

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

No. Labr/ 1464 /(LC-IR)/ 22015/25/2025

Date : 22/12/2025


ORDER

WHEREAS an industrial dispute existed between M/s. Zydus Healthcare Limited, 12A, Swinhoe Street, Ballygunj, Kolkata - 700019 and its workman Sri Prasenjit Mondal, S/o. Late Biswanath Mondal, 197, Rajani Mukherjee Road, Kolkata - 700038, regarding the issues, being a matter specified in the second schedule of the Industrial Dispute Act' 1947 (14 of 1947);

AND WHEREAS the 7th Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 04.12.2025 in Case No. 22/2021 on the said Industrial Dispute Vide e-mail dated 11.12.2025 in compliance of Section 10(2A) of the I.D. Act' 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act' 1947 (14 of 1947), the Governor is hereby pleased to publish the said Award in the Labour Department's official website i.e **labour.wb.gov.in**

By order of the Governor,


Assistant Secretary

to the Government of West Bengal

No. Labr/ 1464 /1(5)/(LC-IR)/ 22015/25/2025

Date : 22/12/2025

Copy forwarded for information and necessary action to :-

1. M/s. Zydus Healthcare Limited, 12A, Swinhoe Street, Ballygunj, Kolkata - 700019.
2. Sri Prasenjit Mondal, S/o. Late Biswanath Mondal, 197, Rajani Mukherjee Road, Kolkata - 700038.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata - 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with request to cast the Award in the Department's website.


Assistant Secretary


to the Government of West Bengal

No. Labr/ 1464 /2(3)/(LC-IR)/ 22015/25/2025

Date : 22/12/2025

Copy forwarded for information to :-

1. The Judge, 7th Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with reference to e-mail dated 11.12.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary

to the Government of West Bengal

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

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

CASE No. 22/2021

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

**Sri Prasenjit Mondal,
S/o. Late Biswanath Mondal,
197, Rajani Mukherjee Road,
Kolkata- 700038**

...Applicant

-Versus-

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

....OP/Company

This Award delivered on Thursday, this the 4th day of December, 2025

A W A R D

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

The applicant's case, in short, is that he was appointed as Trainee medical Representative by the opposite party company namely Zydus Zydus Healthcare Limited formerly known as M/s Cadila Healthcare Limited on 04.4.2009 and that his appointment letter was issued in terms of Form-A of Sales Promotion Employees (Condition of Service) Act, 1976 and that on 31st March, 2010 his services was confirmed by

the company due his sincerity and dedication towards his job. The applicant stated that the above-named company is carrying on business in Pharmaceuticals Produces and involved in manufacturing of popular pharmaceuticals products and marketing having its Registered Office at 'Zydus Corporate Park' Scheme No.63, Survey No.538, Khoraj (Gandhinagar), № Vaishnodevi S.G.Highway, Circle, 382481 and Head Office at Zydus Healthcare Limited Ahmedabad Zydus Tower, CTS No. 460/06 Village Pahadi, Off I.B. Patel Road, Goregaon (East), Mumbai- 400 063 and Regional Branch Office of the Company is at 12A, Swinhoe Street, Presently Renamed as Anil Moitra Sarani, PS Gariahat, Kolkata-700019, West Bengal from where it controls and manages the affairs of business of the opposite party company and the applicant used to perform the duties as per the instructions of the Area Business Manager, Regional Business Manager being posted at the Kolkata. The applicant used to work as Marketing Executive in Aeroforce Division and his headquarter was Kolkata. He used to discharge his duties as per the direction of his superior and/or superiors. The applicant/workman was employed by the company as one Sales Promotion Employee as per the Sales Promotion Employees (Conditions of Service) Act; 1976 and he is covered U/S 2(s) of the Industrial Disputes Act; 1947, as applicable in the State of West Bengal. He further stated that while discharging his regular duties, he used to promote the products of the company and he never discharged his duty in managerial / administrative / supervisory capacity and neither he had any power to initiate any disciplinary proceeding against any employee of the company nor he had any SO ever in nature power to take any decision what independently, which was binding upon the company. He had no subordinate upon whom he used to control and supervise and for that there was no

scope of assessing performance of anybody. As a regular duty he used to send his work report to higher authority. Rather, he used to obey the orders of his superior. The Headquarter of the workman/applicant was Kolkata and he his principal place of work was in Kolkata only. The workman/applicant is an active member of Trade Union namely All West Bengal Sales Representatives Union being Registration No. WB 12662. He used to participate in the movements of the said union who used to raise its voice with regard to unfair and illegal labour practice upon its members. As a sequel thereto he became an eyesore to the management and he has been victimized by the management. The applicant further stated that he had sincerely and diligently served the company. There was no complaint from any corner of the opposite party company with regard to his discharge of duty. It is relevant to mention herein that applicant/workman was in receipt of Charge Sheet- cum-Dismissal Order being Ref: AG:nt:mk:24384 Dated June 06, 2020. After, perusing that various false and fabricated letter, it transpired that allegations were levelled against the workman and all those allegation are stigmatic in nature, which on the contrary makes it mandatory to afford an opportunity to the applicant workman for proving his innocence but surprisingly the same was not done in the present case Even in the said letter, it has been specifically stated that they could not conduct an enquiry due to the then scenario of Covid-19. Even it has been specifically stated in the letter that management reserves its right to prove the aforesaid charges on merits before the appropriate Court/or Authority along with his past service record.

The applicant further stated that in the said Chargesheet-cum- Dismissal, it was stated that (i) Wilful

Insubordination and disobedience, lawful and reasonable orders of the superior; (ii) Dishonesty in connection with the employer's business; (iii) Riotous, disorderly and Indecent behavior and (iv) Commission of any acts subversive of discipline and good behavior-- were established but unfortunately no documents were forwarded to the applicant from which the aforesaid charges could be ascertained how the same has been established.

The applicant/workman further stated that no minimum opportunity was afforded to him to defend his case, whereas on the contrary allegations which have been levelled against him were stigmatic in nature. Thus, minimum opportunity of self defence was not provided to the workman, as no internal enquiry and/or any disciplinary enquiry was conducted by the opposite party. The applicant stated that it is settled position of law that before dismissing a person, principles of natural justice has to be followed and moreso when applicant/workman was a permanent employee. The workman/applicant further stated that on 10th July, 2020, he had made representation where he denied all the allegations which were levelled against him. He also categorically stated that a purported FIR was lodged at Behala Police Station being Behala P.S. Case No. 163 under sections 114/323/341/506 of Indian Penal Code, the complaint dated 05/06/2020 and in the said complaint, the workman/applicant was arrayed as an accused and his name transpires as accused No. 2. The said complaint was lodged by one Mr. Subhabrata Dutta being an employee of the opposite party company and that false allegation were levelled against the applicant/workman. The complainant had withdrawn the name of the so called accused Mr. Partha Sarathi Dasgupta an employee of 'Integrace' division of

Glenmark Limited. The applicant further stated that it can quite safely be presumed that the alleged incident which has been scripted in the FIR by Mr. Subhabrata Dutta was a cooked up story. In the said FIR it was stated that complainant was assaulted by a group of people, then how come the name of the first accused be deleted/withdrawn. Hence, it quite safely be presumed that no such incident had ever taken place. The workman/applicant further stated that he had complied with the notice of Section 41A of CrPC which was served upon him by the concerned investigating officer and subsequently, he had surrendered before the Learned Additional Chief Judicial Magistrate, Alipore on 06/07/2020 and was enlarged on bail on the even date and that investigation has been completed by the police authorities and submitted Charge Sheet No. 248/2020 Dated 15/09/2020 under Section 323/341/506 of Indian Penal Code.

The applicant/workman further stated that in the meantime applicant/workman was in receipt of message from his bank that an amount to the tune of his Rs 90391.09 /- (Ninety Thousand Three Hundred Ninety One Only) has been credited in his bank account under the head of salary on 24/08/2020. After, receiving the said message workman/applicant was prompt enough to acknowledge the said amount and he had served an email dated 26/08/2020 at 10.37 wherein he had stated that he is thankful to the management as they have accepted the appeal and had revoked the termination order dated 06/06/2020. Further, he had ensured that he will discharge his duties sincerely and diligently in future. Thereafter, one mail was sent to the applicant/workman wherein it was stated that the amount which was sent to him was not his salary. It is relevant to

mention herein that it for the first time he came to learn from the email dated 26.08.2020 at 2.35 p.m. that it was not his salary and as a sequel thereto one attachment for the first time was sent to him through the email. The workman/applicant further stated that he sent a letter through email dated 26.08.2020 at 5.13 pm to Mr. Narendra B. Tanger in reply to his letter dated 26.08.2020. thereafter, on 27.08.2020 Mr. Narendra B. Tanger again sent a letter to the workman/applicant by email dated 27.08.2020 at 3.38 pm where it was stated that "your full and final payment of dues are credited in the bank account available with us". With response to the said letter dated 27.08.2020 the workman/applicant sent a letter through email dated 27.08.2020 at 6.48 pm. Mr. Narendra B. Tangar again sent a letter through email at 7.08 pm to the workman/applicant on the same day i.e. 27.08.2020. The workman/applicant also sent a letter through email at 7.54 pm on 27.08.2020 in reply to the email dated 27.08.2020 of 7.08 pm. At 8.11pm Mr. Narendra B. Tanger sent email to the workman/applicant and the workman/applicant also replied to said email at 8.54 pm on 27.08.2020. The workman/applicant further stated that he was in receipt of letter being ZHL/Aeroforce/HR/2020 dated 17/08/2020 wherein it was stated that a cheque No. 381302 dated 14/08/2020 amounting to the tune of Rs 1,29,000/- was sent to him as full and final due pursuant to his termination dated 06/06/2020 and further It was directed to him that he may process online for his provident fund dues and that the said amount has been sent to him through post. The workman/applicant responded to the said letter through email dated 11/09/2020 at 3.33 pm wherein he had specifically stated to authorize someone to receive both the cheque and the amount which has been submitted to his account so that he can hand over the same to the authorized

person. Subsequently, Mr. Nagesh G Nayak sent one email dated 14/09/2020 at 7.00pm to the workman/applicant again. The workman/applicant as a sequel thereto sent another email dated 15/09/2020 at 12.36 pm in response to the email of the company dated 14/09/2020. Thereafter, company again sent one email dated 22/09/2020 to the workman/applicant. The applicant/workman vide email dated 6/10/2020 at 10.40 AM again written a email to the company wherein he again requested the company to collect the cheque and payment which has been submitted in the account of the workman/applicant. Despite this, the company did not bother to sent anyone to collect the same inspite of having an establishment in Kolkata and as a sequel thereto, the workman vide email dated 8/10/2020 at 6.59 PM requested them to collect the same. The workman/applicant has made several verbal prayers as well as an appeal before the opposite party/ management so that he may be allowed to resume his duties since he being the sole earning member of his family and during this hard time, the opposite party should consider his prayer for joining his duties. The applicant/workman further stated that the Behala P.S. Case No. 163 Under Section 114/323/341/506 of Indian Penal Code dated 05/06/2020 was lodged against a group of person and the allegation which have been levelled in the said complaint are no way connected with his employment and the same do not have any nexus. Thus, applicant/workman has been terminated without any fault of his own and he has been victimized the opposite party for the reasons best known to them and while terminating his service by the opposite party company his loyal service for several years was not considered. The workman/applicant further stated that he came to learn that the opposite party company has decided to initiate disciplinary proceeding against some workmen but surprisingly in his instant case,

the opposite party/ company had refrained from conducting any disciplinary proceeding against the workman. Thus, from the very conduct of the management it is quite clear that the workman/applicant has been deliberately victimized by the opposite party company for the reasons best known to them.

The workman /applicant further stated that finding no other alternative, he was compelled to draw the attention of the Labour Commissioner Government of West Bengal over the issue vide email dated 25th September, 2020 and sought for intervention in the illegal and unlawful termination of the service of the workman w.e.f. 06/06/2020 by the opposite party/company and on the basis of such request, the conciliation proceeding was drawn up by the Asst. Labour Commissioner Govt. of West Bengal on the subject of alleged "Illegal termination of Service". The company never participated in conciliation proceeding and as such due to the adamant and non-cooperative attitude of the management, the conciliation process failed.

The applicant/workman further stated that he has been victimised by the opposite party/ company due to his union activities and that he, most of the times, raised his voice against the unfair labour practices of the opposite company thus he had been arbitrarily, unlawfully and illegally terminated by the opposite party management. The Chargesheet-cum-Order-of-Dismissal dated 06/06/2020 contains various types of allegations which were leveled against the workman which are stigmatic in nature and that during the 12 years service tenure, he had never faced any disciplinary proceedings by the opposite party/ company and surprisingly, for the first time, he is hearing about the allegations which are being levelled against him and that to

no supportive documents have been provided to him and even he was not given any minimum opportunity of his self defence and that record of his past service was not taken into account by the opposite party/ management. Such allegations which are being levelled in the chargesheet-cum order of dismissal was never brought against him by issuing any letter of warning / show cause containing any allegation and for that it is strongly believed that such story was framed subsequent to his unlawful termination of service with ill motive to repair the lapses. The applicant/workman prayed for the relief of reinstatement of service with full back wages along with consequential relief.

The applicant/workman further stated that the conciliation proceeding as drawn up by the Asst. Labour Commissioner; Govt. of West Bengal failed due to uncompromising attitude taken by the company the matter could not be settled and as such, when the applicant/workman understood that the management is maintaining a silence over the issue thereby they are unnecessarily delaying the matter before the conciliation Officer, as such, finding no other alternative he filed one Form P/4 on 04.08.2020 to Mr. M.K.Saha Joint. Labour Commissioner Govt. of West Bengal and on the strength of this form the applicant filed this application before this Ld. Tribunal.

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

mental agony. He further stated that his last drawn wages was Rs. 42000/-.

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

The applicant prayed to hold the termination of the service of the applicant by the management of the OP/Company with effect from 06.06.2020 as absolutely illegal and unjustified and prayed for passing Award granting the relief of reinstatement of service with full back wages along with all consequential relief.

The OP/Company after service of notice, entered appearance and filed written statement wherein they have denied each and every allegation brought against them. The OP/Company stated that it is a pharmaceutical company and registered as per the provisions of the Companies Act, 1956 under the name and style of Zydus Health Care Limited having its Registered office at Zydus Corporate Park, Scheme No.-63, Survey No.536, Khoraj (Gandhinagar), N.r. Vaishnodevi Circle, A.G.Highway, Ahmedabad 382481 and Head Office at Zydus Tower, CTS No.406/6 of village Pahadi, off 1.B.Patel Road, Gurgaon (East), Mumbai - 400 063 and that there is no office or establishment of the company in the state of West Bengal wherefrom and where under the company controls and manages the affairs of its business and/or carried out any administrative activities relating to the Sales Promotion employees. The OP/Company further stated that the company for some incidental business purposes, very occasionally, used the apartment/office at Kolkata which has been purportedly described by the applicant/alleged workman as 'Regional Branch Office/ Local Office' and that the aforesaid Kolkata address of the company was mentioned with an oblique intent to mislead

the authority/court and that the applicant/alleged workman had also never made any communication to the company at the aforesaid purported Kolkata address during the entire period of his employment knowing it fully that any administrative activities or any work relating to the work of sales promotion employed had never been carried out from the said establishment of the company at Kolkata and as such controlling and/or managing the affairs of the company relating to the work/duty of the sales promotion employees in any nature whatsoever is out and out false and far from truth.

The OP/Company further stated that applicant/alleged workman and all other Sales Promotion Employees (SPEs) employed in the state of West Bengal also usually carry out their day to day work under the control and supervision of the head office at Mumbai through the digital platform. The sales promotion employees working in the state of West Bengal, irrespective of Division, also used to submit their daily work report and all other communications to the Head office through the official portal of the company 'Zydus Frontline' and that in all practical purposes, Sales Promotion Employees of the company irrespective of division working in the state of West Bengal are administered, controlled and supervised from the Head office of the company. Therefore in all practical sense, the applicant/alleged workman has rendered his duties under the administrative control and supervision of the Head Office at Mumbai and not from the establishment at Kolkata.

The OP/Company further stated that the company has one digital platform called 'Zydus Frontline' and all field employees can access to the Zydus Frontline through their login ID and confidential password which is known to the concerned field employee only and that no other person or

employee can have access to the login ID of any field employee and further stated that the reporting managers of field employees have also their login ID and confidential password and that all field employees used to submit their daily work reports, leave application and all other communication on the above digital platform, of any nature whatsoever and that the daily work report etc. is automatically shared with the respective Reporting Managers through the system and they can only see the daily work reports of their subordinates but cannot modify it. The OP/Company further stated that the above Zydus Frontline can be accessed by field employees through Computer, laptop or smart-phones etc. from anywhere having internet connection. The OP/Company further stated that in view of spreading over of corona virus (Covid-19) in India and upon taking into consideration its magnitude in different states, the company issued the circular "Safety advisory note on COVID-19" on 20th March, 2020 in order to uphold the Zydus philosophy of keeping employees health and safety as a primary concern and thereby advised its employees to 'Work from Home' and that one dismissed employee Subir Kumar Bandyopadhyay, purportedly claiming to be the spokesperson of a meager number of Sales Promotion Employees, who are members of the All West Bengal Sales Representative Union, and purportedly claiming to be an executive committee member of the said union, made not only series of communication to the management in utter disregard to the guidelines / circulars issued by the company with regard to Work from Home and had also deliberately not only refused to participate in the online test and e-training programme as a part of work from home, disregarding and disobeying the guidelines and circulars issued by the company but also instigated and deliberately misguided others for not participating and/or

adhering to the management instructions as per the guidelines/circulars of the management under the heading 'Safety advisory notes on COVID-19' and 'Post Lockdown Field Work Restoration'. The OP/Company further stated that the said Subir Bandyopadhyay purportedly claiming to be a self styled leader of the above Union sent series of e-mails to the company defying and violating the lawful order of the management and had also deliberately, for the purpose of maligning, defaming and ridiculing the company, made series of communication to the management with a view to satisfy his ego and establish his leadership amongst his blind followers and to establish his command/ high handedness over and above the management and he was dismissed from service on 04.06.2020.

The OP/Company further stated that as per practice, Regional Business Manager (RBM) duly informed about the joint field work programme (JFW) well in advance to the respective Area Business Manager (ABM) and accordingly Subhabrata Dutta (RBM) informed about the joint field work for the month of June 2020 and Joy Roy one of the Area Business Manager duly reverted back to Subhabrata Dutta about the pre-scheduled programme of joint field work on 05.06.2020. The OP/Company further stated that on 04.06.2020, the applicant/workman concerned duly discussed, planned with Shubhabrata Dutta (RBM) about the joint field work which was scheduled on 05.06.2020 over mobile phone and the same was also confirmed in the night by the applicant/workman through SMS to Shubhabrata Dutta (RBM) and even while Shubhabrata Dutta (RBM) was on the way to the scheduled place by his car on 05.06.2020, the applicant/workman called him twice over the phone to know about his exact location. Mr. Shubhabrata Dutta (RBM) reached the scheduled meeting point near Dr.Sukomal Dey's Clinic at Matrimoyee Medical Hall on

Roybahadur Road, Behala, Kolkata-700034 at about 10.40 AM and he found that the applicant /workman had already reached thereat and that while they were talking and/or discussing about official work plan for the day, then suddenly 7 to 8 unknown persons came at the spot and claimed themselves as members of All West Bengal Sales Representatives' Union (AWBSRU). The applicant/workman introduced Mr. Subhabrata Dutta, RBM before them as Business Manager of the company. Thereafter those unknown persons forced him to go to nearby a narrow secluded by-lane on the pretext of discussing issue of persons encircled dismissal of Subir Bandyopadhyay, and thereafter, the applicant /workman alongwith those unknown persons started undue arguments with Mr.Dutta and at the instance of applicant/workman, those unknown persons started threatening and humiliating to Mr. Dutta and even those unknown persons pushed Sri S Dutta on his chest, held his collar and shirt and started manhandling him and as a result Mr. Subhabrata Dutta (RBM) fell down on the road. In course of such incident of physical assault, those unknown persons constantly insisted and pressurized Mr.Subhabrata Dutta (RBM) to call Mr. Ananda Gawde, Sr.VP-(HR) to resolve the issue of Subir Bandyopadhyay's termination and Mr. S. Dutta, being succumbed to the pressure, called Mr.Gawde but could not connect him as his phone was busy. Then the applicant/workman alongwith those unknown persons forced Mr.Dutta to connect Mr.Atul Bagal, Sr.Manager (HR) and after getting him connected, one of those unknown persons introducing himself as Parthasarathi Dasgupta of Glenmark Pharmaceuticals Integral Division, started threatening him with abusive languages and asked him to inform Mr.Gawde to call Mr. Subhabrata Dutta on his mobile phone immediately and all the conversations over mobile phone were done with the

mobile phone of Subhabrata Dutta (BM) being in the loudspeaker mode. Immediately thereafter, Mr. Gawde called Mr. Abhijit Mazumder at Kolkata and narrated him the incident and thereby asked Mr. Majumder to locate and rescue Mr. Subhabrata Dutta and to do whatever be warranted and required and that on receiving such calls from Mr. Gawde, he immediately called up Mr. Kaustav Sinha Roy (ABM), subordinate of Mr. Subhabrata Dutta (RBM) to find out the location of Mr. Subhabrata Dutta. Mr. Kaustav knowing that the location was to be in Behala called up Thakurpukur PS and gave the number of Mr. Dutta to find him out and help for rescuing him. The Police personnel from Thakurpukur Police Station called up Mr. Subhabrata Dutta in his mobile phone to locate him. When the phone rang, due to installation of True Caller app, the name of Thakurpukur PS popped up in the display. Immediately, under the instruction of the unknown persons, Mr. Dutta took the call which was on loud speaker and told them his exact location, which was at a bye-lane on Roy Bahadur Road, Behala near Union Drug beside Matrimoyee Medical Hall. When these unknown persons understood that the exact location of Mr. Dutta has been ascertained by the Police Personnel and at any moment, the police may come to the said spot, they abandoned the place and fled away. Surprisingly Mr. Dutta found that Mr. Prosenjit Mondal also disappeared leaving him alone in such a traumatized and injured state. In the meantime, Thakurpukur P.S. informed Mr. Kaustav Sinha Roy about the exact location of Mr. Dutta and advised him to contact Behala PS for his rescue since the area concerned falls under the jurisdiction of the Behala PS. Mr. Kaustav Sinha Roy informed Mr. Avijit Majumder about the same and consequently Mr. Majumder informed Behala P.S. and Behala PS in turn sent their mobile search team to the concerned place in order to rescue Mr. Dutta,

but by that time Mr. Dutta left the place in his own car and approached towards Behala PS. As a result of such physical assault, Sri Dutta sustained injuries on his person and was traumatized. On that day since latter on Sri Dutta's condition warranted medical attendance and treatment and he received medical treatment at Vidyasagar State General Hospital, Behala at around 12.30 p.m. In view of such occurrence of incident of assault, Sri S. Dutta thereafter went to Behala P.S. and lodged a written complaint/against Sri Prasenjit Mondal & one of those unknown persons who had disclosed himself to be Partha Sarathi Dasgupta of Glenmark Pharmaceuticals Integral Division during the heated up conversation at the time of occurrence of the incidence, before the Officer-in-charge Behala police station and acting upon such complaint, F.I.R. was registered and Behala P.S. case No. 163/2020 dated 05.06.2020 U/S 114, 323, 341 and 506 of IPC was commenced against (i) Partha Sarathi Dasgupta (one of unknown persons who claimed/introduced himself to be so) and (ii) Sri Prasenjit Mondal respectively as accused no.1 and 2. Sri Shubabrata Dutta (RBM) duly informed to the higher management over phone immediately after the incident of his assault causing injury in person and on that day also reported the entire incident to the higher management through email wherein a copy of the written complaint made before Behala PS and SMS screenshot of Prasenjit Mondal regarding joint field work.

The OP/Company further stated that on receiving the aforesaid email dated 5.6.2020 from Shubabrata Dutta alongwith attachment, the management duly made preliminary investigation and it was found that on 05.06.2020, the applicant/workman applied for a leave at 11:30:07 am (on 05.06.2020) stating the reason as "social" through email. The same was not accorded sanction by the

Area Business Manager, Mr. Joy Roy and as a consequence it was marked as "unauthorized absence" in the system. However the entire matter regarding the incident took place on 05.06.2020 was viewed dispassionately by the management and on preliminary enquiry, prima facie having been satisfied about the acts of misconduct committed by the applicant/workman and in consideration of the gravity of the misconduct and since the management is unable to repose any confidence upon him, the chargesheet-cum-dismissal-order dated 06.06.2020 was issued.

The OP/Company further stated that in the said order dated 06.06.2020, it was also mentioned that in the normal course, the management would have conducted an enquiry in respect of the charges but in view of the current scenario of Covid-19, it would not become possible to conduct a formal enquiry besides, looking to his act of misconduct, his continuation in the employment was also detrimental to the interest and discipline of the organization and accordingly the management decided to dispense with the departmental enquiry.

In the said chargesheet-cum-dismissal order dated 06.06.2020, the acts of misconduct which were framed against the applicant/alleged workman are as follows:

- (i) Willful insubordination and disobedience, lawful and reasonable orders of the superiors;
- (ii) Dishonesty in connection with the employers' business;
- (iii) Riotous, disorderly and indecent behavior;
- (iv) Commission of any acts subversive of discipline and good behavior.

The aforesaid charge sheet cum dismissal order was sent to the applicant/alleged workman through email as well

as courier at his residential address. The company craved leave to establish the charges, gravity of the misconduct and the justifiability of the aforesaid order of dismissal by adducing evidence before the learned tribunal.

The OP/Company further stated that on receiving the aforesaid Chargesheet-cum-order-of-dismissal, the applicant/ alleged workman did not make any communication to the company until he was enlarged on bail on 06.07.2020 in the aforesaid Behala PS Case no.163/2020 and thereafter, the applicant/workman made the communication to the company through email dated 10.07.2020, in response to the said chargesheet-cum-dismissal order dated 06.06.2020 contending inter alia that the complaint against one of the main accused was proved to be wrong and the complainant Mr.Subhabrata Dutta, BM of the company had to withdraw the name of one Mr.Parthasarathi Dasgupta, an employee of 'Integrace' division of Glenmark. The OP/Company further stated that since the name of accused no.1 as mentioned by Sri Subhabrata Dutta in his complaint dated 05.06.2020, he made a further written complaint before the Behala P.S on 18.06.2020 contending inter alia that the accuse no.1 is named as Parthasarathi Dasgupta (one of unknown persons who introduce himself to be so) who in fact misnamed himself and the name would actually be Paushal Dasgupta and his nick name is Partha, an employee of Sanafi Aventis Ltd. and accordingly Mr. S Dutta, complainant urged for the substitution in the name of accuse no.1 and to exonerate Parthasarathi Dasgupta whose name was mentioned as accused no.1 in his written complaint dated 05.06.2020.

The Op/Company further stated that the applicant/alleged workman also in response to the said order dated 06.06.2020, inter alia stated that on 05.06.2020,

he had an appointment with Mr.Subhabrata Dutta, RBM at Behala for joint work and he went there to meet him in person to inform him about taking leave on that day on social ground and while he talked with Mr.Subhabrata Dutta on 05.06.2020, on meeting at the scheduled spot at Behala, he also informed to Mr.Dutta that he was mentally upset regarding the act of the company for termination of Subir Kumar Bandyopadhyay and after few minutes talk, both the applicant/alleged workman and S. Dutta left the place and he was not aware of any such incidents mentioned in the chargesheet-cum-dismissal order dated 06.06.2020.

The OP/Company further stated that the order of dismissal was just and proper in view of the gravity of misconducts committed by the applicant/alleged workman as mentioned in the said order dated 06.06.2020 and the applicant/alleged workman is not entitled to get reliefs as prayed for and/or any other relief.

The company reiterated that the applicant/alleged workman used to perform his duties under the control and supervision of the Head Office through the concerned Regional Business Manager/Area Business Manager who were posted at Kolkata but not at the Regional Branch Office as purportedly claimed by the Applicant and the applicant/alleged workman used to send all communication including daily work report to the Head Office of the company through the official portal namely Zydus Frontline.

The OP/Company further stated that Mr. S Dutta in connection with Behala PS Case no.163/2020 dated 05.06.2020 u/s 323/341/506 of the IPC made an application u/s 173(8) of the Court of Criminal Procedure before the Court of the Ld. Additional Chief Judicial

Magistrate, at Alipore, South 24 Parganas and the same has been registered as ACGR No.2598 of 2020 wherein inter-alia prayed for an order of further investigation of the case since the investigation officer without enquiring properly and without making any endeavors to arrest the other accused who were involved in assaulting him submitted chargesheet in said case against only one accused namely Prasenjit Mondal u/sec. 323/341/506 of the IPC deleting the section 114 of the Indian Penal Code and without any mention of the name of Poushal Dasgupta being the accused no.2.

The OP/Company further stated that the applicant/workman also filed an application u/s 200 of Cr.P.C. in the court of Ld. Additional Chief Judicial Magistrate at Alipore, South 24Parganas which has been registered as Complaint Case no.1761 of 2020 wherein it was interalia contended that in the month of middle of June 2020, the officer of Behala Police Station informed him that one criminal case was lodged against him related to one incident took place on 05.06.2020 and the said case was started on the basis of complaint lodged by Subhabrata Dutta and subsequently Sri Subhabrata Dutta heckled him in various ways and that on 07.10.2020, Sri Subhabrata Dutta called him and asked him to meet at 8 PM in his house at 50, Dhakuria Station Road, PS-Garfa, Kolkata 700 031 and the applicant/workman alongwith his two colleagues went at the said address but when they entered into the house of Subhabrata Dutta, he threatened the applicant/workman with dire consequences and used filthy languages and thereby inter alia prayed for investigation into the above mentioned matter and to start proceedings u/sec. 200 of the CrPC against Sri Subhabrata Dutta. The OP/Company further stated that the company duly submitted their comments before the Conciliation Officer vide its letter dated 26.03.2021. The OP/Company reiterated

that order of dismissal dated 06.06.2020 passed by the management is proper and just.

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

I S S U E S

1. Whether the instant case u/sec. 10(1B)(d) of the Industrial Tribunal Act, 1947 as amended is maintainable in law and facts ?
2. Whether the applicant is a workman as envisaged u/sec. 2(s) of the Industrial Tribunal Act, 1947 ?
3. Whether the termination/dismissal of the applicant with effect from 06.06.2020 by the Opposite Party/Company is justified ?
4. Whether the applicant is entitled to get an Award /order of reinstatement in service with full back wages/salary and other consequential benefits as prayed for ?
5. To what other relief(s) if any, the applicant is entitled to?

DECISION WITH REASONS

In order to establish his case, the applicant has examined himself as PW-1 and proved some documents, marked as Exhibits-1 to 25 respectively which are as follows:

Sl. No.	Description of document	Exhibit No.
1.	Copy of Letter of Appointment dated 04.04.2009	Exbt- 1
2.	The copy of Letter of confirmation of service dated 31.03.2010	Exbt- 2
3.	The copy of letter of Appointment in Form A	Exbt- 3

	issued by OP/Company	
4.	The copy of letter dated 08.06.2017 issued by the O.P./Company to PW-1	Exbt- 4
5.	The copy of appreciation letter dated 28.02.2019 issued by the O.P./Company to PW-1	Exbt- 5
6.	The copy of Long Service Certificate dated 04.04.2019 issued by the O.P./Company to PW-1	Exbt- 6
7.	Letter in respect of chargesheet-cum-dismissal order dated 06.06.2020 issued by the O.P./Company to PW-1.	Exbt- 7
8.	The printout copy of e mail dated 10.07.2020 of the appeal/representation made by PW-1 to the O.P.	Exbt- 8
9.	The copy of letter dated 17.08.2020 in respect of gratuity payment along with a cheque dated 14.08.2020 of Rs. 1,29,000/- sent by Mr. Nagesh G Nayek, Manager-Human Resource	Exbt- 9
10.	The copy of statement of account dated 07.09.2021 issued by State Bank of India, Alipore Branch to PW-1	Exbt- 10
11.	The printout copy of my email dated 26.08.2020 addressed to Mr. Ananda Gawde, Vice President of the O.P./Company	Exbt- 11
12.	The printout copy of e mail dated 27.08.2020 addressed to PW-1 by Mr. Narendra Tanger on behalf of the O.P./Company	Exbt- 12
13.	The printout copy of email dated 11.09.2020 sent by PW-1 to Mr. Nagesh G Nayek	Exbt- 13
14.	The printout copy of e mail dated 14.09.2020 sent by Mr. Nagesh G Nayek on behalf of the O.P. to PW-1	Exbt- 14
15	The printout copy of e mail sent to PW-1 by Mr. Nagesh G. Nayek dated 22.09.2020	Exbt- 15
16	The printout copy of e mail dated 08.10.2020 sent by PW-1 to Mr. Nagesh G Nayek	Exbt- 16
17	The copy of notice dated 12.06.2020 u/sec. 41A Cr.P.C., sent by Behala P.S. along with the relevant copies in connection with the police case, xerox copy of certified copy of order sheet	Exbt- 17
18	The copies of FIR dated 05.06.2020 and chargesheet	Exbt- 18
19	The copy of letter dated 25.01.2021 sent by PW-1 to the Labour Commissioner	Exbt- 19
20	The copy of letter dated 18.03.2021 sent by the Deputy Labour Commissioner, Sri M.K. Saha to the O.P./Company	Exbt- 20
21	The copy of P-4 Form dated 04.08.2021	Exbt-21
22	The copy of Form-S dated 09.08.2021	Exbt- 22
23	The printout copy of email sent to Mr. Dipesh Bhattacharya, an employee of the O.P./Com-	Exbt- 23

	pany by the O.P./Company dated 16.06.2020, Suspension Order, Chargesheet dated 30.06.2020, email dated 29.09.2020	
24	The printout copy of email in respect of suspension order to Mr. Anirban Chakraborty, Sr. Business Officer by Mr. Narendra B Tanger	Exbt- 24
25	The xerox certified copy of the application u/S 144 Cr.P.C. filed by the O.P. along with two order sheets	Exbt- 25

The OP/Company examined Sri Narendra Tangar, Deputy General Manager, IR of OP/Company as OPW-1. The following documents were marked as Exhibits A to S --

Sl. No.	Description of document	Exhibit No.
1.	The photocopy of extract of the resolution passed by the members of the Finance and Administration Committee at their meeting held on February 6, 2023 whereby OPW-1 have been authorized	Exbt- A
2.	The print out copy of the e mail dated 05.06.2020 from Subrata Dutta to Ananda Gawde (2 pages)	Exbt- B
3	The print out copies of the 3 e-mails dated 26.08.2020, 6 e-mails dated 27.08.2020, e-mail dated 11.09.2020, 14.09.2020, 15.09.2020, 2 e-mails dated 06.10.2020, 07.10.2020 and 08.10.2020	Exbt- C, C/1, C/2, C/3, C/4, C/5, C/6, C/7
4.	The print out copy of the system generated leave status dated 05.06.2020	Exbt- D
5.	The copy of chargesheet-cum-dismissal order dated 06.06.2020	Exbt- E
6.	The copy of the full and final settlement amount of Prasenjit Mondal	Exbt-F
7.	The xerox copy of letter dated 17.08.2020 issued by the management to the applicant	Exbt- G
8.	The xerox copy of letter dated 26.03.2021 written by the management of the O.P. to the Dy. Labour Commissioner, Kolkata	Exbt- H
9.	The print out copy of email dated 10.07.2020 written by the applicant to the O.P./Company	Exbt- I
10.	The print out copies of 2 emails dated 26.08.2020 sent by the applicant to the OP/ Company	Exbt- J & J/1
11.	The print out copy of email dated 27.08.2020 sent by the management of the	Exbt- K

	OP/Company	
12	The print out copy of email dated 27.08.2020 sent by the applicant to the OP/Company	Exbt- K/1
13	The print out copy of email dated 27.08.2020 sent by the Company to the applicant	Exbt- K/2
14	The print out copy of email dated 27.08.2020 sent by the applicant to the Company	Exbt- K/3
15	The print out copy of email dated 27.08.2020 sent by the Company to the applicant	Exbt- K/4
16	The print out copy of email dated 27.08.2020 sent by the applicant to the Company	Exbt- K/5
17	The print out copy of email dated 11.09.2020 sent by the applicant to the Company	Exbt- L
18	The print out copy of email dated 14.09.2020 sent by the Company to the applicant	Exbt- M
19	The print out copy of email dated 15.09.2020 sent by the applicant to the Company	Exbt- N
20	The print out copy of email dated 22.09.2020 sent by the Company of the applicant	Exbt- O
21	The print out copy of email dated 06.10..2020 sent by the applicant to the Company	Exbt- P
22	The print out copy of email dated 08.10.2020 sent by the applicant to the O.P./Company	Exbt- Q
23	The print out copy of email dated 07.10.2020 by the management of the O.P. to the applicant	Exbt- R
24	The copy of the memo dated 18.03.2021 issued by the Dy. Labour Commissioner, Kolkata to the O.P.	Exbt- S
25	The xerox copy of the slip of Behala P.S. Case No. 163 dated 05.06.2020	X for identification
26	The xerox copy of the medical papers	Y for identification

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

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

1. AIR 1958 SC 300 (Para-19)
2. (1970) 3 SCC 548 (Para-6)
3. (2011) 14 SCC 379 (Para-12)
4. (1984) 3 SCC 316 (Para-22)
5. (1999) 3 SCC 60 (Para-34,35,36,37)
6. AIR 1959 SC 484
7. (1999) 8 SCC 582
8. (2013) 10 SCC 324 (Para-38)
9. (2015) 9 SCC 345
10. (2022) 9 SCC 586 (Para- 16 to 19)
11. (2022) 13 SCC 202 (Para 31 to 33)
12. Judgment passed in WPA No. 7792 of 2025 (server copy)
13. 2023 SCC OnLine Del 1999
14. 2001(3) LLN 1106
15. 2010 SCC OnLine Bom395 :: (2011) 1 LLJ 622

The Ld. Advocate for the OP/Company relied on the following citations in support of the case of the OP/Company-

1. (1979) 3 SCC 371 (Para 29,30,31,32)
2. 1975 LabIC 94 (Cal HC) (Para 17)
3. 1982 LabIC 551 (Allahabd HC) (Par 3 to 5)
4. 1998 LLR 622 (Allahabad HC) (Para 7, 8, 9)
5. 2006 (108) FLR 146 (SC) (Para 9)

Issue No. 1 :

Whether the instant case u/sec. 10(1B)(d) of the Industrial Tribunal Act, 1947 as amended is maintainable in law and facts?

This issue implicitly includes within itself the adjudication as to territorial jurisdiction of this Tribunal to take cognizance of the instant case application. The instant

application has been filed by the applicant u/sec. 10(1B)(d) of the Industrial Disputes Act, 1947 challenging the termination of his service by the OP/Company vide termination letter dated 06.06.2020 nomenclatured as 'Chargesheet cum Order of Dismissal'.

The applicant has stated that the OP/Company hurriedly illegally and arbitrarily terminated the service of the workman during the period of pandemic COVID-19 without affording any opportunity to him to face domestic enquiry by way of letter styled as "Chargesheet cum Order of Dismissal" dated 06.06.2020 and that the said termination letter was also served upon the applicant at his residential address at Kolkata. The applicant further stated that the applicant left with no other alternative was compelled to raise the dispute before the Labour Commissioner, Government of West Bengal regarding his illegal and unlawful termination of the service w.e.f. 06.06.2020 by the OP/Company and on the basis of such request, the conciliation proceeding was drawn up by the Asst. Labour Commissioner, Govt. of West Bengal on the said dispute. The OP/Company duly participated in conciliation proceeding. Thereafter, the applicant filed application in format P-4 before the said authority and thereafter getting certificate thereof in Form -S (Exbt-22) filed the instant case before this Tribunal.

It appears from the said termination letter dated 06.06.2020 (Exbt-7/Exbt-E) that the same has been served on the Kolkata address.

In view of the above, this Tribunal has no hesitation to hold that the letter of termination of service dated 06.06.2020 has been received by the applicant in Kolkata within the territorial jurisdiction of this Tribunal.

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

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

The Apex Court further held-

“Yet again the appellants being workmen, their services were protected in terms of the Industrial Disputes Act, 1947. If their services were protected, an order of termination was required to be communicated. Communication of an order of termination itself may give rise to a cause of action. An order of termination takes effect from the date of communication of the said order.”

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

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

The PW-1 in examination in chief stated –

“I say the above-named company is carrying on business in Pharmaceuticals Produces and involved in manufacturing of

popular pharmaceuticals products and marketing, having its Registered Office at 'Zydus Corporate Park' Scheme No.63, Survey No.538, Khoraj (Gandhinagar), N°VaishnodeviCircle,S.G.Highway,Ahmedabad-382481 and Head Office at Zydus Healthcare Limited Zydus Tower, CTS No. 460/06 Village Pahadi3Off I.B. Patel Road, Goregaon (East), Mumbai- 400 063 and Regional Branch Office of the Company is at 12A, Swinhoe Street, Presently Renamed as Anil Moitra Sarani, PS Gariahat, Kolkata-700019, West Bengal from where it controls and manages the affairs of business of the opposite party company and I used to perform the duties as per the instructions of the Area Business Manager, Regional Business Manager being posted at the Kolkata. I used to work as Marketing Executive in Aeroforce Division and my headquarter was Kolkata, I used to discharge my duties as per the direction of my superior and/or superiors”.

PW-1 further stated in chief--

“I used to obey the orders of my superior. My headquarter was Kolkata and my principal place of work was in Kolkata only”.

The Exhibit-25 which is certified copy of the complaint petition filed by and on behalf of the OP/Company fortifies the case of the applicant on this score. On perusal of the Exhibit-25, it appears that the OP/Company stated in that petition that the OP/Company has its Regional Branch Office at 12A, Swinhoe Street, Kolkata- 700019 and deals with manufacturing and selling various types of medicines and Healthcare products to the people at large and conducts various Administrative works throughout the West Bengal including Kolkata region and referred the same as regional Branch/ Administrative Office. This is well within the territorial jurisdiction of this Tribunal.

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

Sec. 10(1B) of the said Act (WB Amendment) lays down---

(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)....

(c) The party may within a period of sixty days from the receipt of such certificatefile an application in such form and in such manner..... to such Labour Court or Tribunal.....”

From Exbt-7 (Exbt-E) demonstrates the termination of the applicant by the OP/Company. Sec. 10(1B)(d) of the said Act (WB Amendment) allows such person to prefer the application under said section before the Industrial Tribunal.

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

competence of this State Industrial Tribunal u/sec. 10(1B)(d) of the Industrial Disputes Act, 1947 read with the said West Bengal Amendment.

The issue no.1 stands decided accordingly in favour of the applicant holding that this Tribunal has territorial jurisdiction to take cognizance of the application of the applicant filed u/sec. 10(1B)(d) of the Industrial Disputes Act, 1947 and the instant case under section 10(1B)(d) of the said Act as amended is maintainable in facts and law.

Issue No. 2 :

-- Whether the applicant is a workman as envisaged u/sec. 2(s) of the Industrial Tribunal Act, 1947 ?

The applicant categorically averred in his examination in chief before this Tribunal that he was employed by the company as one Sales Promotion Employee as per the Sales Promotion Employees (Conditions of Service) Act; 1976 and he is covered U/S 2(s) of the Industrial Disputes Act ; 1947, as applicable in the State of West Bengal and while discharging his regular duties , he used to promote the products of the company and he never discharged my duties in managerial / administrative / supervisory capacity and neither had any power to initiate any disciplinary proceeding against any employee of the company nor had any power to take any decision what - so - ever in nature independently , which was binding upon the company and that he had no subordinate upon whom he used to control and supervise and for that there was no scope of assessing performance of anybody .

He basically stressed that his duties were that of Sales Promotion Employee and he had to promote the sales of products of the O.P./Company. The said nature of job of

applicant also reflects from the Letter of Appointment dated 04.04.2009 issued by the OP/Company (exhibit-1) which shows he was appointed as Marketing Executive and was required to report to Area Business Manager. The nature of job of Marketing executive is also akin to Sales Promotion Employees. This fortifies that the nature of job performed by the applicant was of Sales Promotion employee. The Sales Promotion employees are also within the definition of workman in view of West Bengal Amendment. The applicant is thus within the definition of workman as above.

I thus find that the applicant falls within the definition of workman as laid under section 2(s) of the Industrial Disputes Act, 1947 read with the West Bengal Amendment Act 33 of 1986 (with effect from 21.08.1984) and West Bengal Act 57 of 1980 (with effect from 30.11.1981).

Accordingly, this issue no. 2 is disposed of in favour of the applicant.

ISSUE no. 3, 4 & 5

-- Whether the termination/dismissal of the applicant with effect from 06.06.2020 by the Opposite Party/Company is justified ?

-- Whether the applicant is entitled to get an Award /order of reinstatement in service with full back wages/salary and other consequential benefits as prayed for ?

--- To what other relief(s) if any, the applicant is entitled to?

The issues 3, 4 & 5 are taken up together for sake of convenience and brevity since the same are interlinked and the issue no. 4 & 5 are dependent on outcome of issue no.3.

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

Let me have a close look at the Chargesheet-cum-Order of Dismissal dated 06.06.2020 (Exhibit-7/Exbt-E). The OP/Company has given the nomenclature “Chargesheet-cum-Order of Dismissal” which seems to be uniquely coined terminology by the OP/Company and hardly heard of in labour jurisprudence. If the said letter (Exhibit-7/Exbt-E) is chargesheet, then it cannot be a order of dismissal since the management of the OP/Company has to travel from the stage of chargesheet to Order of Dismissal and in between the OP/Company was bound to provide opportunity to the applicant/ workman to meet out the charges leveled against the applicant/ workman. It further goes on to show that no domestic enquiry was ever held by the OP/Company. No separate chargesheet was ever issued.

The OPW-1 in his cross-examination stated-

“Preliminary enquiry was conducted before issuing the chargesheet-cum dismissal order to Prasenjit Mondal

“H.R.Team conducted the preliminary enquiry of Prasenjit Mondal”

“We have not filed any document authorizing the H.R.Team to conduct the preliminary enquiry of Prasenjit Mondal”

“We have not filed any document showing communications between the H.R. Team and the management for holding the preliminary enquiry or that any preliminary enquiry was held by the H.R. Team against Prasejit Mondal.”

“No notice was given to Prosenjit Mondal of the alleged preliminary enquiry”

“I have not filed any result or minutes of the alleged preliminary enquiry.”

“In Exbt. E (Chargesheet cum dismissal order) it is nowhere written that the HR Team of the O.P./ Company before issuing the charge sheet cum dismissal order, the Company has conducted the preliminary enquiry against the workman herein.”

“No document(s) relating to the alleged preliminary enquiry is handed over to the applicant”

“In my affidavit in chief I have not mentioned the names of the persons examined during the alleged preliminary enquiry.”

It is clear that no domestic enquiry was conducted before his termination.

The OP/Company in the said letter dated 06.06.2020 interalia stated that –

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

Therefore, Management has decided to dispense with the Departmental Enquiry in respect of abovementioned acts of gross misconduct. Accordingly you are hereby dismissed from the services of the company with immediate effect.”

The said letter (exhibit-7/Exbt-E) has been issued by Mr. Ananda Gowde Vice President-HR on behalf of OP/Company.

The OP/Company itself admitted in the aforesaid letter (Exhibit-7) that it has dispensed with the domestic enquiry in the instant case. It is undisputed that the order of dismissal is a major punishment in labour jurisprudence and the management need to pass through the stages of domestic enquiry before imposition of such a major punishment upon the employee.

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

It appears from Exhibit-23 that domestic enquiry was conducted in case of Mr. Dipesh Bhattacharya who was issued charge-sheet dated 01.07.2020 as appearing from the said exhibit issued by Sri Narendra Tangar. The chargesheet has also been issued by the said Sri Narendra Tangar.

It further appears from Exhibit-23 that said employee (Mr. Dipesh Bhattacharya) was suspended vide said letter / email dated 16.06.2020 and it has been stated that detailed chargesheet will be served upon him in due course of time. It further appears from letter dated 29.09.2020 (part of Exbt-23) that management decided to conduct domestic enquiry in that case.

It appears from Exhibit-24 that Suspension order has been issued on 01.10.2020 as regard another employee Mr Anirban Chakraborty stated that detailed chargesheet will be served upon him in due course of time.

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

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

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

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

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

The termination of services of the applicant/ workman vide letter dated 06.06.2020 falls within the definition of retrenchment as laid under section 2(oo) of the said Act, 1947 and does not fall within the exceptions as provided under section 2(oo) of the said Act and is illegal termination of the service of the applicant/ workman since the OP/Company did not comply the statutory conditions precedent to retrenchment as laid down under section 25F or 25N of the said Act, 1947 being compulsory obligation on the company and the said retrenchment is illegal retrenchment.

Apart from the above, let me have a look at the charges leveled against the applicant/ workman by the OP/Company vide letter dated 06.06.2020 (Exhibit-7). The OP/Company in the said letter stated-

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

- a) Willful insubordination and disobedience, lawful and reasonable orders of the superior;

- b) Dishonesty in connection with the employers' business;
- c) Riotous, disorderly and indecent behavior;
- d) Commission of any acts subversive of discipline and good behaviour."

The OP/Company has not conducted any domestic enquiry in the instant case. The onus to prove that it was not possible to conduct the domestic enquiry and that the termination of the applicant/workman was justified because of the misconduct of the applicant/workman, lies on the management of OP/company. This Tribunal has already held that the OP/Company has failed to show that it was not possible to conduct the domestic enquiry and has also failed to prove that the termination of the applicant/workman was justified.

It appears that the applicant / workman joined the OP/Company on vide appointment letter dated 04.04.2009 (Exhibit-1). The letter of termination of service nomenclatured as "Chargesheet cum Order of Dismissal" (Exhibit-7) was issued on 06.06.2020.

The **Hon'ble High Court at Calcutta** in the judgment in **WPA 7792 of 2025 (M/s. Zydus Health Care Ltd – vs – The State of West Bengal)** inter alia held—

"17. Admittedly, no domestic enquiry or disciplinary proceeding was held. It was countered by the Opposite Party/Company, pleading the Covid-19 pandemic, but the company went ahead to inflict "major punishment" of "dismissal from service" of a workman who had put in 35 years of service, without conducting a formal enquiry or even providing an opportunity to the petitioner to defend

himself, in view of the fact that the chargesheet included the order of dismissal.

18. Such an order is usually invalid because it denies the employee a reasonable opportunity to be heard. It breaches the principles of natural justice, especially audi alteram partem ("hear the other side"). A chargesheet is meant to initiate disciplinary proceedings, not conclude them.

The procedure as per law flows like this:-

Chargesheet --- Employee's reply ---- Domestic Enquiry---

Enquiry Report --- Show cause notice on proposed penalty—Final

order imposing punishment.

19. In the present case, the workman served the company for 35 years being also involved in trade union activities. Being dismissed in this manner is clearly an unfair labour practice, thus coming within the fifth schedule to the Industrial Dispute Act, more specifically under clause 5 to the fifth schedule".

The Hon'ble Court further held—

21. It appears that a domestic enquiry was not only dispensed with but a short cut method of a Chargesheet-cum-Dissmissal letter which is totally against the principle of natural Justice, was issued to the workman.

22. In spite of the fact that the world was passing through the severe effects of Covid-19 pandemic, the petitioner hurriedly dismissed the employee without a proper dismissal procedure. This only goes to show that the

defence of Covid-19 pandemic and the said situation was used as an opportunity to dismiss the employee without affording an opportunity of facing a domestic enquiry.

23. An employee who had put in 35 long years of service and holding a senior position, was subjected to such prejudice and abuse of the process of law during a period, when he could not defend himself. This conduct on the part of the petitioner company, which appears to be a multinational, prima facie shows that the company was in a hurry to dismiss the employee, he prima facie being an active member of the trade union.”

The Hon’ble Court further held—

“27. There was no such hurry to dismiss the employee during the severe pandemic Covid-19 lockdown.”

The Hon’ble Court also held-

“34. The employee herein, who had put in 35 years of service, in the petitioner company was terminated from service by a charge sheet cum dismissal letter, during the Covid pandemic (04.06.2020), without there being a scope of placing the employees case/defence.

35. Date of dismissal (04.06.2020) was during the period of the 1st wave of the pandemic which was very severe causing innumerable deaths and immense trauma to the members of the public.

36. The pandemic created havoc in the lives of all, causing loss of near and dear ones, with no known treatment.

37. It was at this stage, the company in the most insensitive manner, dismissed the employee from service by

not following the norms of dismissal, using the excuse of Covid pandemic.”

“39. As per Article 14 & 21 of the Constitution, any termination without providing a chance to be heard is arbitrary and unjust.

Under Section 25-F, retrenchment without notice, notice pay, or enquiry is illegal.

MHA Guidelines (March-April 2020) directed/advised all employers (especially private establishments) not to terminate or reduce wages during lockdown.

Thus termination contrary to these directions is illegal and in violation of public policy.”

The Hon’ble Court further held-

“42. A chargesheet cum dismissal notice is a document which puts questions regarding the allegations (charge) and if clubbed with a dismissal (order) then it can be presumed that the decision to terminate was already taken prior to the charge sheet. A case where questions (charge) directly end in dismissal (result) with no scope to answer (chargesheet cum dismissal letter), is clearly an abuse of the process of law.

43. The workman in this case was dismissed on 04.06.2000, that is during the 1st Covid pandemic period, when there was mass panic around the world for this unforeseen fatal disease and being dismissed during this period and in the manner done is basically “cruelty” beyond imagination.”

The applicant/ workman has been able to demonstrate before this Tribunal that he was subjected to exceptional treatment by not holding domestic enquiry on the plea of

Covid-19 whereas the same OP/Company held domestic enquiry in case of other employees namely Dipesh Bhattacharya and Anirban Chowdhury. This itself shows the act of the victimization by the OP/Company on the applicant/workman.

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

“33. The proposition which can be culled out from the aforementioned judgments are – I) in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.....”

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

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

The Hon'ble Court further held—

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

The OP/Company has also failed to demonstrate its stand of preliminary enquiry. The OP/Company has failed to

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

The judgments relied upon by the Ld. Advocate for the OP/Company does not support the case of the OP/Company in view of the specific facts and circumstances discussed hereinabove.

Thus, this Tribunal has no hesitation to conclude from the evidence adduced on behalf of OP/Company that the OP/Company has failed to prove any of the charges leveled by the OP/Company in Exhibit-7 being styled as "Chargesheet-cum-Order of Dismissal".

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

In view of the aforesaid facts and circumstances and the settled position of the law , this Tribunal finds that the applicant/ workman has been able to prove his case by cogent and consistent evidence that his alleged termination vide letter dated 06.06.2020 is bad, illegal and unjustified and is liable to be set aside and that the applicant/Workman is entitled to reinstatement with full

back wages alongwith consequential reliefs and the services of the applicant/ workman be deemed to be continuous service without any break.

The applicant/workman is entitled to all back wages alongwith consequential benefits including the benefit of revised wages or salary if during the period there is revision of pay-scales with yearly increment, revised dearness allowance or variable dearness allowance. Back wages should be calculated as if the applicant/workman continued in service uninterrupted. He is also entitled to leave encashment and bonus if other workmen in the same category were paid the same. The applicant/workman has been unlawfully kept out of service, therefore it is just that the OP/Company shall pay all the arrears as calculated according to the directions herein given with 10% interest from the date the amount became due and payable till realisation.

The applicant/workman is also entitled for other benefits being paid to other workman/ workmen during the said period including benefits paid under various beneficial, welfare and/or benevolent schemes of the OP/company. The OP/Company is further directed to ensure that the applicant/ workman is not deprived of the annual increments which fell due from time to time since 06.06.2020. The OP/Company is also directed to ensure payment of all other retiral benefits to the applicant / workman including Provident Fund, Gratuity, Pension etc as applicable in the OP/Company.

The Issue no. 3,4 & 5 stands answered accordingly in favour of the applicant/ workman.

Hence, it is

ORDERED

that the instant case being No. 22/2021 u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 be and the same is allowed on contest but without any order as to costs against the OP/Company. The letter of chargesheet cum Order of dismissal dated 06.06.2020 (Exhibit-7) is set aside being bad, illegal and unjustified.

The applicant/ workman is entitled to be reinstated in service with effect from 06.06.2020 with full back wages alongwith all other consequential benefits thereto arising out of such reinstatement and continuity of service and the service of the applicant/ workman shall be deemed to be continuous service without any break.

The OP/Company is directed to pay full back wages alongwith all other consequential benefits thereto arising out of such reinstatement till the date of reinstatement and also other benefits being paid to other workman/ workmen under various beneficial, welfare and/or benevolent schemes of the OP/company. The OP/Company is further directed to ensure that the applicant/ workman is not deprived of the annual increments which fell due from time to time since 06.06.2020.

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

The aforesaid is the Award of this Tribunal passed in this instant case no. 22/2021/ 10(1B)(d).

The case no. 22/ 2021/ 10(1B)(d) stands disposed of on contest.

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

Dictated & corrected by me.

Judge

(Yogita Gaurisaria)
Judge
7thIndustrial Tribunal
Kolkata
04.12.2025