

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

No. Labr/ 15 /LC-IR)/ 22015(16)/167/2025

Date : 06-01-2026

ORDER

WHEREAS an industrial dispute existed between M/s. Tata Consultancy Services Ltd., Plot – C, Block – EP & GP, Sector – V, Salt Lake, Kolkata - 700091 and its workman Sri Jyotirmoy Mukhopadhyay, 37, Pratapgarh, Post Office – Santoshpur, Kolkata – 700075, regarding the issues, being a matter specified in the second schedule of the Industrial Dispute Act' 1947 (14 of 1947);

AND WHEREAS the 7<sup>th</sup> Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 22.12.2025 in Case No. 03 of 2014 on the said Industrial Dispute Vide e-mail dated 23.12.2025 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](http://labour.wb.gov.in)

By order of the Governor,

  
Assistant Secretary  
to the Government of West Bengal

No. Labr/ 15 /1(5)/(LC-IR)/ 22015(16)/167/2025

Date : 06-01-2026

Copy forwarded for information and necessary action to :-

1. M/s. Tata Consultancy Services Ltd., Plot – C, Block – EP & GP, Sector – V, Salt Lake, Kolkata - 700091.
2. Sri Jyotirmoy Mukhopadhyay, 37, Pratapgarh, Post Office – Santoshpur, Kolkata – 700075.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11<sup>th</sup> Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with request to cast the Award in the Department's website.

  
Assistant Secretary  
to the Government of West Bengal

No. Labr/ 15 /2(3)/(LC-IR)/ 22015(16)/167/2025

Date : 06-01-2026

Copy forwarded for information to :-

1. The Judge, 7<sup>th</sup> Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with reference to e-mail dated 23.12.2025.
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, West Bengal

Case No. 03 of 2014  
Under Section 2A(2) of the Industrial Disputes Act, 1947

Sri Jyotirmoy Mukhopadhyay  
37,Pratapgarh,  
Post Office- Santoshpur,  
Kolkata – 700 075

.... Applicant

---versus---

M/s Tata Consultancy Services Ltd.  
Plot – C, Block – EP & GP,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
(erstwhile : M/s. CMC Ltd.,  
228, Camac Street, Kolkata- 700016)

.... Opposite Party/Company

This Award delivered on Monday, this the 22<sup>nd</sup> day of December, 2025

A W A R D

The applicant has filed the present application before this Tribunal under Section 2A(2) 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 case of the applicant/workman, in short, is that he was a permanent employee of the Company i.e CMC Limited and had been working since November, 1989 with the fullest satisfaction of the management. The applicant has stated that he was never issued any sort of show cause notice and/or charge-sheet save and except one alleged notice dated 25.01.2013 which is/was not only incorrect but also baseless, concocted and/or preplanned with an intention to victimize him.

The applicant has further stated that he used to do the jobs mainly on hardware and interior systems of the computer in various places throughout India as well when required and/or asked by the Company. He further stated that he worked as per instructions of the management under the supervision of the Reporting Manager and that since the joining of the company till the date

of alleged termination, he had no authority to do any administrative job, to issue show-cause/charge-sheet and/or to take any disciplinary action against any employee and also that he never discharged his duty either as managerial or supervisory capacity.

The applicant has further stated that during his service tenure, he was neither informed that the PIP (Performance Improvement Plan) is applicable nor he was ever warned as alleged by the Company.

The applicant has further stated that all of a sudden, he was not allowed to sign the register w.e.f. 23.07.2013 and he was not allowed to do his job though he used to visit the office regularly.

The applicant further stated that he was not paid the salary for the months of June, 2013 and July, 2013 with other benefits and as such he has filed a computation Case u/sec. 33C(2) of the Industrial Disputes Act, 1947 as amended which is still pending before the First Labour Court, West Bengal.

The applicant has stated that without assigning any reason/reasons and/or without any show cause notice/charge sheet to the applicant, the Company issued an impugned notice of termination of service dated 03.09.2013 terminating his service with effect from the closing hours of 21.05.2013 and that he made protest to such unfair letter of termination and requested to withdraw the same but in vain. The applicant further stated that having no other alternative, he raised an industrial dispute before the Assistant Labour Commissioner by his letter dated 06.08.2013 and that the Company made their reply before the Conciliation Officer annexing certain documents with baseless allegations and/or concocted /manufactured documents.

The applicant further stated that he made reply to the said letter denying the alleged statements/allegations made therein. The applicant also stated that at the time of his said termination he used to draw his monthly salary of Rs. 21,242/- and that he was not paid full salary for the month of May 2013 violating the principles of law.

The applicant further stated that the allegations made by the Company is/are fully incorrect, baseless, concocted and/or preplanned. The applicant also stated that the said PIP prepared by the management of the Company is /are fully eyewash and/or baseless.

The applicant also stated that the management has to issue show cause/charge sheet to the applicant and in absence of the same, the said termination is/was fully illegal, unjustified and/or against the principles of law.

The applicant further stated that the termination of service with retrospective effect, without having any grounds and/or assigning any reasons, the said termination is not maintainable in facts and law and that the said termination of service is nothing but a case of victimization and/or colorable exercise of unfair practice which is not sustainable in law. The applicant further stated that since the date of termination till date, the applicant is fully unemployed and has been passing his days with great hardship due to want of money.

The O.P./Company entered its appearance and filed written statement.

In its written statement, the O.P./Company stated that the application for recovery of dues is not maintainable in facts and law. The applicant can claim no relief under the Industrial Disputes Act, 1947 as he was employed in supervisory and administrative capacity and by reasons of the powers vested in him, functioned mainly of a managerial nature and drew salary more than Rs. 1,600/- per mensem. The O.P./Company has further stated that the applicant had joined the Company in and around 1989 and immediately before joining the Company he was a site supervisor at EMC Steel Ltd. and post joining CMC Ltd. as technical assistant and by experience he was working as a engineer and was having managerial functions at Assam where he was last posted. The O.P./Company has further stated that the applicant was responsible for upgradation and implementing computer network for different police stations in Assam and Meghalaya and had a team of working personals for whom he stood responsible. He used to coordinate with the client and assess their requirements and deploy such necessary machineries and men to execute the contract between the company and the client and the

OP/Company used to rely upon his discretion and judgment for such execution. The applicant was entitled to all perks and privileges for such job.

The O.P./Company has further stated that the application is barred by the principles of estoppels, waiver and acquiescence. The O.P./Company in addition stated that the applicant had resorted to falsehood and conjecture to draw unlawful gains and have no legal rights to claim salary for June and July 2013 not to claim any benefits which can be computed in terms of money or seek reinstatement.

The O.P./Company has also stated that they lawfully terminated the applicant upon notice on and from 21<sup>st</sup> May 2013 following all regulations. The O.P./Company has further stated that they have envisaged clear and transparent Human resource polices where all employees of their organization are subject to the extant service policies and regulations. Each employee is continuously being monitored for their performance and are graded based on several parameters including but not exclusively internal evaluation, client feedback etc.

The O.P./Company has further stated that those employees who have underperformed are warned and undergoes Performance Improvement Plan (PIP) which is a key aspect of the Performance Management System in CMC. An important outcome of the performance evaluation process is to plan for the employees' further profession development and motivate him or her to continuously improve the performance. Another important aspect of performance management is to identify employees whose performance is below CMS's expected standard and assist them to improve the same. This is achieved through the administration of PIP. The detailed procedure is laid down in PIP document and separation policy. The O.P./Company has further stated that at the end of PIP, the performance of the employee is re-evaluated

against the agreed goals and the employee is given a PIP rating (on a scale of 1 to 5). The PIP rating decides the future course of action for the employee. It could be one of the following :If the PIP rating is 3 or more, employee will be retained in CMC and PIP will be closed. If PIP is 2 or less, it will result in termination from services of the organization , all separation from the Company will be governed by separation policy.

The O.P./Company has further stated that the employees are identified for PIP through a let down procedure of the policy on issues of getting a rating of 1 in annual appraisal cycle or is 2 in back to back assessment cycles or on recommendation of the Manager for below expected performance levels, behavioral issues amounting to non performance ( such as client escalation/attitude problems/disciplinary issues impacting performance etc) to the Regional Human Resource ( RHR). In addition the O.P./Company has further stated that on being identified for a PIP, a PIP initiation letter is prepared by the RHR to inform the employee and the said initiation letter is also signed by the appraiser of the PIP identified employee.

The O.P./Company stated that the PIP evaluation process provides adequate opportunity to the employee to justify and/or put forth his/her views. The outcome of the PIP results in a PIP summary document. If the employees performance is found improving and meets CMC Ltd's expected standards, then the employee will be retained and PIP closed or the employee will be terminated from services of CMC Ltd. when the employee's performance is below the CMC Ltd's expected standards.

The O.P./Company has further stated that the concerned ex-employee Mr. Jyotirmoy Mukhopadhyay had a track record of low performances. In fact he had been obtaining a rating of "2" consistently from 2008-2009, 2009-2010, 2010-2011, 2011-2012. The O.P./Company stated further that there has been instances wherein on 18<sup>th</sup> October 2011 he was issued an ultimatum

letter for performance improvement or in default the PIP period would be considered the notice period for termination of employment. The O.P/Company has further stated that during the PIP period from 18<sup>th</sup> October 2010 to 15<sup>th</sup> Jan 2011 the concerned ex employee obtained the score of 3 which is considered "good" rating.

The O.P/Company has also stated that the concerned employee was further issued PIP during the PIP during the phase 18<sup>th</sup> October 2011 to 3<sup>rd</sup> January 2012 when the concerned ex employee obtained the score of 3 which is considered "good rating".

The O.P/Company has further stated that another PIP initiation letter dated January 2013 was issued to the concerned employee by the Regional Manager Human Resource ( East).

The O.P/Company, in addition stated that the concerned employee was made aware of his status of performance by his managers verbally as well through mails. The concerned employee achieved performance rating of 2 at the end of review on 20.05.2013 where recommendation for termination of employee was prescribed on 20.05.2013. The O.P/Company has further stated that during the PIP period initiated on January 2013 the concerned employee showed lack of discipline, wilful insubordination and unprofessionalism when he failed to report to office on 21<sup>st</sup> January 2013. Based on the report of his manager, the Regional Manager, Human Resource had issued a letter of show cause to the concerned employee on 25<sup>th</sup> January 2013.

The O.P/Company has further stated that the mails dated 24<sup>th</sup> January issued by Mr. Sanjay Mishra also reports that the concerned employee was absconding and inspite of repeated calls, the concerned employee had gone to Shilong. The reply made out against show cause by the concerned employee through mail dated 28<sup>th</sup> January 2013 from mail id " jyotmukh@gmail.com" also exposes the nature and intent of the delinquent employee where he

proceeds to ignore official instructions and directives. The OP/Company relied on copy of mails dated 25.01.2013, 26.01.2013, 29.01.2013, 30.01.2013 and 31.01.2013 between Dipanwita Dutta , Sanjay Mishra , Samir Pradhan and concerned employees stating further stated that the show cause and the reply was evaluated by the Human Resource Department within the PIP evaluation process. The O.P/Company has further stated that the post evaluation of PIP he was terminated on 21<sup>st</sup> May 2013 and the termination letter was sent to him by registered post on 23<sup>rd</sup> May 2013. A release letter was issued on 3<sup>rd</sup> September with a statement of full and final settlement enclosing a cheque of Rs. 1,92,343/- which was received by the concerned employee on 05.09.2013. The O.P/Company has stated that he was paid all his salary till 21.05.2013 till he worked last. The O.P/Company has further stated that the employee has not handed over the assets of the Company nor put in the particulars of claim for reimbursement which if done could be paid by the company.

The O.P/Company has further stated that the Company has followed the applicable rules and regulations while dealing with the said employee and due opportunity was provided to the employee and have not committed any unfair labour practice.

The O.P/Company has further stated that in the circumstances the concerned employee had approached for conciliation based on untrue allegations before th Conciliation Officer where the Company already made their representations. The concerned employee for reasons best known had withdrawn from the said conciliation process.

The O.P/Company has also stated that the company denies all contentions of the applicant as made out in several paragraphs of his application. The OP/Company submitted that the applicant was fully aware of the rules and regulations of the Company and had defied the orders of his

senior colleagues and that the applicant was undergoing Performance Improvement Programme ( PIP ) and his poor performance lead to his termination. The said applicant has in fact admitted of his termination which he raised protest vide his mail. The O.P./Company has further stated that the company did not receive back the company's issued identity card from the applicant post 21<sup>st</sup> May 2013 and therefore reported the said incident to the Shakespeare Sarani Police station which was so done on 5<sup>th</sup> July 2013. The O.P./Company has further stated that the applicant had always been instructed to provide supporting documents to claim his travel expenses of Rs. 42,694/- which the company shall make over on receipt of supporting documents. The applicant till this petition being filed has not provided any supporting documents to claim the travel expenses. The O.P./Company has further stated that the applicant being terminated from services w.e.f. 21.05.2013 has no legal claim under this proceedings to claim the salary for June and July 2013 or any other benefit whatsoever. The O.P./Company has further stated that the management had given adequate warnings for the shortfall of the performance of the applicant and provided opportunity to rectify the same during the evaluation process before being terminated from services. It denied that the termination was fully illegal, unjustified or against the principles of law. It further stated that the evaluation process of the company provides adequate opportunity to the employee to represent it's perspective , upholding the principles of natural justice. The O.P./Company denied that the termination of service is nothing but a case of victimization and /or colorable exercise of unfair labour practice which is not sustainable in law. The O.P./Company prayed that the applicant's petition may be dismissed with costs.

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

ISSUES

1. Whether this application is maintainable in law and facts ?
2. Whether the alleged termination by the notice dated 03.09.2013 is justified ?
3. To what relief, if any, is he entitled to ?

ADDITIONAL ISSUE

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

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 14 respectively which are as follows :

Sl. No.	Description of document	Exhibit No.
1.	List of Documents of the Applicant	Exbt- 1
2.	Xerox copies of emails	Exbt-2 collectively
3	Xerox copies of emails	Exbt-3 collectively
4.	Xerox copy of show-cause letter dated 25.01.2013	Exbt-4
5.	Xerox copy of company's letter with annexures to the applicant dated 09.07.2012	Exbt-5 collectively
6.	Xerox copy of applicant's letter with A/D card dated 07.09.2013	Exbt-6 collectively
7.	Xerox copy of Conciliation Notice dated 27.08.2013	Exbt-7
8.	Xerox copy of applicant's letter to Labour Commissioner dated 06.08.2013	Exbt-8
9.	Xerox copy of Appointment letter dated 09.11.1989 issued by the OP/Company to the applicant	Exbt-9
10.	Xerox copy of email of the applicant to Sanjay Sinha dated 23.07.2013	Exbt-10
11.	Xerox copy of applicant's letter to Deputy Labour Commissioner dated 30.12.2013	Exbt-11
12	Xerox copy of letter of Sri D.N. Jyrwa to the company dated 09.07.2013	Exbt-12
13	Xerox copy of Company's letter to the applicant dated - 09.07.2012	Exbt-13
14	Xerox copy of letter of appreciation to the applicant dated 21.05.2013	Exbt-14
15	Xerox copy of Company's letter addressed to the Dy. Labour Commissioner dated 06.12.2013	Exbt-15

The OP/Company during cross-examination of P.W.1 has proved some documents and marked as Exhibits-A to G respectively which are as follows :

Sl. No.	Description of document	Exhibit No.
1.	Photocopy of letter by the Company to the applicant dated 03.09.2013	Exbt- A
2.	Photocopy of Show-Cause notice	Exbt-B
3.	Photocopy of email dated 21.03.2013	Exbt-C
4	Photocopy of email dated 24.01.2013	Exbt-D
5.	Photocopy of email dated 29.01.2013	Exbt-E
6.	Photocopy of email dated 25.01.2013	Exbt-F
7.	Photocopy of the APO/119/2023 with WPO/188/2020 filed before the Hon'ble High Court at Calcutta	Exbt-G collectively (300 pages)

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. (2006) 6 SCC 548 ( Anand Regional Coop. Oil SeedGrowers' Union Ltd. Vs. Shaileshkumar Harshadbhai Shah.)
2. (2005) 5 SCC 591 (General Manager, Haryana Roadways Vs. Rudhan Singh)
3. (2013) 10 SCC 324 – Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalala ( D.ED) & ors.
4. (2005) 6 SCC 496 (State of UP & Ors –vs- Ram Bachan Tripathi)

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

1. (2005) 3 SCC 232 Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh.
2. (2024) SCCOnline (SC) 2987 (Lenin Kumar Ray Vs. Express Publications ( Madurai ) Ltd.)
3. (2024) 6 SCC 418 (Bharti Airtel Ltd. Vs. A.S. Raghavendra)

4. (2007) 10 SCC 765 (North-East Karnataka Road Transport Corporation Vs. M. Nagangouda)

5. (2005) 5 SCC 337 (Viveka Nand Sethi Vs. Chairman, J & K Bank Limited & ors.)

6. (2004) 8 SCC 88 (Delhi Transport Corporation Vs. Shyam Lal.)

**Issues No. 1 & 4 :**

**Whether this application is maintainable in law and facts ? and Whether the applicant is a workman as envisaged U/S 2(s) of the Industrial Disputes Act, 1947 ?**

Both the issues 1 & 4 are taken up together for sake of convenience and brevity.

Now, let us see as to how far the applicant has been able to prove his case by adducing evidence. The applicant has been examined as PW-1.

In course of argument, the Ld. Advocate of the OP/Company argued that the applicant is not a workman within the definition of workman u/sec. 2(s) of the Industrial Disputes Act, 1947. He relied on Exhibit-G page nos. 43, 44, 45 & 46 as well as oral deposition of PW-1 dated 11.12.2024 wherein PW-1 deposed that “..it is a fact that in the APOT No. 230 of 2023, it is written that I was a Site Coordinator but actually I was a Coordinator – Customer Service.” The Ld. Advocate of OP/Company further relied on deposition of PW-1 where he stated “The hierarchy table of page 43 of Exbt.G is correct..... Page 44 to 46 (activity reports) of Exbt.G bears my signature. .... I have received the letter dated 25.01.2013 (Page 43 of Exbt. G)” The Ld. Advocate for the OP/Company further argued that the termination of applicant is not a stigmatic one and as such, departmental enquiry was not necessary.

The Ld. Advocate for the applicant argued that the applicant is a workman within the definition of workman u/sec. 2(s) of Industrial Disputes Act, 1947 as amended. The applicant was working in the post of technical assistant and that the job of the applicant as to install various technical equipments and he was working under a Project Manager Samir Pradhan and he was mainly doing the job on hardware and interior system of the computer. The Ld. Advocate for the applicant further argued that the applicant had no power to sanction or grant any leave to any other employee and had no capacity to do any administrative job, to issue show-cause/ charge-sheet and/or to take any disciplinary action against any employee of

the OP/Company and he has never discharged his duty either as managerial or supervisory capacity.

It appears from page 43 of Exbt-G that the role of applicant was of Site Coordinator and PW-1 (applicant) in cross-examination dated 11.12.2024 stated “..it is a fact that in the APOT No. 230 of 2023, it is written that I was a Site Coordinator but actually I was a Coordinator – Customer Service.” It appears from the said page 43 itself under SKILL column, it is written “Site preparation, installation of DG Sets, network connections, UPS & AC plant commissioning”. It surfaces from the Appointment letter of the applicant dated 09.11.1989 (Exhibit-9) that the applicant was appointed to function as Environmental Engineering.. It further transpires from Page 53 of Exbt-G that the applicant designation was TECHNICAL ASSISTANT and his function was Customer Service. This Page 53 of Exbt-G runs in two pages to Page 54 and is dated 27.08.2013. This is the document of the OP/Company itself and this has been marked Exhibit from the side of the OP/Company during cross-examination of PW-1 and is relied by the OP/Company. This document itself reveals that the applicant was Technical Assistant as admitted by the OP/Company by this document which gets covered under the definition of workman under section 2(s) of Industrial Disputes Act, 1947 which interalia includes any person employed in any industry to do any technical work also irrespective of his amount of salary. The OP/Company failed to bring any evidence before this Tribunal that the applicant was engaged in supervisory or managerial capacity in the OP/Company.

In view of all above, this Tribunal is inclined to hold that the applicant is workman within the definition of workman u/sec. 2(s) of the Industrial Disputes Act, 1947 as amended.

The parties are not in dispute with regard to territorial jurisdiction of this Tribunal to entertain and adjudicate the instant case. Nothing has been argued on this score.

I find that the instant application is maintainable in fact and law before this Tribunal.

Accordingly, this issue no.1 & 4 are disposed of in favour of the applicant.

**ISSUE no. 2**

**--Whether the alleged termination by the notice dated 03.09.2013 with effect from 21.05.2013 is justified?**

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 no witness adduced from the side of the OP/Company.

Let me have a close look at the Notice dated 03.09.2013 (Exhibit-B) corresponding to Page 51 of Exbt-G. On closer scrutiny of the said document, it clearly reveals that the said letter dated 03.09.2013 terminates the services of the applicant with effect from closing hours of 21.05.2013. This in no uncertain terms implies that the OP/Company has terminated the services of the applicant / workman retrospectively with effect from closing hours 21.05.2013 i.e giving it back date effect of about 3 months 12 days. This retrospective termination of the applicant is hardly known in the labour jurisprudence.

The amount as alleged to have been given to the applicant by the OP/Company vide document being Page 53 & 54 of Exbt-G takes into calculation the amount upto 21.05.2013 which is another blow to the case of the OP/Company.

The applicant/workman had been successful in demonstrating his hard work which transpires from Exbt-14 which is letter of appreciation to the applicant dated 21.05.2013 wherein the work of applicant/workman has been appreciated.

This Tribunal also finds that in the instant case no charge-sheet was issued to the applicant/workman by the OP/Company and no domestic enquiry was held by the OP/Company against the applicant/workman before terminating his services. The stand of the OP/Company that the instant termination of applicant / workman is not stigmatic does not hold water especially in view of repeated averment of the OP/Company of having terminated applicant/workman's services due to his poor performance. The OP/Company even in its reply to Dy Labour Commissioner 9Exbt-15) vid epara 17 clearly stated that post evaluation of PIP, the applicant/workman was terminated on 21.05.2013 and release letter issued on 03.09.2013. This itself dilutes the stand of the OP/Company that the termination was not stigmatic.

The OP/Company itself admitted 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.

In view of the above, this Tribunal is inclined to hold that the termination of the services of the applicant/workman vide notice/ letter dated 03.09.2013 (Exbt-A) with effect from 21.05.2013 is illegal and unjustified and bad in law.

As such, the said letter dated 03.09.2013 (Exbt-A) be and is hereby set aside. The issue no. 2 is decided in favour of the applicant/workman.

### **ISSUE No. 3**

#### **– To what relief if any is he entitled to ?**

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, 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 termination of the applicant/ workman without any disciplinary proceedings being non-stigmatic and that too with retrospective effect does not hold water as discussed above and 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 03.09.2013 with effect from 21.05.2013 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.

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 holds that the OP/Company has failed to show that it was not possible to conduct the domestic enquiry. Rather on the contrary, though not essential for the applicant/workman, the applicant/workman vide Exhibit-14 demonstrated appreciation of his services.

It is settled law that where the precondition for a valid retrenchment has not been satisfied, the termination of service would amount to retrenchment and the termination of service is *ab initio* void, invalid and inoperative and the workman must, therefore, be deemed to be in continuous service.

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....."*

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 03.09.2013 is bad, illegal and unjustified and is liable to be set aside and that the applicant/Workman is entitled to reinstatement with back wages alongwith consequential reliefs and the services of the applicant/ workman be deemed to be continuous service without any break.

This Tribunal has no hesitation to hold that the applicant/workman is entitled to be reinstated.

This takes me to next round of discussion.

The date of birth of the applicant as transpiring from Page 33 of Exbt-G is 19.09.1961. The date of superannuation turns out to be 18.09.2021.

In the instant case, the applicant/ workman since has reached the age of superannuation, as such physical reinstatement in service is not possible. The age of superannuation of the applicant/workman is 18.09.2021 which has reached during the pendency of the instant case and therefore physical reinstatement is not possible, it is hereby declared that the applicant/workman shall continue to be in service uninterruptedly from the date of the attempted termination of service till the date of superannuation. The applicant/workman is entitled to back wages alongwith consequential benefits including the benefit of revised wages or salary if during the

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

The applicant/workman is also entitled for other benefits being paid to other workman/ workmen on their retirement including benefits paid under various beneficial, welfare and/or benevolent schemes of the OP/company. The OP/Company is further directed to ensure that the applicant/ workman is not deprived of the annual increments which fell due from time to time since 21.05.2013. 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.

In view of the above, the applicant/workman is deemed to be in continuous service with effect from 21.05.2013 till his date of retirement. The applicant/workman is deemed to have retired from services with effect from the date of his normal superannuation i.e 18.09.2021 on reaching at the age of 60 years. The applicant /workman is entitled for all his retiremental benefits with effect from his date of retirement. The retiral benefits of the applicant/workman is to be calculated taking into account all the annual incremental and all other benefits which he would have got as if he had been in service of the OP/Company. There will not be any break-in service of the applicant/workman.

This Tribunal also holds that the applicant/workman is also entitled for the back wages i.e wages from the date of his alleged termination which has been held illegal, bad and unjustified till the date of his retirement i.e from 21.05.2013 to 18.09.2021.

This takes me to another round of discussion i.e quantum of back wages and any reduction therefrom.

The OP/Company through cross-examination of PW-1 has been able to demonstrate that the applicant/workman was earning something. But, the OP/Company failed to dcmonstrate how much the applicant/workman was earning but failed to demonstrate during which period the applicant/workman was earning i.e whether earning during the period 21.05.2013 to 18.09.2021 (i.e prior to reaching

age of superannuation) or started to earn post retirement age i.e after 18.09.2021. This Tribunal cannot be oblivious that everyone on the earth needs to sustain his and his family life and cannot go starving. Any meagre earning of the workman does not absolve the employer company from the statutory liability of back wages as a consequence of illegal or unjustified termination of services of workman. This Tribunal also holds in the same breath that the OP/Company failed to prove before this Tribunal by any document and/or oral evidence, the amount of earning per month by the applicant/workman during this period from 21.05.2013 to 18.09.2021. It is also unclear from the cross-examination as discussed above that since when, the applicant/workman started to earn something by way of salary and that if the said earning started after 18.09.2021, the same does not have any adverse bearing on the back wages calculation of the applicant/workman.

The immediate preceding cross-examination of PW-1 accepting the factum of receiving of salary is the line that "The retirement age of the OP/Company is 60". The deposition is dated 12.11.2024, which is three years after post retirement date which is 18.09.2021. So, the OP/Company has left the evidences wanting on that score and left the vaccum unfilled.

This Tribunal is unable to appreciate the argument of the Ld. Advocate of the OP/Company to make conjoint reading of this admittance of PW-1 with deposition of same date but six paras prior thereto.

This Tribunal also fails to understand what deterred the OP/Company to adduce evidence from its side as OPW to bring the amount of income / earning by the applicant / workman during this period 21.05.2013 to 18.09.2021. The OP/Company could have stood in the dock and deposed as to the quantum of amount if any earned by the applicant/workman during the period 21.05.2013 to 18.09.2021 and could have discharged the onus of proof which lies on the OP/Company to prove the quantum of income of the applicant/ workman for the period 21.05.2013 to 18.09.2021.

To put the controversy at rest with regard to the quantum of back wages, this tribunal holds that there was some earning by applicant/workman to the extent of maintaining his family for which he used to work and it is implied that one cannot survive in starving, as such, adjustment (i.e. deduction) in back wages to the tune of Rs. 5,000/- per month be made while calculating the back wages of the applicant/workman. The back wages is to be calculated from the date 22.05.2013 to 18.09.2021 since it is stated by the OP/Company at pages 53 & 54 of Exbt-G that salary upto the date of 21.05.2013 has been paid by the OP/Company to the applicant/workman. The OP/Company however is also entitled to make adjustment

of the amount paid by it vide Page 53 & 53 of Exbt-G., if any such amount has been paid indeed to the applicant/workman.

The applicant/ workman reinstatement is deemed to be reinstated with consequential benefits with continuity of service and deemed to have retired on having reached his age of superannuation i.e 18.09.2021.

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

Hence, it is

**ORDERED**

that the instant case being No. 03/2014 u/s. 2A(2) of the Industrial Disputes Act, 1947 be and the same is allowed on contest without any order as to costs against the OP/Company. The letter dated 03.09.2013 (Exhibit-A) terminating the services of the applicant/workman with effect from the closing hours of 21.05.2013 is set aside being bad, illegal and unjustified.

The applicant/ workman is entitled to be reinstated in service with effect from 21.05.2013 with 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 in continuous service without any break. The OP/Company is entitled to make adjustment (deduction) of Rs. 5,000/- per month while calculating back wages for the period from 22.05.2013 to 18.09.2021.

Since the date of superannuation of the applicant/ workman is 18.09.2021 which has crossed during the pendency of the instant case, the applicant/ workman is deemed to have been reinstated in service with effect from 21.05.2013 with 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 till the date of his retirement. The applicant/ workman stands superannuated / retired on 18.09.2021.

The OP/Company is directed to pay back wages as directed above alongwith all other consequential benefits thereto arising out of such reinstatement till the date of superannuation of the applicant/ workman i.e. till 18.09.2021 and also other benefits being paid to other workman/ workmen on their retirement including benefits paid under various beneficial, welfare and/or benevolent schemes of the OP/company. The OP/Company is further directed to ensure that the applicant/ workman is not

deprived of the annual increments which fell due from time to time since 21.05.2013. The OP/Company is also directed to ensure payment of all other retiral benefits to the applicant / workman including Provident Fund, Gratuity, Pension etc as applicable in the OP/Company.

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

The aforesaid is the Award of this Tribunal passed in this instant case no. 03/2014/ 2A(2).

The case no. 03/ 2014/ 2A(2) stands disposed of on contest.

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

Dictated & corrected by me.

Judge

(Yogita Gaurisaria )  
Judge,  
7<sup>th</sup> Industrial Tribunal  
Kolkata  
22.12.2025