Ex.WW1/9 issued by RBI and Bank is supposed to follow the guidelines. Ex.WW1/16 is not the performance report. Ex.WW1/13 and Ex.WW1/14 relate to overtime payment, however, I am not aware of any such payment. It is correct that the claimant was paid bonus according to clerical cadre. I do not remember whether

claimant was being sanctioned performance allowance, special allowance, special pay etc. every year. It is also incorrect that as and when claimant claimed higher scale, he used to be granted special allowance, pay etc. It is incorrect that when the claimant insisted for scale pay, he was terminated. It is incorrect that I am deposing falsely.”

13. After going through the pleadings of the parties and the evidence both documentary and oral, following facts are found established and almost admitted namely viz.:-

- a) The workman/claimant was initially appointed through appointment letter in writing on probation as sub-staff (subordinate staff) and on successful completion of the prescribed period of probation he was confirmed in services by the management.
- b) In the year 1998 vide letter dated 01.11.1998 the Bank had restructured the existing grading system of all the staff and had moved to the new level of responsibility. The level of responsibility assigned to the workman/claimant is LoR-08.
- c) The workman/claimant was performing his duties as clerical staff of the Bank (LoR-08) to lodging cheques, drafts, clearing instruments received by the bank in RBI in which signature of the claimant are attested.
- d) In pleading of the opposite party as well the evidence of MW1 in oral examination the pay-scale for the sub-staff cadre at the relevant time was 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and at clerical cadre at the relevant time was 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years).
- e) The claimant was not paid his salaries payable to him as an employee working in LoR-08.
- f) The claimant was terminated vide letter dated 02.01.2002 on the ground his services had become surplus as sub-staff.

14. In view of the above established facts the question mooted before this tribunal to adjudicate and answer the reference made is formulated as follows :-

A. Whether the management promoted the claimant from the post of subordinate staff to the next level of responsibility as clerical staff during his service nurture?

B. Had the claimant was reverted at any point of time before his termination from services?

C.-whether the claimant did not get the increased scale of pay and salary attached with the next level of his responsibility he was assigned by the management if yes what will be the legal effect of the non-payment.

D.-Whether the termination so made amount to retrenchment under the ID Act, validly terminating the services of the claimant?

E. If the claimant workman not validly retrenched what would be the fate of the workman with regard to the re instatement in service or entitled to the compensation.

Arguments of the claimant.

15. Dr. Khan submits that the claimant workman who was initially appointed on probation by the management as subordinate staff vide letter of appointment dated 02.07.1993 entered a bipartite contract of service with the management Bank. After successful completion of the period of probation to the entire satisfaction of the employer (the management) he was confirmed in services as such vide the letter of confirmation with effect from 02.01.1998. The letter of appointment and that of the confirmation and the initial contract of service are admitted by the management when placed in evidence before the tribunal. They are marked Exhibit WW1/1 and WW1/2. The management themselves have placed in evidence these documents as ExMW1/1 to MW1/3. Thus, the claimant assumed the status of the permanent employee of the management as subordinate staff (a class IV post) in the Bank prior to restructuring the existing grade in the year 1998.

16. Dr. Khan further argued, factually and actually the claimant was promoted by the management vide letter dated 02.11.1998 to the next level of the post in the Bank namely the clerk. Learned Advocate accentuated on the fact that the management had never reverted the claimant in writing to the post of sub staff upon which he was initially appointed.

17. The learned counsel argued that evidences on record show that the management intended to appoint the claimant on promotion on the post of clerk and throughout prior to his termination from services of the Bank recognized and treated as their clerical staff. He was informed by the management Bank through the letter dated 01.11.1998 that it had undergone the process of restructuring the existing grade system of all the staff and moved to the New Level of Responsibilities, in which he is assigned the LoR-08. He argued that it is admitted and proved in evidence also that LoR-08 consists of all the clerical staff of the management Bank. The claimant's status as clerical staff is communicated to the Reserve Bank of India (RBI) by the management as they increased his responsibility with the permission of the RBI to discharge duty of morning clearing high value/normal clearing, return clearing etc. vide letter dated 08.02.2001 and 02.07.2001. This is also argued with vehemence that RBI had instructed that no class IV staff be deputed by the management to represent the Bank in the 'clearing house'. The management had issued accordingly identity card to the claimant workman as clerk of the bank to represent in the New Delhi Bankers clearing house.

18. It is next argued that admittedly in the Bank the pay scale permissible to the category of staff in LoR-08 is distinct and higher than that of the subordinate staff of the Bank but the claimant was not paid the benefits of the promotion without assigning any reason to him, though the documents proved and stand unrebutted also by the management tend to establish his unblemished performance by the assessing authorities. This clearly amounts exploitation and unfair labour practice on the part of the management under the Industrial Dispute Act, 1947

19. Lastly Dr. Khan argued, the management instead to providing the benefits of promotion as clerk opted to get rid of him. The management in most arbitrary and illegal manner terminated him from the services without serving prior notice of one month. Even the management did not follow the mandatory requirements for a valid retrenchment under section 25 F of the Industrial Dispute Act, 1947. It is argued with vehemence that for retrenchment compensation the pay scale and salary of the post of sub staff is made basis illegally though the claimant was working till then as clerk. The termination / retrenchment thus, stands not only invalid but unjustified and arbitrary, thus it would have no effect in law being *void ab initio*. Reliance is placed on the decision in the case titled as **Municipal Board, Pratapgarh and Another Vs. Labour Court Bhilwara and Others, 2003 (97) FLR 747 (Raj. H.C.)**. For the retrenchment done in contravention of the provision of the section 25 G of the ID Act relating to rule of last come first go if not followed without assigning any reason the same would stand illegal, reliance is placed on **Harjinder Singh Vs. Punjab State Warehousing Corporation (AIR 2010 SC1116) and Sarita S. Melwani Vs. Talekar and Others, 2008 (117) FLR 791 (Bom. H.C.)**

Arguments of the management

20. Ms. Raavi Birbal, the learned Advocate / the Authorized Representative of the management argued the case in defense of the claim of the workman in the present industrial dispute. She submitted, though the initial appointment of the claimant as sub-staff vide appointment letter dated 02.07.1993 on probation and his confirmation vide letter dated 03.01.1994 is admitted to the management but the claim that he got promotion to the post of clerk in the year 1998 is absolutely denied.

21. Learned Advocate, however does not dispute the restructuring of the then existing gradation of the Bank staff all over in India in the year 1998 and fixing new level of responsibilities for them. She further, admits that considering the level of responsibility of the claimant as was there at the time, he was placed in the new level of responsibility that is to say LoR-08 effective from 01.11.1998. The claimant was accordingly informed by the letter of the same date. Learned Ms. Raavi Birbal despite the above material admission argues emphatically that such raising of the level of responsibilities of the claimant does not amount promotion of the claimant as even after that he was continued to be paid salary of sub staff till his termination from services. She put vehemence that the claimant was never issued and served with specific letter of promotion by the management specifying raised salary, grade and scales of pay. On the other hand, other employees working in clerical cadre were issued such specific letter of promotion including specification of increased pay scale. However, no such instances are shown in evidence before the Tribunal.

22. It is argued that the claimant worked in the clearing house of the RBI representing the management Bank as sub staff only and since there was no need of the full time sub staff in the Bank he became surplus therefore, his services were terminated. He was paid the retrenchment compensation along with

termination letter On 02.01.2002. An amount of Rs. 68,117.70 was forwarded to the claimant with the account statement showing break-up of the paid amount. He was paid the compensation on the basis of his last drawn salary as sub staff, as such the termination / retrenchment of the claimant is valid and made as per the I.D. Act, 1947.

23. Reliance is placed on a judgement of the Hon'ble Madras H.C. Dated 22 September, 2008 in WP No. 4821 Of 2001, titled as **B. Narayansami Vs. The Management of Indian bank**. The facts of the case and findings of the court are quite different than those of the present industrial dispute case in hand.

24. Issue no. 1, "*whether the workman is employee of the management as clerk or sub staff?*" covers the question formulated as points A, B & C hereinabove for adjudication of the present industrial dispute, whereas the issue no 2,3 & 4 relating to the validity or illegality of the termination/retrenchment involves the finding on the question for determination framed as points D & E above. The relief / reliefs the claimant deserves will be dealt on the basis of the answers of aforesaid issues accordingly.

DISCUSSIONS

On the issue No.1

25. Promotion of employee means his/her ascension to higher rank. It involves an increase in position, responsibility, status and benefits. This aspect of the employment drives employee the most and the ultimate reward for dedication and loyalty towards his organization. In theory a promotion requires more work and effort in the assigned job. The decision to promote an employee may be based on different consideration like length of experience, performance, seniority or seniority cum suitability for the new responsibility. Promotion may be with or without benefit of enhancement of salary. the later kind of promotion is called dry promotion only when the level of responsibility is increased and not the benefits. The arguments of the parties mooted before the tribunal the only question pivotal for the adjudication of the dispute as to the termination / retrenchment of the present workman claimant, whether the management had duly raised his responsibilities from the level of a subordinate staff to the next level that is of a clerk. further had the workman ever been reduced to the level of responsibility prior to his retrenchment by the management?

26. The initial appointment of the workman as subordinate staff on probation and subsequent confirmation as such is admitted to the management before the restructuring process of existing cadre of staffs fixing their new level of responsibilities all over in India. In their written statement, the management themselves assert that, considering the level of responsibility of the claimant as was there at that time (Year 1998), he was placed in the level of responsibility (LoR-08) effective from 1 November 1998 and the claimant was informed accordingly. In the evidence said letter dated 01.11.1998 is produced and proved by the claimant as witness WW1 upon which exhibit is marked WW1/3. Exhibit WW1/3 above stated is endorsed Admitted by the management. In quick

succession of the above letter the management communicated the designation of the claimant clarifying that LoR-08 denotes to all clerical staff in the Bank so as to ensure the instruction of the RBI regarding representation through a clerk of the Bank only in the clearing house vide letters which are placed and proved by the claimant witness and marked by the tribunal exhibits WW1/4 to WW1/8. The management seems to pretend the above letters denied purposely to negate the claim that the LOR-08 is clerical cadre posts.. The management has neither placed in evidence any communication to the RBI regarding the designation of the claimant other than a clerk who admittedly was representing the bank in the clearing house of the RBI in New Delhi, nor they have denied that LoR-08 denotes all the clerical staff after the restructure in the year 1998. To the utter self-contradiction in written statement and also in affidavit submitted as statement of the 'examination in chief' of MW1 Jagdeep Paul, deposing as vice president of the management Bank (Exhibit MW1/A on 27.04.2017) admits that, "due to a change in the grading system during the year 1998, the management placed the claimant in LOR 08."

27. The Hon'ble Supreme Court in **BSNL Vs. R. Santhakumari Velusamy, (2011) 9 SCC 510** has discussed the kinds of promotion in the process of Restructuring citing some earlier judgement in the case of **V.K. Sirothia Vs. Union of India (2008) 9 SCC 283, Lalit Mohan Deb (1973) 3 SCC 862 and Tarsen Singh Vs. State of Punjab (1994) 5 SCC 392**. The relevant paras of the judgement 16, 17 and 18 are reproduced hereinbelow-

"16. The decision of this Court in V.K. Sirothia arose from a decision of the Allahabad Bench of the Tribunal which expressed a similar view (in V.K. Sirothia vs. Union of India - O.A. No.384/1986). The Tribunal held :

"The restructuring of posts was done to provide relief in terms of promotional avenues. No additional posts were created. Some posts out of existing total were placed in higher grade to provide these avenues to the staff who were stagnating. The placement of these posts cannot be termed as creation of additional posts. There were definite number of posts and the total remained the same. The only difference was that some of these were in a higher grade. It was deliberate exercise of redistribution with the primary object of betterment of chance of promotion and removal of stagnation."

The Union of India challenged the said order of the Tribunal and this Court by a brief order dated 19.11.1998 (Union of India vs. V.K. Sirothia - 2008 (9) SCC 283) dismissed the appeal by a brief order. The relevant portion of the said order is extracted below :

"2. The finding of the Tribunal that "the so-called promotion as a result of redistribution of posts is not promotion attracting reservation" on the facts of the case, appears to be based on good reasoning. On facts, it is seen that it is a case of upgradation on account of restructuring of the cadres, therefore, the question of

reservation will not arise. We do not find any ground to interfere with the order of the Tribunal."

17. We may next consider the concepts of 'promotion' and 'upgradation'. In *Lalit Mohan Deb*, this Court explained the difference between a promotion post and a selection grade :

"7. It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."

18. In *Tarsen Singh vs. State of Punjab* - 1994 (5) SCC 392, this Court defined 'promotion' thus :

"9. Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour."

28. In the wake of admitted facts of appointment and confirmation in services as sub staff and also in the process of the restructuring the existing grade of the staff the placing of the claimant in new level of responsibility termed LoR 08, the raising of responsibilities would be vital fact for consideration to find out had there was promotion in the eye of law? The letter of appointment which is an admitted piece of evidence available on record Exhibit WW1/1 prescribes the work assigned to the claimant as sub-staff was, "*cleaning and dusting of office premises, Delivery of mail/ / documents within the bank and to other location within India. Any other duty assigned from time to time*". Interestingly, the management witness, their vice president as MW1 in his affidavit of the examination in chief (EXHIBIT MW1/A) kept a suspicious silence over the work to be performed and responsibilities assigned to him on placing in LOR 08 category of the staff of the Bank. He neither admits nor denies in the affidavit and even in the cross examination the exhibits WW1/4 to WW1/8 which clarify the meaning of placing a staff in the LoR 08, saying only he cannot say anything regarding them. It is notable that he swore on and verified the affidavit on the basis of personal knowledge on the basis of record. But, the truth is extracted from him in cross examination. he states, "*The claimant was deputed to Reserve Bank of India for clearing duties.*"

29. None else than the MW1 is examined as witness by the management like the record keeper or any other authority entrusted with the responsibility of issuing or maintaining and preserving the letters / orders of the bank in the routine course of day to day business of the Bank who may be treated as their *custodia legis* so as to depose before this tribunal-cum-labour court the issuance of the communication of the letters to the RBI exhibit WW1/ 4 to WW1/8 sent to clarify that whether the staff (the claimant Jagbir Singh) deputed in clearing

house, of the RBI in New Delhi to represent the Bank is a clerical staff included in the LoR-08. Since the claimant pleads and proves successfully thus discharged the initial burden of proof and the management is put under the *onus probandi* that is to disprove the letters exhibit WW1/4 to WW1/8 the clarification that placing in LoR-08 means placing in clerical cadre. The management Bank has miserably failed to do so for the reason explained above. Therefore, it is established and proved by evidence that the management placed the claimant who was in the cadre of sub staff before 02.01.1998 placed him on 02.01.1998 in next level of responsibilities LoR-08 including all the posts of clerical cadre.

30. In written statement the management deceptively and fallaciously makes an admission of the work assigned to the claimant after placing him in LOR 08 in following words, “*The claimant was doing the nature of duties, which are similar to that of a sub staff i.e. lodging cheques, drafts and clearing instruments received by the Bank from the customers and clients for clearing with the clearing house*”. What is explicit in the said coloured admission is the nature of the work assigned to the claimant as staff placed in the LoR-08 and deputed in the clearing house of the RBI to represent the management Bank. What is false is that his duties were that of a sub-staff. Nothing remains for the claimant to prove in regard to the nature of work assigned to him. which is quite different from his earlier work as sub-staff before 01 11.1998 when he was placed in LoR-08 cadre.

31. Moreover, the statement of the MW1 recorded in evidence in the course of his oral examination along with the documentary evidences placed and proved by the management further elaborate the justification why the responsibilities of the claimant were increased by placing him in the LoR-08. In his cross examination on 27.04.2017, he admits the documents placed in evidence by the claimant workman marked Exhibit WW1/8 and WW1/9 the RBI circular and letter containing the RBI guidelines to banks relating to the posting of clerical staff to represent them in clearing house at New Delhi. He stated, “*The claimant was deputed to the Reserve Bank of India for clearing duties. I have seen guidelines of RBI ExWW1/8 which are to be followed by banks. I have seen circular Ex WW1/9 issued by RBI and bank is supposed to follow the guide lines.*” For the purpose of easy reference, the ExWW1/8 is reproduced hereunder of which relevant clause 3 is highlighted.

‘ExWW1/8’

RESERVE BANK OF INDIA
JEEVAN BHARATI BUILDING
TOWER-1, 6-7. FLOOR
124 CONNAUGHT CIRCUS, NEW DELHI -110 001,

DEL. NEC No. 77/12.61.01/98-99

3 February 1999

*The Officer Incharge
Service Branch
New Delhi*

Dear Sir,

Representation at the Clearing House

Issuance of entry pass

As you are aware, entry to New Delhi Bankers' Clearing House is regulated under Rule 12 of the Uniform Rules & Regulations. However, it has been observed that some member banks depute representatives in violation of above rule. We, therefore, advise all member banks to strictly comply with provisions of rule 12 and follow the undernoted procedure.

1. Member bank may depute not more than 5 representatives at a time.

2. 5 blank cards will be issued to a member bank to be signed by the representative as well as the bank's authority. These cards are to be countersigned by the NCC authorities. It will then have status of an "Entry permit".

3. Each member bank shall be represented in the Clearing House by representative who shall deliver and receive the documents. Such representative shall be an officer or a clerical staff. No class IV staff or courier agency etc. should be deputed to represent the bank to Clearing House as such person does not give valid discharge on behalf of the bank. However, representative may be assisted by one more such person, when required.

4. Each representative should always have in his possession the clearing house entry card and Identity Card issued by his bank.

5. Entry pass shall be issued for a period of one year. Under no circumstances shall renewal of Entry pass be allowed. Member banks shall change their representatives accordingly.

6. All members of the Clearing House are advised to follow the above Instructions scrupulously.

Your's faithfully.

**Deputy General Manager
hps/entrypas"**

32. The relevant paras 12 of the guideline ExWW1/9 is also being quoted hereunder to appreciate that duty assigned to the claimant in clearing hose was how high and serious responsibility in nature which was distinctly different and increased from the duties of cleaning and dusting of the sub-staff (a class IV post in the bank).

Ex.WW1/9

12. (a) Each member bank shall be represented in The Clearing House by a representative who shall deliver and receive the

documents to be cleared. Such representative may be assisted by one more person, when required. Each representative, in addition to his identity card which shall be issued to him by his bank, should always have in his possession, whenever he is attending the Clearing House on behalf of his bank, the Clearing House entry card of member bank which shall be issued to his bank by the bank managing the Clearing House. Whenever and wherever the circumstances so warrant, it would be open to the member bank(s) to depute at any time any other representative who may be an officer or a member of clerical staff of the bank to the Clearing House for delivering/receiving documents to be cleared.

b) Such representative shall-

(i) abide by the Regulations and Rules of the Clearing House,

(ii) represent his/her bank. In the House.

(iii) refrain from any activity that may bring discredit to his/her bank or disrupt the clearing.

(iv) conduct himself/herself with dignity in the House and respect and obey the Supervisor and the President of the Clearing House.

(c) The representatives of member banks shall be changed once in six months, and earlier if so required. by the President, for any reason whatsoever. It should be further ensured that under no circumstances, the same individual gets his turn for a second time in the same year.

(d) Member banks shall take full responsibility for the action of their own representatives. Members must send their representatives to the Clearing House during clearing hours whether the member has any documents to pass through the clearing or not. The doors of the Clearing House will be closed after the scheduled timings of each delivery as indicated in Rule 2(a), and the return clearing in Rule 2(c) read with Rule 3.

Should any clearing representative be late, his documents shall not be accepted for the particular clearing but he shall remain in the Clearing House to receive all documents drawn on his bank. The President may at his descretion consider, on the merits of each case, allowing the representative(s) coming late, to take part in the clearing.

(e) Clearing House being Jointly organised for common good of all members, the member banks representatives will help in expediting balancing of the Clearing House. It shall not be permissible for any member bank's representative to leave the Clearing House except with the permission of the supervisor until all balances have been compared and agreed and the final balance has been struck by the supervisor of the Clearing House. But the assistant may leave the Clearing House with the permission of the

supervisor. Facilities consistent with expeditious and smooth conduct of clearing process shall be permitted by the supervisor to the extent possible.

(f) Once the representative of a member bank has entered the Clearing House, he has to participate in the clearing. It shall not be permissible for the representatives of any member bank to refuse to deal with the representatives of other member banks for any reason whatsoever.

(g) When a member bank is not in a position to participate in any clearing meeting for whatever reason, it should intimate so, to the President at the earliest possible time. Wherever possible, the President shall circulate this information to all the members well in advance.

(h) Whenever any member bank does not participate in clearing it shall depute some authorised person to facilitate exchange of unpaid instruments. In such a contingency, the time allowed to the non-participating bank for, returning the unpaid instruments, presented at the earlier meetings by other banks will stand automatically extended by one working day. Alternatively, the non-participating bank should make its own arrangements for returning the unpaid Instruments over the counters of member banks without any delay”.

33. In the service jurisprudence in our country no fixed meaning has been scribed to the term “cadre”. In **A. K. Subraman Vs. Union of India, (1975) 1 SCC 319** a three judges bench of Hon’ble the Supreme Court in para 20 page 328 observed,

“ 20 The word ‘grade’ has various shades of meaning in the service jurisprudence. It is sometimes used to denote a pay scale and sometimes a cadre. Here it is obviously used in the sense of cadre. A cadre may consist only of permanent posts and sometimes as is quite common these days also of temporary.”

34. In the case of **Union of India V. Pushpa Rani (2008) 9 SCC 242** Hon’ble the Supreme Court explained the term promotion in the services in para 31 and 32 quoted here under with due respect from pages

“23. In legal parlance, upgradation of a post involves the transfer of a post from the lower to the higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who

may have suffered punishment - D.P. Upadhyay vs. G.M., N.R. Baroda House and Others [2002 (10) SCC 258].

24. The word 'promotion' means "advancement or preferment in honour, dignity, rank, or grade". 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law the expression 'promotion' has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post" - State of Rajasthan vs. Fateh Chand Soni [1996 (1) SCC 562].”

On the basis of above discussions this Tribunal is reached conclusively at the finding that the claimant/workman was promoted vide letter of the management dated 01.11.1998 w.e.f. the said date by placing in LoR-08 (Clerical Cadre of staff).

Had the claimant after his placement in LoR-08 ever been reverted to the cadre of sub-staff prior to his termination on 02.01.2002?

35. When in pleading and evidence both, the management bank has explicitly admitted the placement of the claimant/workman in the cadre of LoR-08 w.e.f. 01.11.1998 but they neither in pleading nor evidence have explained had the claimant/workman was reverted to the post of sub-staff and assigned with the work of sub-staff i.e. cleaning dusting or other works of class IV staff in the bank and if yes, then how and when they did so.

36. There is no evidence as to the fact that the workman/claimant was assigned any other duty than the 'clearing of instructions as representative of the bank in the clearing house of the RBI' in between 01.11.1998 (i.e. the placement in LoR-08 cadre) to 02.01.2002 (i.e. the date of termination of services by the management). There is no explanation how the services of the workman/claimant, a clerical staff working in LoR-08 since 01.11.1998 continuously was terminated from services by the bank as the sub-staff, a rank lower than he had has as staff of LoR-08. This is the established principle of law that one cannot be promoted in higher rank of cadre of staff nor demoted in lower rank of cadre without any specific order with reasons assigned therefore. In the present case there is admitted documentary evidence proving the increase in the rank from class IV (sub-staff) to the rank of clerical staff (LoR-08) vide letter dated 01.11.1998 specifically informing the workman/claimant regarding his placement in LoR-08 cadre of staff but, no such letter making demotion of the workman/claimant to the post of sub-staff from LoR-08 cadre is referred, placed and proved in evidence by the management. On the reasons stated hereinabove the tribunal/labour court is of considered opinion that the workman/claimant was working in clerical cadre (LoR-08) when his services were terminated vide letter dated 02.01.2002 as such the letter of termination is not only found invalid or illegal but also null and void in the eye of law, having no enforceability. Issue no. 2, thus answered in favour of the claimant/workman.

37. The only reason for denying the status of workman/claimant has promoted from sub-staff (LoR-08) appears a mis-conceived idea and mis-conception of law, which is reflected from the written statement of the management. In para 4 of the written statement the management pleads, *“it is denied that there was a promotion of the claimant to the clerical cadre..... Even after 01.11.1998 salary of claimant remains to be same as was before. It may be added that as and when there is promotion of an employee, he is issued and served with a specific letter of promotion by the replying management, including his revised salary, grade, scale etc.”*

38. In view of the law relating to promotion and upgradation in services laid down by the Hon’ble Supreme Court in the case of **Union of India Vs. Pushpa Rani (2008) SCC 242** and other cases that the increase of rank, responsibility or grade or increase in both i.e. rank and grade/pay-scale amounts to promotion the Apex Court held,

“In legal parlance, upgradation of a post involves transfer of a post from lower to higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment. The word ‘promotion’ means advancement or preferment in honour, dignity, rank, grade. Promotion thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law, the word ‘promotion’ has been understood in wider sense and it has been held that promotion can be either to a higher pay scale or to a higher post.”

39. In the instant case, on 01.11.1998 in the process of restructuring only the rank was increased admittedly and no specific order for change in pay and other benefits were made at that time. This was certainly a promotion in the eye of law, though classified in the ‘service jurisprudence’ as dry promotion. But the workman waited for the increase in his salary in accordance to his work newly assigned to him with raising of responsibility under LoR-08. It is well explained by the witness MW1 in his affidavit filed as examination in chief before the tribunal which is Ex MW1/8 dated 27.04.2017. The relevant portion of the statement of MW1 is quoted hereunder for the purpose of easy reference and appreciating the justification why the order of promotion without any consequential/ financial/monetary benefit was made. It is clear from Ex MW1/8 which is bipartite agreement regarding pay-scale of staffs after restructuring is on record. According to which the pay-scale was clarified distinctly of both the cadre in para 6 of the affidavit of examination in chief:-

6. *The claimant was not in the clerical cadre but was in the cadre of sub-staff. The pay-scale for the sub-staff cadre at*

the relevant time was 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and at clerical cadre at the relevant time was 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years).

40. The tribunal concentrated itself on the date of bipartite settlement as to the revision of pay 27.03.2001 whereas the letter of promotion in rank placing the claimant/workman in LoR-08 is of 01.11.1998. This is therefore, self-explanatory why the promotion was instantly not specifying the increase in salary as the same was under consideration and deserved to be awaited by the employer and employee both. In his cross examination the claimant witness when asked why he did not represent his grievance as to the non-enhancement in salary pursuant to the promotion on the next rank? He answered, “*there was no situation at that time to ask for the hike of salary.*”

41. A list of Class IV posts extracted from the bipartite agreement referred in the oral statement in evidence of MW1/8 is also being reproduced hereunder which names the posts of the workers treated as subordinate staff after restructuring which does not include LoR-08:

List of class IV staffs (subordinate staffs) for SPECIAL PAY

<i>For Subordinate Staff</i>	<i>Amount of Pay(in Rs.)</i>
1. <i>Cyclostyle Machine Operator</i>	<i>145</i>
2. <i>Liftman</i>	<i>178</i>
3. <i>Relieving Liftman</i>	<i>107</i>
4. <i>Cash Peon</i>	<i>178</i>
5. <i>Watchman/Watchman-cum-Peon</i>	<i>178</i>
6. <i>Armed Guard</i>	<i>300</i>
7. <i>Bill Collector</i>	<i>300</i>
8. <i>Daftary</i>	<i>352</i>
9. <i>Head Peon</i>	<i>406</i>
10. <i>Air conditioning Plan Helper</i>	<i>816</i>
11. <i>Electrician</i>	<i>816</i>
12. <i>Driver</i>	<i>923</i>
13. <i>Head Messenger in Indian Overseas Bank</i>	<i>690</i>

42. The above list does not include staff deputed for representing the bank as per RBI guidelines to depute such staff in clearing duties in the clearing house. Therefore, this tribunal has reason to conclude that the management cleverly enough, and falsely denied the status of promotion dated 01.11.1998 on the ground that ExWW1/3 the letter of promotion does not have the specific increase in salary also which was revised in bipartite settlement executed in the year 2001.

Termination, if may be held in this case, a valid retrenchment?

43. Any retrenchment shall amount and include termination of services but vice-versa is not true. Every termination of services may not be a valid and legal retrenchment as defined in the ID Act. Question to be decided by this tribunal is

that whether the services of the claimant terminated by the management wrongfully and illegally? If no, to what relief the claimant is entitled will be a prime question for grant of relief. It is also proved that the workman was working as sweeping duty as cleaning staff in the office of the management bank since the initial date of joining, discharged duties as such workman. But on 01.11.1998 he was promoted on the post of clerical cadre (LoR-08) and started work in consonance with his increased liabilities of clearing the emoluments in clearing house of RBI. He remained there as such till the date of his termination i.e. 02.01.2002. The termination of service in other word is called retrenchment under the Industrial Dispute Act Section 2 (oo) defines the retrenchment as under:

Section 2(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) Termination of the service of a workman on the ground of continued ill-health.

44. **In *K.V. Anil Mithra & Another V. Sree Sankaracharya University of Sanskrit & Another (2021 SCC online SC 982)*** the Apex Court in Para 22, held as under: -

22:- The term ‘retrenchment’ leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action are being termed as retrenchment with certain exceptions and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service. In continuation thereof, the condition precedent for retrenchment has been defined under Section 25F of the Act 1947 which postulates that workman employed in any industry who has been in continuous service for not less than one year can be retrenched by the employer after clauses (a) and (b) of Section 25F have been complied with and both the clauses (a) and (b) of Section 25F have been held by this Court to be mandatory and its non-observance is held to be void ab initio bad and what is being the continuous service has been defined under Section 25B of the Act 1947.

45. **In the case of K.V Anil Mithra (Supra) the Apex Court further held-**
- 23:- *The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its non-observance held the termination to be void ab initio bad and so far as the consequential effect of non-observance of the provisions of Section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the workman is entitled for appropriate relief for non-observance of the mandatory requirement of Section 25F of the Act, 1947 in the facts and circumstances of each case.*
- 24:- *The salient fact which has to be considered is whether the employee who has been retrenched is a workman under Section 2(s) and is employed in an industry defined under Section 2(j) and who has been in continuous service for more than one year can be retrenched provided the employer complies with the twin conditions provided under clauses (a) and (b) of Section 25F of the Act 1947 before the retrenchment is given effect to. The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance of Section 25F of the Act 1947.*
- 25:- *This can be noticed from the term 'retrenchment' as defined under Section 2(oo) which in unequivocal terms clearly postulates that termination of the service of a workman for any reason whatsoever provided it does not fall in any of the exception clause of Section 2(oo), every termination is a retrenchment and the employer is under an obligation to comply with the twin conditions of Section 25F of the Act 1947 before the retrenchment is given effect to obviously in reference to such termination where the workman has served for more than 240 days in the preceding 12 months from the alleged date of termination given effect to as defined under Section 25B of the Act.*

If termination of service by the employer to save skin from their unlawful acts, opposed to status and public policy: -

46. In the facts and circumstances of the present case, relying on the above decisions of Hon'ble the Supreme court and the observations made in the case

of **Ramanand and others Vs. Chief Secretary Government (NCT of Delhi) and others (2020) 9 SCC 208** and in the case of **Union of India Vs. Pushpa Rani (supra) and BSNL Vs. R. Santhakumari Velusamy (2011) 9 SCC 510**, the tribunal has reason to hold that where There is restructuring of some cadre of posts does not involve creation of post but merely results in placement a higher rank to provide relief against stagnation the said process amounts to promotion to the next higher post whether or not the raise in grade of the pay or pay scale. This tribunal/labour court reaches at the conclusion that the claimant, a permanent subordinate staff (sub staff) of the management Bank was placed in the clerical cadre (in LoR-08) in the process of restructuring of the then existing staff in the year 1998. His level of responsibilities was raised by placing him in higher cadre of posts including the all clerical cadres, hence factually and legally he was promoted by the management Bank.

47. Section 2 (ra) of the Industrial Dispute Act defines ‘Unfair Labour Practice’ means any of the practices specified in the 5th schedule of the Act. In 5th Schedule there is item no. 5 which makes the practice unlawful to discharge or dismiss workmen not in good faith, but in the colourable exercise of the employer’s rights quoted herein below.

“5. *To discharge or dismiss workmen—*

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employer's rights;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d)

(e).....

(f)

(g)”

In the present case the management has repeated pleading and statement in evidence also that the workman was Class IV (sub-staff) and his services were terminated by the management but this statement and pleading of the management is not proved whereas, the workman has successfully pleaded and proved in evidence also that he was employed continuously after 01.11.1998 as clerical staff (LoR-08). Therefore, action of the management if it be impeachable on the ground of dishonesty, or as being opposed to public policy, if it be forbidden by law the tribunal would not be just to allow itself to be made the instrument of enforcing obligations alleged to arise out of his alleged right to termination the services of their employee which is illegal.

The consequence of non-observance of the provision of Section 25F. Whether reinstatement in service?

48. On the relief of reinstatement with or without back wages the tribunal has to consider, consequence of it's finding as to the termination of service illegal, malafide and *void ab initio*, whether the workman should be treated as continued in services of the management. The Apex Court in three judge bench decision in **Hindustan Tin Works Pvt. Ltd. Vs. Employees of M/s Hindustan Tin Works Pvt. Ltd. and Ors. (1979) 2 SCC 80**, where retrenchment of employees was declared illegal, held in para 9 -

“It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavored to secure

work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. SafaiKamdar Mandal [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct”.

49. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & Ors. (2013) 10 SCC 324** Hon'ble Apex Court highlighted the need to adopt a restitutionary approach, the court has to consider whether to reinstate an employee and if so, the extent to which back wages is to be ordered. Para 22 judgment in the aforesaid case is being reproduced here under-

Para 22. The very idea of restoring an employee to the position which he held dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a

finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

50. In violation of Section 25 F of the Industrial Tribunal Act, Hon'ble Apex Court has consistently taken the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation. The aforesaid view expressed in Para 33 & 34 by the Apex Court in the case of **Bharat Sanchar Nigam Ltd. V. Bhurmal, (2014) 7 SCC 177**

Para 33 It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

Para 34 the reason for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularization [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1: 2006 SCC (L&S) 753]]. Thus when he cannot claim regularization and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating

such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

51. Lastly, this is to be noted that in oral evidence the claimant has stated that he has not worked for gain at any point of time after his illegal termination from services. Then also, he cannot be reinstated in services because of crossing the age of superannuation during litigation before this tribunal. But, his loss of employment put him in financial crisis and imperilled his livelihood. Therefore, he need to be compensated and awarded with damages separately also. The evidence shows and also proved that he was placed in LoR-08 vide letter dated 01.11.1998 and worked till as such the date of his termination from services i.e. 02.01.2002. The office to place on record a calculation of pay due to the workman/claimant in consonance with his stage depending on his service tenure, during the relevant period as such in the pay-scale of LoR-08 in clerical cadre 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years) which shall be made part of the award.

52. The reference issue no. 3 & 4 are answered in view of the discussion made hereinabove the tribunal passes the following award:

AWARD

1. The workman/claimant Sh. Jagbir Singh is declared a clerical staff of the management of Deutsche Bank in LoR-08 who was working in the clearing house of the RBI in New Delhi to represent the management bank since 01.11.1998 till the date of his termination 02.01.2002. He is held duly promoted and worked as such throughout his services till the date of termination in the pay-scale of clerical cadre 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years). He has never been sub-staff (subordinate staff) of the management bank after 01.11.1998 till the date of his termination of services on 02.01.2002.
2. The order of termination of services on 02.01.2002 as sub-staff (subordinate staff) is declared invalid. It is further held that the order of termination of services dated 02.01.2002 is illegal and *void ab initio* by reason of non-observance of provision of the Section 25F of the Industrial Disputes Act, 1947 as such the same does not have enforceability in law.
3. The workman/claimant is held entitled to the higher pay scale attached to the LoR-08 (all clerical staff) notionally fixed in the pay scale 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years) as on the date of his alleged termination from services as sub-staff and the computation/calculation of the compensation under section 25F of Industrial Disputes Act, 1947 as retrenchment compensation.

4. The management of Deutsche Bank is held liable directed to pay off the compensation under section 25F of the Industrial Disputes Act, 1947, on the basis of the last pay which would have been drawn, fixed notionally as ordered in clause 3 after adjusting the amount of Rs.68,117.70/- already paid by the management at the time of termination of services on 02.01.2002 with an interest @6% p.a. from the date of illegal termination of the services i.e. 02.01.2002 within 3 months from the date of award and special damages to the tune of Rs.5,00,000.00/- on account of loss of livelihood and litigation expenses be also paid separately within the aforesaid 3 months from the date of judgement and award.

In case of failure in payment as prescribed above, penal interest @10% p.a. will be chargeable to be paid by the management till the actual payment is made/recovered through the process of court.

Let the award be sent to course of procedure as prescribed in Section 17 of the Industrial Disputes Act, 1947 for publication and implementation of the award.

Justice Vikas Kunvar Srivastava
Retired Judge, Allahabad High Court
Presiding Officer
23.10.2024

Sudha Jain
PA to the CGIT-cum-LC, Delhi-1

