

I/582869/2024

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

No. Labr./ **1177** /(LC-IR)/22015(16)/552/2019

Date : **05-12-2024**

ORDER

WHEREAS an industrial dispute existed between M/s. Murlidhar Ratanlal Exports Ltd., Unit : Gondalpara Jute Mill, P.O. Gondalpara, Dist. Hooghly, PIN- 712137 and their workman Shri Tapas Kumar Sinha Roy Mohini Bagan Staff Quarter No.5/3, Gondalpara Jute Mill, Gondalpara, P.S. Chandannagore, Dist. Hooghly, PIN- 712137 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

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


AND WHEREAS the said Third Industrial Tribunal has submitted to the State Government its Award dated 06.09.2024 in Case No. 02/2016 u/s. 2A(2) on the said Dispute vide E-mail dated 26.11.2024.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,


Assistant Secretary


to the Government of West Bengal

No. Labr/ **1177** /1(5)/(LC-IR)/ 22015(16)/552/2019

Date : **05-12-2024**

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/s. Murlidhar Ratanlal Exports Ltd., Unit : Gondalpara Jute Mill, P.O. Gondalpara, Dist. Hooghly, PIN- 712137
2. Shri Tapas Kumar Sinha Roy Mohini Bagan Staff Quarter No.5/3, Gondalpara Jute Mill, Gondalpara, P.S. Chandannagore, Dist. Hooghly, PIN- 712137.
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 the request to cast the Award in the Department's website.

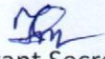

Assistant Secretary

No. Labr/ **1177** /2(3)/(LC-IR)/ 22015(16)/552/2019

Date : **05-12-2024**

Copy forwarded for information to :-

1. The Judge, Third Industrial Tribunal, N. S. Building, 3rd Floor, 1, K. S. Roy Road, Kolkata - 700001 with reference to his E-mail dated 26.11.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.
3. Office Copy.


Assistant Secretary

**In The Third Industrial Tribunal,
New Secretariat Buildings, Kolkata**

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

Present: Sri Mihir Kumar Mondal
Judge, 3rd Industrial Tribunal
Kolkata

Tapas Kumar Sinha Roy Mohini Bagan Staff Quarter No.5/3, Gondalpara Jute Mill, Gondalpara, P.S. Chandannagore, Dist. Hooghly, PIN- 712137.	Applicant
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-Vs.-

M/s. Murlidhar Ratanlal Exports Ltd., Unit : Gondalpara Jute Mill, P.O. Gondalpara, Dist. Hooghly, PIN- 712137.	Opposite Party
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A W A R D

DATED : 06.09.2024

This is a case u/s 2A(2) of the Industrial Dispute Act, 1947. The instant case has been started on the basis of an application u/s 2A(2) of the Industrial Dispute Act, 1947 filed by one Tapas Kumar Sinha Ray, a resident of Mohini Bagan Staff Quarter No.5/3, Gondalpara Jute Mill, Gondalpara, P.S. Chandannagore, Dist. Hooghly, PIN- 712137 against M/s. Murlidhar Ratanlal Exports Ltd. Unit : Gondalpara Jute Mill, P.O. Gondalpara, Dist. Hooghly, PIN- 712137 raising an industrial dispute. The applicant by filing written statement of the case has stated that he was appointed by M/s. Gondalpara Jute Mill, a Unit of M/s. Murlidhar Ratanlal Exports Ltd. as a 'Safety Officer' on 01.02.1997 and he maintained good, clean, spotless, meritorious and unblemished record during the tenure of his service under his employer until unjustified and illegal termination of his service of the Company w.e.f. 01.02.2014. It is stated that he was allotted confirmed service as 'Safety Officer' by the Company w.e.f. 01.02.1997. It is mentioned that although he was appointed as 'Safety Officer', the Company allotted him duty of 'Supervisor' in the production department. It is stated that all of a sudden, like a *bolt from the blue* the Management of the Company terminated his service by the letter dated 28.01.2014 with immediate effect on false, baseless and motivated allegations. It is mentioned that subsequently the Management of the Company realized that the termination of his service was done wrongfully and thus he was reinstated to his service in the post of 'Safety Officer' on the basis of a letter of appointment dated 02.04.2014 with immediate effect on a consolidated salary of Rs.12,350/- per month. It is claimed that suddenly on and from 18.10.2014 the Management of the Company disallowed him to enter into the mill premises to perform his duty without assigning any reason whatsoever. In spite of his repeated requests, the Management did not change their decision and in the result he was not allowed to join his duty and by such act the Management refused his employment. It is mentioned that the Management of the Company neither issued any show-cause notice, charge-sheet, warning letter to him nor brought any

allegation against him during the tenure of his service under the Company. It is stated that prior to such refusal of employment to him (applicant), he was not asked to explain his conduct as also the Company did not take proper step to get verified the allegations brought against him by way of properly constituted domestic enquiry proceedings. It is confirmed that the Management of the Company terminated his (applicant) service summarily by way of refusal of employment. It is also alleged that he was not given the opportunity to defend his case by the Management of the Company and thus the principles of natural justice had been grossly violated by the Management of the Company in the matter of his termination from the service of the Company by way of refusal of employment. It is stated that he (applicant) finding no other alternative raised an industrial dispute on 02.07.2015 before the Deputy Labour Commissioner, Government of West Bengal, Palika Bazar, P.O. Chandannagore, Dist. Hooghly for taking necessary action and after expiry of 45 days from the date of filing such application raising industrial dispute, he filed the instant application before this Tribunal u/s. 2A(2) of the Industrial Disputes Act, 1947. It is mentioned that after such termination of service by way of refusal of employment, he and his family members have been passing the days in great hardship.

It is claimed by the applicant that his '*termination from the service by way of refusal of employment*' was actually 'Retrenchment' as defined u/s. 2(oo) of the Industrial Disputes Act, 1947 but the Company did not observe the statutory preconditions as provided in Section 25H of the Industrial Disputes Act, 1947 (perhaps the applicant has misquoted the Section 25H in place of Section 25F of the Industrial Disputes Act, 1947).

The applicant by his application u/s. 2A(2) of the Industrial Disputes Act, 1947 has prayed for an Award with the direction upon the Company to reinstate him in the service of the Company in his substantive post with full back wages and other consequential benefits and facilities. He has also claimed for any other relief or reliefs which this Tribunal may deem fit and proper to grant him.

The Company i.e. M/s. Murlidhar Ratanlal Exports Ltd. Unit Gondalpara Jute Mill has contested this case by filing Written Statement. M/s. Murlidhar Ratanlal Exports Ltd. Unit Gondalpara Jute Mill (hereinafter referred to as the 'Company') by its Written Statement has denied all the material allegations leveled against it by the applicant. The Company has claimed that the instant application u/s. 2A(2) of the Industrial Disputes Act, 1947 is not maintainable in the eye of the law. It is mentioned in the written statement that the applicant/workman over the self-same cause of action has instituted several civil suits and cases against the OP/Company and thus the subject matter/matter in issue is *sub-judice* before the different forums and thus, there is a legal bar to adjudicating the instant case by this Tribunal. It is claimed that the principles of *res judicata* bars this Tribunal to proceed with this instant industrial dispute raised by the alleged workman. It is claimed that the nature of the industrial 'Dispute' raised by the alleged workman does not come within the jurisdiction of this Industrial Tribunal as also the 'applicant', by the nature of his job/service does not come within the definition of *Workman* as provided under Section 2(s) of the Industrial Disputes Act, 1947. It is mentioned that the alleged workman

joined in Hooghly Mills Company Limited as a 'trainee' in the year 1994 and he was sponsored by the Hooghly Mills Company Limited to undergo 'Safety Engineering Course' during the session 1995-1996 and on or about 01.02.1997 he was appointed as 'Safety Officer/Safety Manager' at Hooghly Mills Company Limited. It is mentioned that the alleged workman primarily had been performing 'Supervisory' duties. It is pointed out that in the 'Resume' submitted by the alleged workman, he has described that the nature of duty carried on by him was *supervising and evaluating the performance and batch monitoring in the weaving department*. It is mentioned that from the office record of M/s. Hooghly Mills Company Limited, Unit – India Jute Mills that the alleged workman namely Tapas Kumar Sinha Roy was a Safety Officer/Safety Manager/Supervisor and he was dismissed from his service on or about 1st February, 2014 but was subsequently reinstated in his service of the Company once again on 2nd April, 2014 and therefrom he continued to perform his managerial duties as a Safety Officer/Safety Manager/Supervisor. It is stated that the said alleged workman Sri Tapas Kumar Sinha Roy all of a sudden stopped to attend his duty place under the Company and it was learnt that the said person joined the service of another Company although he continued to stay in the staff quarters of the Company unauthorisedly along with his family. It is claimed that the alleged workman, who used to perform his duty in supervisory capacity drew a salary of more than Rs.10,000/- per month. It is reiterated that the alleged workman used to perform the functions of managerial nature and thus his duty was to evaluate the work of his subordinates as well as hiring and firing of employees, granting leave to employees. It is mentioned that the alleged workman was given higher responsibility and the nature of duty undertaken by him was not like manual or skilled or unskilled or clerical in nature and thus the said employee cannot be termed as 'workman' and he never received 'wages' from the Company. It is mentioned that the applicant himself admitted that all along he was allotted the duty as a Supervisor in the Production Department. It is mentioned that the applicant has admitted that he was drawing a consolidated salary of Rs.12,350/- per month.

The OP/Company by his written statement has prayed for rejecting the application filed u/s. 2A(2) of the Industrial Disputes Act, 1947 and to pass such other order/orders as this Industrial Tribunal may deem fit and proper.

After submission of Written Statements and list of documents by the parties to this case, exchange of documents took place. Thereafter, the matter was fixed for framing of issues.

On the basis of pleadings of the parties, the following issues were framed in this case by the then Learned Presiding Officer of this Tribunal on 18.04.2018 :

ISSUES

1. *Is the instant case filed under Section 2A(2) of the Industrial Disputes Act, 1947 sustainable in its present form, in fact and law both ?*

2. *Whether the termination of service of the applicant Sri Tapas Kumar Sinha Roy by the management of the O.P. Company w.e.f. 18.10.2014 is justified or not ?*
3. *What relief / reliefs, if any, the applicant is entitled to ?*

It is seen that the then Learned Presiding Officer of this Tribunal by order dated 18.04.2018 framed three numbers of issues for adjudication of the industrial dispute of this case. It is seen from the order dated 18.04.2018 that the then Learned Presiding Officer, upon perusal of the *suggested issues* filed by the parties coupled with the materials on record, framed three numbers of issues. It may not be wrong if it is mentioned here that Issues are generally framed in view of the pleadings of the parties. It is needless to mention here that the pleadings of the parties to this case are certainly within the materials on record.

In the above, in course of summarizing the contents of the Application u/s. 2A(2) of the Industrial Disputes Act, 1947 and the Written Statement filed to counter the said Application, it is revealed that the applicant in his Application raising industrial dispute has repeatedly claimed that the Management of the OP/Company refused his employment since the Management of the Mill did not allow him to enter into the Mill premises to perform his duty w.e.f. 18.10.2014. According to the applicant, such refusal of employment tantamounts to the termination of his service of the OP/Company. The written statement of the OP/Company shows that the OP/Company refused to concede with the claim of the applicant that he was a 'workman' under it. Moreover, the OP/Company has specifically and categorically disputed the claim of the applicant that he was terminated illegally. It is also revealed that the OP/Company has specifically denied and disputed the claim of the applicant that he was not allowed to enter into the mill premises to perform his duty w.e.f. 18.10.2014 and at the same time the OP/Company has alleged that the applicant abruptly stopped to attend the mill without any notice. The OP/Company has specifically and categorically denied the allegation of the applicant that the Management of the Company refused his employment.

In view of such statements and claims (in one word – '*pleadings*' of the parties to this case) of both the parties, I am of the opinion that Issues are to be recast with a view to make discussion and to reach to a reasonable decision over the industrial dispute raised by the applicant.

RECAST ISSUES

1. *Is the instant application u/s. 2A(2) of the Industrial Disputes Act, 1947 filed by Shri Tapas Kumar Sinha Ray maintainable in its present form and in the eye of the law ?*
2. *Whether the applicant is qualified as a 'workman' u/s. 2(s) of the Industrial Disputes Act, 1947 in connection with this instant case.*
3. *Whether the Management of the OP/Company refused the employment of the applicant Sri Tapas Kumar Sinha Ray w.e.f. 18.10.2014 which tantamount to termination of his service of the OP/Company.*

4. *Whether the applicant was retrenched by the OP/Company by way of alleged termination of his service under the guise of refusal of employment.*
5. *To what other relief/reliefs the applicant is entitled?*

After framing of the issues, the evidence of this case was started.

During evidence stage, the applicant Sri Tapas Kumar Sinha Roy adduced himself as PW-1.

It is seen that the Company adduced three witnesses namely Sri Prasanta Chakraborty, Sri Ajoy Kumar Ray and Sri Binod Behari Das as OPW-1, OPW-2 and OPW-3 respectively in support of the case of the Company.

In course of evidence, both the parties proved documents during examination of witnesses.

The applicant Sri Tapas Kumar Sinha Ray has identified and proved the following documents in course of his examination as witness:-

1. Exbt.-1 : Photo copy of the letter of confirmation dated 08.02.1997;
2. Exbt.-2 : Photo copy of letter of termination dated 28.01.2014;
3. Exbt.-3 : Photo copy of letter of appointment (3 sheets) dated 02.04.2014;
4. Exbt.-4 : Photo copy of workman's letter (2 sheets) dated 01.07.2015 to the Company;
5. Exbt.-5 : Photo copy of workman's letter dated 02.07.2015 (5 sheets) to the D.L.C., Chandannagar, Hooghly;
6. Exbt.-6 : Photo copy of letter dated 17.08.2015 of company to the A.L.C., Chandannagar, Hooghly;
7. Exbt.-7 : Photo copy of letter dated 06.11.2015 (2 sheets) of workman to A.L.C., Chandannagar, Hooghly;
8. Exbt.-8 : Photo copy of letter (2 sheets) dated 21.08.2015 of workman to the D.L.C., Chandannagar, Hooghly;
9. Exbt.-9 : Photo copy of pay slip for the month of September, 2014;

In course of examination of witnesses on behalf of the Company, the following documents were identified and proved. It is to be mentioned here that in course of examination of PW-1, two separate documents of the Company were identified and proved by the PW-1. The exhibited documents are as follows:-

1. Exbt.-A: photocopy of second appointment letter dated 02.04.2014 of the applicant issued by the Company (proved by PW-1);
2. Exbt.-B: signature of applicant dated 19.04.2014 (proved by PW-1);
3. Exbt.-B/1: photocopy of Bio-Data of the applicant;
4. Exbt.-C: salary slip of the applicant for the month October, 2014;
5. Exbt.-D : photocopy of certificate of University of Calcutta of the applicant;
6. Exbt.-E: Authorization letter issued by company dated 19.05.2022;
7. Exbt.-F: Copy of appointment letter dated 01.12.2011;
8. Exbt.-G: authorization letter of OPW-3 dated 09.03.2023;
9. Exbt.-H: Diploma Certificate;
10. Exbt.-I: Copy of minutes of meeting dated 10.06.2014;
11. Exbt.-J: copy of Attendance Register;
12. Exbt.-K: Licence to work in factory;
13. Exbt.-L: Staff Off. Furniture details;
14. Exbt.-M: STL Check List (32 pages);
15. Exbt.-N: Memorandum and Article of Association;

Decisions with reasons

Issue Numbers – 1, 2 & 3

For the sake of brevity and convenience, all those issues are taken together for discussion.

In this case, Ld. Advocates of both the parties made argument in support of their respective case. Apart from making oral argument, Ld. Advocates for the parties to this case submitted their written argument.

I would like to note down the recast Issue Nos. 1, 2 & 3 which were framed by this Tribunal on 18.04.2018.

1. *Is the instant application u/s. 2A(2) of the Industrial Disputes Act, 1947 filed by Shri Tapas Kumar Sinha Ray maintainable in its present form and in the eye of the law ?*
2. *Whether the applicant is qualified as a 'workman' u/s. 2(s) of the Industrial Disputes Act, 1947 in connection with this instant case.*
3. *Whether the Management of the OP/Company refused the employment of the applicant Sri Tapas Kumar Sinha Ray w.e.f. 18.10.2014 which tantamount to termination of his service of the OP/Company.*

On scrutiny of the record it appears that the applicant Tapas Kumar Sinha Ray filed the application u/s. 2A(2) of the Industrial Disputes Act, 1947 before this Tribunal on 26.09.2016. According to the application u/s. 2A(2) of the Industrial Disputes Act, 1947 the applicant was employed under M/s. Murlidhar Ratanlal Exports Ltd., Unit : Gondalpara Jute Mill, P.O. Gondalpara, Dist. Hooghly. This Tribunal enjoys its jurisdiction over the Hooghly District of West Bengal. It appears to me that the applicant being PW-1 has identified and proved his letter dated 02.07.2015 to the Deputy Labour Commissioner, Chandannagore, Dist. Hooghly raising industrial dispute (the said letter was received by the office of the Deputy Labour Commissioner, Chandannagore, Dist. Hooghly on 02.07.2015) and the same has been marked as Exbt.-5. So, it is transpired that the applicant filed the instant application u/s. 2A(2) of the Industrial Disputes Act, 1947 after the expiry of 45 days from the date, and that he submitted application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute. So, it is clear that he filed the application u/s. 2A(2) of the Industrial Disputes Act, 1947 complying the statutory provision.

Upon perusal of the application u/s. 2A(2) of the Industrial Disputes Act, 1947, it appears that the applicant unambiguously mentioned that he was appointed by the OP/Company on or about 01.02.1997 to discharge his duty as 'Safety Officer'. He has also categorically mentioned that being satisfied with his performance, the Management of the Company confirmed him in the service as 'Safety Officer' w.e.f. 01.02.1997. He has averred that he used to perform his duty as 'Safety Officer' with spotless, meritorious and unblemished service record as 'Safety Officer' till he was terminated illegally and w.e.f. 01.02.2014 by the letter of the Management dated 28.01.2014 but the Company on his application, considered the matter and 'reinstated' him in his service as 'Safety Officer' w.e.f. 02.04.2014 on a consolidated salary of Rs.12,350/- per month by issuing a Letter of Appointment dated 02.04.2014. The applicant being the PW-1 identified and proved - (i) the photocopy of his appointment letter dated 08.02.1997 issued by 'The Hooghly Mills Company Ltd., Unit : Gondalpara Jute Mill', (ii) letter dated 28.01.2014 issued by the Chief Executive Officer of Murlidhar Ratanlal Exports Ltd., Unit : Gondalpara Jute Mill informing the applicant Tapas Kumar Sinha Ray about the termination of service w.e.f. 01.02.2014 and (iii) Letter of Appointment dated 02.04.2014 in favour of the applicant Tapas Kumar Sinha Ray issued by Chief Executive Officer of Murlidhar Ratanlal Exports Ltd., Unit : Gondalpara Jute Mill have been marked as Exbt.-1, Exbt.-2 and Exbt.-3 (in 3 sheets) respectively.

The PW-1 Tapas Kumar Sinha Ray in his examination-in-chief on affidavit has practically reproduced the contents of his Application u/s. 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Written Statement') submitted in this case. It is seen from the examination-in-chief on affidavit of PW-1 that he on oath has stated that his designation was 'Safety Officer' but at no point of time he was given the duty related to safety matters. The PW1 in his examination-in-chief on affidavit has categorically stated that the Management of the Company due to compulsion kept a post of 'Safety Officer' and he was given an ornamental

designation as 'Safety Officer' but in fact he was assigned to perform supervisory work. The applicant in his written statement has categorically mentioned that although he was appointed as 'Safety Officer' and his service was confirmed in the said post but actually he was allotted the duty as 'Supervisor in the Production Department'. So, it is clear that the applicant in his written statement and the applicant being the PW-1 in his examination-in-chief on affidavit has corroborated his such 'statement'. He on oath has stated that although he was appointed and performed job in the Company of the opposite party but he never discharged any duty in administrative/managerial/supervisory capacity and he had no authority to take independent decision in the area of his work and he used to act as per the direction/instruction of higher management of the Company. If we go through the Written Statement of the applicant, it is revealed that he was appointed as 'Safety Officer' of the Company and he all along performed his duty meticulously till the date of his unjustified and illegal termination from service w.e.f. 01.02.2014. So, it is palpable that the applicant being PW-1 in his examination-in-chief on affidavit has made a statement being deviated from his statement made in the written statement. The PW-1 Tapas Kumar Sinha Roy in his examination-in-chief on affidavit has stated that he was entrusted with only supervision of the machines but not any workman employed in the factory. He has again stated that he was working to keep machines in good conditions for the purpose of smooth production in the department and he used to report to his higher authority for taking necessary steps for repairing of any machine as and when situation arose. He has also stated that he used to keep record of daily production quantity of the department. If we go through the Written Statement of the applicant, it is transpired that all those statements are not found or are visible in the Written Statement. So, the occasion arises to say that the applicant being PW-1 has made new statements about the nature of his job being deviated from his version contained in the Written Statement.

It is seen that (i) the photocopy of the appointment letter dated 08.02.1997 issued by 'The Hooghly Mills Company Ltd., Unit : Gondalpara Jute Mill' in favour of Tapas Kumar Sinha Ray and (ii) the Letter of Appointment dated 02.04.2014 in favour of the applicant Tapas Kumar Sinha Ray issued by Chief Executive Officer of Murlidhar Ratanlal Exports Ltd., Unit : Gondalpara Jute Mill have been marked as Exbt.-1 and Exbt.-3 (in 3 sheets) respectively. It is to mention here that the Letter of Appointment dated 02.04.2014 in favour of the applicant Tapas Kumar Sinha Ray issued by Chief Executive Officer of Murlidhar Ratanlal Exports Ltd., Unit : Gondalpara Jute Mill was shown to the PW-1 in course of his cross-examination and the said document was again exhibited with **Exbt.-A** mark. It is seen from Exbt.-A that the 'Letter of Appointment' dated 02.04.2014 was prepared in 'three pages' but only the page no.1 of the said Letter of Appointment dated 02.04.2014 was marked as Exbt.-A excluding other two pages of the said Letter of Appointment dated 02.04.2014. It is to mention here that said Letter of Appointment dated 02.04.2014 (in three pages) was marked as **Exbt.-3** in course of examination-in-chief of PW-1. So, it is found that Exbt.-3 (in three pages) and Exbt.-A in one page are partially same and identical documents.

On perusal of Exbt.-1 it is revealed that Chief Executive (Works) on behalf of the Hooghly Mills Company Ltd., Unit: Gondalpara Jute Mill issued Letter of Appointment dated 08.02.1997 to the applicant Tapas Kumar Sinha Ray. The said Letter of Appointment (Exbt.-1) shows that the Management of the Company by its letter dated 08.02.1997 was pleased to confirm the applicant as 'Safety Officer' in the mills w.e.f. 01.02.1997. It is also revealed that by such Letter of Appointment (Exbt.-1) the Company informed him the amount of monthly salary and undertook that all other perks as admissible to his grade and scale, which were usually paid to other employees of his cadre in the Company, will be paid to him. The Exbt.-1 also discloses that after joining in the service, the applicant Tapas Kumar Sinha Roy will be responsible for the promotion of satisfactory safety measures at his place of posting. So, the Exbt.-1 unambiguously discloses that the applicant Tapas Kumar Sinha Ray was confirmed in the cadre of 'Safety Officer' of the mill and he would be entitled to get all other perks which were admissible to his grade and scale. It is to mention here that pursuant to the said Exbt.-1, the applicant Tapas Kumar Sinha Ray joined in his service of the Company. So, it can be safely said that Tapas Kumar Sinha Ray agreed with all the terms, conditions and stipulations as mentioned in the Letter of Appointment (Exbt.-1) and thereby joined in the service (as 'Safety Officer') of the Company. The Exbt.-3 goes to show that the applicant Tapas Kumar Sinha Ray was again appointed (**fresh appointment**) as 'Safety Officer' of the Company w.e.f. 02.04.2014 (Although the applicant has used the term 'reinstated' in para. no. 5 of his written statement). Exbt.-3 shows that – *on appointment he will be paid a consolidated salary of Rs.12,350/- per month and in addition to consolidated salary he will be entitled to such allowances or perquisites as may be time to time specified by the Company in writing and communicated to him.* On perusal of Exbt.-4 i.e. letter dated 01.07.2015 issued by Tapas Kumar Sinha Ray to the Deputy Chief Executive Officer, The Hooghly Mills Co. Ltd. (renamed as M.R. Exports Ltd.) asking to make payment of money due to him, it is revealed that previously he was appointed as 'Safety Officer' in the mill on 01.02.1997 and thereafter his service was terminated on and from 01.02.2014 and again he was appointed in the post of 'Safety Officer' (*the applicant in para. 4 of such Exbt.-4 has used the term 'reinstate' although his appointment was fresh vide Exbt.-3*). The Exbt.-4 goes to show that the applicant has admitted that he was appointed as 'Safety Officer' of The Hooghly Mills Co. Ltd. (renamed as M.R. Exports Ltd.) against a salary of Rs.12,350/- per month. In this space, it is pertinent to mention that the applicant Tapas Kumar Sinha Ray did not produce and prove any document from which it can be revealed that during the tenure of his service under The Hooghly Mills Co. Ltd. (renamed as M.R. Exports Ltd.) he submitted any application expressing his grievance that he was deprived to act as 'Safety Officer' of the mill in terms of his Appointment Letter and the Management of the Company compelled him to perform the duty of Supervisor to look after the production. It is to note here that the applicant Tapas Kumar Sinha Ray has began to make allegations that he was deprived to act as 'Safety Officer' of the mill and he was compelled to perform his duty as 'Supervisor' to look after the production of the mill as and when the industrial dispute between him and the Management of the Company was started. It is seen that the applicant Tapas Kumar Sinha Ray raised industrial dispute by issuance of a

letter dated 02.07.2015 addressed to the Deputy Labour Commissioner, Chandannagore, Hooghly which has been marked as Exbt.-5 (in 5 sheets). It is seen from the Exbt.-5 that the applicant Tapas Kumar Sinha Ray admitted that he was a **Trainee** in The Hooghly Mills Co. Ltd. (renamed as M.R. Exports Ltd.) in the year 1994 and **he was sponsored by the mill to undergo diploma in Safety Engineering Course during the period 1995-1996** and on successful completion of the said course he was appointed as 'Safety Officer' of the said mill on 01.02.1997. In the Exbt.-3 the applicant Tapas Kumar Sinha Ray has again mentioned that all along he was allotted to perform the duty of a Supervisor to look after the production and he was deprived to perform the duty as 'Safety Officer' as stipulated in the Letter of Appointment (**Exbt.-1**). The applicant has also mentioned in Exbt.-5 that on 02.04.2014 he was **reinstated** (*but on conjoint perusal of Exbt.-3 and Exbt.-B/1, it goes to show that his appointment in the Company was a fresh appointment considering his professional experience and qualification*) as 'Safety Officer' at a monthly salary of Rs.12,350/- together with other admissible benefits vide **Exbt.-3**. From the Exbt.-8 it is revealed that the applicant Tapas Kumar Sinha Ray has reiterated that on 02.04.2014 he **was again appointed as 'Safety Officer'**. Exbt.-9 is the pay slip for the month of September, 2014 in respect of Tapas Kumar Sinha Ray. In Exbt.-9, the designation of Tapas Kumar Sinha Ray has been mentioned as '**Supervisor**'. Exbt.-C is the pay slip for the month of October, 2014 in respect of Employee No.01141 Tapas Kumar Sinha Ray and in such document the designation of Sri Sinha Ray has been mentioned as '**Supervisor**'. Exbt.-I is the 'Distribution of Meeting Minutes on Formation of Fire Safety Committee' dated 10.06.2014. The Exbt.-I shows that the applicant Mr. T.K. Sinha Ray under his designation as 'Safety Officer' is one of the core members of 'Fire Safety Committee'. The Exbt.-I also shows that all the members of such 'Committee' including Mr. T.K. Sinha Ray, Safety Officer put their signatures in the signature column against their names. The said document i.e. Exbt.-I was executed on 10.06.2014. The signature of Mr. T.K. Sinha Ray in the signature column against his designation 'Safety Officer' speaks a lot against the claim of the applicant Tapas Kumar Sinha Ray in course of raising industrial dispute that he never acted as 'Safety Officer' and he was never considered by the Management of the Company as 'Safety Officer' of the mill. If the Management of the Company actually did not consider the applicant Tapas Kumar Sinha Ray as 'Safety Officer' of the mill, then the Management of the Company would not include Mr. Tapas Kumar Sinha Ray as 'Core Members of Fire Safety Committee'. Exbt.-L goes to show that Tapas Kumar Sinha Ray handed over the possession of furnished staff quarters to one Tapas Banerjee on 02.02.2017. Exbt.-M is the photocopies of 'STL Check List' for the year 2014 and the year 2015 and the sheets comprising of 'STL Check List' for the year 2014 and the year 2015 do not contain the name of Tapas Kumar Sinha Ray. In course of evidence of OPW-3 'Statutory Leave Register for the year 2014-2015' has been marked as Exbt.-M (collectively) and the OPW-3 mentioned in his examination-in-chief on affidavit that the signature of Tapas Kumar Sinha Ray is not available within Statutory Leave Register. The OPW-3 also has stated that 'Statutory Leave Register' of the Company is required to be signed only by the workers and not by the employees working at managerial capacity. It is seen that during cross-examination the

applicant save and except denying such statement of OPW-3 (as contained in para. No. 23 of his examination-in-chief on affidavit) by putting suggestion, did not cross-examine him to make such statement unbelievable. It is to mention here that the applicant Tapas Kumar Sinha Ray in the **Exbt.-5** has voluntarily admitted that his employer i.e. The Hooghly Mills Co. Ltd. (renamed as M.R. Exports Ltd.) sponsored him to undergo the one year course to obtain the Diploma in Safety Engineering from West Bengal State Council of Technical Education and thereafter he was appointed as 'Safety Officer' of the mill. Such version or admission of the applicant Tapas Kumar Sinha Ray as mentioned in the Exbt.-5 makes it clear that his employer had borne all the cost/expenses for participating in the said 'Course' by the employee Tapas Kumar Sinha Ray. In view of such statement of Tapas Kumar Sinha Ray, as is found in Exbt.-5, it is hard to believe that the Management of The Hooghly Mills Co. Ltd. (renamed as M.R. Exports Ltd.) would have neglected to use the resource / expertise of Tapas Kumar Sinha Ray after appointing him as 'Safety Officer' and preferred to use him otherwise in other works of the mill.

One '**Resume**' in respect of Tapas Kumar Sinha Ray has been marked as Exbt.-B/1 and the signature of Tapas Kumar Sinha Ray on such 'Resume' has been marked as Exbt.-B. It is revealed from Exbt.-B/1 that Tapas Kumar Sinha Ray had experience in working as 'Safety Officer' in Gondalpara Jute Mill for last 17 years as well as he had experience of handling various operational activities of Weaving Department for last 19 years. The Exbt.-B discloses that the designation of Tapas Kumar Sinha Ray was a 'Safety Officer' (1997 – till date) and a Production Supervisor (1994 – 1997). It also reveals that Tapas Kumar Sinha Ray was given the responsibility of managing overall safety system, regular maintenance of equipments, periodic inspection of various equipments such as fire extinguisher, sprinkler system, hydrant point, hose, noise level meter, fire alarm etc. and apart from that, he was given responsibilities of the Weaving Department including quantity and quality of output, performance monitoring, batch monitoring etc. The Exbt.-B/1 contains the Exbt.-B and thus it is clear that the applicant Tapas Kumar Sinha Ray knowing fully well about the contents of such 'Resume' put his signature on 19.04.2014. It can be said that if the applicant Tapas Kumar Sinha Ray had any objection or grievance in respect of the contents of the document i.e. 'Resume', he would not have put his signature on such document. Exbt.-D is the Certificate of Bachelor of Science (3 year course) Degree issued by The University of Calcutta to Tapas Kumar Sinha Ray. Exbt.-H is the Certificate of passing one year Diploma Examination in Safety Engineering issued by the West Bengal State Council of Technical Education in favour of Tapas Kumar Sinha Ray. So, it is clear that the applicant Tapas Kumar Sinha Ray is a well educated person having 3 years B.Sc. Degree and Diploma in Safety Engineering. Since the applicant Tapas Kumar Sinha Ray is an educated person, it is quite natural that he would accept any condition and stipulation after understanding and realizing the same. In view of Exbt.-B, it can be safely said that the applicant Tapas Kumar Sinha Ray being satisfied with the contents of the document i.e. 'Resume' and having accepted the responsibilities given upon him, put his signature on the same on 19.04.2014 as a mark of his 'acceptance' of the 'Resume'.

The applicant Tapas Kumar Sinha Ray examined himself as PW-1. In course of cross-examination the PW-1 has divulged that Safety Engineering Course is mainly related with accidental incidents as emerged in course of running of factory/mill. He has admitted that he was exclusively related with the service of the jute mill industry since 1994 including the period of his training i.e. Diploma in Safety Engineering. He has admitted that he got appointment as 'Safety Officer' in the year 1997 in the said factory/mill. He has admitted that his last paid salary was Rs.12,350/- per month. He has divulged that he was merely appointed as 'Safety Officer' but he used to look after the machines of the Weaving Department of the mill. It is to mention here that in his examination-in-chief on affidavit he has stated that he was assigned to perform supervisory work. Again he has stated that he was entrusted only to supervise the machines, not any workmen employed in the factory. Thus, it is clear that PW-1 in his evidence has made self-contradictory statement about the nature of his job for the role played by him in the mill as an employee of the Company. He has divulged that Factory Manager was his immediate superior in the Company's employment.

The OP/Company has adduced three witnesses. The OPW-1 Prasanta Chakraborty in his examination-in-chief on affidavit has divulged that Tapas Kumar Sinha Ray joined in the Hooghly Mills Co. Ltd. as Trainee in the year 1994 and he had undergone Safety Engineering Course during the year 1995-1996 and on successful completion of the course, Sri Sinha Ray obtained a 'Certificate'. He has stated that Sri Tapas Kumar Sinha Ray was primarily vested with supervisory functions and he had to carry out his duty of supervising and evaluating the performance of other workmen employed in the unit as well as batch monitoring in the Weaving Department. He has stated that Tapas Kumar Sinha Ray was responsible for implementation of Company's policies from operational point of view and he was also in-charge of implementing safety standards. He has stated that Sri Tapas Kumar Sinha Ray all along was vested with 'higher responsibilities'. He has stated that Sri Tapas Kumar Sinha Ray used to receive salary for performing the function of Supervisor and at no point of time he received 'wages'. Again, he has stated that Tapas Kumar Sinha Ray never acted as workman but he was a 'Safety Manager/Safety Officer' of the unit. He has stated that Sri Tapas Kumar Sinha Ray was reinstated in his earlier capacity as 'Safety Officer/Safety Manager/Supervisor'. He has stated that Tapas Kumar Sinha Ray stopped to attend his duties from the month of October, 2014.

During cross-examination he has divulged that in the Appointment Letter (i.e. Exhibit-A) the designation of the workman has been written as 'Safety Officer' and not 'Safety Manager'. He has denied the suggestion of the applicant that Sri Tapas Kumar Sinha Ray had no Supervisory capacity as well as he was not a Supervisor.

The OP/Company has examined Ajay Kumar Ray, Labour Officer as the OPW-2. He has divulged that Mr. Tapas Kumar Sinha Ray had joined in the service of M/s. Hooghly Mills Company Limited in the year 1994 as a trainee and in course of such training period, Tapas Kumar Sinha Ray joined in the Diploma Course on "Safety Engineering" and on completion of

such course he obtained a Diploma Certificate from West Bengal State Council for Technical Education. He has identified such 'Certificate' and the same has been marked as 'Exhibit-C'. He has divulged that after completion of the Diploma Course on 'Safety Engineering', he was appointed as "Safety Officer" at Hooghly Mills Company Limited on 01.02.1997. He has divulged that Tapas Kumar Sinha Ray was primarily vested with 'Supervisory functions' and in the 'Resume' (Exhibit-E) his specified duties were mentioned in details. He has divulged that Tapas Kumar Sinha Ray was responsible for implementation of Company's policies from operational point of view and also he was in-charge of implementing safety standards throughout the unit according to the prescribed standards of the Government. He has divulged that Tapas Kumar Sinha Ray was all along vested with responsibilities higher than an ordinary workman. He has disclosed that Tapas Kumar Sinha Ray had accepted the 'Resume' and he admitted that he was working in the capacity of a Production Supervisor from the year 1994-1997. He has divulged that Shri Tapas Kumar Sinha Ray had stopped to attend his duties from the month of October 2014 and while he was working under the Company, he used to draw salary amounting to Rs. 12,350/- per month.

During cross examination he has admitted that he did not file any document to show that the workman was vested with Supervisory duties. He has spelt out the meaning of "higher responsibilities" as the Head of the Department. He has disclosed that Tapas Kumar Sinha Ray used to work in 'Hasia Department' and he also worked as 'Safety Officer'. He has denied the suggestion of the applicant that Tapas Kumar Sinha Ray has never worked as 'Production Supervisor'.

The OP/Company has adduced Binod Behari Das, Director of the Company as OPW-3. The OPW-3 in his examination-in-chief on affidavit has admitted that he is one of the Directors of the Company. He has disclosed that the alleged workman joined in the service of M/s. Hooghly Oils Mills Company Ltd. as trainee in the year 1994 and the alleged workman had undergone a course on Safety Engineering in the year 1995-1996 and obtained a diploma certificate (Exbt.-H) on Safety Engineering. He has divulged that the said alleged workman was appointed in the post of 'Safety Officer' of Hooghly Mills Co. Ltd. on 02.04.2014. He has divulged that the alleged workman was working as Supervisor. He has confirmed that the nature of duty performed by the alleged workman discloses that his functions were supervisory. He has disclosed that the 'Resume' (Exbt.-B/1) of the workman goes to show that he (workman) used to perform duty in supervisory position and he also used to monitor the works of other departments as well as he was involved in assigning duties to other workmen in the unit. He has proved the minutes of meeting of Fire Safety Committee (Exbt.-I) and has disclosed that the alleged workman put his signature under designation 'Safety Officer' on the minutes of the meeting on formation of Fire Safety Committee. He has proved the 'attendance sheet' (Exbt.-J) in respect of the alleged workman and such Exbt.-J shows that the alleged workman put his signature on the same under the designation 'Safety Officer'. He has divulged that since the alleged workman was working in the supervisory position, 'Statutory Leave Register' (Exbt.-M) for the year 2014-

2015 does not contain the signature of the alleged workman because only the workmen are liable to put their signatures thereon. He has also stated that employees working in the managerial capacity are not required to put their signatures on the Statutory Leave Register. He has disclosed that the alleged workman used to draw a sum of Rs.12,350/- per month while he was working under the OP/Company.

On the first date of his cross-examination he has reiterated that he was inducted as one of the Directors in the Board of Directors of the Company in the year 2014 and he undertook to file a copy of the Articles of Association of the Company before this Tribunal to establish that he is one of the Directors of the Company as he was inducted in the Board of Directors in the year 2014. On the second date of his cross-examination he filed a copy of the Articles of Association of the Company containing pages nos. 1 to 36. The said copy of Articles of Association has been marked as Exbt.-N. During cross-examination he has admitted that according to Exbt.-N his name is not included as one of the Directors of the Company. He has divulged that the Management of the Company used to prepare duty roster for the workmen and the said system is still prevailing but there is no mention of the name of Sri Tapas Kumar Sinha Ray in the duty roster made for the 'workmen' of the Company. He has reiterated that he has filed the photocopy of attendance register (Exbt.-J) to show that Tapas Kumar Sinha Ray had been working under the designation 'Safety Officer' of the Company. The OPW-3 has denied the suggestion of the applicant that the Company provided with accommodation to Sri Tapas Kumar Sinha Ray since he was a 'Safety Officer' of the Company and his nature of job was emergency round the clock. In view of such suggestion put to OPW-3 by the applicant, it can be said that the applicant has admitted that he was working as 'Safety Officer' of the Company.

After scanning the evidences of OPW-1, OPW-2 and OPW-3 it is found that all of them in unequivocal language have stated that Sri Tapas Kumar Sinha Ray initially joined in the OP/Company in the year 1994 as 'Trainee' and during his assignment as 'Trainee', he joined in the diploma course on Safety Engineering in the year 1995-1996 and he obtained a Diploma Certificate on the Safety Engineering on successful completion of such course. It is found from the evidences of all those witnesses that the applicant Sri Tapas Kumar Sinha Ray was appointed in the post of 'Safety Officer' on 02.04.2014 of Hooghly Mills Co. Ltd. All those three witnesses in unequivocal language have divulged that the applicant was vested with supervisory functions (including supervising and evaluating the performances of other workmen employed in the unit as well as batch monitoring in the Weaving Department) and the applicant was also given the charge of implementing safety standards throughout the unit compatible with prescribed standards as fixed by the Government. It is also seen that OPW-1, OPW-2 and OPW-3 in their respective evidences, have stated that a 'Resume' (Exbt.-B/1) was prepared in respect of the applicant and such 'Resume' goes to show the nature of duties to be performed by the applicant as an employee of the OP/Company. All those three witnesses have stated in an unequivocal language that the applicant used to draw salary of Rs.12,350/- per month being a 'Supervisor' of the Company and for acting in the supervisory capacity. It is seen that all those three witnesses

have supported the case of the OP/Company in the matter of the industrial dispute raised by the applicant. It is seen that all those three witnesses in their respective evidences have stated that the alleged workman Tapas Kumar Sinha Ray stopped to attend his duty from the month of October, 2014. It is seen that the applicant did not cross-examine the OPW-2 on his statement that the applicant stopped to attend his duties from the month of October, 2014 but the applicant cross-examined OPW-1 and OPW-3 on their statements that the applicant stopped to attend his duties from the month of October, 2014. In course of cross-examination of OPW-3, he made statement that the Management of the Company did not send any show-cause letter to the applicant asking him to show-cause as to why his employment would not be terminated on the ground of continuous absence without intimation.

The applicant i.e. PW-1 in his examination-in-chief on affidavit has stated that on and from 18.10.2014 the OP/Company did not allow him to enter in the mill premises to perform his duties. He has also stated that inspite of his verbal request, the Management of the Company did not allow him to enter into the mill premises to discharge his duties. Apart from such statement, the PW-1 did not divulge whether he went to local Police Station to lodge a G.D. Entry/information containing his grievance against the OP/Company over that matter as well as the applicant (PW-1) did not make any statement whether he went to local Police Station to seek the help of the Police in the alleged matter of disallowing him to enter into the mill premises to join his duty. Moreover, the PW-1 in his examination-in-chief on affidavit has not mentioned that he submitted application to the Management of the OP/Company requesting them to allow him to perform his duty after allowing him to enter into the mill premises or to inform him in writing the reason behind the alleged refusal by the Management to give entry to him to the mill premises to perform his duty. It is to mention here that although the applicant in his application u/s. 2A(2) of the Industrial Disputes Act, 1947 has claimed that the OP/Company by way of refusal of his employment actually terminated him from his service and such termination comes under the purview of 'retrenchment' as defined u/s. 2(oo) of the Industrial Disputes Act, 1947 and the Company did not comply the provision of Section 25F of the Industrial Disputes Act, 1947 to give benefit to retrenched workman. Although the applicant has claimed such matter in his application u/s. 2A(2) of the Industrial Disputes Act, 1947 but it is seen that the applicant being PW-1 did not make any statement in the matter of 'retrenchment' in his examination-in-chief on affidavit. It is to mention here that the issue of 'retrenchment' has been raised by the applicant in his application u/s. 2A(2) of the Industrial Disputes Act, 1947 and thus it has become his incumbent duty to establish such issue of 'retrenchment' by adducing evidence but in fact the applicant being PW-1 did not make any statement on the 'retrenchment' with a view to substantiate his such claim.

After churning out the application u/s. 2A(2) of the Industrial Disputes Act, 1947, and the Written Statement submitted by the OP/Company with a view to oppose/controvert the claim of the applicant made in the application u/s. 2A(2) of the Industrial Disputes Act, 1947 and also the evidence on record, it is surfaced that the applicant, with a view to create a confusing

environment in the process of adjudication of the real industrial dispute, has tactfully and cleverly brought/included a seemingly out of context matter in the current dispute in question because the applicant has included an apparently irrelevant matter i.e. the matter of his Appointment to the OP/Company by means of Exbt.-1 and the matter of his subsequent termination from his service of the OP/Company by means of Exbt.-2 in this instant case (industrial dispute) knowing fully well that this 'instant industrial dispute' has not arisen due to the effect of Exbt.-2 but has arisen over the allegation of the applicant Tapas Kumar Sinha Ray that he was not allowed to enter into the mill premises to perform his duty on and from 18.10.2014 in the perspective that he was appointed in the post of 'Safety Officer' of Gondalpara Jute Mill by the OP/Company (Murlidhar Ratanlal Exports Ltd.) by means of Letter of Appointment dated 02.04.2014 (Exbt.-3). The Exbt.-3 (the first page of Letter of Appointment dated 02.04.2014 has again been marked as Exbt.-A) goes to show that the appointment of Sri Tapas Kumar Sinha Ray as 'Safety Officer' of Gondalpara Jute Mill was a fresh appointment and in fact the contents of the Exbt.-3 does not spell out such appointment as 'reinstatement' of Sri Tapas Kumar Sinha Ray with a view to restoring him in his earlier post and position. Thus, in this case, arising out of an industrial dispute raised by Sri Tapas Kumar Sinha Ray, the duty entrusted upon this Industrial Tribunal to adjudicate the 'industrial dispute' allegedly arisen on the grievance upon the applicant Sri Tapas Kumar Sinha Ray to the effect that he was not allowed to enter into the mill premises of Gondalpara Jute Mill on and from 18.10.2024 while he intended to perform his duty under his employer. It is to mention here that 'industrial dispute' if any, had arisen with the effect of issuance of letter of termination of service of Sri Tapas Kumar Sinha Ray (dated 28.01.2014 i.e. Exbt.-2) by the management of Murlidhar Ratanlal Exports Ltd., Unit: Gondalpara Jute Mill was perhaps settled after he was appointed as the 'Safety Officer' w.e.f. 02.04.2014 of Gondalpara Jute Mill under Murlidhar Ratanlal Exports Ltd. by letter of appointment dated 02.04.2014 (Exbt.-3). Thus, it can be safely said that 'industrial dispute' if any, had arisen with the effect of Exbt.-2 was supposed to cease to exist or come to an end with the effect of issuance of Exbt.-3.

In view of such discussion, we ought to have concentrated on the alleged 'industrial dispute', which had arisen over the allegation of the applicant that he was appointed by Murlidhar Ratanlal Exports Ltd., Unit: Gondalpara Jute Mill through Exbt.-3 as 'Safety Officer' and he was performing duty but on and from 18.10.2014 he was allegedly denied to enter into the mill premises to perform duty. However, this Tribunal has made detailed discussion over the facts in its entirety as narrated in the application u/s. 2A(2) of the Industrial Disputes Act, 1947 with a view to come to a just and proper conclusion by way of adjudication of the dispute.

Now, I like to reproduce the provision of Section 2(s) of the Industrial Disputes Act, 1947 with a view to settle the Issue No.1.

Section 2(s) – "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of

employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison, or*
- (iii) who is employed mainly in a managerial or administrative capacity, or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.*

Ld. Advocate for the OP/Company has cited decisions of (i) the Hon'ble Supreme Court of India in the matter of M/s. Bharti Airtel Ltd. versus A.S. Raghavendra (Civil Appeal No.5187 of 2023), (ii) the Hon'ble High Court, Karnataka in the matter of Writ Petition No.49982/2018(L-TER) C/W Writ Petition No.6531/2019(LRES) and (iii) the Hon'ble High Court of Gujarat in the matter of R/Special Civil Application No.28475 of 2007 with R/Special Civil Application No.8871 of 2008 in support of their case.

On perusal of the judgment passed by the Hon'ble Supreme Court of India in the matter of Civil Appeal No.5187 of 2023 it appears that the said Appeal had arisen out of the final judgment and order dated 31.03.2022 passed by the Hon'ble Division Bench of the High Court, Karnataka in Writ Appeal No.4067 of 2019 (L-TER) arising from Writ Petition No.13842 of 2018 (L-TER). It is seen that in the said judgment the Hon'ble Supreme Court of India after taking into consideration the judgment in Ved Prakash Gupta versus Delton Cable India (P.) Ltd., (1984) 2 SCC 569 has been pleased to observe that – ‘a bare perusal of the above makes it clear that absence of power to appoint, dismiss or conduct disciplinary enquiries against other employees was not the only reason for the Court to conclude in Ved Prakash Gupta (*supra*) that the appellant therein was a ‘workman’. At this juncture we may note that although Ved Prakash Gupta (*supra*) was decided by a 3-Judge Bench, in a later judgment by a 2-Judge Bench of this Court in S.K. Maini versus M/s. Carona Sahu Company Limited, (1994) 3 SCC 510, it was held that – “.....It should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in a big set-up such power is not vested to a local manager but such power is given to some superior officers also in the management cadre at regional or divisional level.” In the said judgment, the Hon'ble Supreme Court has also observed that – “That being said, in our considered view, mere absence of power to appoint,

dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine such an issue. Holding otherwise would lead to incongruous consequences, as the same would, illustratively, mean that, employees in high-ranking positions but without power to appoint dismiss or hold disciplinary enquiry would be included under the umbrella of 'workman' under Section 2(s), I.D. Act. We cannot be oblivious of the impact of our decisions."

The Hon'ble High Court of Karnataka in the matter of Writ Petition No.49982/2018 (L-TER) C/W Writ Petition No.6531/2019 (L-RES) has been pleased to observe –

"The definition of 'workman' in Section 2(s), in connection with the persons employed in an industry falls in three parts:

- i. Any person (including an apprentice) employed in an 'industry' to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward;*
- ii. It includes something more in what the term primarily denotes and this part, it defines the person who has been dismissed, discharged or retrenched in connection with an industrial dispute;*
- iii. This part specifically excludes the categories of person specified in Clause-i to iv of this Sub- Section.*

13. The exception to Section 2(s), more particularly Sub-Clauses (iii) and (iv) which are necessary to be considered in this petition, are the persons who are employed mainly in a managerial or administrative capacity or who are employed in a supervisory capacity, draw wages exceeding Rs.10,000/- per month and either by the nature of the duties attached to the office functions mainly of a managerial nature. Taking the provisions of Section 2(s) of the ID Act, whether the duties performed by the applicant as an 'Executive Secretary' falls within the meaning of Section 2(s) of the ID Act needs to be looked into.

14. The applicant was offered employment with the designation "Executive Secretary" and the nature of work of the respondent, as could be gathered from the appointment letter, resume made available by the applicant to the post of "Executive Secretary," is that:

- i. Assisting the Chairman, Managing Director and Director in the day-to-day work;*
- ii. Taking care of their travels (Domestic and International), renewal of Passports, processing of VISA / Tickets, accommodation and vehicle arrangements;*

iii. Ensuring that all the bills from the travels are received, checked and forwarded to the Accounts Department for payment;

iv. To see that all the meetings and appointments of the schedule of Chairman, Vice Chairman and Directors are updated;

v. As per the appointment letter, the performance of the duties to be carried out by the applicant was to be in compliance with the established policies and procedures, endeavoring to her best ability to protect and promote the interests of the company;

vi. The salary of the applicant was fixed at Rs.20,000/- per month;

15. The perusal of the records would indicate that before joining the company, the applicant had a total experience of 17 years as a Secretarial Assistant and the post to which the applicant was appointed was based on the qualification and experience she possessed prior to her appointment to the company. The applicant discharged her duties in Supervisory and Managerial Role, the documents produced at Exs.M.1 and M.2 clearly establish the nature of function the applicant was performing as on the date of termination and it is abundantly clear that the applicant was working as an "Executive Secretary" and she had a duty of maintaining the records of the Managing Director and the Chairman, the nature of work performed by the applicant at no stretch of imagination can be said to be as envisaged under Section 2(s) of the ID Act. The main duties performed by the applicant is in the nature of Manager and thus, the Labour Court was not justified in coming to a conclusion that the applicant was a workman as defined under Section 2(s) of the ID Act, even assuming the applicant is doing clerical work as contended by the party-in-person-N. Bhuvaneshwari, the clerical work, if any, is only incidental to the principal work, which she is undertaking as a Manager to the post of "Executive Secretary". The work assigned to the applicant is of responsibility and she was discharging the managerial and supervisory duties as per the appointment order, these surrounding circumstances clearly indicate that the applicant is not a 'workman' as defined under Section 2(s) of the ID Act."

In view of the observation made by the Hon'ble High Court of Karnataka in the above cited Writ Petition, it can be safely said that the applicant Tapas Kumar Sinha Ray was appointed as the 'Safety Officer' of Gondalpara Jute Mill vide Exbt.-3 on the basis of qualification and experience he possessed prior to his appointment to the Company and other duties and responsibilities vested on him by the Management of the Company i.e. Murlidhar Ratanlal Exports Ltd., Unit : Gondalpara Jute Mill was only incidental to the principal work, which he was undertaking as a 'Safety Officer'. Moreover, the work assigned to the applicant Tapas

Kumar Sinha Ray is of responsibility and he was discharging supervisory duties as per the 'Resume' (Exbt.-B/1) coupled with Exbt.-3.

The Hon'ble High Court of Gujarat in the matter of R/Special Civil Application No.28475 of 2007 with R/Special Civil Application No.8871 of 2008 has been pleased to observe -

"15. The Labour Court appears to have lost sight of aforesaid document, which cannot be disputed by the parties and which clearly specifies the grade of the respondent, the pay scale of the respondent and the fact that the salary of the respondent was above the salary of Rs.1600/-, which was stipulated for attracting the definition of the workman at the relevant time. Hence, the Court is of the view that on the basis of the nature of work of the respondent as well as his salary, the respondent will not attract definition of a workman.

16. The Labour court Court erred in not appreciating that the company witness Mr. R.M.Patel had stated in his oral evidence that while he (R.M.Patel) was working in Production Engineering Department, he frequently had to interact with the respondent No.3 in his capacity as Maintenance Engineer in Maintenance Department and that under his supervision, workman in the category of fitter, helper, etc. were working. It was also stated by C/SCA/28475/2007 JUDGMENT DATED: 01/08/2022 said Mr.R.M.Patel that there would be about 2-3 fitters in one plant in a shift, whereas in general shift there would be 3-4 fitters and that it was the respondent s No.3 who used to give instructions regarding work to fitter and helper. The petitioners humbly submit that while overlooking the said evidence by Mr.R.M.Patel, the respondent No.1 Court chose to refer to only cross-examination and has erred in discarding the evidence of Mr.R.M.Patel by disbelieving the same. The respondent No.1 Court has also erred in ignoring and misconstruing the evidence of Mr. R.M. Maidamwar, who also in his oral evidence stated that the fitter and helper used to work under respondent No.3 and that the fitter and helper are supposed to work as per the instructions of Maintenance Engineer and in the event of breakdown, it is the Maintenance Engineer, who guides and instructs the fitter and helper to carry out the repair work and it is the Maintenance Engineer, who would determine the requirement of parts, spares, etc.

17. In view of the aforesaid, where this Court is convinced that the respondent will not fall in the definition of a 'workman', the issue of raising industrial dispute will have to be decided in favour of the petitioner-company as a necessary consequence."

The Hon'ble High Court of Gujarat in the matter of Laxmikant Mohanlal Dawda and Servo Drives Pvt. Ltd. (SCA No.8297/1998 dated June, 1999) has been pleased to observe -

“4. It is therefore obvious from the above definition that under Section 2(s) of the Act a person will not be included in the definition of workman who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. It is actually this clause which was pressed into service by the Labour Court for coming to the conclusion that the petitioner is not a workman. The first thing to be kept in mind for applying the provisions of Section 2(s) of the Act is that the person should be employed in a supervisory capacity. The second condition is that he should be drawing wages exceeding one thousand six hundred rupees per mensem. The third condition is that such person may be exercising either by the nature of his duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. The third condition of the sub-section (iv) may not attract because the petitioner was not employed to discharge mainly function of a managerial nature. Even according to the writ petition, he was employed as a machine shop Supervisor on probation for six months and was confirmed after completion of probationary period since March 1984 and was working as machine shop Supervisor. Therefore, it seems from the narration in the writ petition that the nature of duties of the petitioner was to look after the machine shop section of the respondent Company and to supervise the work of this section. He may be having technical knowledge in operating the machines of the section in which he is employed but he was also doing supervisory work which is obvious from the findings recorded by the Labour Court.

5. In para 6 of the award of the Labour Court it has been mentioned, on the basis of the material on record as well as from the statement of the petitioner in examination-in-chief as well as in cross-examination, that the petitioner was appointed as machine shop Supervisor. Appointment letter was also considered by the Labour Court in which it found that the petitioner's appointment was as a machine shop Supervisor. The Labour court further found that the petitioner was paid salary of Rs. 1725/- which means his salary exceeded Rs. 1600/- as is specified in Section 2(s) of the Act. The petitioner further stated before the Labour Court that he was being paid more allowance than the allowance paid to other workmen. He was thus working in supervisory capacity and his salary and allowance were not equal to the salary and allowance of other workmen who

were working under him. He further stated that he used to fill in workmen's Confidential Report. Giving entry in the Confidential Report in writing is certainly work of supervisory nature and it cannot be said that it was a clerical work which was being done by the petitioner on the request of the workmen. Workmen had no access to the Confidential Report. He further stated that he was taking work from other workmen and he used to put remarks on the loan applications of the workmen. Taking work from other workmen and putting remarks on the loan applications of the workmen working under him indicate supervisory nature of the work which was being taken from the petitioner by the respondent. He also used to make endorsement on the leave application of the other workmen which cannot be said to be a mere clerical job. There is categorical finding of the Labour Court that the petitioner was appointed as Supervisor. Consequently, if a person was appointed as Supervisor and was looking after some work in the technical section in which he was posted and he was having technical knowledge, he cannot be said to be workman within the definition of Section 2(s) of the Act."

In the matter of Union Carbide (India) Ltd. v. D. Samuel & Ors. (Writ Petition No.2596 of 1994), reported in 1998 II CLR 736 the Hon'ble High Court of judicature at Bombay has been pleased to observe –

“Let me now refer to the various Judgments. The first judgment referred to is the Judgment in the case of Mcleod and Co. v. Sixth Industrial Tribunal, West Bengal & Ors. AIR 1958 Cal. 273. A single Judge of the Calcutta High Court P.B. Mukharji, J. addressed himself to the Issue as to what is managerial, administrative or supervisory functions. It will therefore be worthwhile to reproduce paragraph 36 of the said Judgment, which reads as under :

'Having regard to the categories of service indicated by the use of different words like "supervisory", "managerial", "administrative", it is I think necessary not to import the notions of one into the interpretation of the other. The words such as supervisory, managerial and administrative are advisedly loose expressions with no rigid frontiers and I would discourage too much subtlety in trying to precisely define where supervision ends, management begins or administration starts. For that would be theoretical and not practical. It has to be in my opinion broadly interpreted from a common sense point of view where tests will be simple both in theory and in their application. I should say interpreting this section on this point that (1) a supervisor need not be a manager or an administrator, (2) that a supervisor can be a workman so long as he does not exceed the wage limit of Rs. 500/- per month and (3) that a supervisor, irrespective of his salary, is not a workman who has to discharge functions mainly of managerial nature by reason of the duties attached to his office or of the powers vested in him. I consider the

Industrial Tribunal in this case has made the error in confusing a person who is an employee in a supervisory capacity drawing wages exceeding Rs. 500/- per month with the other class of a person who being employed in a supervisory capacity exercises functions mainly of a managerial nature. That is why he had been at pains to show that Sanyal had no superior authority for assigning business or that he had no initiative or that he could not dismiss, discharge or take disciplinary action against any subordinates. I am afraid these are the tests of managerial work or administrative work within the meaning of such words as used in Section 2(s) of the Industrial Disputes Act. In the case of Sanyal the only question after the financial test of wage limit was satisfied was to see whether he was employed in a supervisory capacity. In fact, the Tribunal has found that it was supervisory. I shall quote the language of the Tribunal's decision. In one place the Tribunal says that "Sj. Sanyal as the Assistant in charge of the Jute Department has to keep an eye upon the work of the clerks". Now, "keeping an eye upon the work of other clerks" is supervision and that is supervisory work. In another place the Tribunal says "though he had to check up the work of the clerks" yet his work was mainly clerical and not supervisory. I should have thought that "checking the work of the clerks", "keeping an eye upon the work of the clerks" would be obvious works of supervision. No other conclusion is possible from those findings of fact. Sanyal has said that he did not distribute work. Distribution of work may easily be the work of a manager or an administrator but "checking" the work so distributed or "keeping an eye" over it is certainly supervision. A manager or administrator's work may easily include supervision but that does not mean that supervision is the only function of a manager or administrator."

In the above, we have made detailed discussion on the materials of the case and on the evidence on record. At the cost of repetition it is pointed out that the applicant was appointed as 'Safety Officer' in Gondalpara Jute Mill under Murlidhar Ratanlal Exports Ltd. through the 'Letter of Appointment' dated 02.04.2014 (Exbt.-3) and in the Exbt.-3 the appointing authority of Murlidhar Ratanlal Exports Ltd., Unit: Gondalpara Jute Mill offered consolidated salary of Rs.12,350/- per month to the 'Safety Officer' Tapas Kumar Sinha Ray. The Exbt.-B/1 coupled with Exbt.-B (signature of the applicant Tapas Kumar Sinha Ray dated 19.04.2014) goes to show that the applicant Tapas Kumar Sinha Ray was given appointment letter and in the matter of his appointment, his previous professional experience and professional qualification were considered. The Exbt.-B/1 contains the description of the nature of duties and responsibilities vested upon Sri Tapas Kumar Sinha Ray in connection with his appointment in the Gondalpara Jute Mill through Exbt.-1 and Exbt.-A (which are the similar documents). Exbt.-I, Exbt.-J and Exbt.-L speak a lot in favour of the version of the OP/Company that Tapas Kumar Sinha Ray was appointed as 'Safety Officer' of Gondalpara Jute Mill and his status as an employee of the

OP/Company is not at par with common workman. The applicant in course of his evidence has identified one pay slip for the month of September, 2014 in his name issued by the OP/Company, in which his designation has been mentioned as 'Supervisor'. Similarly, the OP/Company submitted a pay slip for the month of October, 2014 issued in the name of Tapas Kumar Sinha Ray and the said document has been proved in course of evidence of OPW-1 and has been marked as Exbt.-C. The Exbt.-C goes to show that the designation of Tapas Kumar Sinha Ray is mentioned as 'Supervisor'. The applicant in the para. no. 3 of his application u/s. 2A(2) of the Industrial Disputes Act, 1947 has categorically mentioned that although he was appointed as 'Safety Officer' of the OP/Company but all along he was allotted the duty of 'Supervisor' of the Production Department. In the said 'Application' he has categorically admitted that he was appointed on 02.04.2014 as 'Safety Officer' against consolidated salary of Rs.12,350/-. But the PW-1 (applicant) in his examination-in-chief on affidavit being resiled from his earlier version has stated that although *he was given the designation of 'Safety Officer'* but as a matter of fact he was assigned to perform supervisory works only and further he has stated that *he was only entrusted with to supervise the machines not workmen who were employed in the factory*. He has admitted that he used to keep record of daily production quantity of the department. So, it is found that the applicant Tapas Kumar Sinha Ray being the PW-1 has purposefully made some statements relating to his designation, nature of duty and responsibilities which are palpably different from his earlier statements mentioned in the Application u/s. 2A(2) of the Industrial Disputes Act, 1947. In my view, such contradictory statements made by the applicant caused damage to his credibility. During cross-examination he has admitted that the Factory Manager was his immediate superior in the Company's employment and also he has admitted that his last paid salary was Rs.12,350/- per month. During cross-examination he has admitted the genuineness of the 'Resume' (Exbt.-B/1) and he has identified his signature appearing thereon (Exbt.-B). Since it has been established by Exbt.-D and Exbt.-H that the applicant is a well educated person, his version to the effect that the 'Resume' was prepared as per the dictation of the Management of the Company fails to attract any evidential value. It can be safely said that the applicant after knowing fully well or realizing the contents of Exbt.-B/1 put his signature thereon as a mark of accepting the same voluntarily. It is to mention here that specially Exbt.-I and Exbt.-J come to discard the fragile and afterthought claim of the applicant (as it appears from the examination-in-chief on affidavit of PW-1) that the OP/Company had given him an ornamental designation 'Safety Officer' but actually he was entrusted with only to supervise the machines and not workmen, who were employed in the mill. It is revealed from the evidences of OPW-1, OPW-2 and OPW-3 that actually the applicant Tapas Kumar Sinha Ray was appointed as a 'Safety Officer' of Gondalpara Jute Mill under Murlidhar Ratanlal Exports Ltd. but he was vested with the supervisory functions including evaluating the performance of other workmen employed in the unit and batch monitoring of the Weaving Department.

Now, considering the facts and circumstances of this case, evidence on record, discussion made in the above and after going through the above cited decisions of the Hon'ble Supreme

Court of India, Hon'ble High Court of Karnataka, Hon'ble High Court of Gujarat and Hon'ble High Court at Bombay, I am of the opinion that the observations made by the Hon'ble Supreme Court of India, Hon'ble High Court of Karnataka, Hon'ble High Court of Gujarat and Hon'ble High Court at Bombay in those decisions help to come to the conclusion that the applicant has failed to be qualified as a 'workman' u/s. 2(s) of the Industrial Disputes Act, 1947 and at the same time the 'decisions' of the Hon'ble Supreme Court of India and other Hon'ble High Courts are squarely applicable to the contention of the OP/Company that the applicant Tapas Kumar Sinha Ray does not fall within the purview of the definition of 'workman' u/s. 2(s) of the Industrial Disputes Act, 1947.

Ld. Advocate for the applicant has relied upon various 'Decisions' such as (i) Arkal Govindraj Rao vs. Ciba Geigy of India Ltd., Bombay, (ii) D.P. Maheshwari and Delhi Administration & Ors. and (iii) D. K. Yadav and M/s. J.M.A. Industries Ltd. in support of his contention. In fact, I have carefully read all those valuable 'Decisions' as supplied by the Ld. Advocate for the applicant but in view of the facts and circumstances of this case and in view of the trend of finding of this Tribunal and also in view of the Decisions of the Hon'ble Supreme Court of India and other Hon'ble High Courts, which are relied upon by the Ld. Advocate for the OP/Company as well as which are cited by this Tribunal, my humble opinion is that the Decisions relied upon by the Ld. Advocate for the applicant are not directly relevant to the point and thus, those Decisions would have no application in the facts of the present case. Accordingly, my humble submission is that the Decisions cited by the Ld. Advocate for the Applicant of this case are not found as relevant for making decision in this case.

In view of the above discussion, I am of the considered opinion that there should be no hesitation to hold that the applicant is not found to be qualified as a 'workman' u/s. 2(s) of the Industrial Disputes Act, 1947 in connection with this instant case and it is held that the applicant was not a 'workman' under the OP/Company. So, the Issue Nos. 2 is decided in negative against the Applicant.

Thus, the Issue No.2 is disposed of.

In view of the above discussion and in view of the decision on the Issue No.2, I am of the opinion that there is no necessity for adjudicating whether the Management of the OP/Company refused the employment of the Applicant Tapas Kumar Sinha Ray w.e.f. 18.10.2024. So, there is no necessity for answering the Issue No.3. It has been held that although the Applicant had been working under the OP/Company being appointed as 'Safety Officer' and thus his status was never at par with 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947, the application filed u/s. 2A(2) of the Industrial Disputes Act, 1947 is found as not maintainable in its present form and in the eye of the law. Thus, the Issue No. 1 is decided in negative and the Issue No.3 is disposed of accordingly.

Issue Nos. - 4 & 5

In view of decisions made on the Issue Nos.1, 2 & 3, it is apparent that the Issue No.4 has no maintainability. Apart from that there is no necessity for making decision on the Issue No.4 in view of the decision of the Issue No.2. It is needless to mention here that there is no requirement for answering the Issue No.5 in view of the decisions made in respect of Issue Nos. 1, 2, 3 & 4. Thus, the Issue Nos. 4 & 5 are disposed of accordingly.

Hence,

it is

ORDERED

that the instant case of industrial dispute arising out of an application under Section 2A(2) of the Industrial Disputes Act, 1947 is rejected on contest.

This is the award of this Industrial Tribunal in this case.

Copies of this Award be sent to the Labour Department, Government of West Bengal in accordance with usual norms and rules.

Dictated and corrected

sd/-
Judge

sd/-

(Mihir Kumar Mondal)
Judge
Third Industrial Tribunal
Kolkata
06.09.2024