

IN THE SEVENTH INDUSTRIAL TRIBUNAL, WEST BENGAL  
New Secretariat Buildings, Kolkata

Present: Miss Yogita Gaurisaria, Judge,  
Seventh Industrial Tribunal,  
Kolkata.

**CASE No. 15/2020**

Under Section 10(1B)(d) of the Industrial Disputes Act, 1947

**Sri Subir Kumar Bandyopadhyay,  
S/o. Late Jatindra Nath Bandyopadhyay,  
Sai Baba Enclave, Flat No. 3A, 3<sup>rd</sup> Floor,  
A/F-1, Jyangra, Kolkata- 700059**

**...Applicant**

**-Versus-**

**M/s. Zydus Healthcare Limited,  
12A, Swinhoe Street, Ballygunj,  
Kolkata- 700019.**

**....OP/Company**

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**This Award delivered on Friday, this the 17<sup>th</sup> day of January, 2025**

**A W A R D**

The applicant has filed the present application before this Tribunal under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (West Bengal Amendment) challenging the termination of the service of the applicant with prayer for reinstatement with full back wages and consequential benefits.

The applicant's case, in short, is that he was appointed as Trainee medical Representative vide appointment letter dated 22.07.1985 and he joined the OP/Company on 01.08.1985. The OP/Company was formerly known as m/s. Cadila Laboratory Pvt Ltd. The applicant was confirmed in service with effect from 01.01.1986 vide letter dated 01.01.1986 of the OP/Company. On 01.01.1988, he was designated as Senior Field Officer in the OP/Company.

The applicant further stated that the OP/Company is carrying on business in Pharmaceuticals Produces and involved in manufacturing of popular pharmaceuticals products and marketing , having its Registered Office at 'Zydus Corporate Park' Scheme No.63, Survey No.538, Khoraj (

Gandhinagar), Nr. Vaishnodevi Circle, S.G.Highway, Ahmedabad 382481 and Head Office at Zydus Healthcare Limited Zydus Tower, CTS No. 460/06 Village Pahadi, Off I.B. Patel Road, Goregaon (East), Mumbai- 400 063 and Regional Branch Office of the Company is at 12A, Swinhoe Street, presently renamed as Anil Moitra Sarani, PS Gariahat, Kolkata-700019, West Bengal from where it controls and manages the affairs of business of the opposite party company and the applicant used to perform the duties as per the instructions of the Area Business Manager being posted at the Kolkata.

The applicant further stated that he was employed by the OP/Company with the designation “Senior Business Officer” but as a matter of fact he was employed as one Sales Promotion Employee as per the Sales Promotion Employees ( Conditions of Service ) Act, 1976 and covered U/S 2(s) of the Industrial Disputes Act, 1947 , as applicable in West Bengal and that as a matter of fact , he, in discharging regular duty, used to promote the sale products of the company and that he never discharged his duty in managerial/ administrative / supervisory capacity and he neither had any power to initiate any disciplinary proceeding against anybody nor had any power to take any decision whatsoever in nature independently , which was binding upon the company . He had no subordinate upon whom he used to control and supervise and for that there was no scope of assessing performance of anybody and that as a regular duty, he used to send his work report to higher authority.

The applicant further stated that in the year 1995, the Company namely Cadila Labs. Limited was divided into two separate companies having no relation with each other in anyway and the two groups was incorporated in Company Law Board as per The Companies Act. 1956 as separate companies and that the name of the one Company became CADILA HEALTHCARE LIMITED and this company started to use ZYDUS as its group name. The other part became a separate entity company namely CADILA PHARMACEUTICAL LIMITED. No option was provided to the Sales Promotion Employees of the erstwhile Cadila Labs Limited to exercise their option to be a part of the companies of their

choice. The applicant was shifted to the Zydus Group i.e. Cadila Healthcare.

The applicant further stated that he is an active member of Trade Union namely All West Bengal Sales Representatives Union being Registration No. 12662 and was elected as the Secretary of the Bardhaman Local Unit of the Union in the year 1988 since then he has been subjected to different onslaughts of the management in different ways. The applicant used to be in charge of arranging various meetings, programs for the union. The applicant has represented on behalf of the National Federation of Sales Representatives' Union as one of the office bearers of the National Federation and he remained as only such participant at Indian Labour Conference. The applicant was elected as the Treasurer and National Secretariat member of the National Federation namely National Federation of Sales Representatives' Unions in the year 2005 and uninterruptedly until 22<sup>nd</sup>. March, 2018 and during these period, he has participated in various tripartite meetings convened by the Central Labour Ministry from time to time. The applicant was elected as an Executive Committee member of All West Bengal Sales Representatives Union in the year 2001 at the 26<sup>th</sup>. Annual General Body Meeting of the Union held at Malda and was also elected as Assistant Secretary of the Union for the year 2009 at the 34<sup>th</sup> Annual General Body Meeting of the Union held at Barasat. In the year 2013 the union had amended its constitution and the said Post of Assistant Secretary was abolished. The applicant is still one of the Executive Committee Members of the Union.

The applicant further stated that he used to raise his voice against the illegal activities and/or the unfair labour practise of the opposite party company. The applicant had given evidences in the cases on behalf of the Union against the Company since 1997 at different forum and most of these cases were answered in positive in favour of the Union. As such, the applicant became eyesore to the opposite party company, as the company was compelled to accede to the just demands like provision of Pay Slips to its Sales promotion employees, granting of Paid Holiday on the day of

General Elections, inclusion of 1<sup>st</sup>. May in the Holiday List, extension of financial benefits of the settlement between the company and an Union which is unknown to the members of All West Bengal Sales Representatives Union, equalizing the retirement age for all Sales Promotion Employees of the company, erasing the anomalies of payment of bonus amongst the Sales Promotion Employees and many more issues, where the applicant has been in leading role all along. The applicant had accepted the requests to be the defender of the employees of the opposite party company, when any Sales Promotion employees had been served with Enquiry Proceedings Orders on the false pretext by the OP company and that the applicant used to raise his voice against such illegal and unlawful act of the management. The applicant further stated that in all such cases, the proceedings were concluded without loss of jobs as the management could not prove anything in most of these cases. The applicant remained in the forefront when OP/company illegally appointed a third party to perform the assigned jobs of the Sales Promotion Employees of Zydus Cadila Division where the applicant raised his voice of protest against the flouting of Section 10 of The Contract Labour (Regulation and Abolition) Act 1970 by the OP/ company and to level the division a non viable division and to pave the way to retrench the Sales Promotion Employees of that Division in West Bengal as well the applicant in particular raised an Industrial disputes and the applicant was in the forefront of the Organizational activities of the Union and at a time OP/ company had no other alternative but to cancel the Third Party agreement and brought back the products to the said division again. The applicant further stated that he was never engaged in any unlawful or violent activities within or outside the company's movements and no allegation has ever been made by any of the companies in the industry including the OP/company.

The applicant further stated that in the month of March 2020, after the outbreak of the global pandemic COVID-19, an abhorrent policy was introduced by the OP company wherein instruction was given by the OP company to the applicant and the other Sales Promotion Employees of the Company to WORK FROM HOME which was not feasible for the Sales Promotion Employees to discharge the duties from home. The applicant

along with other Sales Promotion Employees who are the members of All West Bengal Sales Representatives Union, informed the OP/ company that the situation was not conducive to work in the field where the possibilities of getting infected were much more than that of many other jobs, In the month of May 2020, when the lockdown was lifted by the competent authority but no such instruction were issued by the appropriate Government or Central with regard to Sales Promotion Activities could be done. The last meeting which he applicant participated along with four other employees was held at Mumbai on 02.01.2020 in relation to the hike of emoluments for the sales promotion employees.

The applicant further stated that the applicant was transferred to various places such as Burdwan , Siliguri, Kolkata , Surat and Bankura during his tenure of his unblemished service. All the transfer were effected and the applicant had joined the transfer place without any protest and/or objection as a loyal employee. The applicant stated that it will transpire from the said conduct, it is quite clear that OP company always used to harass the workman as he used to raise his voice against the unfair labour pactise of the OP/company. Due to such frequent transfers without any valid reason, the applicant had to face huge difficulty in performing his duties. Despite this, he always tried to serve the company to his level best and achieved the target. The applicant further stated that due to such frequent transfers, his family life also got affected as he could not take care of his family members.

The applicant further stated that the superannuation of the applicant is due on 31.03.2024.

The applicant further stated that the normal life was disturbed due to the global pandemic COVID-19 and both the State Government and the Central Government declared lock down and phase by phase the process of unlock took place. During this juncture, taking full advantage of the situation, the OP/ company illegally and arbitrarily terminated the service of the workman in the late night at around 11.45 P.M. vide email dated 4th June, 2020 and that the said termination letter was also served upon the applicant at his residential address at Kolkata.

The applicant further stated that various false and fabricated allegations were levelled against him and all those allegation are stigmatic

in nature and that even in the said termination letter, it has been specifically stated that they could not conduct an enquiry due to the current scenario of Covid-19.

The applicant further stated that on 05.06.2020, he made an appeal to the management of the OP/company to consider his candidature as he has put in 35 years of service without any stigma and/or allegation, thus he had requested the OP/company to allow him to discharge his duties, but the OP/company remained silent over the issue.

The applicant further stated that the applicant finding no other alternative was compelled to draw the attention of the Labour Commissioner Government of West Bengal over the issue vide email dated 07.07.2020 and sought for intervention as to the illegal and unlawful termination of the service of the applicant w.e.f. 04.06.2020 by the OP/company and on the basis of such request, the conciliation proceeding was drawn up by the Asst. Labour Commissioner, Govt. of West Bengal on the subject of alleged "Illegal termination of Service" . The OP/company duly participated in conciliation proceeding vide email dated 21.09.2020 , addressed to the Joint Labour Commissioner, Govt. of West Bengal the company specifically stated that termination of the workman /applicant was legal and as per the provisions of law and that due to the existed situation, the management is compelled to dispense with enquiry and that the OP/Company action is genuine and bonafide. The said email dated 21.09.2020 was forwarded to the applicant by the Joint Labour Commissioner Govt. Of West Bengal on 23.09.2020 and the applicant submitted his comments over the same, wherein all the allegations which were levelled against him were denied and disputed by him and he categorically stated that those are false and baseless allegations.

The applicant further stated that the applicant has been victimised by the OP/Company due to his aforesaid union activities as he always raised his voice against the unfair labour practice of the OP/Company thus he had been arbitrarily, unlawfully and illegally terminated by the OP/Company. The applicant came to learn that the OP/Company has decided to initiate disciplinary proceeding against some

workmen but surprisingly in the instant case the OP/company had refrained from conducting any disciplinary proceedings against the applicant. Thus, from the very conduct of the OP/Company, it is quite clear that the applicant has been deliberately victimized by the OP/Company and the reasons stated by the OP/Company in the termination letter dated 04.06.2020 and comments dated 21.09.2020 are far from the truth.

The applicant further stated that in the Charge Sheet-cum-Order of Dismissal dated 04.06.2020, various types of allegations have been levelled against the applicant which are stigmatic in nature and that allegations have also been made with regard to the past service record of the applicant and that the workman was never intimated of the same. The applicant further stated that during his past 35 years service tenure, the applicant had never faced any disciplinary proceedings by the OP/company rather he obeyed all the directions which were issued by the OP/ Company from time to time, be it his transfer order or sales related matter, but surprisingly, for the first he heard about the allegations which are levelled against him and that no supportive documents have been provided to him and surprisingly he has not been given any minimum opportunity of his self defence.

The applicant further stated that the applicant was a good organizer and he was very popular with his fellow colleagues and he used to raise his voice against all sort of unlawful, illegal and unfair labour practice which were carried out by the OP/company. As he was an active member of the union who always negotiated with the OP/Company for the betterment and welfare of the employees at large whether it be regarding paying wages, implementation of social securities act as per the provisions of the Labour Laws etc. Due to all these activities, the applicant became eyesore to the management and the applicant was illegally and unlawfully terminated by the OP/Company by imposing stigma as well as without providing any minimum opportunity of self defence which is totally contrary to the principles of natural justice and the settled provision of Labour Laws.

The applicant further stated that it is matter of record that at no point of time any allegation which are being levelled in the chargesheet-cum order of dismissal, was brought against him by the OP/Company by issuing any letter of warning / show cause containing any such allegation and for that it is strongly believed by the applicant that such story was framed by the OP/Company subsequent to applicant's unlawful termination of service with ill motive to cover up the lapses on the part of OP/Company. At no point of time ever in applicant's 35 years of service tenure, no disciplinary proceeding has been initiated by the OP/Company against him. The applicant was executive committee member of the union. It was also clearly mentioned that the applicant could not get any minimum chance of self defense before termination of service .

The applicant further stated that the conciliation proceeding as drawn up by the Asst. Labour Commissioner, Govt. of West Bengal failed due to uncompromising attitude taken by the OP/Company and the matter could not be settled. However , when the applicant workman understood that the management is unnecessary delaying the matter before the conciliation Officer, then finding no other alternative he filed one Form – P/4 on 08.10. and on the strength of this form the applicant filed this application before this Ld. Tribunal.

The applicant further stated that the termination of service is not only arbitrary but illegal also and after such wrongful illegal termination of service, the workman is still unemployed and passing his days in tremendous financial stringency along with his family members . Despite his sincere effort, the applicant could not secure any other employment elsewhere and that he and his family members are facing unspeakable financial hardship and are also suffering from mental agony

The applicant further stated that the last drawn wages of the applicant was Rs. 78,569.60/-

The applicant further stated that on same cause of action, no case is pending anywhere other than this tribunal.



The applicant prayed to hold the termination of the service of the applicant by the management of the OP/Company with effect from 04.06.2020 as illegal and unjustified and prayed for granting the relief of reinstatement of service with full back wages along with all consequential relief.

The OP/Company after service of notice, entered appearance and filed written statement on 18.08.2021 wherein they have denied each and every allegation brought against them. The OP/Company stated that the instant case u/sec. 10(1B)(d) of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal since the cause of action and/or part cause of action in respect of the alleged industrial dispute did not arise in the district of Kolkata and that the Head Office of OP/company is at Mumbai and all communications made therefrom. The conciliation proceeding and/or its pendency before the conciliation officer at Kolkata was without jurisdiction inasmuch as it had to territorial jurisdiction. The Op/Company further stated that even this Tribunal has no jurisdiction to entertain the instant case of the applicant since it has no territorial jurisdiction inasmuch as the applicant was posted at Burdwan Headquarter and the chargesheet-cum-dismissal order dated 04.06.2020 was issued by the OP/Company and was served at the residential address at Burdwan as well as the said order was also sent through email and as such, the purported address of the Op/Company as mentioned by the applicant in his cause title will not give any scope to acquire jurisdiction of the conciliation officer or of this Tribunal. The Op/Company stated that the Op/Company has its registered office at Ahmedabad and its Head Office at Mumbai and further stated that there is no office or establishment of the Op/Company in the State of West Bengal wherefrom and whereunder the OP/Company controls and manages the affairs of its business and/or carried out any administrative activities relating to the Sales Promotion employees. The OP/company for some incidental business purpose, very occasionally, used the apartment/office at Kolkata and the same has been purportedly described by the applicant/alleged workman as 'Regional Branch Office/ Local Office'. The address of the company purportedly mentioned at Kolkata by the applicant with an

oblique intent to mislead the authority/court. The OP/Company further stated that the applicant/alleged workman described the aforesaid Kolkata address of the company as 'Local Office' while intervention of the Labour Commissioner, Government of West Bengal was sought for vide his e-mail dated 07.07.2020 and it was again described as Regional Branch office in its written statement. The OP/Company further stated that the applicant/alleged workman had also not ever made any communication to the company at the said address during the entire period of his employment. The OP/Company further stated that the applicant/alleged workman and all other sales promotion employees (SPEs) employed in the state of West Bengal also usually carry out their day to day work under the control and supervision of the Head Office at Mumbai through the digital platform. The Sales Promotion Employees working in the state of West Bengal irrespective of Division also used to submit their daily work report and all other communications to the Head Office through the official portal of the company 'Zydus Frontline'. In all practical purposes Sales Promotion Employees of the company irrespective of division working in the state of West Bengal are administered, controlled and supervised from the head office of the company. Therefore in all practical sense the applicant/alleged workman has rendered his duties under the administrative control and supervision of the Head Office at Mumbai.

The OP/Company has one digital platform called "Zydus Frontline". All field employees used to submit their daily work reports, leave application etc. on the above digital platform from anywhere. The daily work report etc. is automatically share with the respective reporting managers and they can only see the daily work reports of their subordinates but cannot modify it and that Zydus Frontline can be accessed by field employees through Computer, laptop or smartphones etc. from anywhere having internet connection.

The OP/Company further stated that In view of spreading over of corona virus (Covid-19) in India, the OP/company issued the circular "Safety advisory note on COVID-19" on 20.03.2020 in order to uphold the Zydus philosophy of keeping employees health and safety as a primary concern and thereby advised its employees to 'Work from Home'. The OP/Company further stated that It is pertinent to mention that

manufacturing and distribution units of Drugs and Pharmaceuticals industry were/are out of the ambit of 'Lockdown' because of categorization of "Essential". The OP/Company further stated that during the lockdown period since March 2020 the company had duly paid full salaries of all the employees who adhered to the guidelines and circulars issued by the company from time to time during lockdown in Covid-19 and had also not defaulted in payment of provident fund. All sales promotion employees also used to send their communications through the official portal Zydus Frontline'. The sales promotion employees were/are also using Frontline 2.0 Dashboard tool of Zydus for their daily reporting, leave balance checking, claiming expenses etc; with the help of their Smart Android or IOS Cell Phone. The 'Frontline 2.0' was designed to accelerate growth and simplify daily sales circle etc. In order to meaningful utilisation of the lock down period while the sales promotion employees (SPEs) of the company were advised to work from home, the company organized the e-learning & training programme of the sales promotion employees for upgrading skill and knowledge through e-learning so that the sales promotion employees after such learning would be able to perform with better growth, enhanced product knowledge and skills. Accordingly in the official site Zydus Frontline 2.0 the management used to upload the day wise medical content in Zydustraining.com in order to enable the field employees / sales promotion employees to go through the medical content so that the sales promotion employees upon going through the medical content can attempt online MCQ Quiz. The SPES / BOs across the country were also asked to participate in the said online test and e- training programme. In order to attend the aforesaid e-learning & training programme one Smart Phone is enough and for the same an employee need not essentially required to be a computer savvy worker. The OP/Company further stated that sales promotion employees including the applicant/alleged workman are not only accustomed with the smart phone but they are also accustomed of making all correspondences through online. Almost all sales promotion employees all over India duly participated in such e-learning & training programme.

The OP/Company further stated it was found that in spite of sending e-mails / circulars to the applicant/alleged workman for such online test and e-training programme in the month of April 2020, the applicant/ workman did not participate on single occasion in such online test and e-training programme held on different dates despite of forwarding date and time of online test along with test link before the date and time of said online test and receiving study materials, module/curriculum etc well in advance forwarded by the Training Manager and further stated that the applicant/workman deliberately and intentionally not only refrained from e-learning and assessment but also refused to attend himself in such online test and e-training programme with some purported plea and fake pretext and that the applicant/workman has offered lame and patently false excuses and the reasons put forward by him were sham. The OP/Company further stated that it was revealed further that the applicant also misguided and instigated others SPEs for not attending such online test and e- training programme and as a result few others sales promotion employees working in West Bengal had also not participated in the said online test and e-training programme. The OP/Company further stated that the applicant/ workman was advised to implement Frontline 2.0 immediately through emails dated 19.02.2020 and 17.3.2020 and despite of making such communication the applicant/alleged workman did not make any communication to the management intimating in any manner about any sorts of his difficulty to participate in such online test and training programme prior to the schedule dates of such test and programme.

The Opposite Party / Company thereafter called upon the applicant/workman to explain in writing for such not attending the online tests and training programmes organized by the company vide its e-mail dated 21.04.2020. In response to the said E-mail the applicant/ workman instead of giving any proper explanation, refused to participate in such training programme and online test on some purported plea vide its E-mail dated 22.04.2020 contending interalia that it was not the coherent situation to conduct such online test and training programme, the Government notification has not been well understood by the issuing authority of the said e-mail and his Trade Union body had also already conveyed it's

members stances to the different organization of Pharmaceutical Companies to that effect etc. It was further mentioned in the said mail that the aforesaid e-mail of the company was inapposite and digressive as work from home of the Sales Promotion Employees was sounded to him like swimming of fishes in dry pools etc. and wherein also made the demand for daily allowance for such work of online test and e-training programme as any work done by the BOs makes them eligible to get the Daily Allowance and thereby it appeared that the stands of the applicant/alleged workman is self- contradictory and conflicting. The OP/Company further stated that it was subsequently revealed that immediately after receiving the said E-mails from the applicant/workman, all other BO's/Sales Promotion Employees working in West Bengal also did not participate in the online test and E-Training Programme and made similar verbatim and identical communication to the company through their respective e-mails in response to the e-mails of the company for calling upon them to explain in writing for such non-attending and/or participating the aforesaid online test and e- training programme.

The OP/Company further stated that despite extending all sorts of co-operation by way of forwarding circulars/guidelines/e-training modules, making arrangement of e-learning modules, online MCQ Quiz the applicant refused to follow such circulars, guidelines and even during the period of such 'Work from Home' in the month of April & May, 2020, he not only refused to participate in the online test and e-learning/training programme but also deliberately misguided and instigated other sales promotion employees employed in West Bengal to disobey and defy the instructions of the management and advised them not to participate and follow the circulars issued by the management for such e-learning and training and as a result of such instigation and advice, some other sales promotion employees claiming allegiance with the applicant did also not attend and/or participate along with the applicant/alleged workman on a single day of such e-learning & training programme conducted by the management. Only after compilation of necessary information and records all over India, it was found that the applicant/workman along with few others working in West Bengal had not only refrained themselves from

attending the said e-training programme but they refused to participate in the said e-learning & training programmes disregarding and disobeying the guidelines / circulars on some purported plea and also even made the communication to the management contending interalia that the 'Work from Home' could not be performed by them in any way during the period of lock down.

The OP/Company further stated that the applicant/ workman through his email dated 24.4.2020 specifically stated that being a member of the union he himself inspired the members of the union, AWBSRU, to raise voices against such alleged unjustified and malafide action of the management for asking the Sales Promotion Employees to participate in the e-training programme and online test through digital medium / platform and also to work from home at the period in question.

The OP/Company further stated that in the month of May,2020, the management issued circular regarding Post Lockdown Field Work Restoration effective from 11.05.2020 and the same was uploaded in the official site in Zydus Frontline and thereby all field employees having their Head Quarters falling under the designated Green Zones were requested to prepare and organize for field work starting from 11.5.2020 by strictly adhering to and following the required Covid appropriate guidelines. The said guide lines/circular were also time to time reviewed by the company following the guidelines of the central government and respective state government and all other advisory authorities regarding Covid-19.

The OP/company further stated that thereafter, in response to the mangement's circular dated 3.5.2020 regarding Post Lock Down Field Work restoration, the applicant/ workman, instead of adhering to the said circular, made the demand of continuing the prevailing situation until the Lockdown period was withdrawn by the Central Govt. and State Govt. of West Bengal vide his email dated 4.05,2020. The OP/company further stated that it further appeared to it that the applicant/workman also misguided other SPEs by way of deliberate misinterpretation of governments orders and notification and spreading misinformation about governments orders to that effect and thereby, the applicant/workman had

not only made the attempt to thwart and stifle the process of work restoration in phased manner as per the above guide lines but also misguided other sales promotion employees and instigated them to defy the lawful order of the management for work from home during the period of lock down.

The OP/Company further stated that it was revealed that by issuing one after another emails, the applicant/workman had not only deliberately disobeyed the guidelines/circulars of the company but also refused to work as per circulars/guidelines issued by the management from time to time with regard to work from home, e-training programme and online test and that the applicant/workman had also continuously incited and instigated other sales promotion employees working in West Bengal to defy and disobey the lawful orders of the management and also by way of deliberate misinterpreting the Government Notifications and misrepresentation of management's circulars/guidelines with an oblique motive to hamper the work of the company and to cause damage to the reputation of the company particularly in the crucial hour of need of the society and nation at large and that the applicant/workman even made communications to the company maligning the management personnel and acted in a manner vilifying higher management and even spreading false rumors affecting reputation of the company.

The OP/Company further stated that although the union, AWBSRU did not even make any demand and/or communication to the management to withdraw the said guidelines/ circulars particularly to the extent of directing the sales promotion employees to 'Work From Home' as specified in the said guide lines/ circulars, but it appeared that the applicant/ workman purportedly claiming to be a self styled leader of the above union sent series of e-mails to the company defying and violating the lawful order of the management and has also deliberately for the purpose of maligning, defaming and ridiculing the company made series of communication to the management and conducted himself in a way inconsistent with the faithful discharge of his duty in service as well as he acted in a manner which is subversive of discipline. The OP/Company further stated that only about 8.4 percent of the Sales Promotion employees of the company are working within the territory of West

Bengal and out of which some of them including the applicant/ workman are purportedly claiming to be the members of the union namely, All West Bengal Sales Representatives Union. Majority of the sales promotion employees of the company all over India working under different divisions are represented by their registered trade union namely Zydus Cadila Field Employees Association. The Union namely All West Bengal Sales Representative Union does not have any representative character of the employees of the company and does not also have any locus standi to espouse any industrial dispute irrespective of Division of SPEs with regard to the terms and conditions of their employment.

The OP/Company further stated that it further subsequently came to the knowledge of the company that in order to tarnish the image of the Organization, Human Resource Department and senior officials of the company, a post was circulated by the applicant/ workman through his Facebook account on 02.06.2020 depicting incorrect picture of Zydus Management and its official and on noticing about such a derogatory post, the company through its Advocate's notice called upon the applicant/workman to delete and/or expunge the said post dated 02.06.2020 and to tender apology for such posting and that on receiving the said Advocate's notice, the applicant/workman deleted and/or expunged the aforesaid post from its Facebook account and also tendered apology for the same with lame excuse and as such, it revealed that the applicant/workman can do anything against the company to fulfill his unlawful and unjustified demand.

The OP/Company further stated that in view of the above the management was left with no other alternative but to take a disciplinary action against the applicant/workman. The OP/Company further stated that in the normal course the management would have issued a charge sheet and conducted an enquiry in respect of the allegations which amounts to major misconduct by adhering to the rules of natural justice but for the prevailing pandemic situation arising out of COVID 19, it was practically impossible to hold any such enquiry and at the same time it was also essential to protect the business interest of the organization as well as need of the society in that crucial hour.



The OP/Company further stated that that on collation of information it was also revealed that prior to lockdown in the recent past during the period of December 2019 to March 2020 the normal field working of the BOs and field sales employees were seriously affected in West Bengal owing to illegal hindrances, obstructions at the instigation, instruction and advice of the applicant/workman by some unknown persons purportedly claiming to be the members of AWBSRU. The management had also come across with some untoward incident of physical assault upon the managers and other officers/field employees in West Bengal by those persons and in the Zydus Division wherein the applicant/ workman was employed such type of the incident of hindrances and physical assault on the manager and other field employees was very rampant and as a consequence of which the management was rather compelled to lodge series of complaints before the police authority.

The OP/Company further stated that in view of the prevailing pandemic situation arising out of corona virus (COVID-19), the company could not conduct domestic enquiry and since continuation of the employment of the applicant/workman was detrimental to the interest and discipline of the organization, the chargesheet-cum-order of dismissal being Reference No ZHL/Zydus Cadila/HR/2020 dated 4th June, 2020 was issued by the management. However before issuing the aforesaid order, the allegations against the applicant/workman were prima facie investigated and the entire matter was viewed dispassionately by the management and on preliminary enquiry, prima facie having been satisfied about the acts of misconduct committed by the applicant/workman and in consideration of the gravity of misconducts, the said order of dismissal was issued for bonafide and justified reasons. The said charge sheet cum Order of dismissal dated 04.06.2020 was sent to the applicant through courier at his residential address at AWBSRU Rest House, 5, Ramlal Bose Lane, Radhanagar Para, Purba Bardhaman and it was duly received by the applicant and that the said charge sheet cum order of dismissal was also sent to the applicant through email.

The OP/Company further stated that on receiving the said order of dismissal, the applicant/workman did not make any communication to the company denying and/or disputing the charges and/or acts of misconduct

which were brought/ framed against him in the said order although in acknowledgement of the said order the applicant/alleged workman made an appeal before the management vide its e-mail dated 05.06.2020.

Thereafter the applicant/ workman vide its e-mail dated 07.06.2020 sought for intervention of the Labour Commissioner with regard to the termination of his service by the company and with an oblique intent mentioned therein one fictitious address as 'Local office' of the company only to mislead the authority.

In course of the conciliation proceedings, the applicant/workman did not also make any statement and/or communication denying the charges and/or acts of misconduct which was leveled against him. However in the conciliation proceedings the company duly made the communication to the conciliation officer in response to the e-mails of the applicant/ workman addressed to the conciliation officer and thereby denied and disputed each and every allegation made against the company.

The OP/Company further stated that the order of dismissal was just and proper in view of the gravity of misconducts committed by the applicant/ workman as mentioned in the said order dated 04.06.2020 and the applicant/ workman is not entitled to get reliefs as prayed for and/or any other relief. In the circumstances, the OP/Company has prayed for an order to reject the instant case.

Considering the pleadings of both the parties, the following issues are framed and recast for proper adjudication of this case :-

### **I S S U E S**

1. Whether the instant case is maintainable in its present form and law?
2. Whether this Learned Tribunal lacks territorial jurisdiction to take cognizance of the purported application ?
3. Whether the alleged termination of the applicant namely Subir Kumar Bandyopadhyay by the OP namely M/s. Zyduz Healthcare Limited with effect from 04.06.2020 is justified ?
4. To what relief is the applicant entitled to ?

### **DECISION WITH REASONS**

In order to establish his case, the applicant has examined himself as PW-1 and proved some documents, marked as Exhibits-1 to 40 respectively which are as follows :

<b>Sl. No.</b>	<b>Description of document</b>	<b>Exhibit No.</b>
1.	List of documents	Exbt- 1
2.	Copy of Letter of Appointment being Ref No. OL/Appt/MR/MP/85/32357 dated 22nd July, 1985	Exbt- 2
3.	Copy of Letter of confirmation of service being Ref No. CL/MP/85/56215 dated 1st January, 1986	Exbt- 3
4.	Copy of Letter confirming as Senior Field Officer being Ref No. S-XV/B/SFO/CL1928 dated 15/01/1988	Exbt- 4
5.	Copy of Letter being No. Ref No. CL/GM(P&A)/91 Date 20th August, 1991 issued to the applicant by the Cadila Laboratories Limited.	Exbt- 5
6.	Copy of Letter being No. Ref No. CL/GM(P&A)/93 Date 14th April, 1993 issued to the applicant by the Cadila Laboratories Limited	Exbt- 6
7.	Copy of Letter being No. CHC/DGM(HR)96 dated June 10, 1996 issued to the applicant by the Cadila Healthcare.	Exbt- 7
8.	Copy of Letter being No. CHC/DGM(HR)96 dated June 10, 1996 issued to the applicant by the Cadila Healthcare.	Exbt- 8
9.	Copy of Letter being No. Z/CHL/HR(MKT)/98 Date March 21, 1998 issued to the applicant by the Cadila Healthcare	Exbt- 9
10.	Copy of Letter being No. Z/CHL/HR(MKT)/98 Date October 17th , 1998 issued to the applicant by the Cadila Healthcare Ltd.	Exbt- 10
11.	Copy of Letter being No. Z/CHL/HR/99 Date February 22, 1999 issued to the applicant by the Cadila Healthcare Ltd	Exbt- 11
12.	Copy of Letter dated 6/6/1995 issued by Cadila Healthcare Pvt. Ltd to the workman	Exbt- 12
13.	Copy of letter being Z/CHL/HR(MKT)/98 dated February 10, 1998 issued by the company to the workman	Exbt- 13
14.	Copy of letter being Z/CHL/HR(MKT)/99 dated February 22, 1999 issued by the company to the workman	Exbt- 14
15	Copy of Notification being No. 1952-I.R Dated 29.12.2000 and Copy of Award dated 21.01.2003 passed by the Learned Third Industrial Tribunal,	Exbt- 15

	West Bengal in Case No. VIII-13/2001	
16	Copy of Memo No. S/3762/239/02/L.C. Dated 7.10.2002 issued by Asstt. Labour Commissioner West Bengal to the General Secretary All West Bengal Sales Representatives' Union	Exbt- 16
17	Copy of letter dated 13.10.2014 written to Mr Madhu Srinivas G.M. IR by the workman and the copy of postal receipt	Exbt- 17
18	Copy of Memo No. Labr/467/2(2)/(LC-IR) April, Dated, Kolkata, the 28th April, 2017 issued by Asstt. Secretary of the Govt. of West Bengal the General Secretary All West Bengal Sales Representatives' Union and Copy of the Award passed by Learned 5th Industrial Tribunal West Bengal in Case No. VIII-36/2011dated 12.04.2017	Exbt- 18
19	Copy of tour programme of the workman issued by the opposite party company	Exbt- 19
20	Copy of letter dated 8th June, 2017 issued by Zy-dus Healthcare limited to the workman	Exbt- 20
21	Copy of Memorandum in relation to accelerate the process of Reinstatement of Sri Debasish Gayen dated 30/06/2019 written to Mr. Ananda Gawde Vice President (HR) by the workman and the postal receipt	Exbt-21
22	Copy of Memorandum in relation to the pay hike to be effective from 1/9/2019 to the SPEs dated 30/06/2019 written to Mr. Ananda Gawde Vice President (HR) by the workman and the postal receipt	Exbt- 22
23	Copy of Charge Sheet-cum-Order of Dismissal being No. ZHL/Zydus Cadila /HR/2020 dated 4th June,2020 issued to the workman by opposite party company through email and envelop and copy of the Charge sheet-cum-Oder of Dismissal dated 4th June, 2020 sent to the workman's address at Kolkata	Exbt- 23
24	Copy of email dated 5th June, 2020 written by the workman addressed to Ananda Gawde of Opposite Party Company	Exbt- 24
25	Copy of email dated 16/06/2020 issued by Narendra B. Tangar to Mr. Dipesh Bhattacharjee with regard to suspension order	Exbt- 25
26	Copy of email dated 30/06/2020 issued by Narendra B.Tanger to Dipesh Bhattachargee with regard to Charge Sheet	Exbt- 26
27	Copy of email dated 7/7/2020 written by the workman to The Labour Commissioner Government of West Bengal	Exbt- 27
28	Copy of email dated 18/09/2020 written by Mr. Bikram Mohalanobish to Mr. Narendra B.Tangar of opposite party company	Exbt- 28
29	Copy of email dated 23/09/2020 written by Mr.	Exbt- 29

	Bikram Mohalanobish to the workman wherein comments of the opposite party has been forwarded for comments of the workman	
30	Copy of email dated 28/09/2020 written by workman to Mr. Bikram Mohalanobish wherein comments of the workman was submitted	Exbt- 30
31	Copy of letter dated 4/08/2020 of the workman written to the Labour Commissioner Government of West Bengal along with the postal receipt and information downloaded from the official website of the India Post	Exbt- 31
32	Copy of email dated 14/08/2020 written by one Rupak Rathore to the workman with regard to the reply of the letter of the workman	Exbt- 32
33	Copy of letter being ZHL/Zydus Discovery/HR/202 September 29, 2020 by the opposite party company to one Mr. Dipesh Bhattacharjee with regard to Domestic Enquiry	Exbt- 33
34	Copy of email dated 6/10/2020 issued by opposite party company to one Mr. Anirban and copy of suspension order of Mr. Anirban by the opposite party company	Exbt- 34
35	Copy of suspension order by the opposite party company to Mr. Bhattacharya	Exbt- 35
36	Copies of correspondences through emails between the workman and the EPFO authorities with regard to implementation of the order passed by the Apex Court with regard to Provident Fund	Exbt- 36
37	Copy of the Form P-4 before Joint Labour Commissioner cum Conciliation Officer Government of West Bengal dated 8/10/2020	Exbt- 37
38	Copy of notification being No.351/HS/PA/20 dated 7th July, 2020 issued on behalf Government of West Bengal	Exbt- 38
39	Copy of email dated 04.03.2021	Exbt- 39
40	Copy of the email sent by the OP/Company to the applicant ( on admission during cross-examination of OPW-1)	Exbt- 40

The OP/Company examined Sri Narendra Tangar, Deputy Manager, IR of OP/Company as OPW-1 and examined Sri Goutam Das as OPW-2 and also Sri Amit De as OPW-3 on behalf of OP/Company. The following documents were marked as Exhibits A to Z, AA to ZZ and AAA to HHH—

<b>Sl. No.</b>	<b>Description of document</b>	<b>Exhibit No.</b>
1.	Communication through online (4 pages)	Exbt- A
2.	Certified copy of Case no. 1779/2020 ( 7 sheets)	Exbt- B
3	Letter dated n02.08.2003 issued by the OP/Company to the applicant	Exbt- C
4.	Letter dated 24.07.2005 by the OP/Company to the applicant	Exbt- D
5.	Minutes of the meeting held on 22.05.2019 between the Management of Op/Company and the representatives of Zydus Counsels (4 pages)	Exbt- E
6.	Summary record of discussions of the 42 <sup>nd</sup> Session of Indian Labour Conference held on 20-21, February, 2009 (4 page) (with objection)	Exbt-F
7.	Photocopy of Safety Advisory Note on COVID-19 dated 20.03.2020 (2 pages)	Exbt- G
8.	Photocopy of Safety Advisory Note on COVID-19 dated 24.03.2020	Exbt- H
9.	Photocopy of Safety Advisory Note on COVID-19 dated 31.03.2020	Exbt- I
10.	Photocopy of Safety Advisory Note on COVID-19 dated 14.04.2020 (2 pages)	Exbt- J
11.	Photocopy of Safety Advisory Note on COVID-19 dated 20.04.2020 (2 pages)	Exbt- K
12	Photocopy of email dated 19.02.2020	Exbt- L
13	Photocopy of email dated 17.03.2020	Exbt- L/1
14	Printout copy of the post of Facebook dated 15 <sup>th</sup> June at 3:35 PM (2 pages) (with objection)	Exbt- M
15	Printout copy of email dated 01.06.2020	Exbt- N
16	Printout copy of email dated 02.06.2020 (3 Pages)	Exbt- O
17	Printout copy of email dated 23.04.2020 (2 pages)	Exbt- P
18	Printout copy of email dated 05.05.2020 (2 pages)	Exbt- Q
19	Printout copy of email dated 03.06.2020 ( 3 pages)	Exbt- R
20	Printout copy of email dated 22.04.2020 (3 pages)	Exbt- S
21	Printout copy of email dated 06.05.2020 ( 3 pages)	Exbt- T
22	Printout copy of email dated 24.04.2020 ( 3 pages)	Exbt- U
23	Printout copy of email dated 04.05.2020 (3 pages)	Exbt- V
24	Printout copy of email dated 01.06.2020 (2 pages)	Exbt- W
25	Printout copy of email dated 08.05.2020	Exbt- X
26	Photocopy of Advocate letter dated 05.06.2020 sent by OP/Company Advocate to the applicant and Union (4 pages)	Exbt- Y
27	Photocopy of Advocate letter dated 10.06.2020 sent by OP/Company Advocate to the applicant (4 pages)	Exbt- Z
28	Printout copy of email letter dated 15.06.2020 sent by the applicant to the Advocate of OP/Company namely PD Gandhi & Associates (4 pages)	Exbt- AA
29	Xerox copy of extract of the resolution of the meeting held on 06.02.2023	Exbt- BB
30	Printout copy of email dated 01.06.2020 (2 pages)	Exbt- CC

	(with objection)	
31	Printout copy of email dated 21.04.2020 (2 pages) (with objection)	Exbt- DD
32	Printout copy of email dated 02.06.2020 (3 pages) (with objection)	Exbt- EE
33	Printout copy of email dated 03.06.2020 (with objection)	Exbt- FF
34	Printout copy of email dated 30.09.2020 (with objection)	Exbt- GG
35	Printout copy of email dated 08.03.2020 (with objection)	Exbt- HH
36	Printout copy of email circular dated 02.03.2020 (with objection)	Exbt- II
37	Printout copy of email circular dated 14.05.2020 (2 pages) (with objection)	Exbt- JJ
38	Printout copy of email circular dated 15.05.2020 (2 pages) (with objection)	Exbt- KK
39	Printout copy of email circular dated 16.05.2020 (2 pages) (with objection)	Exbt- LL
40	Printout copy of email circular dated 17.05.2020 (2 pages) (with objection)	Exbt- MM
41	Printout copy of two email circular dated 21.05.2020 (4 pages) (with objection)	Exbt- NN
42	Printout copy of email circular dated 22.05.2020 (with objection)	Exbt- OO
43	Printout copy of email dated 23.05.2020 (3 pages) (with objection)	Exbt- PP
44	Printout copy of email dated 07.07.2020 (4 pages) (with objection)	Exbt- QQ
45	Printout copy of email dated 18.09.2020 (with objection)	Exbt- RR
46	Printout copy of email dated 21.09.2020 & 13.10.2020 (2 pages) (with objection)	Exbt- SS
47	Printout copy of two email dated 24.04.2020 (2 pages) (with objection)	Exbt- TT
48	Printout copy of two email dated 23.04.2020 (2 pages) (with objection)	Exbt- UU
49	Printout copy of three email dated 21.04.2020 (12 pages) (with objection)	Exbt- VV
50	Printout copy of email dated 24.04.2020 (2 pages) (with objection)	Exbt- WW
51	Printout copy of three email dated 26.05.2020 & 28.05.2020 (8 pages) (with objection)	Exbt- XX
52	Printout copy of two email dated 24.04.2020 (2 pages) (with objection)	Exbt- YY
53	Printout copy of six email (6 pages) (with objection)	Exbt- ZZ
54	Printout copy of two email dated 04.05.2020 and four emails dated 06.05.2020 (20 pages) (with objection)	Exbt- AAA
55	Printout copy of two email dated 23.05.2020 & 24.05.2020 (3 pages) (with objection)	Exbt- BBB

56	The Govt. Notification dated 15.05.2020 (9 pages)	Exbt- CCC
57	The Govt. Notification dated 04.05.2020 (3 pages)	Exbt- DDD
58	Printout copy of thirteen email (33 pages collectively) (with objection)	Exbt- EEE
59	Printout copy of twenty six email (26 pages collectively) (with objection)	Exbt- FFF
60	Printout copy of email communication (with objection)	Exbt- GGG
61	Printout copy of email communication (with objection)	Exbt- HHH

The Ld. Advocate for the applicant filed written notes of arguments in support of the applicant case.

The Ld. Advocate for the applicant relied on the following citations in support of the case of the applicant –

1. 2010(14) SCC 471 Para-17
2. 2013(4) SCC 301 Para-45
3. 2015 SCCONLINE ALL 7299 para-6
4. 2016 AIR 1 Jhar 698 para-10
5. 1998(3)SCC 192
6. 1976(1)SCC518.
7. 1993(1) LNN 151 Pare19
8. (1981)3 SCC 225 Para-18
9. 1984(1) SCC 509 para- 2-4
10. 2016(16)SCC 663
11. 2013(10)SCC324 para-38
12. 2015(9)SCC345
13. 2015(4)SCC 458 para-20-22
14. 2016(6)SCC 541
15. 2015(8)SCC 150 Para-27
16. 2019(17)SCC184 Para- 13 to 16
17. 2022(13)SCC202 Para-31 to 33
18. 2022(9)SCC586 Para-16 to 19
19. (2007) 5 SCC 591
20. Novartish India Ltd. Vs. State of West Bengal & Ors. Unreported Judgement passed by the Hon'ble Justice U.P. Mukherjee
21. (1993) 3 SCC 259
22. ILR 2009 KAR 3927



23. (1999) 2 SCC 21
24. 1988 (1) LNN (Bom) Ganesh Ranjan Servai And Bounelt Colemant & Co. Ltd. & Ors.
25. AIR 1957 SC 7
26. (2022) 175 FLR 952
27. (2020) 4 SCC 810

The Ld. Advocate for the OP/Company relied on the following citations in support of the case of the OP/Company –  
(2007) 5 SCC 591 and also Novartis India Ltd. Vs. State of West Bengal & Ors. Unreported Judgment passed by the Hon’ble Justice U.P. Mukherjee

**Issue No. 2 :**

**Whether this Learned Tribunal lacks territorial jurisdiction to take cognizance of the purported application ?**

This issue is taken up first since it relates to territorial jurisdiction of this Tribunal to take cognizance of the instant case application. The instant application has been filed by the applicant u/sec. 10(1B)(d) of the Industrial Disputes Act, 1947 challenging the termination of his service by the OP/Company vide termination letter dated 04.06.2020 nomenclatured as ‘Chargesheet cum Order of Dismissal’.

The applicant has stated that the OP/Company illegally and arbitrarily terminated the service of the workman in the late night at around 11.45 P.M. vide email dated 4th June, 2020 and that the said termination letter was also served upon the applicant at his residential address at Kolkata. The applicant further stated that the applicant finding no other alternative was compelled to draw the attention of the Labour Commissioner, Government of West Bengal over the issue vide email dated 07.07.2020 and sought for intervention as to his illegal and unlawful termination of the service of the applicant w.e.f. 04.06.2020 by the OP/Company and on the basis of such request, the conciliation proceeding was drawn up by the Asst. Labour Commissioner, Govt. of West Bengal on the subject of alleged “Illegal termination of Service” . The OP/Company duly participated in conciliation proceeding vide email

dated 21.09.2020 , addressed to the Joint Labour Commissioner, Govt. of West Bengal the company specifically stated that termination of the workman /applicant was legal and as per the provisions of law and that due to the existed situation, the management is compelled to dispense with enquiry and that the OP/Company action is genuine and bonafide. The said email dated 21.09.2020 was forwarded to the applicant by the Joint Labour Commissioner Govt. Of West Bengal on 23.09.2020 and the applicant submitted his comments over the same, wherein all the allegations which were levelled against him were denied and disputed by him categorically as being false and baseless allegations. The applicant even in his cross-examination stated that “Presently, I am residing at Sai Baba Enclave, Flat No. 3A, 3<sup>rd</sup> Floor, A/F-1, Jyangra, Kolkata- 700059.” He further stated in cross-examination “I am residing at this address since 01.04.2020 and now this is my permanent address”. The applicant further stated in cross-examination “No, I have not received the order of dismissal at Burdwan, but the same was at Kolkata address, prior to that, it was sent to me on email which I noticed while I was in Union office at Kolkata at around 11:45 P.M.” It also transpires from the xerox copy of the envelope of the said letter dated 04.06.2020 being part of **Exhibit-23** that the same has been served upon the applicant at his Kolkata address.

It appears from Exbt-40 being printout copy of the email dated 04.06.2020 that the same was sent at 11:44 PM on 04.06.2020 addressed to PW-1 stating that PW-1 was working as Senior Business Officer.

In cross-examination, PW-1 stated that –

“All West Bengal Sales Representatives Union called a meeting on 30.06.2019 in the evening at Union’s office at 44/1, Guruprasad Chowdhury Lane, Kolkata- 700006.”

PW-1 further stated in cross-examination—

“44/1 Guruprasad Chowdhury Lane, Kolkata- 700006 is the office of the AWBSRU. During that time in the month of June, 2020, night curfew was imposed after 9 p.m. across the State (West Bengal) and as I could not complete the task by 9 p.m., I had to be in the Union Office on that date.

On 04.06.2020 at 11:45 P.M., I alongwith General Secretary of the Union namely Avijit Roy was present at the Union office at 44/1 Guruprasad Chowdhury Lane, Kolkata- 700006.

On 04.06.2020, I was in the office of the Union for urgent work of the Union.”

Thus, it becomes clear that the Union office is at address- 44/1, Guruprasad Chowdhury Lane, Kolkata- 700006 which is also within territorial jurisdiction of this Tribunal.

In view of the above, this Tribunal has no hesitation to hold that the letter of termination of service dated 04.06.2020 has been received by the applicant in Kolkata within the territorial jurisdiction of this Tribunal. The OP/Company seems to be also conscious of such address of applicant at Kolkata inasmuch as the OP/Company has not mentioned the address of the applicant in the letter dated 04.06.2020 but dispatched the same at Kolkata address of the applicant which is well demonstrated from the envelope of the said letter being part of Exbt-23.

The Hon’ble Supreme Court in the judgment reported in (2007) 5 SCC 591 (2 JJ) (Bikash Bhusan Ghosh & Ors vs Novartis India Ltd & anr) interalia held-

*“ 16. Judged in that context also, a part of cause of action arose in Calcutta in respect whereof the State of West Bengal was the appropriate Government. It may be that in a given case, two States may have the requisite jurisdiction in terms of clause (c ) of sub-section (1) of Section 10 of the Industrial Disputes Act. Assuming that other State Government has also jurisdiction, it would not mean that although a part of cause of action arose within the territory of the State of West Bengal, it would have no jurisdiction to make the reference..... ”*

The Apex Court further held-

*“Yet again the appellants being workmen, their services were protected in terms of the Industrial Disputes Act, 1947. If their services were protected, an order of termination was required to be*

*communicated. Communication of an order of termination itself may give rise to a cause of action. An order of termination takes effect from the date of communication of the said order.”*

In view of all above, the cause of action arose at Kolkata within the jurisdiction of this Tribunal and as such, this Tribunal has territorial jurisdiction to entertain the instant application of the applicant.

Apart from the above, now, let me analyze the territorial jurisdiction of this Tribunal to take cognizance of the instant application from another perspective also.

The PW-1 in cross-examination stated –

“ABM posted in Kolkata means Area Business Manager and five or more Sales Promotion Employees are supervised by the persons who are designated as ABM and while I was in the service of the Company, the ABM who was working at that time was posted in Kolkata Head Quarter.

When I was working at Burdwan Head Quarter, I was posted under ABM Kolkata.”

OPW-1 Narendra Tangar in cross-examination stated that –

“The function of the Area Business Manager is to supervise the work of Business Officers.

The Area Business Managers are the immediate boss of the Business Officers.”

PW-1 in para-4 of the Affidavit in chief interalia stated the OP/Company has its Regional Branch Office at 12A, Swinhoe Street, presently renamed as Anil Moitra Sarani, PS Gariahat, Kolkata- 700019, West Bengal from where it controls and manages the affairs of business of the OP/Company and he (PW-1) used to perform his duties as per the instructions of the Area Business Manager posted at Kolkata.

The Exhibit-B which is certified copy of the complaint petition filed by and on behalf of the OP/Company fortifies the case of the

applicant on this score. The same was got exhibited during the cross-examination of PW-1. On perusal of the Exhibit-B, it appears that the OP/Company stated in that petition that the OP/Company has its Regional Branch Office at 12A, Swinhoe Street, Kolkata- 700019 and deals with manufacturing and selling various types of medicines and Healthcare products to the people at large and conducts various Administrative works throughout the West Bengal including Kolkata region and referred the same as regional Branch/ Administrative Office. This is well within the territorial jurisdiction of this Tribunal.

It further transpires from Exhibit-A (4<sup>th</sup> page dated 21.09.2020) that the OP/Company functioning from the Kolkata office of 12A, Swinhoe Street mentioned at the bottom of the letter.

Thus, this Tribunal has also the territorial jurisdiction even from this perspective over the instant application of the applicant.

The issue no.2 stands decided accordingly in favour of the applicant holding that this Tribunal has territorial jurisdiction to take cognizance of the application of the applicant filed u/sec. 10(1B)(d) of the Industrial Disputes Act, 1947.

**Issue No. 1 :**

**Whether the instant case is maintainable in its present form and law?**

In course of argument, Ld. Advocate of the OP/Company makes no submission with regard to the maintainability of this case except as to territorial jurisdiction of this Tribunal to entertain such application. The point of territorial jurisdiction has been adjudicated above while deciding Issue no.2 hereinabove in favour of the applicant. As such, I do not find that parties are at loggerhead with regard to any other point regarding maintainability in law of the instant case. Apart from that, on a close scrutiny of the materials on record including written arguments filed by

the applicant and the verbal arguments made by the parties, I do not find anything against this issue.

The applicant has filed the instant application u/sec. 10(1B)(d) of the Industrial Disputes Act, 1947. The said provision has been inserted vide West Bengal Amendment Act (33 of 1989). The same is enabling provision which enables the workman to file application before this Tribunal on expiry of sixty days before the Conciliation Officer as laid down in clause ( c ) thereof. The applicant has filed the instant application after exhausting the stage of Conciliation Officer and after expiry of sixty days thereat. I find that the instant application of the applicant is well within the competence of this State Industrial Tribunal u/sec. 10(1B)(d) of the Industrial Disputes Act, 1947 read with the said West Bengal Amendment.

I further find that the applicant falls within the definition of workman as laid under section 2(s) of the Industrial Disputes Act, 1947 read with the West Bengal Amendment Act 33 of 1986 (with effect from 21.08.1984) and West Bengal Act 57 of 1980 (with effect from 30.11.1981). The applicant categorically averred in his application and deposed before this Tribunal that his duties were that of Sales Promotion Employee and he had to promote the sales of products of the O.P./Company. The said nature of job of applicant also reflects from the Letter of Appointment dated 22.07.1985 issued by the OP/Company (exhibit-2). The nature of job of Senior Business Officer also akin to Sales Promotion Employees. This fortifies that the nature of job performed by the applicant was of Sales Promotion employee. The Sales Promotion employees are also within the definition of workman in view of West Bengal Amendment. The applicant is thus within the definition of workman as above.

Accordingly, this issue no.1 is disposed of in favour of the applicant.

**ISSUE no. 3 & 4**

**--Whether the alleged termination of the applicant namely Subir Kumar Bandyopadhyay by the OP namely M/s. Zydus Healthcare Limited with effect from 04.06.2020 is justified ?**

**-- To what relief is the applicant entitled to ?**

Both the issues 3 & 4 are taken up together for sake of convenience and brevity.

Now, let us see as to how far the applicant has been able to prove his case by adducing evidence. The applicant has been examined as PW-1 and OP/Company adduced three witnesses, OPW-1, OPW-2 & OPW-3, on its behalf.

Let me have a close look at the Chargesheet-cum-Order of Dismissal dated 04.06.2020 (Exhibit-23). The OP/Company has given the nomenclature “Chargesheet-cum-Order of Dismissal” which seems to be uniquely coined terminology by the OP/Company and hardly heard of in labour jurisprudence. If the said letter (Exhibit-23) is chargesheet, then it cannot be a order of dismissal since the management of the OP/Company has to travel from the stage of chargesheet to Order of Dismissal and in between the OP/Company was bound to provide opportunity to the applicant/ workman to meet out the charges leveled against the applicant/ workman. It further goes on to show that no domestic enquiry was ever held by the OP/Company.

The OPW-1 in his cross-examination stated-

“It is a fact that the applicant/ workman was terminated without giving an opportunity of his self defence.”

OPW-1 has also stated in cross-examination-

“It is a fact that no domestic enquiry was conducted before his termination.”

The OP/Company in the said letter dated 04.06.2020 interalia stated that –

“In the normal course, management would have conducted an enquiry in respect of the above charges, but in view of current scenario of Covid-19 it is not possible to conduct a formal enquiry. Besides, your continuance in the employment is also detrimental to the interest and discipline of the organization and hence management has decided to dispense with the enquiry.

Accordingly your services stand terminated by way of dismissal with immediate effect for your above stated acts of gross misconduct. In the event you decide to challenge your termination, management reserves its right to prove the aforesaid charges on merits before the appropriate Court and/or Authority alongwith your unsatisfactory past service record...”

The said letter (exhibit-23) has been issued by Mr. Narendra Tangar as Deputy General Manager- HR Department on behalf of OP/Company.

The OP/Company itself admitted in the aforesaid letter (Exhibit-23) that it has dispensed with the domestic enquiry in the instant case. It is undisputed that the order of dismissal is a major punishment in labour jurisprudence and the management need to pass through the stages of domestic enquiry before imposition of such a major punishment upon the employee.

Now, let me see how far the OP/Company has been able to prove the necessity of dispensing the enquiry in the instant case. The OP/Company has stated that ‘in view of the current scenario of Covid-19, it is not possible to conduct a formal enquiry.’”

It appears from Exhibit-26 and Exhibit-33 that domestic enquiry was conducted in case of Mr. Dipesh Bhattacharya who was issued charge-sheet dated 01.07.2020 as appearing from the said exhibit issued by Sri Narendra Tangar. The chargesheet has also been issued by the said Sri Narendra Tangar.



It appears from Exhibit-34 that Suspension order has been issued on 01.10.2020 as regard another employee Mr Anirban Chakraborty stated that detailed chargesheet will be served upon him in due course of time.

It appears from Exhibit-35 dated 16.06.2020 that another employee (Mr. Dipesh Bhattacharya) was suspended vide said letter / email dated 16.06.2020 and it has been stated that detailed chargesheet will be served upon him in due course of time.

The OPW-1 (Sri Narendra Tangar) in his cross-examination admitted that the OP/Company has conducted disciplinary proceedings against Sales Promotion Employees namely Mr. Dipesh Bhattacharjee (Employee Code- 12288) and Mr. Anirban Chakraborty (Employee Code- 28715).

The applicant/workman has been successfully able to demonstrate before this Tribunal that the OP/Company has conducted domestic enquiry even during the Covid-19 period in case of the aforesaid two employees.

In view of the above, this Tribunal has no hesitation to hold that the reason put forward by the OP/Company for not holding domestic enquiry in case of the applicant/ workman does not hold water. The falsity of the OP/Company has been exposed before this Tribunal by consistent and cogent evidences by the applicant/ workman as discussed.

The discharge and/or dismissal from the service are major punishment(s) under the labour law jurisprudence which cannot be inflicted without the prerequisite disciplinary proceedings. But, in the instant case, no disciplinary proceedings have been initiated by the OP/Company, as such, the definition of retrenchment under section 2(oo) of the said Act which otherwise excludes the punishment inflicted by way of disciplinary action is not helpful to the OP/Company. The termination of service of the applicant/workman, whether by the nomenclature of discharge or dismissal or chargesheet-cum-order of dismissal, is within the four corners of the definition of retrenchment.

This Tribunal finds that the OP/company has not conducted any disciplinary proceedings which is reflected from above Exhibits as well as deposition of witnesses. The mandate of Sec. 25F / Sec. 25N of the said Act has also not been complied with by the OP/Company.

The stand of the OP/Company of Chargesheet-cum-order of dismissal of the applicant/ workman without any disciplinary proceedings does not hold water in view of sec. 2(oo) of the said Act and the action of the management amounts to retrenchment of the service of the applicant/ workman under section 2(oo) of the said Act.

The termination of services of the applicant/ workman vide letter dated 04.06.2020 falls within the definition of retrenchment as laid under section 2(oo) of the said Act, 1947 and does not fall within the exceptions as provided under section 2(oo) of the said Act and is illegal termination of the service of the applicant/ workman since the OP/Company did not comply the statutory conditions precedent to retrenchment as laid down under section 25F or 25N of the said Act, 1947 being compulsory obligation on the company and the said retrenchment is illegal retrenchment.

Apart from the above, let me have a look at the charges leveled against the applicant/ workman by the OP/Company vide letter dated 04.06.2020 (Exhibit-23), the same issued by Mr. Narendra Tangar. The OP/Company in the said letter stated-

“The aforesaid acts on your part amounts to serious acts of misconduct as under :

- a) Willful insubordination of lawful and reasonable work instructions of management;
- b) Instigation to other employees for mass disobedience;
- c) Act subversive of discipline and/or good behavior;
- d) Tarnish the image of organization, Human Resource Department and senior officials of the company.”

The OP/Company has not conducted any domestic enquiry in the instant case. The onus to prove that it was not possible to conduct the domestic enquiry and that the termination of the applicant/workman was justified because of the misconduct of the applicant/workman, lies on the management of OP/company. This Tribunal has already held that the OP/Company has failed to show that it was not possible to conduct the domestic enquiry. Let me delve further to analyze how far the OP/Company has been able to discharge its onus of proving that the termination of the applicant/workman was justified.

It appears that the applicant / workman joined the OP/Company on 01.08.1985 vide appointment letter dated 22.07.1985 (Exhibit-2). The letter of termination of service nomenclatured as “Chargesheet cum Order of Dismissal” (Exhibit-23) was issued on 04.06.2020.

OPW-1 (Mr Narendra Tangar) in his cross-examination stated that he has not filed any document to show that the applicant/ workman has faced any disciplinary proceeding during the tenure of his employment in the OP/Company.

When the OPW-1 was confronted with questions over Exhibit-M, OPW-1 stated in cross-examination-

“The word Zydus Healthcare Limited” is not written in the Exbt. M”

OPW-1 further stated that he has not filed any document to show that Zydus Healthcare Limited in its short form is written as ZHL. OPW-1 further stated that he cannot show from the said Exhibit –M that how many persons have viewed the particular comment therein.

OPW-1 further stated in cross-examination that he (OPW-1) does not remember the name from whose facebook account this Exhibit-M print out copy has been taken. OPW-1 further stated in cross-examination that he cannot show from Exbt-M that the Exbt-M is printed out from the applicant/ workman’s facebook profile. He also stated that he cannot show from the Exbt-M that the name mentioned in Exbt-M is the applicant/ workman. OPW-1 also stated in cross-examination that it is not

mentioned in Exhibit-23 that the applicant/ workman has made a derogatory post in the social media against the OP/Company.

The OP/Company stated in Exhibit-23 that “it is observed that , in the recent past i.e. from December, 2019 to March, 2020 at your instruction .....

It appears that the matter in discussion as appearing from exhibit-M if any is regard to some social media post is of 02.06.2020 and as such, the incident dated 02.06.2020 if any no where can be taken to be foundation for any such action which prompted OP/Company to issue Chargesheet-cum-Order of Dismissal” dated 04.06.2020 (Exhibit-23) inasmuch as Exhibit-23 expressly stated the same to be outcome of the sum total of incidents from December, 2019 to March, 2020.

When OPW-1 was confronted with questions in cross-examination with regard to Exhibit-EEE, OPW-1 stated that he cannot show from emails (being Exbt-EEE collectively) that the applicant/ workman had instructed the sender of the email (Exbt-EEE) or that the sender of these emails were advised and/or instigated not to attend e-learning program in the month of April, 2020.

Similarly, when OPW-1 was confronted with questions in cross-examination with regard to Exhibit-FFF, OPW-1 stated that it will not be reflected from these emails (Exbt-FFF) that the sender of these emails had specifically mentioned the names of the applicant/ workman who advised and/or instigated them not to attend e-learning program in the month of April, 2020.

OPW-1 further stated in cross-examination that there was no written communication at any material point of time to the OP/Company to the effect that either they have been forced or instigated by the applicant/ workman in any manner.

OPW-2 adduced on behalf of the OP/Company stated in cross-examination that it is a fact that he participated in the e-learning programme and MCQ Quiz organized by the OP/Company during Covid period and he did not receive any obstruction or threat from anyone and

further stated that he participated and completed the e-training program and MCQ Quiz which was imparted by the OP/ Company during Covid period.

OPW-3 stated in deposition stated that he cannot say whether page 33 to 37 of the Exbt-EEE is email communication sent by him to the OP/Company or not on 22.04.2020 and further stated that the email id mentioned therein is his email id. He further stated that he does not remember whether he has sent any email on 22,04.2020. He further deposed that the Op/company deducted a part of his salary during the period of Covid.

OPW-1 also stated in cross-examination that he has not filed any document to show the names of HR or any higher/ senior officials whose image been tarnished due to facebook post of the applicant/ workman. OPW-1 also stated in cross-examination that he has not filed any document to show that the applicant/ workman used to obstruct the discharge of duties of other Sales Promotion Employees of the OP/Company working in West Bengal.

When OPW-1 was confronted with the question whether he has filed the alleged Facebook post of the applicant/workman if any dated 02.06.2020 before the Tribunal, OPW-1 stated in cross-examination that he has filed Exbt-M as to the same. On perusal of Exbt-M , it appears from the same, that the same is a post which is dated 15.06.2020 and not Facebook post dated 02.06.2020.

OPW-1 further stated in cross-examination that no written complaint has been received by the OP/Company with regard to the Facebook post of the applicant/ workman.

OPW-1 also stated that he does not remember whether he filed any document to show that the sales of the product of the OP/Company was affected due to the Facebook post of the applicant/ workman.

OPW-1 further stated in cross-examination that he has not received any written complaint from the prospective customer of the OP/Company with regard to the Facebook post of the applicant/ workman. OPW-1

further stated that no document has been filed before the Tribunal to show that the OP/Company suffered financial loss due to the Facebook post of the applicant/ workman.

In reply to the question that can he tell what prompted him to send an email at 11:44 P.M. (exhibit-23/ Exbt-40) at such late hour, OPW-1 in cross-examination stated that it was his decision. OPW-1 further stated that he has not filed any document nor any email to show that he has been instructed to send the said email.

The **Hon'ble Supreme Court** in the judgment reported in **(2010) 14 SCC 471 (Para 17)** interalia held-

*“17. In view of the aforesaid position of law, the inevitable conclusion is that when no enquiry is conducted before the service of a workman is terminated, the onus to prove that it was not possible to conduct the enquiry and that the termination was justified because of misconduct by the employee, lies on the management. It bears repetition that it is for the management to prove, by adducing evidence, that the workman is guilty of misconduct and that the action taken by it is proper. In the present case, the services of the appellant workmen having been terminated on the ground of misconduct, without holding a domestic enquiry, it would be for the management to adduce evidence to justify its action. It will be open to the appellant workmen to adduce evidence in rebuttal.”*

The **Hon'ble Apex Court** in the judgment reported in **(2013) 4 SCC 301 (Para 45)** interalia held-

*“45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.”*

The Hon'ble High Court at Allahabad in the judgment reported in **2015 SCC OnLine All 7299 :: (2016) 2 All LJ 314** interalia held that non supply of the preliminary enquiry report vitiates the enquiry proceedings.

The Hon'ble Jharkhand High Court in the judgment reported in **(2016) 1 AIR Jha R 698 :: (2015) 4 JLJR 210 (HC)** interalia held—

“The Enquiry Officer has committed gross illegality in taking on record the findings of the Officer-in-charge, Hansdiah Police Station with respect to the preliminary enquiry as the petitioner was never in any form associated with the said enquiry.”

The Hon'ble Jharkhand High Court further held-

*“Since the enquiry itself is perverse and non est in the eye of law in view of the reliance on a preliminary enquiry held behind the back of the petitioner ...”*

The **Hon'ble Supreme Court** in the judgment reported in **(1998) 3 SCC 192 vide para 13** interalia laid down the meaning of the term “Victimisation”. It held that if a person is made to suffer some exceptional treatment it would amount to victimization.

The applicant/ workman has been able to demonstrate before this Tribunal that he was subjected to exceptional treatment by not holding domestic enquiry on the plea of Covid-19 whereas the same OP/Company held domestic enquiry in case of other employees namely Dipesh Bhattacharya and Anirban Chowdhury. This itself shows the act of the victimization by the OP/Company on the applicant/workman.

The Hon'ble Apex Court in the judgment reported in **1981 LabIC 806 :: AIR 1981 SC 1253 (Mohan Lal vs The Management , Bharat Electronics Ltd)** interalia held-

*“7. Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where the termination is way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, 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, and the*

*termination of the services of a workman on the ground of continued ill health. It is not the case of the respondent that termination in the instant case was a punishment inflicted by way of disciplinary action. If such a position were adopted, the termination would be ab initio void for violation of principles of natural justice or for not following the procedure prescribed for imposing punishment. It is not even suggested that this was a case of voluntary retirement or retirement on reaching the age of superannuation or absence on account of continued ill health. The case does not fall under any of the excepted categories. There is thus termination of service for a reason other than the excepted category. It would indisputably be retrenchment within the meaning of the word as defined in the Act.”*

The Hon’ble Apex Court in the said judgment further held-

*“... Therefore, termination of his service would constitute retrenchment. As precondition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service...”*

The **Hon’ble Apex Court** in the judgment reported in **(1984) 1 SCC 509 (3 JJ)** interalia held-

*“3. It is not disputed that the prerequisite for a valid retrenchment as laid down in Section 25-F has not been complied with and therefore the retrenchment bringing about termination of service is ab initio void.....”*

The Hon’ble Apex Court further held-

*“In the course of hearing of this appeal, it was stated that the respondent has reached the age of superannuation therefore physical reinstatement in service is not possible. Appellant will have to establish that fact but in the event, the appellant shows that under a valid rule, respondent has reached the stage of superannuation and therefore physical reinstatement is not possible, it is hereby declared that the respondent shall continue to be in service uninterruptedly from the date of the attempted termination of service till the date of superannuation.*



*Respondent would be entitled to all back wages including the benefit of revised wages or salary if during the period there is revision of pay-scales with yearly increment, revised dearness allowance or variable dearness allowance and all terminal benefits if he has reached the age of superannuation such as Provident Fund, Gratuity etc. Back wages should be calculated as if the respondent continued in service uninterrupted. He is also entitled to leave encashment and bonus if other workmen in the same category were paid the same. It appears that the respondent has been unlawfully kept out of service, therefore it is but just that the appellant-company shall pay all the arrears as calculated according to the directions herein given with 12% interest from the date the amount became due and payable till realisation. Appellant shall also pay costs to the respondent quantified at Rs. 5,000....”*

This Tribunal finds that the case of the applicant/ workman stands on the same footing as hereinabove who has also reached the age of superannuation during the pendency of the instant case on 31.03.2024. The applicant/ workman is entitled for similar reliefs.

The Hon’ble Apex Court in the judgment reported in **2003 LabIC 4249 (SC) (Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya D Ed)** interalia held-

*“33. The proposition 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.....”*

The **Hon’ble Apex Court** in the judgment reported in **(2015) 9 SCC 345** interalia held—

*“21. Therefore, the impugned judgment of the High Court is bad in law as the normal rule to be followed by the respondent Firm with regard to the termination of the services of the workman has not been done in the present case...”*

The Hon’ble Court further held—

*“We further direct the respondent Firm to pay full back wages to the workman from the date of passing of the Award by the Labour Court till the date of his reinstatement in service...”*

The **Hon’ble Apex Court** in the judgment reported in **(2015) 4 SCC 458** interalia ordered with regard to reinstatement with full back wages.

The **Hon’ble Apex Court** in the judgment reported in **(2015) 8 SCC 150** interalia ordered with regard to reinstatement with full back wages.

The **Hon’ble Apex Court** in the judgment reported in **2009 LLR 113 (SC) (Novartis India Ltd – vs – State of West Bengal** interalia held-

*“16. When an employee does not join at his transferred place, he commits a misconduct. A disciplinary proceeding was, therefore, required to be initiated. The order of discharge is not a substitute for an order of punishment. If an employee is dismissed from services on the ground that he committed a misconduct, he was entitled to an opportunity of hearing. Had such an opportunity of hearing been given to them, they could have shown that there were compelling reasons for their not joining at the transferred places. Even a minor punishment could have been granted. Appellant precipitated the situation a post haste order of termination of their services.”*

The **Hon’ble Apex Court** in the judgment reported in **(1993) 3 SCC 259** interalia held—

*“..The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard*

*intends to prevent the authority to act arbitrarily affecting the rights of the concerned person.*

*It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice....”*

The Apex Court further held—

*“It is thus well settled law that right to life enshrined under Art. 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice..”*

The **Hon’ble Apex Court** in the judgment reported in **(1999) 2 SCC 21** inter alia held—

*“In our view, it is an absolutely clear case where the inquiry officer examined witnesses, recorded their statements and gave a clear finding of the appellant accepting a bribe and even recommended his termination. All these were done behind the back of the appellant. The Managing Director passed the termination order the very next day. It cannot in the above circumstances be stated, by any stretch of inspection that the report is a preliminary inquiry report. It's findings are definitive. It is not a preliminary report where some facts are gathered and a recommendation is made for a regular departmental inquiry. In view of the principles laid down in the cases referred to above, this case is an obvious case where the report and its findings are the foundation of the termination order and not merely the motive. The Tribunal was right in its conclusion. The High Court was in grave error in treating such a report as a preliminary report.*

*For all the above reasons, we set aside the High Court's Judgment and restore the Tribunal's order.”*

The **Hon’ble Supreme Court** in the judgment reported in **AIR 1957 SC 7** interalia held—

*“The charge-sheet which was furnished by the appellant to the respondent formed the basis of the enquiry which was held by the General Manager and the appellant could not be allowed to justify its action on any other grounds than those contained in the chargesheet...”*

This Tribunal finds that despite the absence of conduct of domestic enquiry, the OP/Company did not resort to discharge the onus of proving the charges leveled against the applicant/ workman by beginning the evidence on behalf of the O/Company beforehand i.e. before the evidence of applicant/ workman. The OP/Company tried to justify Exhibit-23 by evidences of OPW-1, 2 & 3 but miserably failed to prove any of the charges leveled in Exhibit-23.

The **Hon’ble High Court at Karnataka** in the judgment reported in **ILR 2009 Kar 3927** relying on the judgment of Hon’ble Apex Court reported in (2001) 9 SCC 180 ( O K Bhardwaj vs Union of India) interalia held-

*“Disagreeing with the view taken by the High Court, the Apex Court has observed that imposing punishment of withholding increments with cumulative effect even if it is treated as minor penalty, but opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. If the charges are factual and if they are denied by the delinquent employee, necessary inquiry could be held and it is the minimum requirement of principles of natural justice which cannot be dispensed with. The above proposition speaks to the fact that when such plausible explanation was given and was not accepted, necessarily it was for the Corporation to hold an inquiry regarding proof of the misconduct. As such, if the procedure could have been followed, necessarily there was scope for the workman to explain the circumstances in detail and who has committed*

*actual misconduct could have been ascertained- whether the petitioner or some other person is in the service. Without concluding on this aspect, straight away the disciplinary authority has also jumped to the conclusion holding him guilty of misconduct and, that it is a serious lapse. There appears to be perversity in the order of the disciplinary authority as also in the order of the appellate authority.”*

The OP/Company has also failed to demonstrate its stand of preliminary enquiry. The OP/Company has failed to bring any iota of evidence in support of its version as to preliminary enquiry. No preliminary enquiry report has been placed before this Tribunal. The OP/Company also failed to aver and/or depose that it supplied any copy of such alleged preliminary enquiry to the applicant/workman. In view of the settled law as to preliminary enquiry, such alleged preliminary enquiry as alleged by OP/Company is violative of the principles of natural justice and holds no water in the eye of law and is in teeth of the settled law on this aspect.

Thus, this Tribunal has no hesitation to conclude from the evidence adduced on behalf of OP/Company that the OP/Company has failed to prove any of the charges leveled by the OP/Company in Exhibit-23 being styled as “Chargesheet-cum-Order of Dismissal”.

The applicant/ workman has averred and deposed that the applicant/ workman has not been in any gainful employment elsewhere since his said illegal retrenchment and is entitled to full back wages with reinstatement with consequential benefits and prayed for continuity of service.

In view of the aforesaid facts and circumstances and the settled position of the law , this Tribunal finds that the applicant/ workman has been able to prove his case by cogent and consistent evidence that his alleged termination vide letter dated 04.06.2020 is bad, illegal and unjustified and is liable to be set aside and that the applicant/Workman is entitled to reinstatement with full back wages alongwith consequential reliefs and the services of the applicant/ workman be deemed to be continuous service without any break.

In the instant case, the applicant/ workman since has reached the age of superannuation, as such physical reinstatement in service is not possible. The age of superannuation of the applicant/workman is 31.03.2024 which has reached during the pendency of the instant case and therefore physical reinstatement is not possible, it is hereby declared that the applicant/workman shall continue to be in service uninterruptedly from the date of the attempted termination of service till the date of superannuation. The applicant/workman is entitled to all back wages alongwith consequential benefits including the benefit of revised wages or salary if during the period there is revision of pay-scales with yearly increment, revised dearness allowance or variable dearness allowance and all terminal benefits as he has reached to the age of superannuation such as Provident Fund, Gratuity etc. Back wages should be calculated as if the applicant/workman continued in service uninterrupted. He is also entitled to leave encashment and bonus if other workmen in the same category were paid the same. The applicant/workman has been unlawfully kept out of service, therefore it is just that the OP/Company shall pay all the arrears as calculated according to the directions herein given with 10% interest from the date the amount became due and payable till realisation. The OP/Company shall also pay costs to the applicant/workman quantified at Rs. 5,00,000/-.

The applicant/workman is also entitled for other benefits being paid to other workman/ workmen on their retirement including benefits paid under various beneficial, welfare and/or benevolent schemes of the OP/company. The OP/Company is further directed to ensure that the applicant/ workman is not deprived of the annual increments which fell due from time to time since 04.06.2020. The OP/Company is also directed to ensure payment of all other retiral benefits to the applicant / workman including Provident Fund, Gratuity, Pension etc as applicable in the OP/Company.

The applicant /workman is also entitled for compensation to the applicant/ workman for the applicant's mental agony and unnecessary harassment due to illegal, unlawful and unjust termination of his service by the OP/Company quantified at Rs. 4 Lacs.

The Issue no. 3 & 4 stands answered accordingly in favour of the applicant/ workman.

Hence, it is

**ORDERED**

that the instant case being No. 15/2020 u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 be and the same is allowed on contest with costs of Rs. 5,00,000 (Rupees Five Lacs only) against the OP/Company. The letter of chargesheet cum Order of dismissal dated 04.06.2020 (Exhibit-23) is set aside being bad, illegal and unjustified.

The applicant/ workman is entitled to be reinstated in service with effect from 04.06.2020 with full back wages alongwith all other consequential benefits thereto arising out of such reinstatement and continuity of service and the service of the applicant/ workman shall be deemed to be continuous service without any break.

Since the date of superannuation of the applicant/ workman is 31.03.2024 which has crossed during the pendency of the instant case, the applicant/ workman is deemed to have been reinstated in service with effect from 04.06.2020 with full back wages alongwith all other consequential benefits thereto arising out of such reinstatement and continuity of service and the service of the applicant/ workman shall be deemed to be continuous service without any break. The applicant/ workman stands superannuated / retired on 31.03.2024.

The OP/Company is directed to pay full back wages alongwith all other consequential benefits thereto arising out of such reinstatement till the date of superannuation of the applicant/ workman i.e. till 31.03.2024 and also other benefits being paid to other workman/ workmen on their retirement including benefits paid under various beneficial, welfare and/or benevolent schemes of the OP/company. The OP/Company is further directed to ensure that the applicant/ workman is not deprived of the annual increments which fell due from time to time since 04.06.2020. The OP/Company is also directed to ensure payment of all other retiral benefits to the applicant / workman including Provident Fund, Gratuity, Pension etc as applicable in the OP/Company.

The OP/Company is also directed to further pay a sum of Rs. 4 Lac (Rupees Four Lacs) as compensation to the applicant/ workman for the applicant's mental agony and unnecessary harassment due to illegal, unlawful and unjust termination of his service by the OP/Company.

The OP/Company is also directed to pay all the dues and outstanding as directed by this Tribunal with interest @ 10% per annum within thirty days from the date of this order.

The aforesaid is the Award of this Tribunal passed in this instant case no. 15/2020/ 10(1B)(d).

The case no. 15/ 2020/ 10(1B)(d) stands disposed of on contest.

Let copy of this Award be sent to the appropriate authority(ies) as envisaged under the law.

Dictated & corrected by me.

Judge

(Yogita Gaurisaria )  
Judge,  
7<sup>th</sup>Industrial Tribunal  
Kolkata  
17.01.2025



Government of West Bengal  
Labour Department, I. R. Branch  
N. S. Building, 12<sup>th</sup> Floor, 1, K. S. Roy Road, Kolkata – 700001

No. Labr/ 111 / (LC-IR)/ 22015/25/2019

Date : 22/01/2025

ORDER

WHEREAS an industrial dispute existed between M/s. Zydus Healthcare Limited, 12A, Swinhoe Street, Ballygunj, Kolkata- 700019 and their workman Sri Subir Kumar Bandyopadhyay, S/o. Late Jatindra Nath Bandyopadhyay, Sai Baba Enclave, Flat No. 3A, 3rd Floor, A/F-1, Jyangra, Kolkata- 700059, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the 7<sup>th</sup> Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 17.01.2025 in Case No. 15/2020 on the said Industrial Dispute Vide e-mail dated 21.01.2025 in compliance of u/s 10(2A) of the I.D. Act, 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

( Attached herewith )

By order of the Governor,



Assistant Secretary

to the Government of West Bengal

No. Labr/ 111 / 1(5)/(LC-IR)/ 22015/25/2019

Date : 22/01/2025

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/S. Zydus Healthcare Limited, 12A, Swinhoe Street, Ballygunj, Kolkata- 700019.
2. Sri Subir Kumar Bandyopadhyay, S/o. Late Jatindra Nath Bandyopadhyay, Sai Baba Enclave, Flat No. 3A, 3rd Floor, A/F-1, Jyangra, Kolkata- 700059.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11<sup>th</sup> Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Assistant Secretary

No. Labr/ 111 / 2(3)/(LC-IR)/ 22015/25/2019

Date : 22/01/2025

Copy forwarded for information to :-

1. The Judge, 7<sup>th</sup> Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 21.01.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.



Assistant Secretary