

File No. LABR-22015(16)/306/2018-IR SEC Dept. of LABOUR

1/30378/2018

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

No. Labr./863 /(LC-IR)/IR/11L-28/18

Date : 16.11.18.

ORDER

WHEREAS an industrial dispute existed between M/S The Supreme Industries Ltd., 601, Central Plaza, 6th Floor, 2/6, Sarat Bose Road, Kolkata – 700020 and their workman Sri Sudhanshu Bhowmick, 47, Purbopara Road, Thakurpukur , Kolkata - 700063 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14of 1947);

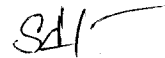
AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14of 1947) to the Judge, Seventh Industrial Tribunal Specified for this purpose under this Department Notification No. 101–IR dated 2.2.12;

AND WHEREAS the Judge of the said Industrial Tribunal heard the Parties and 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

(Contd.. 2)

(2)

No. Labr./ 863. /1(2)/ (LC- IR)

Date : 16.11.18.

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 1753 – L.T. dated 24.08.2018.
2. The Joint Labour Commissioner (Statics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. Labr./ 863 /2(5) /(LC- IR)

Date : 16.11.18.

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

1. M/s The Supreme Industries Ltd., 601, Central Plaza, 6th Floor, 2/6, Sarat Bose Road, Kolkata – 700020.
2. Sri Sudhanshu Bhowmick, 47, Purbopara Road, Thakurpukur , Kolkata – 700063.
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary



**In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata**

Present: Sri Avani Pal Singh, Judge, Seventh Industrial Tribunal.

Case No.64/2015, u/S.10(1B)(d) of the Act 14 of 1947

An Industrial Dispute

-Between -

Shri Sudhanshu Bhowmick,
47, Purbopara Road, Thakurpukur, Kolkata – 700 063.

....**Applicant**

- A n d -

M/s. The Supreme Industries Ltd.,
601, Central Plaza, 6th Floor,
2/6, Sarat Bose Road, Kolkata – 700 020.

.....**O.P. / Company**

A W A R D

Dated : 06-08-2018

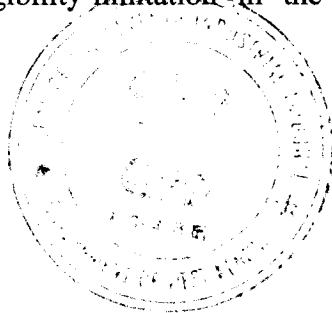
1. The instant case came to be registered when an application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 was filed on 16.12.2015 by Sri Sudhanshu Bhowmick, referred to as the **applicant** hereinafter, purportedly raising an industrial dispute against his employer M/s. The Supreme Industries Ltd., thereby and therein challenging the illegal and unjustified termination of his employment by such employer and seeking relief(s), inter alia, of reinstatement with full back wages and consequential benefits.
2. On the case being registered, notice was issued, together with a copy of such application, to M/s. The Supreme Industries Ltd., referred to as the **OP/Company** hereinafter, at its address given in the application directing its appearance and filing of its written statement on the next date fixed.

3. On 28.01.2016, the OP/Company duly appeared through their Ld. Advocate and contested these proceedings by filing their written statement, wherein and whereby they substantially rebutted the claims made by the applicant in his such application.
4. The case of the applicant as made out in his application briefly is that, the OP/Company is a company registered under the Companies Act with its registered office at 612, Raheja Chambers, Narimon Point, Mumbai – 400 021, and that the applicant was employed in the furniture division of the OP/Company on 21.01.2013 as **sales-officer**, consequent upon issuance of an offer letter by the OP/Company to him dated 11.01.2013 and that his such job was one of sales promotion employee covered u/S. 2(s) of the Industrial Disputes Act, 1947 and that suddenly, the OP/Company by its letter dated 02.03.2015 served a notice of termination upon him stating that such termination would be effective from 01.04.2015 and that, in such letter of the OP Company it had raised various false and fabricated allegations against him, which he had rebutted by his letter dated 11.03.2015 with a further request to withdraw / cancel / rescind the said letter of termination and allow him to resume his duties, and that, having waited for some time for the Company to answer to his letter dated 11.03.2015, the applicant by his letter dated 02.04.2015 moved the office of the Labour Commissioner for conciliation proceedings against his illegal termination of service and it was during such conciliation proceedings that, by their letter dated 06.07.2015, the OP/Company for the first time brought in the allegations that the applicant was a non-performer since his appointment and that he never worked with responsibility and his productivity was too low with regard to the target value of sales and that the applicant had not submitted his sales report for the months April, 2014 to August, 2014 for which he had been cautioned and show-caused. It is the further case of the applicant that the conciliation proceedings before the Assistant Labour Commissioner, Govt. of West Bengal, failed due to the alleged uncompromising



attitude of the company and thereafter the applicant applied for and obtained a conciliation pendency certificate (Form-S) on 16.09.2015 but could not file the instant case within 60 (sixty) days thereof due to financial stringency and that his case ought not to be thrown out for such delay, and that this Tribunal may hold that the termination of service of the applicant w.e.f. 01.04.2015 by the OP/Company was unlawful and unjustified, and grant relief(s) of reinstatement with back wages and consequential benefits.

5. The OP/Company, by its written statement filed on 12.05.2016, at the outset challenged the maintainability of the application on the grounds, inter alia, that the applicant was not a 'workman' and that, the instant case was not an 'industrial dispute' within the meaning of the Industrial Disputes Act, 1947 and further, answering the specific claims made by the applicant, the OP/Company stated that the applicant was a non-performer in the organization and he had been granted several opportunities to mend his ways, but the applicant was casual in his approach and that he was also indisciplined in course of his employment and indulged in misconduct which was detrimental to the goodwill of the company and that, the applicant spread indiscipline amongst other employees also. The OP/Company further stated that the applicant had realized that his non-performance and casual approach was no longer tolerable and accordingly he had submitted his resignation on 19.12.2013, though on the same day he had also requested his Regional Manager to provide him one more opportunity and withdraw his resignation on 20.12.2013. The OP/Company further stated that the applicant never attended the target calls and his productivity was also very low, with regard to the targets assigned to him for which he was cautioned many times, and that the applicant was issued show-cause for his insubordination and repeated misconduct and further, the OP/Company stated that the applicant had misused the official mobile and had violated his eligibility-limitation in the month of February 2015 and



thereafter, the company terminated him w.e.f. 01.04.2015 on the basis of the notice given to him on 02.03.2015. The OP/Company, for the records, also stated at para. 19 of its written statement that due to lack of knowledge and effective guidelines the company could not conduct domestic enquiry, giving opportunity to the applicant for his self-defense, prior to issuance of the notice of termination dated 02.03.2015 and accordingly, the OP/Company sought an opportunity to prove the charges of insubordination, repeated misconducts, moral turpitude, dishonesty and violation of company's policy, against the applicant.

6. In the light of the aforesaid pleadings by the parties, this Tribunal framed the following Issues on 23.11.2016 :-

1. *Is the applicant, a workman as per definition of Section 2(s) of the Industrial Disputes Act, 1947?*
2. *Whether the instant case u/S. 10(1B)(d) of Industrial Disputes Act, 1947 is maintainable either in facts or in law?*
3. *Whether the termination of service of the applicant Sri Sudhanshu Bhowmick by the management of M/s. Supreme Industries Ltd. is justified?*
4. *If not, whether the applicant is entitled to get relief of reinstatement with back wages?*
5. *Whether the applicant is entitled any other relief, if any?*

7. In support of his case, the applicant Sudhanshu Bhowmick examined himself as PW-1, and was cross-examined as such, and during his evidence copies of his appointment letter, offer letter, termination letter, demand of justice, as well as other relevant documents were taken into evidence and marked as **Exhibits – 1 to 12** series and would be discussed at relevant portions hereinafter.

8. In support of their contentions, the OP/Company examined Debabrata Ghosh as OPW-1, while Atanu Dinda was examined as OPW-2, and both OPWs were cross-examined



as such, and the OP/Company brought into evidence copies of communications and office memos., received and issued by the OP/Company on various dates, as well as a summary of monthly sales report of the applicant, all of which have been variously marked as **Exhibits – A to B/12 series**, and are discussed at the relevant portions.

9. The point of determination in this proceeding therefore, is to examine if the applicant has succeeded in establishing his contention(s) by way of cogent and consistent evidence and, to further examine if the applicant is entitled to any relief(s), as prayed for or at all, as against the OP/Company.

Decision with Reasons

Before proceeding with the deliberation and decision on each of the said Issues separately, this Tribunal finds it imperative to examine the evidence on record of both parties, in support of their respective contentions as well as facts relevant thereto.

10. Testifying in support of his pleadings, the applicant deposed as PW-1 on 05.01.2017 and was duly cross-examined as such, on behalf of the OP/Company, on 05.01.2017, 21.02.2017, 03.04.2017 and finally on 16.05.2017. PW-1 stated that prior to his joining the OP/Company as sales-officer, the company had issued one “offer letter” dated 11.01.2013, asking him to join duties latest by 21.01.2013, on the basis whereof he had joined the company on such date, as would reflect in the letter of appointment issued by the company on 04.02.2013, and copies of such appointment-letter (**Exhibit – 1**) and offer-letter (**Exhibit – 2**) were identified by PW-1 and take into evidence. PW-1 further stated that he was employed as **sales-officer** in the furniture division of the OP/Company and he was a “sales promotion employee” as per Sales Promotion Employees (Condition of Services) Act, 1976 and during his period of employment, he

discharged the duties of promoting the sale of the products of the company and that he never discharged any duty in managerial / administrative / supervisory capacity and neither did he have any power to initiate disciplinary proceedings or to take decisions independently that would be binding upon the OP/Company. PW-1 further stated that he had no subordinate(s) under his control or supervision and hence there was no scope for him to assist anybody's performance and, as part of his duties, he would regularly send his work-reports to the higher authority. PW-1 further stated that suddenly he received a notice of termination dated 02.03.2015 from the OP/Company notifying him that his employment would be terminated w.e.f. 01.04.2015 and in the said notice, the OP/Company brought various false and fabricated allegations against him, and he identified a copy of such notice (**Exhibit – 3**). PW-1 further stated that, in response to such notice of the OP/Company, he had sent a representation dated 11.03.2015, with a request to withdraw his such termination and allow him to resume his duties, a copy whereof (**Exhibit – 4**) with its delivery-track-report (**Exhibit – 5**) were identified by him; further, PW-1 testified that thereafter, he waited for some time but as the OP/Company did not respond, he was left with no alternative but to seek intervention of the office of the Labour Commissioner to whom he wrote a representation dated 02.04.2015 (**Exhibit - 6**), after his so-called termination came into effect on 01.04.2015. PW-1 further stated that on the basis of his such representation, the conciliation proceedings were drawn up (**Exhibit - 7**) and the company participated therein, and by their letter dated 06.07.2015 to the Conciliatory Authority, the OP/Company for the first time raised allegations against the applicant that he was a non-performer since his appointment and that he had submitted his resignation on 19.12.2013, which was withdrawn subsequently on 02.12.2013. On being identified by PW-1, a copy of the letter of the OP/Company dated 06.07.2015 to the Assistant Labour Commissioner, together with its annexures and other communications of that office, were taken into evidence (**Exhibit- 8**). PW-1 further stated that, as would



appear from his resignation letter dated 19.12.2013 itself, he had resigned from service absolutely on personal reason and it was incorrect to say that he resigned due to a caution given by the company for his poor performance and further PW-1 stated that no such document(s) reflecting his poor performance were ever served on him prior to his so-called termination and even such alleged “under performance” was never brought to his knowledge prior to his wrongful termination. PW-1 brought into evidence his copy of reply to the Assistant Labour Commissioner dated 30.07.2015 (**Exhibit - 9**) and stated that he had explained such circumstances and details whereby he had also asked the company to adjust his excess mobile-phone bill from his salary account. PW-1 further stated that the “target value of sales” was always determined by the management unilaterally and that it was not correct to state that he had not submitted sales-reports for certain months and that copies of all such mails to the company submitted by him were also placed before the Assistant Labour Commissioner by his letter dated 26.08.2015 (**Exhibit - 10**). PW-1 also identified a copy of Form P-4 dated 14.09.2015 filed before the Conciliation Officer (**Exhibit - 11**), who issued a pendency certificate in Form – S on 16.09.2015 (**Exhibit - 12**). Throwing a specific challenge to the letters and communications, submitted by the company before the conciliatory authority and sought to be relied before this Tribunal, vide its list of documents filed on 29.06.2016, PW-1 stated that he was never served copies of such documents and that all the allegations made against him in the written statement of the OP/Company were not correct and had no basis thereto. PW-1 thereafter submitted that the termination of his services w.e.f. 01.04.2015 by the OP/Company was wholly unjustified and illegal and that the relief of reinstatement in service with full back wages, along with other consequential benefits may be granted in his favour.

11. With a view to rebut the case of the applicant, as well as to substantiate its own stand, the OP/Company examined two witnesses



(a) **Debabrata Ghosh**, Senior Sales Executive of the OP/Company, deposed as **OPW-1** and stated that any assigned sales-officer used to perform his duties under instructions from senior sales executive to sell items of furniture, as per targets fixed for every month by the company which such sales personnel had to achieve for the company to remain viable. OPW-1 further stated that every sales-officer was required to communicate in writing his sales report so that the company could determine the progress of such sales-officer and assess his abilities besides getting to know the demand of the company's products in the market. OPW-1 stated that he knew the applicant in official capacity, as he was posted under him at Malda to sell the furniture products of the company in that district. OPW-1 further stated that he had observed the applicant since his joining the company at Malda District that he was a non-performer in the organization and used to show casual approach to the organization and that, being his superior, he had tried to make the applicant improve his performance, but he never listened to instructions from his seniors. OPW-1 further stated that the applicant did not submit the "daily sales report" for the period from April, 2014 to August, 2014 despite directions upon him to submit sales report for such period to the Kolkata Office. The OPW-1 further stated that on 19.12.2013 in the morning he had received an e-mail from Sudhanshu Bhowmick, the applicant herein, whereby he had tendered his resignation w.e.f. 19.12.2013 for personal reasons and wanted to settle his accounts, however, by another e-mail sent by the applicant on 20.12.2013 in the night, he sought another chance to join the team with a commitment that he would try and work very hard, upon which the OP/Company had provided the applicant further opportunity to perform better. OPW-1 further stated that he came to know from Kolkata Office that the applicant had been terminated w.e.f. 01.04.2015. No documents were identified and/or exhibited during examination of OPW-1.



- (b) **Atanu Dinda**, Regional Manager of the OP/Company deposed as **OPW-2**, and stated that he had joined the company as sales-officer in February, 1992 and had worked with the OP/Company since then. OPW-2 further stated that the applicant was employed as sales-officer to sell furniture items, on certain terms and conditions laid down in appointment letter dated 04.02.2013 (**Exhibit-1**) issued to the applicant. OPW-2 further stated that the OP/Company had introduced limits on the expenses on use of mobile and internet services, for various grades of employees, by its letter dated 23.07.2011 (**Exhibit - B**) and that the applicant belonged to '**O-2**' Grade and was thus, permitted expenditure on mobile upto Rs. 200/- and on internet upto Rs. 500/-. OPW-2 further stated that for the month of February 2015, the applicant had incurred a bill on his mobile use to the amount of Rs.14,470/- which was made known to the applicant, upon which the applicant by his mail dated 27.02.2015 (**Exhibit - B/2**), admitted such excess expenses with a request that the excess amount be permitted to be adjusted in 14 EMIs from his salary. OPW-2 further stated that the applicant was a non-performer in the organization and that the OP/Company had given ample opportunities to him to improve his performance on several earlier occasions, but the applicant was so indisciplined that his performance never improved and that he repeatedly resorted to misconduct which was detrimental to the goodwill of the company. OPW-2 further stated that the applicant had not submitted his daily sales-report for the months April, 2014 to August, 2014 compelling the company to issue five office memos to the applicant. (**Exhibits- -B/3, B/4, B/5, B/6 and B/7**). OPW-2 further stated that the applicant, having realized that he was an under-performer and that his casual approach to the organization was no longer tolerable, had submitted his resignation on 19.12.2013 (**Exhibit - A**) and thereafter, he withdrew his resignation by another communication dated 20.12.2013 (**Exhibit - A/1**). OPW-2 further stated that though the OP/Company had allowed the applicant to continue his services, the



applicant never attended his target calls and simultaneously his productivity remained low and that he was cautioned many times and was given show-cause for his insubordination and misconduct. OPW-2 further stated that the services of the applicant were terminated by notice dated 02.03.2015 (**Exhibit -3**), for the reason that despite numerous verbal cautions as well as notices, the applicant had not fulfilled his targets and his approach as a sales officer was very casual. OPW-2 identified a letter written to the Assistant Labour Commissioner on 08.06.2015 (**Exhibit - B/8**) and another letter to the same office written on 25.06.2015 (**Exhibit - B/9**). OPW-2 further identified copies of office memos. dated 03.07.2015 and 31.07.2015 (**Exhibit - B/10**) issued by the office of the Assistant Labour Commissioner. Lastly, OPW-2 identified copy of the letter dated 4.9.2015 showing the final settlement amount of the applicant submitted to the Assistant Labour Commissioner (**Exhibit - B/11**) and also identified a copy of a summary of monthly sales report(s) for the period December, 2013 to March, 2015 of the applicant (**Exhibit - B/12**) and stated that, from such summary report it was clear that no sales report had been submitted from April to August by the applicant and on that note, OPW-2 stated that the prayer of the applicant to be reinstated with back wages did not stand in the eyes of law due to his misconduct, and the applicant was not entitled to the relief(s) that he had prayed for.

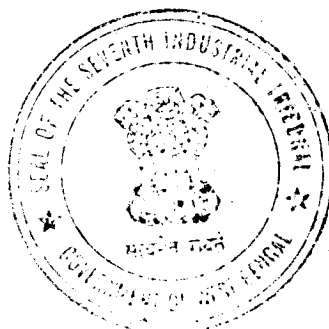
12. Having noted the evidence on record of both parties in support of their respective contentions, as well as facts relevant thereto, this Tribunal would now proceed to discuss and deliberate upon the Issues in the instant case, with a view to arrive at a decision thereupon.



Issue No.1 : “Is the applicant a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947?”

13. **Section 2(s)** of the Industrial Disputes Act states 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 one thousand six hundred 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.
14. In light of the aforesaid definition, this Tribunal examined the application of the applicant, wherein (at para. 3) he has stated that he was a sales-officer and was employed as a “sales-promotion employee” and was also a workman as per the said Act, as applicable in West Bengal, and further, dwelling upon his duties, the applicant claimed that during his employment he used to regularly promote the sales of the furniture products of the OP/Company and he never discharged any duty in managerial or administrative or supervisory capacity. The applicant further claimed in his application that he did not have any power to initiate disciplinary proceedings or to



take any decision independently which would be binding upon the company and, in that context the applicant further stated that he did not have any subordinate under him, whom he could control and/or supervise and/or assess the performance and, that he regularly used to send his work reports to the higher authority.

15. Testifying as PW-1, the applicant stated that he was engaged as a sales-officer and besides him there were other sales-officers within the territory of Kolkata jurisdiction and further testified (at para. 4) that he was also a 'workman' under the Industrial Disputes Act, 1947 as applicable in West Bengal, besides elaborating upon the nature of his duties, as were stated in his pleadings. In the cross-examination of PW-1, nothing comes out that would put such testimony of PW-1 to any doubt or render it unbelievable. In fact, during cross-examination of PW-1 (on 03.04.2017), it came out that he was also required to survey the market to find out the shops dealing with the products of the OP/Company and though he was not given any target to meet, his job was to take orders and transmit the same to the company, to enable it to supply the same. That apart, Debabrata Ghosh (OPW-1) testifying in support of the case of the OP/Company, stated (at para. 3) that he was a senior sales executive and was assisted by the sales-officers of the company and that such **sales officers used to perform their duties under instructions from senior sales executives to sell furniture with certain terms and conditions** and further, OPW-1 testified (at para. 6) **that every sales officer had to communicate to the company in writing their sales report** to enable the company to determine the progress of the sales-officer, the demands of the company's products in the market, as well as to assess performance of the sales-officers. From the cross-examination of OPW-1, it further came out that the regional manager of the OP/Company used to **verbally allot territorial jurisdiction** of work of each employee and it further came out that the **allotted duty of the applicant was to promote sales of the products of the company and that nobody worked under**

the applicant and that there was no document filed to show that the applicant Sudhanshu Bhowmick could independently write to the businessmen and his such writings could be binding on the OP/Company. That apart, OPW-2 Atanu Dinda also testified more or less on the same lines as did OPW-1, though from cross-examination of OPW-2, it came out that the applicant was a **confirmed employee of the OP/Company** being appointed in the year **2013**.

16. In light of the definition of the term 'workman' in the Act, as well as of the testimony of the applicant as well as the witnesses of the OP/Company, this Tribunal finds that the applicant Sudhanshu Bhowmick was appointed as a 'sales officer' by the OP/Company, and his primary job was promoting the sales by collecting orders from different shops and sending them to the furniture division of the company for supply thereof, and further it appears that, in course of his such employment, the applicant neither had any subordinate nor did he have any managerial or administrative or supervisory or disciplinary functions, related to any other employee of the company. Further, the job of pursuing and/or promoting sales of products of the OP/Company would fall within 'operational work' as laid down in Section 2(s) of the said Act. That apart, by dint of State Amendment Act 57 of 1980 w.e.f. 30.11.1981, the provisions of Section 2(s) of the said Act were expanded to specifically include '**sales promotions**' after the term '**technical**' in the definition of the term 'workman', and the job of the applicant would be covered squarely by such amendment. Accordingly, this Tribunal finds no impediment in holding that the applicant has established by cogent and consistent evidence that during his employment under the OP/Company, he was a '**workman**' as defined under Section 2(s) of the Industrial Disputes Act, 1947, and the **Issue No.1 is answered accordingly.**



Issue No. 2 : “Whether the instant case under Section 10(1B)(d) of the Industrial Disputes Act, 1947 is maintainable either in facts or in law?”

Section 10(1B) of the Act lays down as follows :-

- “(1B) (a) *Notwithstanding anything contained elsewhere in this Act, where in a conciliation proceeding of an industrial dispute relating to an individual workman, no settlement is arrived at within a period of sixty days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer in such manner and in such form as may be prescribed, for a certificate about the pendency of the conciliation proceedings.*
- (b) *The Conciliation Officer shall, on receipt of the application under clause (a) issue a certificate within seven days from the date of receipt in such manner, in such form and containing such particulars as may be prescribed. A copy of the certificate shall also be sent to the appropriate Government for information.*
- (c) *The party may, within a period of sixty days from the receipt of such certificate or, where such certificate has not been issued within a period of sixty days from the receipt of such certificate or, where such certificate has not been issued within seven days as aforesaid, within a period of sixty days commencing from the day immediately after the expiry of seven days as aforesaid, file an application in such form and in such manner and with such particulars of demands as may be prescribed, to such Labour Court or Tribunal as may be specified by the appropriate Government by notification. Different Labour Courts or Tribunals may be specified for different areas or different classes of industries.*
- (d) *The Labour Court or Tribunal specified under clause (c) shall, within a period of thirty days from the date of receipt of an application under clause (c), give a hearing to the parties and frame the specific issues in dispute, and shall thereafter proceed to adjudicate on the issues so framed as if it were an industrial dispute referred to in sub-section (1)”*

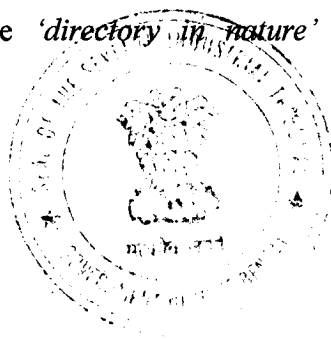
17. In the aforesaid context, it appears that the OP/Company, in its written statement, claimed that the instant application under Section 10(1B)(d) was not maintainable (at para. 7) in light of the promulgation of Section 2A of the Central Act and further that the instant case did not fall under the definition of an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 (at para. 3) and further, that the Conciliation Officer had not discharged his duties as per Section 12(2) of the said Act (at para. 6).



In this regard, it came to be noted that it is the admitted position between the parties that the OP/Company was a company, registered under the Companies Act with its registered office at Mumbai (*undisputed averment at para. 2 of the application, and para. 10 of written statement of the OP/Company*) and further it came out from the cross-examination of OPW-1 that the company dealt in plastic-made furniture and besides OPW-1, there was another sales officer in the territory of Kolkata jurisdiction, thereby corroborating the claim of the applicant that the company carried out the business of selling furniture-items within the jurisdiction of this Tribunal, and also establishing that the appropriate Government as defined under the Industrial Disputes Act, 1947 in respect of the present case would be the Government of West Bengal. That apart, the address of the OP/Company given in the cause title of the application itself reveals that the OP/Company indeed has its office and carries out business under the jurisdiction of this Tribunal. Further, on the issue, PW-1 testified that on 02.03.2015 he received his termination letter (*at para. 5, Exhibit-3*) and in reply thereto, he sent one protest letter dated 11.03.2015 (*at para. 6, Exhibit-4*) and thereafter he wrote a letter to the Labour Commissioner, Govt. of West Bengal on 02.04.2015 (*at para. 7, Exhibit-6*), leading to initiation of conciliation proceedings. Further, PW-1 testified that as the management of the OP/Company was delaying matters unnecessarily before the Conciliation Officer, he had filed Form P-4 on 14.09.2015 (*para. 10, Exhibit-11*), as a consequence of which the Conciliation Officer issued the pendency certificate in Form-S on 16.09.2015 (*at para. 10, Exhibit-12*).

18. In light of the aforesaid evidence, this Tribunal also revisited the definition of 'industrial dispute' under Section 2(k) of the Industrial Disputes Act, 1947, and further examined the provisions of Section 2A(1) of the said Act, wherein it is clearly laid down that any termination of an 'individual-workman' or any dispute or differences between such workman and his employer connected with such termination **shall be**

deemed to be an industrial dispute, **notwithstanding** that no other workman or any union of workmen is a party to such dispute. It is, therefore, evident that the OP/Company is an employer carrying out '**industry**' [u/S. 2(j) of the Act] with its office in the jurisdiction of this Tribunal, under which the applicant was employed as a workman [u/S. 2(s) of the Act] who was terminated on 02.03.2015 (Exhibit-3) and hence such termination or any matter connected therewith **would be an industrial dispute** which can be adjudicated by this Tribunal. Further on the point, and recalling the provisions of Section 10(1B) as stated above, this Tribunal noted that the applicant/workman, after moving the conciliatory authority on 02.04.2015, had participated in the conciliation proceeding on various dates and since the matter was not settled within 60 days, the workman had applied to the Conciliation Officer (Exhibit-11) on 14.09.2015 and obtained a certificate in Form-S two days thereafter (Exhibit-12), and on the strength thereof, the instant case came to be filed on 16.12.2015 i.e. about 90 days from the date of issue of the certificate in Form-S. It is relevant to mention here that in the Form-S (Exhibit-12), issued by the appropriate authority of the State Government, it is clearly stated that conciliation proceedings were pending in respect of an 'industrial dispute' between the parties. In this context, this Tribunal further noted at para. 12 of his statement, the workman has stated that he could not file the present case within 60 days as prescribed in the aforesaid Section due to paucity of money to meet up necessary expenses and as such his case ought not to be thrown out for a delay of some days and in context of such prayer, this Tribunal also noted that the OP/Company in its written statement (para. 18 at page-10) stated that it was not denying / contesting any of the submissions made by the applicant from para. 11 to para.14 of his statement. It is indeed a fact that the application was not filed within the time prescribed by Section 10(1B), however this Tribunal is mindful of the use of the word '**may**' in the sub-Section, which clearly shows that the legislature intended the time-limit to be '*directory in nature*' and as such, a mandatory



interpretation cannot be given to such time-frame prescribed. Keeping in mind the fact that the Industrial Disputes Act, 1947 was meant to be a social-welfare legislation and its provisions were aimed at bringing industrial peace and ought not to be construed in a manner that would be laced with technicality or rigid interpretation, and in light of the uncontroverted stand of the workman, as aforesaid, that financial stringency kept him away from filing the case with the prescribed time period, this Tribunal is inclined to hold that such delay cannot be held to be fatal to the instant proceedings. Further, the non-obstante clause at the beginning of the Section makes it clear that there would be no effect of Section 2A on the operation of Section 10(1B), which incidentally is a State Amendment inserted by West Bengal Act 33 of 1989, as both can be harmoniously read and do not pronounce in conflict of each other.

In light of the aforesaid discussion, this Tribunal holds that, in light of the evidence on record, the **instant dispute is maintainable under Section 10(1B)(d) of the Act**, both in facts as well as in law, and accordingly the **Issue No.2 is answered in such terms.**

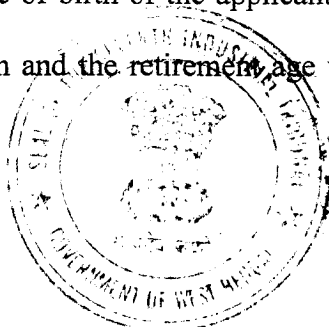
Issue No. 3 : “Whether the termination of service of the applicant Sudhanshu Bhowmick by the management of M/s. Supreme Industries Ltd. is justified ?”

19. It was pleaded by the applicant/workman in his statement of claims (*at para. 4*) that the OP/Company had suddenly by its letter dated 02.03.2015 (*Exhibit – 3*) served one notice of termination upon him stating that his termination would be effective from 01.04.2015 and further, that the OP/Company had made various false and fabricated allegations against him therein. Seeking to counter such pleadings, the OP/Company in its written statement (*at para. 12*) denied and disputed such contention(s) of the workman, save and except what were matters of record and further stated that the said



workman was a non-performer in the organization and he was too casual to take job-responsibility in a proper manner and that his such casual approach to the organization was intolerable and that he never attended the targeted calls and simultaneously, the productivity was too low with regard to the 'target value of sales' assigned to him and that, the applicant/workman had not filed 'sales-report' for five consecutive months from April, 2014 to August, 2014 despite several reminders and that he had misused the mobile handset / official number of the company and had exceeded the prescribed limit and such act was violation of code of conduct and was a serious misconduct, which the applicant had admitted.

20. In light of the aforesaid pleadings, this Tribunal proceeded to examine the terms of appointment (*Exhibit-1*) of the workman as well as the said letter of termination dated 02.03.2015 (*Exhibit-3*). From the letter of offer of appointment (*Exhibit-1*) as well as the initial offer letter (*Exhibit-2*), this Tribunal has noted that the workman was required to 'abide and strictly adhere to Employee Code of Conduct presently in force for all Supreme Employees and as may be modified by the management from time to time" (**clause 5**), and further, this Tribunal also noted that, at **clauses – 12 & 13** of **Exhibit-1**, it was specified that the services of the workman could be terminated without notice or compensation by the OP/Company in the event – "*of any act of dishonesty, disobedience, moral turpitude, insubordination, intemperance or any misconduct, neglect or upon loss of confidence in you or inobedience in the discharge of their duties or upon any breach of the above terms by you*" (**clause 12**) and that the OP/Company also had the right to terminate the workman by giving him no notice or compensation in lieu thereof, if he was found to be involved in any criminal proceeding / insolvency or bankruptcy, etc. That apart, at **clause 15** thereof, the company had admitted the date of birth of the applicant (21.11.1968) as provided by the workman in his application and the retirement age was prescribed, as per extant



policy, as 58 years. In light of the aforesaid terms of employment of the workman, this Tribunal proceeded to examine the said letter of termination dated 02.03.2015 (*Exhibit-3*) and it appeared that the OP/Company had stated the following reasons for terminating the employment of the workman in the furniture division of the OP/Company w.e.f. 01.04.2015 :-

- I) *In-subordination ;*
- II) *Repeated misconduct;*
- III) *Moral turpitude;*
- IV) *Dishonesty;*
- V) *Violation of Company policy.*

21. Having noted the said reasons stated by OP/Company for such termination(*Exhibit-3*), this Tribunal also examined the contentions of the letter dated 11.03.2015 (*Exhibit-4*) which the workman PW-1 written to the company as a protest against the aforesaid termination, and on such examination it appears that the workman had specifically stated that before **“recording the reason of termination nothing was intimated regarding such allegation”** and further, the applicant workman had stated therein that as a consequence thereof he did not receive any minimum opportunity of self-defense and further the workman had specifically claimed that the termination was palpably bad in law and that he should be allowed to continue with his job as usual or else he would be constrained to take appropriate steps in accordance with law.

22. Having noted the contentions, as well as the contents of the relevant Exhibits, as aforesaid, this Tribunal noted that the OP/Company had not produced the Employees' Code of Conduct of Supreme employees before this Tribunal, and further nowhere in the four-corners of the termination letter (*Exhibit-3*) had the OP/Company stated that the workman was an '*under-performer*' or that one of the reasons for termination was '*under-performance*'. This aspect assumes significant relevance in the light of the



specific pleadings of the OP/Company (*para. 12, at page - 7 of its written statement*) wherein it was clearly stated -- "*it is submitted that the applicant was the non-performer in the organization. He was too casual to take job responsibility in the proper manner. His casual approach to the organization was no more tolerable.....It was observed thereafter that he never attended the targeted calls and simultaneously the productivity was too low with regard to target value of sales assigned to him ...on 27th February, the applicant had admitted his guilt following the letters of the company dated 26.02.2015*". In this context, it comes out clearly from the evidence before this Tribunal, that the entire case as sought to be made out in the pleadings of the OP/Company, **of the workman having been terminated for the reason of being "a non-performer" or "being casual" or "never attending the targeted calls or low productivity with regard to the target assigned"** appears to be an after-thought, and a grave discrepancy in the version of the OP/Company, as such matters do not reflect anywhere in the letter of termination (*Exhibit-3*).

23. Having noted the aforesaid discrepancy, this Tribunal proceeded to examine the testimony of PW-1, wherein he testified (*at para.5*) that the letter of termination dated 02.03.2015 had various false and fabricated allegations against him and further, PW-1 testified (*at para.7*) that, during the conciliation proceedings, the OP/Company by its letter dated 06.07.2015 (*Exhibit-8*) had for the **very first time** come up with the allegation(s) that he was a non-performer since his appointment and did not work with responsibility in a proper manner, and further PW-1 specifically deposed (*at para. 8*) that his earlier resignation letter dated 19.12.2013 was for absolutely personal reasons and it was not due to any caution given by the company for his poor performance, as contended by the company (*in Exhibit-8*), and further PW-1 emphatically stated that he was not made aware of any alleged under-performance or shown any document connected to or reflecting his poor performance before his termination, and further



PW-1 stated (*at para. 9*) that at no point of time during his tenure of employment was any letter of warning/show-cause/charge-sheet, with any allegation(s), was issued to him prior to his such termination, in line with allegations that appeared in the said letter submitted to the Conciliation Officer (*Exhibit-8*) by the OP/Company. In light of the aforesaid testimony of PW-1, this Tribunal proceeded to note that nothing came out in the cross-examination of PW-1 that would put the aforesaid testimony to any doubt or contradiction or even make it patently unbelievable. In fact, during his cross-examination, copy of an e-mail dated 19.12.2013 (*Exhibit-A*) was put to PW-1 to which he specifically stated that the same was a copy of his letter of resignation of that date, together with the copy of withdrawal of his resignation (*Exhibit-A/1*) and on the point, PW-1 further stated that he had submitted the letter due to misbehaviour by his immediate superior at Malda, and it further came out that it was on the advice of the then Regional Sales Manager, who was incidentally on tour at Malda at the relevant point of time, that he did not proceed with his resignation and withdrew the same. That apart, this Tribunal also noted that **nothing was put** to PW-1 during his cross-examination, **to the effect** that he had been notified that he was an under-performer, prior to his termination, **or that** he had knowledge in respect of any enquiry or any show-cause *that may have been conducted/issued* by the OP/Company in respect of his alleged under-performance. In fact, PW-1 emphatically denied a suggestion put to him that he had not submitted sales-reports for the months of April, 2014 to August, 2014 or that he did not perform any sales for those months.

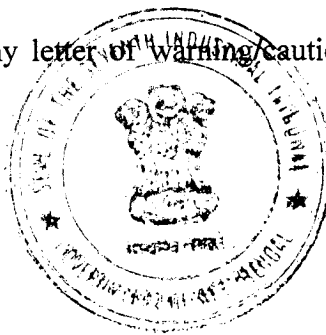
24. On the issue, traversing further, this Tribunal examined the testimony of OPW-1 and OPW-2, both of whom claimed to have been superiors of the applicant/workman during his employment term. OPW-1 stated (*at para. 9*) that the applicant was a non-performer in the service since joining the company and he used to show casual approach to the organization and that he tried to develop his performance, but the

workman would not comply with instructions of his seniors (*at para. 10*) but rather he would go by his own thoughts, as a consequence of which his productivity was too low and further, OPW-1 stated that the workman had not submitted his daily sales-report for the period from April, 2014 to August, 2014 in spite of directions upon him to submit them to the Kolkata Office. Further stating that he had never shown any irrational behaviour or used slang-language against the applicant/workman, OPW-1 testified that the workman had **tendered his resignation on 19.12.2013 for personal reasons** and that subsequently the company had allowed him to withdraw the resignation and he re-joined his duties. OPW-1 also stated that he had come to know from Kolkata Office that the applicant's service has been terminated w.e.f. 01.04.2015. The second witness examined by the OP/Company, OPW-2 Atanu Dinda testified that he was working as Regional Manager with the OP/Company since 01.07.2013, and further stated that the applicant was a non-performer in the organization (*at para. 5*) and that the company had given him ample opportunities to mend himself, but the workman had not paid any attention and further, OPW-2 testified (*at para. 6*) that the applicant was so in-disciplined during his employment and indulged in such misconduct that they were detrimental to the goodwill of the company and inspired other employees to do the same. Further OPW-2 deposed (*at para. 10*) that the applicant never attended to his targeted calls and his productivity was low with regards to the target assigned to him, and that the applicant was cautioned many times and was given show-cause for his insubordination and misconduct(s). This part of testimony of OPW-2 (*underlined*), was not borne out or supported by the testimony of OPW-1 though he too claimed to have worked as a superior to the applicant, and further, having examined the documents brought on record by the OP/Company, this Tribunal noted that OP/Company failed to bring any code of conduct for their employees, or a copy of any show-cause for insubordination or misconduct(s) or any such or other letter of caution, that may have been issued to the workman, as testified by the

company witness(es) who claimed to be his immediate superiors and would be in the best position to know the facts at the ground level. That apart, the OP/Company also not come out with the reasons explaining/justifying such non-production of show-cause letters / letters of caution, that may have been issued to the workman, from time to time **as claimed**. In this context, this Tribunal noted that **on a specific query during his cross-examination, OPW-2 admitted that no letter was given to the workman that he was/is a non-performer employee and further, OPW-2 admitted that neither any show-cause nor any charge-sheet had been served upon the applicant/workman for his alleged misconduct as claimed by the OP/Company.** That apart, to another specific query, the OPW-2 stated that he had no document to show that the Office Memos dated 07.05.2014 (*Exhibit-B/7*), dated 12.05.2014 (*Exhibit-B/6*), dated 09.06.2014 (*Exhibit-B/5*), dated 07.07.2014 (*Exhibit-B/4*) and dated 05.09.2014 (*Exhibit-B/3*) were ever served upon the workman. In fact, on a specific query, OPW-2 admitted in his cross-examination that the aforesaid letters (*which were placed before the Assistant Labour Commissioner during conciliatory proceedings, to show that the applicant had not been sending sales-reports for the given months*) were **not sent either** by e-mail or through the post, even though the residential address and the e-mail address of the workman were very well known to the OP/Company. To another specific query, the OPW-2 admitted that there was no indication in the said resignation letter (*Exhibit-A*) that the workman had realized his non-performance or that the workman had prayed for any other opportunity. Responding to further queries during his cross-examination, OPW-2 admitted that the copy of the summary of monthly sales-report (*Exhibit-B/12*) was not duly authenticated by the OP/Company, and that there was no document to show that due to insubordination or misconduct of the applicant/workman, he had been cautioned by the OP/Company or any such steps were taken against him. It also came out during the cross-examination of OPW-2 that there was no document to show that the

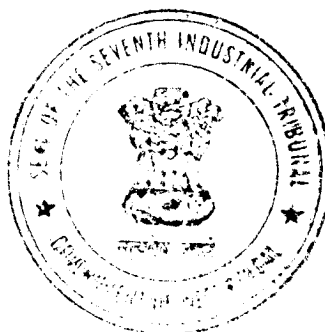
delinquent employee was given an opportunity to explain his behaviour / conduct in respect of the charges, or any of them, as mentioned in the termination letter (*Exhibit-3*) and it further came out that no enquiry was done by the OP/Company with respect to the alleged misconduct of the applicant/workman prior to his termination. To another query, OPW-2 admitted that the applicant/workmen had indeed lodged a protest letter refuting the allegations in the said letter of termination and while admitting that, OPW-2 also admitted that the workman used to promote the sales target of the company. In light of the facts, as have surfaced during cross-examination of OPW-2, the evidence led by the OP/Company does not inspire confidence and raises more questions in respect of its case / contentions than the answers it provides.

25. In the light of the aforesaid discussion, it is clear that there is nothing in evidence which would show, or support the contention, that the termination of the workman by letter dated 02.03.2015 (*Exhibit-3*) issued by the OP/Company was on account of any punishment or disciplinary action as was sought to be made out on behalf of the OP/Company. The grounds raised in the written statement of the OP/Company, especially about the alleged under-performance by the workman and misconduct being the reason for such termination, do not have legs to stand on and appear to be an afterthought and have been raised after issuance of the termination letter, lending support to the contention of the applicant/workman (*para 9, page 7 of his statement*) that such allegations/story were framed subsequent to his termination with the ill-motive of repairing its lapses, by the OP/Company. The OP/Company has failed to establish, by cogent and consistent evidence, that the termination was punitive on any justified grounds against the workman. That apart, from the evidence on record, it also stands established before this Tribunal that prior to issuance of the termination letter (*Exhibit-3*), at no point of time during the employment of the applicant/workman, was any letter of warning/caution/show-cause issued to him by



the OP/Company, nor any communication, recording any alleged misconduct or insubordination or such other grounds, was ever made to the workman by the OP/Company.

26. Since the OP/Company has failed to establish, by cogent and consistent evidence, that the termination of employment of the applicant/workman by them was not on account of any punishment meted out by the OP/Company, or even punitive in any manner in terms of his employment, this Tribunal holds that such termination of the services of the applicant/workman clearly was an act of '**retrenchment**' as defined under Section 2(oo) of the Industrial Disputes Act, 1947 [renumbered Section 2(ooo) by the West Bengal Amendment Act 17 of 2007], by the OP/Company, and accordingly, this Tribunal would further proceed to examine if the OP/Company had complied with the statutory conditions prescribed for retrenchment of a workman, under the Industrial Disputes Act, 1947. In that context, it is in evidence that, having joined the company on 21.1.2013 (*Exhibit-1*), the applicant/ workman continued to be in employment till his termination from such services w.e.f. 01.04.2015 vide letter dated 02.03.2015 (*Exhibit-3*). There is nothing in evidence nor was it pleaded by the OP/Company that such service of the workman was not 'uninterrupted' or was 'broken' on account of acts of the workman himself or for reasons that could be ascribed to the workman. Clearly therefore, on the basis of the evidence on record, it comes out that the applicant/workman had rendered uninterrupted service for over two years to the OP/Company and, in absence of any contra-evidence, this Tribunal holds that such service of the applicant/workman would qualify as '**continuous service**' under Section 25B of the Industrial Disputes Act, 1947, and in such view of the matter, this Tribunal further holds that the retrenchment of the workman was required to be done in compliance with the provisions of Section 25F and such other provisions of the Industrial Disputes Act, 1947, failing which such retrenchment would be in violation



of law laid down, and hence illegal and void *ab-initio*. In this context, it is in evidence that no retrenchment compensation was paid to the workman by the OP/Company while terminating his services and in fact, the letter of termination (Exhibit-3) does not speak of any such payment made to the workman by the OP/Company. That apart, the OP/Company has also failed to produce any documentary evidence to show that they had taken steps in compliance with Section 25F of the said Act while terminating the services of the applicant / workman.

27. In light of the aforesaid discussions, and deliberation upon the evidence brought by both parties in support of their contention and pleadings, this Tribunal holds that the termination of services of the applicant/workman Sudhanshu Bhowmick by the letter dated 02.03.2015 (*Exhibit-3*) of the OP/Company M/s. Supreme Industries Ltd. was a case of **retrenchment**, *as defined under Section 2(oo) of the Industrial Disputes Act, 1947*, and this Tribunal further holds that such retrenchment/termination was unlawful and void-ab-initio, being hit by and violative of express provisions of Section 25F of the Industrial Disputes Act, 1947.

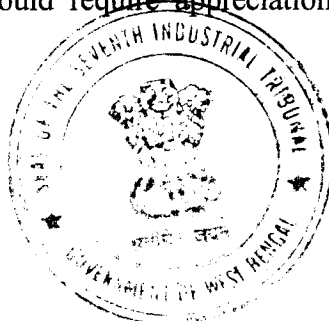
The Issue No.3 is thus answered, in favour of the applicant, as against the OP/Company.

Issue No. 4 : “If not, whether the applicant is entitled to get relief of ‘reinstatement’ with back wages ?”

&

Issue No. 5 : “Whether the applicant is entitled to any other relief ?”

Since both the aforesaid Issues would require deliberation on similar lines, and since answers to both such Issues would require appreciation of similar and connected



pieces of evidence, discussions with regard to both are being undertaken together hereinafter, for sake of brevity and to avoid repetition.

28. In light of the findings in respect of Issue No. 3, it is imperative to examine as to what relief(s) the workman would be entitled to as per law. Law, in this regard, has been laid down in various pronouncements of the Hon'ble Supreme Court, applying to various fact-situations. Discussing the law laid down through various pronouncements, the Hon'ble Supreme Court, by judgment dated August 12, 2013 passed in Civil Appeal No.6767 of 2013 ***Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors***, as reported in (2013) 10 Supreme Court Cases 324, and relied upon by the applicant in this proceedings, was pleased to hold, inter alia, at para 38 thereof as follows :

38. *The propositions which can be culled out from the aforementioned judgments are:*
- 38.1. *In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
- 38.2. *The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
- 38.3. *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

- 38.4. *The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.*
- 38.5. *The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.*
- 38.6. *In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53].*
- 38.7. *The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53], [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.*



29. Having examined the provisions of law, it is imperative to examine the stand and evidence of the parties on the issue of relief(s) to which the applicant/workman may be entitled to as per law.
30. The applicant/workman, at paragraph 11 of his pleadings, stated that the termination of his services was not only arbitrary but illegal also, and after such illegal and wrongful termination of his services, he was still unemployed and passing his days in tremendous financial stringency along with his family members, and further he stated that despite his sincere efforts, he could not secure any suitable job elsewhere and as a result, besides his unspeakable financial hardship, he is also suffering from mental agony. Stating that his last drawn salary was Rs. 11,940/- (gross), the applicant/workman prayed that this Tribunal declare his termination of service by the management of the OP/Company w.e.f. 01.04.2015 as absolutely unjustified and illegal, and pass an Award granting the relief of reinstatement with back-wages and all consequential relief in his favour.
31. The OP/Company has not specifically met the aforesaid contentions of the applicant/workman, in their written statement, and in fact, at paragraph 18 thereof, they have stated to the effect that the aforesaid contentions of the workman are his submissions and therefore, are not denied.
32. In the light of the aforesaid pleadings of the parties, this Tribunal proceeded to examine the evidence on record, wherefrom it appears that PW-1 testified that he was about 48 years old (*as on 05.01.2017*) and was still unemployed after forceful termination of his services illegally by the OP/Company (*para 11*) and he could not secure any alternate employment and was suffering a lot with his family members, and further PW-1 stated that he could not file the case within the prescribed time due to



paucity of money to meet up day-to-day expenses, and PW-1 prayed that an Award be passed holding his termination wholly unjustified and illegal, and grant him normal relief of reinstatement in service with full back-wages along with consequential relief, otherwise being an unfortunate workman he would suffer irreparable loss and injury. From the cross-examination of PW-1, there appears nothing that would render his aforesaid testimony unbelievable or even put to any doubt. In fact, it appears that not a single question / suggestion was put to PW-1 in respect of his claim of unemployment or the resulting sufferings and financial stringency, or to the effect that he was not entitled to reinstatement with full back-wages or at all. Further, except a singular assertion by OPW-2 (*at para 24 of his chief*) that the applicant was not entitled to be reinstated with back-wages and any other relief, as prayed for by him, this Tribunal finds that nowhere in the testimony of OPW-1 or OPW-2 has the assertion of the applicant/workman, in respect of his continuing unemployment or the resulting sufferings and financial stringency due to such illegal termination of his services by the OP/Company, has been challenged or even denied. That apart, the singular assertion of OPW-2, as aforesaid, appears to be made only for the reason of the alleged misconduct of the workman, which does not find support in the evidence led by the OP/Company.

33. In light of the aforesaid discussion, this Tribunal holds that the applicant/workman has established, by cogent and consistent evidence on record, that he was a **permanent employee** of the OP/Company who had put in over **two years of continuous service** to the OP/Company, and at the age (46 years) when his services were unlawfully terminated by the OP/Company it has not been possible for him to secure alternate employment, as a result of which he remains **unemployed**, facing financial stringency and suffering a lot with his family members, and undergoing mental agony, and further this Tribunal holds, in terms of employment of the applicant workman



(Exhibit-1, *clause 15*), that in the usual course the applicant would have served the OP/Company till his age of 58 years had it not been for such unjustified and illegal termination of his services by the OP/Company. Considering the present age of the applicant/workman, he is not near his age of retirement either. That apart, there is nothing on record to indicate or show that the OP/Company is suffering from financial constraints or loss/ closure of business (or part thereof) and/or consequent reduction of staff-strength or such other challenges that may indicate mitigating circumstances, against the prayers made by the applicant/workman. In view of the fact-situation, as has emerged from the evidence on record, this Tribunal further holds that the applicant/workman is found entitled to, and the ends of justice would be served if he be reinstated in his services with the OP/Company, w.e.f. 01.04.2015 with a direction upon the OP/Company to pay full back-wages and consequential benefits to the workman, arising out of such reinstatement of the workman. In this context, this Tribunal has also perused the judgment passed by the Hon'ble Supreme Court in **Municipal Council, Sujanpur versus Surinder Kumar** on 5th May, 2006 and reported in **(2006) 5 Supreme Court Cases 173**, and relied upon by the OP/Company, however the ratio laid down therein would not apply in the fact-situation as has come out in this case as aforesaid, and this Tribunal is of the view that payment of compensation in lieu of reinstatement would not serve the ends of justice in the peculiar facts and circumstances of this case.

The Issue Nos. 4 & 5 are answered accordingly, in favour of the workman, as against the OP/Company.

34. Accordingly, and in light of the law laid down by the judgment passed by Hon'ble Supreme Court in **Deepali Gundu Surwase** (*supra*), this Tribunal finds and holds that



the applicant/workman is entitled to the following relief(s) and is granted the same,
and hence :

IT IS HEREBY

ORDERED

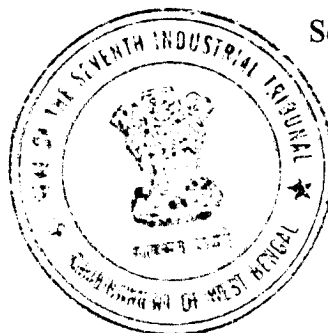
- (i) That, the order dated 02nd March 2015 terminating the services of the workman Sudhanshu Bhowmick w.e.f. 01-04-2015 issued by his employer M/s. The Supreme Industries Ltd, the OP/Company herein, is found and held to be unjustified and unlawful, and is a case of retrenchment, and is hereby set aside for it being illegal and unsustainable in terms of Section 25F, and such other provisions, of the Industrial Disputes Act, 1947:
- (ii) That, the workman Sudhanshu Bhowmick is hereby directed to be reinstated in his services of the OP/Company w.e.f. 01-04-2015, and the OP/Company shall pay him full back-wages and accord him full consequential benefits, arising out of his such reinstatement;

All the **Issues** in the instant proceedings are answered in the aforesaid terms. The aforesaid shall constitute the **Award** of this Tribunal, in the instant Case No.64 / 10(1B)(d) / 2015, which shall stand disposed of, **on contest**.

Dictated & Corrected by me

sd/-
Judge

sd/-
Judge



sd/-
(Avani Pal Singh)
Judge
Seventh Industrial Tribunal,
Kolkata
06-08-2018
sd/-
Seventh Industrial Tribunal