

I/208374/2022

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/. 705. /(LC-IR)/22020/54/ 2019.

Date 20-07-2022

ORDER

WHEREAS an industrial dispute existed between M/s IBM India Pvt. Ltd., Milenium City, Tower - 1, 5th Floor, Plot No. 62, Block DN, Sector - V, Salt Lake, Kolkata - 700091 and their workman Shri Diptiman Sengupta, AA-176, Salt Lake, P.S. - North Bidhan Nagar, Kolkata - 700064 regarding the issues being a matter specified in the Second schedule of the Industrial Dispute act, 1947 (14of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14of 1947) to the First Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the First Industrial Tribunal has submitted to the State Government its Award dated 28.06.2022 vide memo no. 1079 - L.T. dated 13/07/2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes 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,



Joint Secretary
to the Government of West Bengal

I/208374/2022

(2)

No. Labr.....705/1(2) - IR

Dated20-07-2022.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal with reference to his Memo No. 1079 - L.T. dated 13/07/2022.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.


Joint Secretary

No. Labr.....705/2(5) - IR

Dated20-07-2022

Copy with a copy of the Award is forwarded for information & necessary action to:

1. M/s IBM India Pvt. Ltd., Milenium City, Tower - 1, 5th Floor, Plot No. 62, Block DN, Sector - V, Salt Lake, Kolkata - 700091.
2. Shri Diptiman Sengupta, AA-176, Salt Lake, P.S.-North Bidhan Nagar, Kolkata-700064.
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (11th 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.


Joint Secretary

In the matter of an Industrial Dispute existing in between M/S IBM India Pvt. Ltd., Milenium City, Tower – 1, 5th Floor, Plot No. 62, Block DN, Sector – V, Salt Lake, Kolkata – 700 091 and their Workman Shri Diptiman Sengupta , AA-176, Salt Lake, P.S. – North Bidhan Nagar, Kolkata – 700 064.

[Case No. 02/2016 u/s 2A(2)]

Before the First Industrial Tribunal, West Bengal

PRESENT

Shri Uttam Kumar Nandy, Judge
First Industrial Tribunal,
Kolkata

AWARD

Dated :28.06.2022

In the matter of an industrial disputes under Sub-Section (2) of Section 2A of the Industrial Disputes Act, 1947 filed on 30.05.2016 before this Tribunal for his reinstatement in service with full back wages and other consequential benefits.

The present case being No. 02/2016 u/s 2A(2) of the Industrial Disputes Act, 1947 as amended as stated by the applicant / workman in a nutshell is that the concerned workman joined the opposite party / company as Senior Systems Analyst with effect from 25.07.2011 vide Company's letter, dated 06.05.2011 and e-mail, dated 16.07.2011 on probation for six months.

It is further stated that though the concerned workman was appointed as a Senior Systems Analyst but all along he was offered succeeding @IBM and Royal Blue Ambassador (RBA) program, which is a multifaceted system of support designed specifically to enable all new IBMers to excel. The said duties of the concerned workman were purely technical in nature and no managerial or supervisory activities was involved as demanded by the Opposite Party.

The concerned workman was illegally terminated by the company with effect from 27.07.2015 by letter, dated 27.07.2015 without issuing any show-cause notice or charge-sheet and without holding any domestic enquiry. The concerned workman protested against the said illegal termination by letter, dated 28.07.2015 to the Company and requested to withdraw the said termination and allow him to resume his duty and also send a representation to the Assistant Labour Commissioner by his letter, dated 03.08.2015 against which the Company submitted its comments in the said conciliation proceeding on 18.11.2015 and when 45 days had been passed without any settlement, the concerned workman had filed the instant case for taking cognizance of the application and to pass necessary order / orders in that regard.



On the other hand, the opposite party / Company had appeared through their Ld. Counsel and filed written statement on 30.12.2016 denying all material allegations by stating inter-alia that the application was filed by the workman is not maintainable and same is mischievous, being suppressed, misstated, misrepresented and concealed material facts and details for which the case is liable to be dismissed. It is also claimed that the applicant is not a Workman as defined under the Industrial Disputes Act, 1947 as he was a Senior Consultant being worked on developing computer programmes of the opposite party by drawing an annual fixed remuneration of Rs. 12,45,393/- (Rupees twelve lakhs forty five thousand three hundred ninety three) only and he had independent and managerial job and he was a senior employee of the Opposite Party Company. The termination of the applicant was necessary as the Company assessed the Workman/Applicant has failed to meet the expectation of the Company, in spite of that the Workman/Applicant was given a fair opportunity to PIP which is Performance Improvement Plan vide e-mail dated 21.05.2015 for improvement of his work. But since his performance was poor, so termination of the alleged Workman/Applicant was necessary after giving him sufficient time to prove his suitability to the assigned work.

Lastly the Opposite Party humbly prayed that the application filed by the Applicant to be dismissed with exemplary cost or to pass any other order / orders as the Tribunal may deem fit and proper in the interest of justice.

In view of the aforesaid facts and circumstances the following issues have been framed by this tribunal for adjudication of this case.

ISSUES

- 1) *Is the instant application u/s 2A(2) of the Industrial Disputes Act, 1947 as amended is maintainable?*
- 2) *Is Shri Diptiman Sengupta a workman within the meaning of Section 2S of the Industrial Disputes Act?*
- 3) *Whether the termination of service of Diptiman Sengupta with effect from 27.07.2015 by the management is justified?*
- 4) *To what are the reliefs is the workman entitled?*
- 5) *Has the Tribunal any territorial jurisdiction to entertain the present proceeding?*



Thereafter, the record was taken up for evidence from the side of the Workman. In the meantime, during such stage of pendency of the above dispute the parties herein discussed for amicable settlement and proposed for negotiation. Dispute between the parties is settled and one memorandum of settlement has been filed being signed by the parties to the case. That apart a Demand Draft of Rs. 5,00,000/- (Rupees five lakhs) only, dated 17.06.2022 drawn on Deutsche Bank at Brook House, Shakespeer Sarani, Kolkata being number 776636 has been filed. The applicant Sri Diptiman Sengupta is examined in full on recall as PW-1 for the settlement and has also crossed in full and discharged. The Memorandum of Settlement has been marked as Exhibit – 1 and the Demand Draft being No. 776636 of Rs. 5,00,000/- (Rupees five lakhs) only has been marked as Exhibit – 2 of settlement respectively.

It appears from the facts and contents of the memorandum of settlement that the dispute was regarding the dismissal of Sri Diptiman Sengupta from the Company by their letter, dated 27.07.2015 and his last working day with the Company was on 27.07.2015 for which Sri Sengupta raised the instant industrial dispute before the Labour Commissioner, Government of West Bengal and after lapse of 45 days, the applicant filed the instant case before this Tribunal on 30.05.2016, since the conciliation was failure.

However, the bone of contention has been settled in view of the joint petition being filed by the parties to the case to this Tribunal and supported by evidence led by them.

Lastly a joint petition on behalf of the parties, dated 28.06.2022 goes to show that the Demand Draft as received by the workman, had been duly been encashed.

On perusal of their evidence and the contents of the memorandum of settlement and from the submission of Ld. Counsel for the parties to the case, I am of the opinion that the settlement has been reached in between the contending parties amicably and so their lies no more conflict in between the parties.

The settlement has been voluntarily effected and the settlement is genuine one and as per the terms of the settlement Sri Diptiman Sengupta, the employee has already received an amount of Rs. 5,00,000/- (Rupees five lakhs) only, which is attached as Exhibit – 2 to the Settlement Agreement through Bank Draft as full and final payment on behalf of the company as a consideration for future and final settlement of the present dispute and on the other hand Sri Diptiman Sengupta had accepted the order of dismissal imposed upon him, which was issued to him by the company by letter, dated 27.07.2015 with effect from 27.07.2015.

Sri Diptiman Sengupta hereby states, declares and confirms that the company's stands discharged from all liabilities and obligations owed to Sri Sengupta in relation to and arising out of the aforesaid dispute, whether in present or in future and that he shall not make any claim further against the company in any manner whatsoever.



As the settlement is voluntary one and there remains no more disputes in between the parties, this Tribunal is of firm opinion that the memorandum of settlement shall be accepted and accordingly the same is accepted.

Hence it is

AWARDED

That in pursuance of the observations made above, the instant case being No. 02/2016 u/s 2A(2) of the Industrial Disputes Act, 1947 is disposed of on the basis of memorandum of settlement, Exhibit and considering all aspects and having heard the Ld. Counsels for the parties the prayer made in joint petition coupled with settlement agreement is allowed and an Award is being passed on the basis of terms and conditions being contended in the memorandum of settlement as prayed for, being jointly filed by the parties to this dispute and the same (settlement of agreement) be made part of this Award.

Thus, the instant case is disposed of.

This is my AWARD.

The Award be sent to the Government.

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)
Judge

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

