

I/38463/2019

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

No Labm.1721 (LC-IR)Date 14.2.19

ORDER

WHEREAS an industrial dispute existed between M/S. Panorama Television Pvt. Ltd, Godrej Waterside, Tower-1, DP-5, 7th Floor, Room No-701, Salt Lake, Sector-V, Kolkata-91 & Mr. Madhusudan Manda, Head, H R & Operations , M/S: Panorama Television Pvt. Ltd. , Ramoji Flim City, Hyderabad-501512 and their workman Sri. Manab Guha,S/O Sri Prasun Guha, Memari, DVC Para, P.O. Memari, Dist. Burdwan, Pin. -713146 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 Judge, First Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the said Judge, First Industrial Tribunal has submitted to the State Government its Award on the said Dispute.

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,



Deputy Secretary
to the Government of West Bengal

2019

No. Labr/172/1(2) - (LC-IR)

Dated14.2.19

Copy forwarded for information to :

1. The Judge, First Industrial Tribunal with reference to his Memo No. 67-L.T. dated 08/01/2019.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. Labr/172/2(5) - (LC-IR)

Dated14.2.19..

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

3. M/S. Panorama Television Pvt. Ltd, Godrej Waterside, Tower-1, DP-5, 7th Floor, Room No-701, Salt Lake, Sector-V, Kolkata-91 & Mr. Madhusudan Manda, Head H R & Operations , M/S: Panorama Television Pvt. Ltd. , Ramoji Flim City, Hyderabad-501512 .
4. Sri Manab Guha, S/O Sri Prasun Guha, Memari, DVC Para, P.O. Memari, Dist. Burdwan, Pin. -713146 .
5. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
6. The Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 7. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

In the matter of an industrial dispute between M/s. Panorama Television Pvt. Ltd. (Opposite Party-1) & Mr. Madhusudan Manda, Head H R & Operations, M/s. Panorama Television Pvt. Ltd. (Opposite Party-2) and their workman Sri Manab Guha, S/o. Sri Prasun Guha, DVC Para, Dist. Burdwan, Pin-713 146, West Bengal.

(Case No. 04/2016 u/s 2A(2))

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

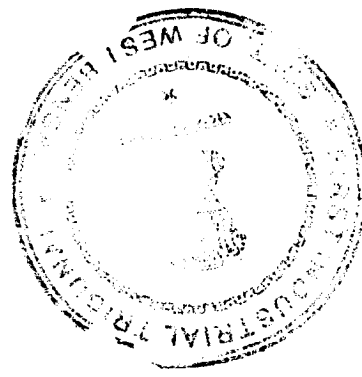
SHRI TANMOY GUPTA, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

The instant case arose out of an application u/s 2A(2) of the Industrial Dispute Act, 1947 as amended filed by workman Sri Manab Guha, S/o. Sri Prasun Guha, Memari, DVC Para, P.O. Memari, Dist. Burdwan, Pin-713 146, West Bengal against his employer M/s. Panorama Television Pvt. Ltd., Godrej Waterside, Tower-1, DP-5, 7th Floor, Room No. 701, Salt Lake, Sector-V, Kolkata-700 091 & Mr. Madhusudan Manda, Head-HR & Operation, M/s. Panorama Television Pvt. Ltd. Ramoji Film City, Hyderabad-501512 and another in connection with the termination of his service by issuing a letter dated 11.17.2016 by his employer and has prayed for an award holding that such termination of service by the management M/s. Prism T.V. Pvt. Ltd. is unjustified and illegal and for a direction to the company to reinstate him in service with full back wages and other consequential relief.

On the basis of such application filed by the applicant Manab Guha, instant case was registered and notice was issued to the opposite parties to appear and to file written statement. The opposite parties have appeared and filed two separates written statement.

The case as made out by the applicant in the claim statement is that he initially joined Newstoday Pvt. Ltd. (Television Division), ETV Building, Ramoji Film City, R.R. Dist. Hyderabad-501512 vide offer letter dated 11.11.2004 and subsequent appointment letter dated 27.11.2004 as Trainee Copy Editor/Reporter w.e.f. 27.11.2004 and posted at Burdwan office of the said company. Thereafter by letter dated 05.03.2005 he was transferred at company's (Newstoday) Balurghat office w.e.f. 13.03.2005 and was again transferred to the Asansol office of the company w.e.f. 23.11.2005 vide letter dated 14.11.2005 issued by the management. By



letter dated 01.12.2005 the company namely, Newstoday Pvt. Ltd. issued a probationary appointment letter to him in the post of "Copy Editor/Reporter, Grade-III" in the said company's Asansol office and subsequently he has been confirmed in service w.e.f. 01.12.2006. He was again transferred to company's office at Purulia w.e.f. 03.09.2007. The company being very much satisfied on the performance of the workman promoted him to the post of "Copy Editor/Reporter Grade-II" w.e.f. 01.12.2008 and again he was promoted to the post of Copy Editor/Reporter Grade-I w.e.f. 01.12.2010. Then vide letter dated 01.03.2012, Newstoday Pvt. Ltd. transferred the service of the workman to his sister concern M/s. Prism T.V. Pvt. Ltd. w.e.f. 01.03.2012 and said M/s. Prism T.V. Pvt. Ltd. by letter acknowledged the transfer of the concerned workman including his past services. The said M/s. Prism T.V. Pvt. Ltd. being satisfied on the performance of the workman enhanced his pay w.e.f. 01.11.2012 by letter dated 27.12.2012 and again promoted him to the post of Senior Reporter w.e.f. 30.12.2013 vide letter dated 20.12.2013 and his pay packet was increased. Thereafter said M/s. Prism T.V. Pvt. Ltd. by letter dated 29.01.2014 transferred him from its Kolkata office to the company's Head Quarter at Ramoji Film City, Hyderabad w.e.f. 05.02.2014 and again transferred him at Kolkata Bureau office w.e.f. 22.03.2014 vide letter dated 17.03.2014. Then by letter dated 31.03.2014 M/s. Prism T.V. Pvt. Ltd. transferred the service of the workman to M/s. Panorama Television Pvt. Ltd., another sister concern w.e.f. 01.04.2014 and said Panorama Television Pvt. Ltd. by letter dated 01.04.2014 acknowledged the said transfer and also recognised the past services of the concern workman. Even the said concerned appreciated his performance and enhanced his pay packet w.e.f. 01.11.2014 vide letter dated 27.12.2014 and w.e.f. 01.11.2015 vide letter dated 27.01.2016. It is contended that Mr. Madhusudan Manda (OP-2) is the head of HR Operation of both M/s. Prism T.V. Pvt. Ltd. and M/s. Panorama Television Pvt. Ltd. Thereafter suddenly by letter dated 11.07.2016 the concerned company M/s. Panorama Television Pvt. Ltd. terminated the service of the concerned workman w.e.f. that date under Clause-12 read with Clause 3 on the appointment letter dated 01.12.2006 issued to the concerned workman even though the concerned workman did his duty till late night of 11.07.2016. It is contended further that during the tenure of service the workman worked sincerely, honestly and diligently without any iota of blemish and no show-cause or warning was ever received by workman. The principal and main nature of job of the concerned workman was to collect news in specified fields and report the same which

is a skilled job and squarely falls within the definition of Section 2(s) of the Industrial Disputes Act, 1947. The workman never supervised any other workman, nor rendered any managerial function. He had no power to appoint any one nor the power to terminate any one nor had any power to grant leave. The termination of the concerned workman is illegal, unjustified, void, ab-initio as no compensation u/s 25F of the ID Act, 1947 has been paid to the workman nor the principle of "last come first go" as provided in Section 25G of the Industrial Dispute Act, 1947 has been complied. There are 15 employees for working in the concerned category as Reporter and all are junior to the concerned workman. No cases of breach of terms of employment has been stated in the letter of termination dated 11.07.2016. That being so the termination is bad in law since no show-cause/chargesheet was issued to the workman. No domestic enquiry was held and such termination was made in violation of the principles of natural justice. The workman was also not given the copy of standing order of the company. The workman made a protest by letter on 24.07.2016 against such illegal termination and raised a dispute with the company. But company did not bother to reply to it. Thereafter the concerned workman sought the intervention of the Labour Commissioner by letter dated 16.08.2016. The conciliation proceeding was initiated and notice was issued to the company but the company did not appear before the conciliation officer. As 45 days has already passed after sending the representation to the conciliation officer, the concerned workman has filed the instant application u/s. 2A(2) of the Industrial Disputes Act, 1947. The last drawn salary (CTC) of the concerned workman is Rs. 27150/- per month. He is not gainfully employed elsewhere since the date of termination of his service and passing his days in great hardship as his family consisting of his wife, children and parents all of whom are dependent on him. All his efforts to secure alternative employment failed due to the said illegal termination of service of the workman which had cast a stigma on his career.

Hence, the instant application has been filed by the workman for appropriate relief and redress.

The Opposite Party No. 1 filed written statement containing two parts. In Part - A it is contended that the applicant has no cause of action against the Opposite Party No. 1; that the claim filed by the applicant are beyond the terms and scope of this Tribunal and such claim should not be entertained; that the claim made by the applicant are vexatious, harassing, mala fide and should be dismissed; that the Company is not an industry



within the meaning of the Industrial Disputes Act, 1947 and as such termination of service of the applicant cannot be termed as an 'industrial dispute' within the meaning of the said Act. It is contended further that the applicant failed to keep the Opposite Party No. 1 updated about the 5-point Work Agenda resulting in serious lapse on the part of the applicant in discharging his duties making him liable for disciplinary action. It is submitted further that every reporter is required to maintain a 5-point Work Agenda as required by the Opposite Party No. 1 and the applicant failed to maintain the work agenda and he was thereafter placed on suspension for two days by a letter dated 15th June, 2016. By a subsequent letter dated 16th June, 2016 a warning was given to the applicant regarding serious lapse and negligence on his part in discharging his duties and particularly the gross negligent news related to Alipore Zoo on 2nd June, 2016. It is further contended that on that specific date one Giraffe Cub and two Chausingha (Four horned) deer was brought at Alipore Zoo from Rourkella and was made available for visitors. The story/assignment was supposed to be covered by the applicant, however he missed providing information to Company with regard to the same. Meanwhile, other media channels telecasted the same event. The Opposite Party No. 1 was able to telecast the same at late afternoon on getting some video clippings on request to the zoo authorities. The applicant was warned of stringent action being taken against him by the Management. As the applicant did not rectify his mistake and his deliberate negligence in carrying out his duties, on 11th July, 2016 his service was terminated by a letter of even date. On 20th July, 2016 a cheque amounting Rs.1, 28,232/- was made over to him by full and final satisfaction. In **Part – B** of the written statement the Opposite Party denied the materials facts and allegations made out in the written statement filed by the applicant. It is contended that the Opposite Party No. 1 has acted in accordance with the appointment letter dated 01.12.2016 while terminating the service of the applicant. It is further submitted that the cheque amounting Rs. 1,28,232 was tendered to the applicant has been encashed by him. It is then contended that the Labour Commissioner ought not to have intervened in the present matter. On that score, the Opposite Party No. 1 has prayed for dismissal of the instant proceedings.

The written statement filed by Opposite Party No. 2 contains two parts. The contentions made in Part – A is almost a replica of the written statement filed by Opposite Party No. 1 in Part – A of its written statement. It is claimed by the Opposite Party No. 2 that the said Opposite Party No. 2

is not proper or necessary party to the present proceedings. The Part – B of the written statement filed by the Opposite Party No. 2 is also almost a replica of the written statement filed by the Opposite party No. 1 in Part – B. Accordingly, the Opposite Party No. 2 has also prayed for dismissing the instant proceedings.

In support of his case, the applicant Manab Guha has examined himself as WW1. Besides such oral evidence he has relied on some documentary evidences which have been marked as Exhibit 1-14. The said WW 1 was cross-examined by the Opposite Parties. It would be pertinent to mention that both the Opposite Parties appeared by filing vakalatnama and written statement through the same Advocate.

The Opposite Party No. 1, on the other hand, examined one witness namely, Ashish Vaid as CW 1 and he was duly cross-examined for the workman. Some documents have been marked as Exhibit A-K for the Company.

DECISION WITH REASONS

On the basis of the aforesaid oral and documentary evidences as adduced by the parties, let us now decide the issues framed in this case. WW1 in support of his case as made out in the Claim Petition has stated that initially he joined Newstoday Pvt. Ltd. (Television Division), ETV Building, Ramoji Film City, R.R. District, Hyderabad – 501512 vide Offer Letter dated 11.11.2004 and subsequent appointment Letter dated 27.11.2004 as Trainee Copy Editor/Reporter w.e.f. 27.11.2004 and posted at Burdwan Office of the said Company. Those two letters have been marked as Exhibit 1 and 2. The witness then stated that on 05.03.2005 he was transferred at Company's office (Newstoday, Balurghat office) w.e.f. 13.03.2005 and was again transferred to the Asansol office of the Company w.e.f. 23.11.2005 vide letter dated 14.11.2005. In support of such contention, the witness has placed reliance on two letters dated 5th March, 2005 and 14th November, 2005 which have been marked as Exhibit 3 and 3/1 respectively. The witness then stated that thereafter by a letter dated 01.12.2006 the News Today Pvt. Ltd. issued a probationary appointment letter to him appointing him as Copy Editor/Reporter Grade – 3 and placed him at Asansol office of the said Company and subsequently he was confirmed in service from the said date as mentioned in the letter dated 01.12.2006. The said letter has been marked as Exhibit 4. He then stated that by a letter dated 29.08.2007 Newstoday Pvt. Ltd. transferred him to its



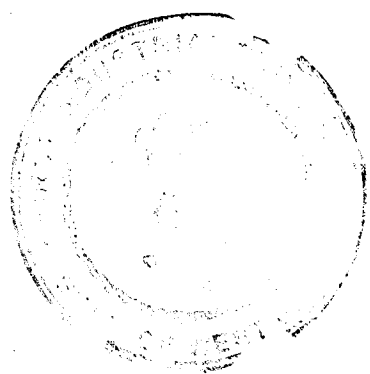
Purulia office w.e.f. 03.09.2007. The said letter has been marked as Exhibit 6. He then stated that Newstoday Pvt. Ltd, being very much satisfied with his performance promoted him to the post of Copy Editor/Reporter Grade – 2 w.e.f. 01.12.2008 by a letter dated 01.12.2008 and again promoted him to the post of Copy Editor/Reporter Grade – 1 w.e.f. 01.12.2010 vide letter dated 01.12.2010. Those two letters have been marked as Exhibit 6/1 and 6/2 respectively. He then stated that News Today Pvt. Ltd. by a letter dated 01.03.2012 transferred him to its sister concern (group company) M/s Prism TV Pvt. Ltd. w.e.f. 01.03.2012 and M/s Prism TV Pvt. Ltd. vide letter dated NIL acknowledged the said transfer including his past services. Those two letters have been marked as Exhibit 7 and 7/1 respectively. The witness then went on saying that M/s Prism TV Pvt. Ltd. also being satisfied with his performance enhanced his pay vide letter dated 27.12.2012 w.e.f. 01.11.2012 and again promoted him to the post of Senior Reporter w.e.f. 01.11.2013 vide letter dated 30.12.2013. Those two letters have been marked as Exhibit 8 and 8/1 respectively. He then stated that M/s Prism TV Pvt. Ltd. vide letter dated 29.01.2014 transferred him from its Kolkata office to the Company's head office at Ramoji Film City, Hyderabad w.e.f. 05.02.2014 and again transferred him at Kolkata Bureau Office w.e.f. 22.03.2014 vide letter dated 17.03.2014. Those two letters have been marked as Exhibit 8/3 and 8/4 respectively. It is then stated by the witness that by letter dated 31.03.2014 M/s Prism TV Pvt. Ltd. transferred him to its another sister concern (group company) M/s Panorama Television Pvt. Ltd. w.e.f. 01.04.2014 and said M/s Panorama Television Pvt. Ltd. vide letter dated 01.04.2014 acknowledged his said transfer and also recognized his past services. Those two letters have been marked as Exhibit 8/5 and 9 respectively. The witness states further that said Panorama Television Pvt. Ltd. appreciated his performance and enhanced his pay packet w.e.f. 01.11.2014 vide letter dated 17.12.2014 and again w.e.f. 01.11.2015 vide letter dated 27.01.2016. Those two letters have been marked as Exhibit 9/1 and 9/2 respectively. The witness then goes on saying that M/s Prism TV Pvt. Ltd. and M/s Panorama Television Pvt. Ltd. Mr. Madhusudan Manda (OP No. 2) is the Head of the HR and Operations.

All the aforesaid statements which have come out in the evidence-in-chief of said witness (WW 1) have not been challenged during cross-examination. The authenticity of those documents which have been marked as Exhibits for the workman have also not been denied or disputed by the Opposite Party. So, in view of such oral and documentary evidences as

adduced by the applicant/workman (WW 1) it is abundantly clear that the applicant Manab Guha initially appointed by Newstoday Pvt. Ltd. as Trainee Copy Editor/Reporter w.e.f 27.11.2004 at the Burdwan office of the Company and thereafter he was transferred in different places from time to time. It transpires from the evidence of the witness (WW 1) that said Newstoday Pvt. Ltd. by its letter dated 01.03.2012 transferred him to its sister concern (group company) M/s Prism TV Pvt. Ltd. w.e.f. 01.03.2012 and said Prism TV Pvt. Ltd. acknowledged the said transfer including his past services under Newstoday Pvt. Ltd. Such statement of the witness gets support from Exhibit 7/1 and 8.

It further appears from the statement of WW 1 and the documents relied upon him that the Prism TV Pvt. Ltd. by its letter dated 27.12.2012 enhanced the CTC of the applicant/workman to Rs. 2,42,272 per annum w.e.f. 1st November, 2012. This refers to Exhibit 8. The further statement of the witness (WW 1) and the documents (Exhibit 8 to Exhibit 8/5) clearly establish that the applicant/workman worked under Prism TV Pvt. Ltd. for some time and while working there he was transferred to Panorama Television Pvt. Ltd. w.e.f 1st April, 2014. Exhibit 9 series clearly establish that while working under Panorama Television Pvt. Ltd. (Opposite Party No. 1) he was terminated from service vide letter dated 11.07.2016 (Exhibit 10) issued by the Company and the said letter was signed by the Opposite Party No. 2 being Head HR & Operations.

In the instant case, the applicant/workman has made Panorama Television Pvt. Ltd. as Opposite Party No. 1 and Mr. Madhusudan Munda as Opposite Party No. 2 being the Head HR & Operations of the Opposite Party No. 1 Company. From the exhibited documents for the applicant it appears that all the letters issued to the applicant/workman were signed by said Opposite Party No. 2 being the Head HR of both Prism TV Pvt. Ltd. and Panorama Television Pvt. Ltd. The letter of termination (Exhibit 10) issued to the workman by Panorama Television Pvt. Ltd, was also signed by said Opposite Party No. 2. The Opposite Party No. 2 has claimed in the written statement filed by him that he is neither a necessary party nor a proper party. It is true that no relief has been sought for by the applicant/workman against the Company, namely, the Opposite Party No. 1 but considering the facts of the case which has come out from the statement of the witness (WW 1) and documents filed by him which have been marked as Exhibits, I am of the view that by impleading said Opposite Party No. 2 the applicant has committed no wrong, since in my opinion



impleading said Opposite Party No. 2 as extra precaution in the instant proceedings cannot be said to be unjustified. Considering the totality of the matter, I am of the view further that said Madhusudan Munda can surely be considered to be a proper party as the instant proceedings is required to be decided in his presence though no relief has been sought for against him (Opposite Party No. 2).

In the instant case, two issues are being framed, namely, (i) whether the termination of service of the applicant Manab Guha w.e.f. 11.07.2016 vide letter dated 11.07.2016 by the Management of M/s Panorama Television Pvt. Ltd. is justified? and, (ii) what relief/reliefs the workman is entitled to?

It is argued by the Ld. Advocate of the Opposite Parties that it has been stated in Paragraph No. 4 of the written statement that the scope and ambit of the applicant does not make him fall under the definition of 'workman' within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947. The Ld. Advocate for the applicant strongly raised dispute as to such submission as made by the Ld. Advocate for the Opposite Party. It is submitted by the Ld. Advocate for the applicant that in said Paragraph No. 4 of the written statement filed by the Opposite Parties no specific plea has been taken by the Opposite Parties that the applicant is not a workman and in fact therein the Opposite Parties has given a denial to the statements made in Paragraph No. 11 and 14 of the written statement of the applicant. It is submitted further that it is a settled principle of law that the Tribunal cannot consider and decide any matter which has not been specifically pleaded by the Opposite Party.

Considered the submissions of both sides. Even though no such specific plea has been taken by the Opposite Parties in the written statement as to whether the applicant is a workman within the meaning of Section 2 (s) of Industrial Disputes Act, 1947, I think the said matter is require to be considered since an argument has been placed on that point by the Ld. Advocate for the Opposite Parties which involves a question of law and fact. In this connection, it would be pertinent to go through the provisions of Section 2 (s) of the Industrial Disputes Act, 1947 which runs as follows — "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding

under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature”.

It is argued for the Company that the applicant has stated that he was never engaged in any administrative and/or managerial work, but there was no pleading and/or evidence of the applicant that his nature of work fell within the first limbs of the definition of ‘workman’ i.e. his nature of work fell within the category of manual, unskilled, skilled, technical, operational, clerical or supervisory as required under the law in order to be a workman. Accordingly, it is argued that the applicant being a senior reporter, his nature of job does not fall within the definition of ‘workman’. In support of his contention, the Ld. Advocate for the Company has placed reliance of two case laws, the internet generated copy of which has been filed. One such case law in respect of a judgement passed by Hon’ble High Court of Judicature at Delhi in Civil Writ Petition No. 827 of 1974 (**Kirloskar Brothers Ltd. vs. Labour Court, Delhi and Another**) and another case law as reported in 1970 (3) SCC 378 (**Burmah Shell Oil Storage and Distribution Company of India Ltd. vs. The Burmah Shell Management Staff Association and Others**).

The Ld. Advocate for the applicant, on the other hand, argued that the case laws as cited by the Ld. Advocate for the Opposite Party cannot have any applicability in the instant case since the facts of the present case are not identical with the facts of the cases before the Hon’ble Courts. It is argued further that perhaps the Ld. Advocate for the Opposite Parties has misunderstood the provisions of the definition of ‘workman’ as given in Section 2 (s) of the said Act and thereby confused himself in the matter. It

is submitted that the evidences as adduced by the applicant clearly suggests that his nature of job certainly falls within the first limb of the definition of Section 2 (s) of the said Act.

Considered the submissions of both sides. Perused the evidences and others materials on record. Admittedly, the applicant was placed as Senior Reporter which would be evident from Exhibit 8/1 and at the time when he was terminated from service, he was holding the said post. The said applicant while examining himself as WW 1 has stated in his evidence-in-chief that his principal and main nature of duties was to collect news in specified fields and report the same which is purely manual and skilled and routine job. He has further stated that he has never supervised any other workman and rendered any managerial function. He then stated that he had no power to appoint anyone and to terminate the service of anyone nor he had the power to grant leave to anybody. All such statements made by the witness (WW 1) have not been challenged during cross-examination. Furthermore, it has categorically been mentioned in exhibit-5 which is a letter of employment/ confirmation of service of the applicant/workman as issued by the company, therein in Clause-3 it has been mentioned that the service of the applicant will be governed by the company standing order/service rules and any other rules as may be framed by the company from time to time. Curiously, no such standing order or rules have been produced by the opposite party. It is rightly argued by the Ld. Advocate for the applicant/workman that certified standing order is applicable in any industry in respect of the workman only. The CW1 has stated in his evidence-in-chief that the applicant being a Senior Reporter engaged in the Company used to do reports and covers on religion/culture/social/local activities etc. But nothing has been stated by the witness that the applicant has any supervisory role in the day-to-day functioning of the Company. The said witness (CW1) has further stated in his evidence-in-chief that the applicant had an independent role and did not have anyone reporting to him during his term of employment.

It has been held by the Hon'ble Court in the case as relied upon by the Ld. Advocate for the company as reported in 1970 (3) SCC 378 as appearing in Paragraph No. 5 of the judgement wherein it has been held by the Hon'ble Apex Court that —“For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such nature, he

would not be a workman..." From the observations made by the Hon'ble Court in those two reported cases it is clear that the Hon'ble Court have observed that the nature of duties performed by the employee alone would determine whether an employee is a workman under section 2(s) of the Industrial Dispute Act and not the nomenclature. In the instant case before us the evidences as adduced by a party it has come out that the applicant's duty was to collect news in specified fields being a senior reporter. The testimony of WW1 to the effect that he never supervised the work of any other workman and he never rendered any managerial function has remained unchallenged. Such evidence of WW1 gets corroboration from the evidence-in-chief of CW1 as discussed earlier.

Considering the evidences as adduced by the parties I am constrained to hold that the work rendered by the applicant as Senior Reporter of the Company certainly falls within the category of skilled work and to some extent it may be considered to be technical work. That being so, I am convinced to hold that the applicant can surely be termed as 'workman' within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947. Nothing could be shown by the Opposite Parties that the applicant was employed in a managerial or administrative capacity or he was employed in a supervisory capacity. Therefore, the principles of law as set forth by the Hon'ble Courts in the reported cases as relied upon by the Ld. Advocate for the Opposite Parties cannot have any bearing in the instant case before us as the facts of the present case before us and that of before the Hon'ble Courts are clearly distinguishable.

It is then argued by Ld. Advocate for the opposite party/company that M/s. Panorama Television Pvt. Ltd. is engaged in the business of providing Telegraph Services within the meaning of Section 3(1) of the Indian Telegraph Act 1885. It is submitted further that Ministry of Information and Broad Casting, Govt. of India has granted permission to the said Government for up linking and down linking – TV channels. It is then argued that the telegraph service is notified 'controlled industry' u/s 2(a)(1) of the Industrial Dispute Act 1947 and therefore the appropriate Government in respect of the said company (Respondent-1), Central Government, and not the State Government of West Bengal and that being so, it is beyond the power and jurisdiction of this tribunal to enter and try the present complaint. In support of such contention the Ld. Advocate for the company has produced one xerox copy of a Gazette published by the

Government of India on 04.11.2004. Notification published in the State Gazette runs as follows: -

“S.o. 1233(E)- in pursuance of sub-clause-1 of Clause-A of Section-2 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby specifies, for the purpose of the said sub-clause, the controlled Industry engaged in the Telegraph service which is controlled by the Central Government u/s-4 of the Indian Telegraph Act, 1985 (13 of 1985)”.

The Ld. Advocate for the workman, on the other hand argued that no such plea has been taken by the opposite party in their written statement that appropriate Government is the Central Government and not the State Government and as such the argument as advanced by the Ld. Advocate for the opposite party in that regard is not tenable and same cannot be taken into consideration by this tribunal.

Considered the submissions as made by the Ld. Advocate for the workman. I think that since such argument as made by the opposite party involves some point of law, the same is require to be considered and decided. It is then argued by the Ld. Advocate for the workman that no document has been produced by the company in connection with any license obtained by it for running the business. It is argued further that to misdirect this tribunal the aforesaid argument has been advanced by the Ld. Advocate for the opposite party. It is argued further that the Gazette notification published by the Govt. of India on 04.11.2004 will not serve any purpose of the opposite party and the same can in no way come in aid to the argument as advanced for the opposite party. According to the Ld. Advocate for the applicant/workman that in order to attract the provision of Section 2(a)(1) of the Industrial Dispute Act it requires that the Central Government must specify the names of the controlled industries and the specification must be made by the Central Government by reference to, and for the purpose of the provisions of the Act in order to that Central Government may by itself become the appropriate Government qua such industry u/s 2(a)(1) of the Act. In this connection the Ld. Advocate has placed reliance on case law as reported in 1960(2)-SCR982 (**The Bijoy Cotton Mills Ltd. Vs their workman and another**) as reported in (1960)-3 SCR 214 (**Management of Vishnu Sugar Mills Vs their workman**).

Perused those case laws. In the case of management of **Vishnu Sugar Mills** as quoted earlier it has been observed by the Hon'ble Apex Court that – “So far as the question of competence of the reference is

concerned, we are of opinion that there is no force in it. A similar question was mentioned before this court in *The Bijoy Cotton Mills Ltd. Vs Their Workman and another* (1) and it was held there on the language of S. 2(a)(1) of the Industrial Dispute Act 1947, that before that provision could apply to a controlled industry there must be a notification by the Central Government for the purpose of 2(a)(1) of the Industrial Dispute Act.....”.

It has further been observed by the Hon’ble Apex Court in the said report case that: - “It is true that sugar is a controlled industry under the industries (Development and Regulation Act), 1951, but that in our opinion does not conclude the matter. In order that the appropriate government u/s 2(a)(1) may be the Central Government for a controlled industry, it is necessary that such controlled industry should be specified by the Central Government for the purpose of S.2(a)(1). This is in our opinion is obvious from the words ‘controlled industry’ as may be specified in this behalf by the Central Government appearing in S.2(a)(1). It is not enough that the industry should be a controlled industry to attract this provision of S.2(a)(1); it is further necessary that it should be specified in this behalf, namely, for the purpose of S.2(a)(1), as a controlled industry by the Central Government, before the Central Government can become to an appropriate government within the meaning of S.2(a)(1)”.

As already stated, that no documents/license has been produced by the opposite party to run the business of Broad Casting. Nothing could be produced by the opposite party to show that the said Central Government has specified the industry being run and managed by the opposite party as a controlled industry. Therefore, considering the facts and circumstances of the case and relying upon the observations made by the Hon’ble Apex Court in those two reported cases I hold that the State Government is the appropriate Government and this tribunal has jurisdiction to decide the instant case u/s 2A(2) of the Industrial Dispute Act in 1947.

Let us now turn to the other aspect of the case. From the case as put forward by the parties it appears that service of the applicant/workman was terminated by letter dated 11.07.2016 (exhibit-10) issued by the company. In the earlier part of this award it has discussed in details regarding the appointment and place of posting of the applicant under the company from time to time. It is clear from the documentary evidences produced by the WW1 that he initially joined the company on 11.11.2004 and thereafter he was transferred to different places and he was ultimately posted as senior

reporter with effect from 30.12.2013 which would appear from exhibit-8/1. From the documents as produced by the applicant/workman which have been marked as exhibit that the opposite party/company during the tenure of his service recognised the valuable efforts of the applicant rendered to the company and being satisfied with the performance of the applicant/workman enhanced his monthly emoluments from time to time. It would appear from exhibit-9/2 which is a letter issued by the company on 27.01.2016 that the monthly emoluments of the applicant/workman was increased to Rs. 3,25,800/- per annum w.e.f. 1st November 2015. Surprisingly within a short term i.e. on 11.07.2016 the company by issuing a letter (exhibit-10) terminated the service of the workman. The relevant portion of the said letter of termination runs as follows: - "With reference to Clause-12 read with Clause-3 of our letter dated 01.12.2006, you are hereby informed that your services are not required by us any longer. You are hereby relieved from your service with immediate effect". No reason has been given in the said letter as to what prompted the company to terminate the service of the applicant in such a manner abruptly when all through the company appreciated the performance and quality of job rendered by the applicant to the company. However, in the written statement filed by the company it is alleged against the applicant/workman that the applicant failed to keep the opposite party no. 1 updated about the 5 Point work Agenda, resulting in serious lapse on the part of the applicant in discharging his duties making him liable for disciplinary action. It is further stated in the said written statement filed by opposite party no.-1 as appearing in Part-A para-7(b) that by letter dated 16.06.2016 a warning was given to the applicant regarding serious lapse and negligence on the part of the workman in discharging his duties and particularly the gross negligent news related to Alipore Zoo on 2nd June 2016. Exhibit-D is the letter dated 15th June 2016 issued by the company by which the workman was placed under suspension till 17.06.2016 starting from 16.06.2016 with an advised to him to report back to work on 18th June 2016. By letter dated 16th June 2016 (exhibit-E) it appears that some allegations were made against the workman by giving some caution mentioning therein that further action will be initiated against him. The workman was not asked to submit his reply in respect of the allegation made against him as appearing in exhibit-E. Surprisingly the service of the applicant was terminated by issuing a letter dated 11.07.2016. It appears from the above that the service of the applicant/workman was terminated by the company by a stroke of pen in spite of the fact that the applicant rendered his valuable service to the company for so many years upto the satisfaction

of the company. If the management intends to terminate the service of any employee on the ground of any misconduct or any allegation then the said employee/workman should be issued with a notice to show cause thereby asking him to submit his reply and if the management is not satisfied with such reply then necessary charges may be framed against him followed by departmental proceedings. In my considered view, the Management of the Company deliberately and purposely did not assign any reason which necessitated the Management to terminate the service of the workman by issuing a letter dated 11.07.2016 (Exhibit 10). In my view, that the Management was confident that if the service of the workman is terminated by putting any allegation against him and if any chance is given to the workman to submit reply against such allegation, the Management will not be able to substantiate such allegation. The CW 1 has stated in his Paragraph No. 9 of his evidence-in-chief that the Company dismissed the service of the applicant vide letter dated 11.07.2016 as per Clause 12 and 3 of Terms & Conditions of his appointment. In the letter dated 01.12.2006 (Exhibit 5) for the workman and exhibit-B for the company it has been stated therein in the relevant Clause that the service of the workman may be terminated on the ground of breach of terms of employment. It is clear from the materials that while terminating the service of the workman in such a fashion nothing has been mentioned in the Letter of Termination (Exhibit 10) as to any breach of terms of employment on the part of the workman. It has been discussed earlier that in the said Exhibit 5 for the workman and exhibit-B for the company it has been stated that the service of the workman will be governed by the Companies Standing Order/Service Rules and any other Rules as may be framed by the Company from time to time. No such Standing Order and Service Rules of the companies has been produced before this Tribunal by the Company. The CW 1 in his evidence-in-chief has stated that every reporter is required to maintain 5-point work agenda and the applicant/workman failed to maintain such 5-point work agenda while discharging his duties for which he was suspended from his duties for two days vide letter dated 15.06.2016 which has been marked as Exhibit which has been marked as exhibit-D. At the cost of repetition, it would be pertinent to mention that vide Exhibit D the applicant/workman was placed under suspension till 17.06.2016 starting from 16.06.2016 with an advice to him to report back to work on 18th June, 2016. Curiously, on the same date i.e. on 16th June, 2016 (Exhibit E) some allegations were brought against the workman giving some caution mentioning therein that the further action will be initiated against him. It is really surprising that thereafter what has



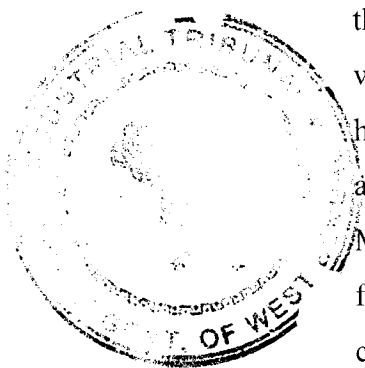
happened which prompted the Management of the Company to terminate the service of the workman within a short span i.e. on 11.07.2016. Nothing has been explained by the company in that regard. During cross-examination CW 1 has admitted that there is no mention in Exhibit A and Exhibit B regarding maintaining 5-point work agenda by the reporters as stated by him in the first line of Paragraph No. 7 of his evidence-in-chief. The witness has admitted further that he has not filed any document showing the description and any particular about the 5-point work agenda.

Considering the aforesaid evidences and materials on record, it is abundantly clear that the service of the workman/applicant has been terminated with some vindictive motive. The Management of the Company has practically failed to assign any reason which has led the Management of the Company to terminate the service of the workman. It is a settled position of law that no person should be condemned unheard and no decision should be taken behind his back. The natural justice is another name of common-sense justice. The rules of natural justice are not codified canon. But they are principles engrained into the conscience of man. The materials on record clearly suggest that the Management of the Company did not care and bother to struck down the service of the workman at its whims without applying any sense of natural justice.

It is argued by the Ld. Advocate for the applicant/workman that if the Management of the Company intends to take a stand that such termination of service of the workman is a termination simpliciter i.e. termination of the workman without having his committing any misconduct then the company has to comply the mandatory provision as provided in Section 25F and 25G has to be complied with. In this connection the Ld. Advocate for the workman drew my attention to the testimony of WW1 as appearing in paragraph no. 17 of the evidence in chief of the WW1 wherein he has stated that no compensation as per law was paid to him and the principles of 'last come first go' was not followed. He has further stated that there are 15 employees working in the company at the relevant time in the same category as reporter like him and they all joined after him. The Ld. Advocate for the company, on the other hand, argued that the company did not make any violation of any provision of the Industrial Disputes Act as argued for the applicant/workman while terminating the service of the applicant/workman. The Ld. Advocate for the company drew my attention evidence-in-chief of CW1 as appearing in paragraph no. 10 wherein he has

stated that the company paid Rs. 1,28, 232/- to the applicant as his full and final settlement through cheque no. 002172, dated 22.07.2016.

Considered the submissions of both sides and also the testimony of the witness in the said point. It appears that the WW1 has stated during his cross examination that the company issued to him an account payee cheque dated 22.07.2016 amounting to Rs. 1,28,232/- drawn of YES Bank. However, he denied the suggestion that the said amount was paid to him towards full and final settlement. The witness (WW1) made a statement that he informed over phone to the management that said amount was given to him towards reimbursement of EL which was lying credited in his EL account and also the salary for that month. On perusal of the testimony of the said WW1, I find that the statement which has made during his evidence-in-chief to the effect that company has not followed the principles of 'last come first go' and there were 15 employees working in the same category as reporter like him who joined after him have not been challenged specifically during his cross examination. The CW1 in his evidence-in-chief has not stated anything on that point. Nothing has been stated by CW1 specifically as to the exact amount will fall due towards compensation in terms of Section 25F Industrial Dispute Act. Moreso, nothing has been stated by the CW1 as to whether the applicant/workman was given one month's notice in writing indicating the reasons for retrenchment as provided in Section 25F(a) of the said Act. The WW1 has stated in his evidence-in-chief that his last drawn salary (CTC) was Rs. 27,150/- per month. The provision lays down in Section 25G of the said Act supports the statement made by WW1 in his evidence-in-chief that the management of the company did not follow the principles of 'last come first go' since there were 15 employees working in the same category as reporter joined after him. In this connection the Ld. Advocate has placed reliance on a case law as reported in AIR 1986 SC 485 (Workmen of American Express..... Vs. Management of American Express....), internet generated copy of which is filed. Perused the observations made by the Hon'ble Apex Court in the said cited case which supports the argument as advanced by the Ld. Advocate for the workman in respect of the provisions of Section 25F and 25G of the Industrial Dispute Act 1947. On due consideration of the submissions as made by the Ld. Advocate of the respective parties and also the evidences as adduced on the point and also relying upon the observations as made by the Hon'ble Apex Court in the aforesaid reported case, I am constraint to hold that the management of the company/opposite party have not complied



the provisions of Section 25F and 25G of the Industrial Dispute Act 1947. For that reasons also, I am of the view that the manner in which the management of the company terminated the service of the applicant/workman is illegal.

The WW1 in his evidence-in-chief at paragraph-27 has stated that he is not gainfully employed anywhere since the date of termination of service by the opposite party/company. He has further stated that all his efforts to secure alternative employment failed due to said illegal termination which has casted a stigma on his carrier. Such statement of WW1 gets corroboration from his statement which has come out during cross examination. Nothing could be produced by the opposite party/company to show that the workman is gainfully employed anywhere. That being so, I have no hesitation to hold that the applicant/workman is not gainfully employed anywhere since the date of termination of his service by the opposite party/company.

Therefore, having considered all aspects of the evidences and materials on record and in view aforesaid discussions and reasons stated thereon I have no hesitation to hold that the opposite party namely, management of the company has terminated the service of the applicant/workman illegally and that being so the such order of termination can surely be said to be unjust and improper. Accordingly, the termination of service of the workman Sri Manab Guha w.e.f. 11.07.2016 vide letter dated 11.07.2016 by the management of M/s. Panorama Television Pvt. Ltd. is unjustified.

Consequently, the management of M/s. Panorama Television Pvt. Ltd. is directed to reinstate the workman, Sri Manab Guha in service with immediate effect with full back wages. The issues taken up for consideration are thus decided and disposed of accordingly.

This is my A W A R D.

Dictated & corrected by me.

Sd/- T. Gupta

Judge.

Sd/- T. Gupta

Judge
First Industrial Tribunal
Kolkata
31.12.2018

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

