

In the matter of – An Industrial Dispute exists between M/s. Delta Limited, 4, Council House Street, Kolkata- 700 001 **And** Their Workmen represented by Delta Jute (H.O.) Employees' Union, 12A, Netaji Subhas Road, Kolkata- 700 001

(Order of Reference being G.O. No. Labr/415/LC-IR)/22015(16)/528/2018 dated 24.04.2019 u/sec. 10(2A) of Industrial Disputes Act, 1947)

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

Present :
Miss Yogita Gaurisaria,
Judge, Seventh Industrial Tribunal, West Bengal

Case No. VIII- 07/2019

This Award delivered on Monday, the 30th Day of September, 2024

AWARD

1. The instant case has been initiated on 26.04.2019 on receipt of copy of Government order of reference being G.O. No. Labr/415/LC-IR)/22015(16)/528/2018 dated 24.04.2019 u/sec. 10(2A) of Industrial Disputes Act, 1947 from the Labour Department, IR Branch, Government of West Bengal referring an industrial dispute between M/s. Delta Limited, 4, Council House Street, Kolkata- 700 001 **And** Their Workmen represented by Delta Jute (H.O.) Employees' Union, 12A, Netaji Subhas Road, Kolkata- 700 001 for adjudication of the matter and for submitting its Award to the State Government in respect of the issues mentioned below ---

ISSUE(S)

- I) Whether the transfer of (i) Sri Dilip Chakraborty w.e.f. 19.05.2011, (ii) Sri Ratan Kumar Chakraborty w.e.f. 19.05.2011 (iii) Smt. Merch Ghosh w.e.f. 21.11.2011 , (iv) Sri Amiya Charan Maity w.e.f. 21.11.2011 (v) Sri Biman Kumar Ghosh w.e.f. 25.05.2011 (vi) Sri Rabindra Kumar Bhunia w.e.f. 19.05.2011 (vii) Sri Salil Kumar Roy w.e.f. 19.05.2011 and

(viii) Sri Diwan Kumar Pariyar w.e.f. 19.05.2011 from the Head Office at Calcutta to Jute Mill at Howrah by the management of M/s. Delta Limited under the guise of the management policy is justified ?

II) To what relief, if any, the workmen are entitled ?

This Tribunal also framed the following two ancillary Issues for adjudication-

III) Whether the instant case under Industrial Disputes Act, 1947 is maintainable in law and facts ?

IV) Whether the employee(s) herein is *are workman/* workmen as envisaged u/sec. 2(s) of Industrial Disputes Act, 1947 ?

2. In view of G.O. No. Labr/700/(LC-IR)/23099/15/2019 dated 26.07.2019, the instant case has been withdrawn from the file of this Ld. 7th Industrial Tribunal and transferred the same to the Ld. 8th Industrial Tribunal for adjudication.

3. The same was transferred from the file of Ld. 8th Industrial Tribunal to this Ld. 7th Industrial Tribunal by virtue of solemn order dated 25.01.2024 passed by the Hon'ble High Court at Calcutta in WPA No. 28466 of 2023. The same was received by this Ld. 7th Industrial Tribunal on 08.02.2024 for disposal.

4. **Case of Employees-Union**

The facts of the case of the Employees- Union as per their Written Statement in a nutshell is that ---

(i) The Union is a registered Trade Union and is espousing the cause of its eight members who are named in the order of reference being No. Labr/415/LC-IR)/22015(16)/528/2018 dated 24.04.2019.

(ii) The Employer/ Company illegally and unjustifiedly transferred the employees' as detailed hereunder by serving separate transfer orders upon them from its Head Office at Calcutta to the Jute Mill of the Opposite Party /Company at Howrah ---

- (a) Sri Dilip Chakraborty transferred w.e.f. 19.05.2011 by serving transfer order dated 18.05.2011 ;
- (b) Sri Ratan Kumar Chakraborty transferred w.e.f. 19.05.2011 by serving transfer order dated 18.05.2011 ;
- (c) Smt. Mercy Ghosh transferred w.e.f. 16.11.2011 by serving transfer order dated 15.11.2011 ;
- (d) Sri Amiya Charan Maity transferred w.e.f. 16.11.2011 by serving transfer order dated 15.11.2011 ;
- (e) Sri Biman Kumar Ghosh transferred w.e.f. 25.05.2011 by serving transfer order dated 18.05.2011 ;
- (f) Sri Rabindra Kumar Bhunia transferred w.e.f. 19.05.2011 by serving transfer order dated 18.05.2011 ;
- (g) Sri Salil Kumar Roy transferred w.e.f. 19.05.2011 by serving transfer order dated 18.05.2011 ;
- (h) Sri Diwan Kumar Pariyar transferred w.e.f. 19.05.2011 by serving transfer order dated 18.05.2011.

(iii) The Employees- Union stated that the services of the concerned workmen was not transferable and the terms of employment was specifically incorporated and agreed upon by the Union and the Company in the

Settlements dated 23.02.2008 in continuance of earlier Settlements dated 05.03.1993 , 19.12.1994 and 21.11.2001.

- (iv) It is further stated by the Employees-Union that none of the concerned workmen joined at the transferred posts at the Jute Mill at Howrah since the said transfer orders were punitive in nature and violative of the Memorandum of Settlements. The Union further stated that all their persuasions, representations and prayer before the Company were not considered in their right perspective and thus were rejected by implication.
- (v) The Union further stated that the said Transfer Orders were violative of the Memorandum of Settlements which is an offence under the Industrial Disputes Act, 1947 and for the same, the Union took up the matter before the appropriate Forum which after enquiry found the said Transfer Orders as violative of the Memorandum of Settlements and law and recommended for criminal prosecution against the Directors of the Company under Section 29 read with Section 32 of the said Act and the said matters are pending before the Learned 16th Metropolitan Magistrate, Calcutta.
- (vi) The Union further stated that all the concerned workmen have been superannuated from service upon attaining the age of superannuation and on non-payment of their gratuity , have filed applications for direction before the Controlling Authority, Calcutta.
- (vii) It is further stated that all the concerned workmen also filed applications under Section 33C(2) of the Industrial Disputes Act, 1947 before the 1st Labour Court, West Bengal for non-payment of salaries and the same were dismissed on the ground of maintainability of which final orders were

impugned by two of the concerned workmen by way of Writ Petition under Article 226 of the Constitution of India before the Hon'ble High Court, Calcutta which are still pending and the rest concerned Workmen could not file such proceedings for lack of financial resources.

(viii) The Union further stated that thereafter they raised Industrial Dispute before the Labour Commissioner, Government of West Bengal and detailed conciliation took place but was not resolved at the Conciliation stage despite best efforts by the Conciliation Officer and as such, the Conciliation failed, upon which, the Failure Report was submitted whereupon, the appropriate Government issued an order of Reference dated 27.11.2018 which was registered as Case No VIII-28/18 before the Ld. 7th Industrial Tribunal , West Bengal whereafter the Union found that the said order of reference dated 27.11.2028 was incomplete inasmuch as the dates of purported transfers was not mentioned against the names of the concerned Workmen forcing them to pray for issuance of the Corrigendum and upon so, the Appropriate Government issued a fresh order of Reference dated 24.04.2019 as stated hereinabove. The Union filed an appropriate application before the concerned Tribunal in Case No. VIII-28/18 and after hearing , the concerned Tribunal has been pleased to close the said case.

(ix) The Union further stated that the concerned workmen performed the duties which were purely manual and clerical in nature. The Union also stated that the services of the concerned workmen was not transferable and hence, the transfer was in reality a termination of services of the concerned workmen which was done de hors the provisions of law and in violation of principles of natural justice. It further stated that the concerned workmen has been subjected to extreme punishment without even being given fair opportunity

of being heard and that the concerned workmen have been inflicted such capital punishment under the Code of Labour Law by terminating the service of the concerned workman in the garb of transfer and as such, the order of transfer resulting in termination is ab-initio void and liable to be set aside and/or quashed in limine.

- (x) The Union prayed to pass an Award holding that the concerned Workmen's Transfers from the dates as enumerated in order of Reference is legal and void ab-initio and further prayed to pass an order granting full back wages and all other consequential benefits from the date of transfer till the date of superannuation.

5. **Case of the Employer/ Company**

The case of the Employer/ Company is that--

- (i) The instant order of Reference is bad and not maintainable either in facts or in law and that the Union under the said order of Reference has no locus standi to espouse the cause of any of the employees , present or former, of the company herein. The Company further stated that the said Reference is misconceived, erroneous, highly belated and barred by principles of constructive res-judicata and therefore, not sustainable either in facts or in law.
- (ii) That admittedly, the identical claims of all the employees herein had been adjudicated by the First Labour Court and on being unsuccessful , two of these employees Sri Biman Ghosh and Smt. Mercy Ghosh have challenged the Final Order passed in those cases by the First Labour Court before the Hon'ble High Court by filing separate Writ Petitions and therefore, the employees named under order of Reference are debarred from raising further purported

“Industrial Dispute” through the purported Union on the self-same cause of actions as well as on the self-same prayers, and as such, the instant case is not maintainable.

- (iii) The Company further stated that the instant Reference has been made by the appropriate Government after expiry of more than seven years of the transfer of the employees and that too, after their retirement, therefore , there was no existence of purported Industrial Disputes between the parties on the day the instant reference has been made.
- (iv) The Company further stated that this Tribunal lacks jurisdiction to adjudicate the same.
- (v) The Company further stated that none of the ex-employees herein named under order of Reference satisfy the definition of “workman” as defined under the Act, 1947 and that there was no employee-employer relationship between the parties on the day instant reference was made and the instant reference is not sustainable in the eye of law.
- (vi) That the Jute Mills in the State of West Bengal are in very poor shape and are facing severe financial crisis and are on the verge of closure. The company further submitted that because of rampant indiscipline, loss of production, frequent strikes and lockouts, the resources of the Mill of the Employer/Company dried out and it failed to make delivery of finished products on time resulting in cancellation of orders and it is virtually on the brinks of closure.

- (vii) The Company further stated that the place of transfer is from Kolkata to Howrah, a few kilometers away from Kolkata, as a process of reorganisation on extreme exigency.
- (viii) The Company further stated that none of the eight employees herein reported at their place of transfer and remained absent unauthorisedly till their date of retirement and in fact, they chose to abandon their employment but the Employer Company decided not to take any action against them and continued their names of the roll of the Jute Mill till their retirement. Since these ex-employees had not reported for their duties on any single day after receipt of order of transfer, as such, they are not entitled to any wages or salary.
- (ix) The Company denied and disputed the averments made by the Employees-Union in their several paragraphs save and except as what are matters of record and what specifically admitted by the Company. The Company further submitted that the transfer had been effected due to exigency of work and not punitive which the concerned workmen refused, causing immense financial losses and instead of joining at the place of transfer, they pursued their personal business and trade and some of them, joined other services. They caused huge financial losses and if they are given any back wages, even after their unauthorised absence, it will be a premium for them. The claim by the employees herein is filed with malafide intention to squeeze money from the employer and the prayer are frivolous, vexatious and liable to be rejected with exemplary costs.
6. The Union led evidence and Sri Ratan Kumar Chakraborty was examined as PW-1 on behalf of Union, for himself and other seven employees. The

following documents were marked as Exhibits on behalf of the employees-

Union –

Sl. No.	Description	Exhibit No.
1.	Letter of Authorisation (Original)	Exbt-1
2.	Xerox copy of Certificate of Registration of Trade Union	Exbt-2
3.	Xerox copy of appointment letter dated 20.01.1974 of Sri Dilip Chakraborty	Exbt-3
4.	Xerox copy of confirmation letter dated 28.05.1974	Exbt-3/1
5.	Xerox copy of Transfer Order dated 18.05.2011	Exbt- 3/2
6.	Xerox copy of Representation dated 19.05.2011 against transfer	Exbt- 3/3
7.	Xerox copy of reply of Company dated 25.05.2011	Exbt-3/4
8.	Xerox copy of Superannuation Letter dated 20.02.2012	Exbt-3/5
9.	Xerox copies of Provident Fund Statement of subscriber's balance dated 31.03.2012	Exbt-3/6
10.	Xerox copy of appointment letter dated 01.07.1975 of Sri Ratan Kumar Chakraborty	Exbt-4
11.	Xerox copy of Transfer Order dated 18.05.2011	Exbt-4/1
12.	Xerox copy of Representation dated 19.05.2011 against transfer	Exbt- 4/2
13.	Xerox copy of reply of Company dated 25.05.2011	Exbt- 4/3
14.	Xerox copy of Superannuation Letter dated 18.04.2013	Exbt-4/4
15.	Xerox copies of Provident Fund Statement of subscriber's balance	Exbt-4/5
16.	Xerox copy of appointment letter dated 23.05.1980 of Smt. Mercy Ghosh	Exbt-5
17.	Xerox copy of Transfer Order dated 15.11.2011	Exbt-5/1
18.	Xerox copy of Representation dated 21.11.2011 against transfer	Exbt- 5/2
19.	Xerox copy of reply of Company dated 23.11.2011	Exbt- 5/3
20.	Xerox copy of Superannuation Letter dated 18.04.2013	Exbt-5/4
21.	Xerox copies of Provident Fund Statement of subscriber's balance	Exbt-5/5
22.	Xerox copy of appointment letter dated 27.10.1976 of Sri Amiya Charan Maity	Exbt-6
23.	Xerox copy of Transfer Order dated 15.11.2011	Exbt-6/1
24.	Xerox copy of Representation dated 21.11.2011 against transfer	Exbt- 6/2
25.	Xerox copy of reply of Company dated 23.11.2011	Exbt- 6/3
26.	Xerox copy of Superannuation Letter dated 18.04.2013	Exbt-6/4
27.	Xerox copies of Provident Fund Statement of subscriber's balance	Exbt-6/5

28.	Xerox copy of appointment letter dated 27.07.1972 of Sri Biman Kumar Ghosh	Exbt-7
29.	Xerox copy of Transfer Order dated 18.05.2011	Exbt-7/1
30	Xerox copy of Representation dated 24.05.2011 against transfer	Exbt- 7/2
31.	Xerox copy of reply of Company dated 25.05.2011	Exbt- 7/3
32.	Xerox copy of Superannuation Letter dated 03.02.2014	Exbt-7/4
33.	Xerox copies of Provident Fund Statement of subscriber's balance	Exbt-7/5
34.	Xerox copy of appointment letter dated 18.12.1979 of Sri Rabindra Kumar Bhunia	Exbt-8
35.	Xerox copy of Transfer Order dated 18.05.2011	Exbt-8/1
36	Xerox copy of Representation dated 19.05.2011 against transfer	Exbt- 8/2
37.	Xerox copy of reply of Company dated 25.05.2011	Exbt- 8/3
38.	Xerox copy of Superannuation Letter dated 03.02.2014	Exbt-8/4
39.	Xerox copies of Provident Fund Statement of subscriber's balance	Exbt-8/5
40.	Xerox copy of appointment letter dated 01.09.1982 of Sri Salil Kumar Roy	Exbt-9
41.	Xerox copy of Transfer Order dated 18.05.2011	Exbt-9/1
42	Xerox copy of Representation dated 19.05.2011 against transfer	Exbt- 9/2
43.	Xerox copy of resignation letter dated 30.11.2016 alongwith Postal receipt	Exbt- 9/3
44.	Xerox copies of Provident Fund Statement of subscriber's balance	Exbt-9/4
45.	Xerox copy of appointment letter dated 01.01.1977 of Sri Dewan Kumar Pariyar	Exbt-10
46.	Xerox copy of confirmation letter dated 17.05.1979	Exbt-10/1
47	Xerox copy of Transfer Order dated 18.05.2011	Exbt-10/2
48	Xerox copy of Representation dated 19.05.2011 against transfer	Exbt- 10/3
49.	Xerox copy of resignation letter dated 30.11.2016 alongwith Postal receipt	Exbt-10/4
50.	Xerox copy of Provident Fund Statement of subscriber's balance	Exbt-10/5
51	Copy of the Agreement dated 05.03.1993	Exbt-11
52	Copy of the Memorandum of Settlement dated 19.12.1994	Exbt-11/1
53	Copy of the Memorandum of Settlement dated 21.11.2001	Exbt-11/2
54	Copy of the Memorandum of Settlement dated 23.02.2008 alongwith letter dated 25.02.2008	Exbt-11/3
55.	Xerox copy of the representation of the Union dated 24.05.2011 to the Company	Exbt-12
56.	Xerox copy of the representation of the Union dated	Exbt-13

	25.05.2011 to the Deputy Labour Commissioner	
57	Xerox copy of the letter dated 24.11.2011 of the Union to the Company	Exbt-13/1
58.	Xerox copy of the representation of the Union dated 06.03.2012 to the Deputy Labour Commissioner	Exbt-13/2
59	Xerox copy of the Company's letter dated 22.05.2011 to the Secretary of the Union	Exbt-13/3
60.	Xerox copy of the reply dated 29.11.2012 under RTI Act by the Deputy Secretary, Govt. Of West Bengal to the Secretary of the Union	Exbt-13/4
61	Xerox copy of the reply dated 21.06.2013 under RTI Act by the Deputy Secretary, Govt. Of West Bengal to the Secretary of the Union	Exbt-13/5
62	Xerox copies of the Certified Copies of the Complaint Petition and order dated 30.05.2013 and 08.07.2013 of Complaint Case No. C/ 18177 / 2013	Exbt-14
63	Xerox copy of the certified copy of the Complaint Petition alongwith condonation of delay petition and order dated 22.01.2013 & 16.03.2013 of Complaint Case No. C/ 2478 / 2013	Exbt-14/1
64	Xerox copy of the representation dated 17.05.2017 by the Union to the Labour Commissioner	Exbt-15
65	Xerox copy of the representation dated 02.11.2017 by the Union to the Labour Commissioner	Exbt-15/1
66	Xerox copy of the representation dated 21.03.2018 by the Union to the Labour Commissioner	Exbt-15/2
67	Xerox copies of the Conciliation Memos	Exbt-16 Collectively
68	Xerox copies of the Order of Reference dtd 27.11.2018	Exbt-17
69	Xerox copy of the representation of the Union dated 07.12.2018 to the Deputy Secretary, Government of West Bengal	Exbt-17/1
70	Xerox copy of the reply dated 11.01.2019 under RTI Act addressed to the Secretary of the Union	Exbt-18
71	Xerox copy of the reply dated 10.05.2019 under RTI Act addressed to the Secretary of the Union	Exbt-18/1
72	Xerox copy of the Govt. Order dated 18.08.2019	Exbt-19
73	Xerox copy of the order of publication of Award alongwith the Award passed by the 8 th Industrial Tribunal, Kolkata in case No. VIII-28/18	Exbt-20

The following documents were marked as Exhibits from the side of the Company during cross-examination of PW-1

<u>Sl. No.</u>	<u>Description</u>	<u>Exhibit No.</u>
1.	Xerox copy of the Application under Section 33C(2) of the Industrial Disputes Act, 1947 of Sri Amiya Charan Maity alongwith annexure thereto	Exbt-A
2	Xerox copy of the Application under Section	Exbt-B

	33C(2) of the Industrial Disputes Act, 1947 of Sri Dewan Kumar Pariyer alongwith annexure thereto	
3	Xerox copy of the Application under Section 33C(2) of the Industrial Disputes Act, 1947 of Sri Salil Kumar Roy alongwith annexure thereto	Exbt-C
4	Xerox copy of the Application under Section 33C(2) of the Industrial Disputes Act, 1947 of Sri Dilip Chakraborty alongwith annexure thereto	Exbt-D
5	Xerox copy of the Application under Section 33C(2) of the Industrial Disputes Act, 1947 of Sri Biman Kumar Ghosh alongwith annexure thereto	Exbt-E
6	Xerox copy of the Application under Section 33C(2) of the Industrial Disputes Act, 1947 of Smt. Mercy Ghosh alongwith annexure thereto	Exbt-F
7	Website print-out copy of the order dated 09.11.2022 passed in WPA No. 193 of 2017	Exbt-G
8	Website print-out copy of the order dated 05.12.2022 passed in WPA No. 193 of 2017	Exbt-G/1
9	Website print-out copy of the order dated 21.01.2021 passed in WPO No. 306 of 2016	Exbt-H
10	Website print-out copy of the order dated 11.02.2021 passed in WPO No. 306 of 2016	Exbt-H/1
11	Website print-out copy of the order dated 24.03.2021 passed in WPO No. 306 of 2016	Exbt-H/2
12	Website print-out copy of the order dated 05.05.2022 passed in WPO No. 306 of 2016	Exbt-H/3
13	Website print-out copy of the order dated 23.06.2022 passed in WPO No. 306 of 2016	Exbt-H/4
14	Website print-out copy of the order dated 07.07.2022 passed in WPO No. 306 of 2016	Exbt-H/5
15	Website print-out copy of the order dated 18.08.2022 passed in WPO No. 306 of 2016	Exbt-H/6
16	Xerox copy of the Application under Section 33C(2) of the Industrial Disputes Act, 1947 of Sri Ratan Kumar Chakraborty alongwith annexure thereto	Exbt-I
17	Xerox copy of the Application under Section 33C(2) of the Industrial Disputes Act, 1947 of Sri Rabindra Kumar Bhunia alongwith annexure thereto	Exbt-J

7. The point of determination therefore would be to examine whether the employees-Union has succeeded in establishing their case by way of cogent and consistent evidence and to further examine in the light of facts emerging out of evidence, if the employees herein are entitled to any relief(s) and the extent thereof, as against the Company herein.

Argument on behalf of the parties-

8. The Ld. Advocate for the Employees-Union argued that the case of the employees'-Union has been substantiated by evidences both oral and documentary. The Ld. Advocate for the Employees-Union interalia argued that the employees herein are workmen within the definition of "workmen" as envisaged under section 2(s) of the Industrial Disputes Act, 1947. The Ld. Advocate for the Union further argued that none of the workmen herein performed any supervisory function and nature of work is to be looked into for determining whether they are "workmen" or not. As such, they come within the definition of workmen. They were workmen at the Head Office of the Company herein situated at Kolkata and this Tribunal has territorial jurisdiction over the instant case. The Ld. Advocate for the Union argued that the eight applications under section 33C(2) of the Industrial Disputes Act filed by the concerned eight workmen herein before the First Labour Court was dismissed by the said Labour Court on point of maintainability and the two workmen from amongst the said eight workmen have challenged the Final Order passed by the First Labour Court before the Hon'ble High Court by filing two separate Writ Petitions and the same though are pending before the Hon'ble High Court at Calcutta but there is no stay in any of those two Writ Petitions and as such, the instant case/dispute is maintainable before this Tribunal. He further argued that as per the terms of agreement dated 05.03.1993, the employees of the Head Office could not be transferred to any other place and drew attention of the Court to paragraph no. 7 of the agreement dated 05.03.1993. He further argued that in the Memorandum of Settlement dated 19.12.1994 in paragraph 10 it was agreed that the existing facilities made available to the employees will

continue to remain in force and the same is also reflected Memorandum of Settlement dated 21.11.2001 and further in Memorandum of Settlement dated 23.02.2008 vide paragraph 5 (o) thereof. The Ld. Advocate for the Union argued that the instant case is maintainable in facts and law and that the transfer order of the workmen herein from the Kolkata Head Office to Howrah office is illegal and is in violation of the terms and conditions of said agreement and Memorandum of Settlements. He further argued that the said transfer order(s) is actually termination in the guise of transfer of the workmen herein. The Ld. Advocate for the Union prayed to pass an Award to hold the transfer illegal of the 8 workmen as mentioned in the order of reference as unjustified, illegal and void ab-initio and further prayed to pass an order granting full back wages and all other consequential benefits from the date of such illegal transfers till their respective dates of superannuation or resignation of the concerned workmen, as applicable.

The Ld. Advocate for the Union relied on the following citations in support of his case--

- i. 1969 (18) FLR 186 (SC) (Ananda Bazar Patrika vs. The Workmen)
- ii 1985 (II) LLJ 401 (SC) (Arkal Govind Raj Rao vs Ciba Geigy of India Ltd.)
- iii. 1980 (41) FLR 156 (BOM) (Waman Ganpat Rao vs Cadbury-Fry (India) Pvt Ltd)
- iv.. 1996(II) LLJ 104 (SC) (FCI Workmen Union vs. FCI)

9. The Ld. Advocate for the Company interalia argued that the instant case is not maintainable in facts and law. The Ld. Advocate for the Company further argued that the employees herein are not the workmen within the definition of sec. 2(s) of the Industrial Disputes Act, 1947. The salary of these employees were more than Rs. 10,000/- and as such, they are

outside the purview of the definition of the “workmen”. The Ld. Advocate for the Company argued that the employees herein has filed this instant case on the self-same cause of action which they filed before the Ld. First Labour Court with the self same prayer for the unpaid salary for the same period for which prayed before this Tribunal and the same is in between the same parties and the instant case is barred by res-judicata or constructive res judicata. The Ld. Advocate for the Company further argued that the First Labour Court dismissed all the eight applications filed by eight employees herein. The Ld. Advocate for the Company further argued that two out of eight employees have filed two separate Writ Petitions before the Hon’ble High Court challenging the Final Order of the First Labour Court and the same is impugned before the Hon’ble High Court and further argued that the filing of the instant case is nothing but an abuse of process of law and multiplicity of litigation. The Ld. Advocate for the Company further argued that the employees herein are guilty of abnormal delay and laches inasmuch as they have come up with the instant case after seven years of the transfer orders and that too after superannuation or resignation of the eight employees , as applicable, herein. The Ld. Advocate for the Company further argued that no explanation has been given by the Union for such abnormal delay and submitted that the employees-Union are guilty of delay and laches and the instant case be dismissed on that score even. The Ld. Advocate for the Company argued that the Company has never terminated any of the employees herein and has also not taken any Disciplinary Action against these eight employees and the same be taken as magnanimity of the Company. The Ld. Advocate for the Company submitted that these eight employees have not been paid any emoluments for the said period i.e. from the effective date of transfer to their respective date of their superannuation or resignation on the principle of no work, no pay. The Ld. Advocate for the

Company further argued that PW-1 deposed on behalf of the Union and he stated that he is Assistant Secretary of the Union. The Ld. Advocate for the Company argued that PW-1 is not Secretary of the Union and has not filed any Power Of Attorney nor filed any resolution of the Executive Committee of the Union to show that he has been empowered to depose on behalf of the Union. The Ld. Advocate for the Company submitted that the employees-Union are guilty of suppressions and has not come with clean hands before this Tribunal and not entitled for any of the reliefs prayed by them and that the instant case be dismissed with exemplary costs.

DECISION WITH REASONS

10. Before proceeding to examine and deliberate upon the aforesaid Issues, this Tribunal finds it imperative to examine the evidence, oral and/or documentary, led by both the parties in support of their respective contentions.
11. The Issue no.4 is taken up at the very first since the same swells upon whether the employees herein are workmen as defined under section 2(s) of the Industrial Disputes Act, 1947 and the rest issues are taken in serialim thereafter.
12. **Issue No. 4--Whether the employee(s) herein is are workman/ workmen as envisaged u/sec. 2(s) of Industrial Disputes Act, 1947 ?**

This Tribunal finds that the Union herein has been able to demonstrate that the eight employees herein were performing the nature of work which falls

within the definition of workmen under section 2(s) of the Industrial Disputes Act, 1947. The Company has failed to prove that any of these eight employees were performing their job in managerial or administrative capacity or supervisory capacity. As such, the criterion of salary exceeding Rs. 10,000/- becomes inconsequential on the subject matter.

The **Hon'ble Supreme Court** in the judgment reported in **1985 (II) LLJ 401 (SC) (Arkal Govind Raj Rao vs Ciba Geigy of India Ltd.)** inter alia held--

“11. Difference in salary is hardly decisive, nor the designation of a clerk by itself is decisive. Focus has to be on the nature of the duties performed and in this behalf, the Labour Court itself was of the opinion that primarily for all practical purposes, the duties performed by the applicant were of a clerical nature.”

The Apex Court in the said judgment further held--

“16. The test that one must employ in such a case is what was the primary basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth.”

The **Hon'ble Supreme Court** in the judgment reported in **1969 (18) FLR 186 (SC) (Ananda Bazar Patrika vs. The Workmen)** inter alia held--

“The principal work that Gupta was doing was that of maintaining and writing the cash-book and of preparing various Returns. Being the senior-most clerk, he was put in-charge of the Provident Fund Section and was given a small amount of control over the other clerks working in his

section. The only powers he could exercise over them was to allocate work between them, to permit them to leave during office hours and to recommend their leave applications. These few minor duties of a supervisory nature cannot, in our opinion, convert his office of senior clerk in charge into that of a supervisor...”

As such, this Tribunal has no hesitation to hold that the eight employees herein were workmen on the date of issuance of transfer orders. The Issue no. 4 stands decided accordingly..

13. The main bone of contention between the parties herein is that whether the transfer of the eight employees from the Head Office at Calcutta to Jute Mill at Howrah by the management of M/s. Delta Limited is justified or whether the same is termination in the guise of management policy.

The Union got exhibited the transfer orders of the eight employees as under--

- (i) Transfer order of Sri Dilip Chakraborty w.e.f. 19.05.2011-- Exbt-3/2
- (ii) Transfer order of Sri Ratan Kumar Chakraborty w.e.f. 19.05.2011- Exbt-4/1
- (iii) Transfer order of Smt. Merch Ghosh w.e.f. 21.11.2011- Exbt-5/1
- (iv) Transfer order of Sri Amiya Charan Maity w.e.f. 21.11.2011-Exbt-6/1
- (v) Transfer order of Sri Biman Kumar Ghosh w.e.f. 25.05.2011- Exbt-7/1
- (vi) Transfer order of Sri Rabindra Kumar Bhunia w.e.f. 19.05.2011-Exbt-8/1
- (vii) Transfer order of Sri Salil Kumar Roy w.e.f. 19.05.2011- Exbt-9/1 and
- (viii) Transfer order of Sri Diwan Kumar Pariyar w.e.f. 19.05.2011- Exbt-10/2

It appears from the aforesaid exhibits that transfer orders were for transfer of these workmen from the Head Office at Calcutta to Jute Mill at Howrah by the management of M/s. Delta Limited. It further surfaces from the said Exhibits that the reason of transfer stated therein is “Due to exigencies”. The said documents have been marked as Exhibits at the behest of the Union through PW-1.

It also appears from the above Exhibits that the Company has specified therein that these employees will be paid an extra amount of Rs. 500/- per month as Special Allowance to defray the extra expenditure.

PW-1 in cross-examination stated that Rs 500/- was offered as an extra allowance in the transfer letter issued by the Company. PW-1 further stated that this Special Allowance was offered to defray the extra expenditure and also stated that there was no change of work vide said orders.

The Ld. Advocate for the Union strenuously relied on the agreement dated 05.03.1993 (Exhibit-11) to bring home his point that the workmen herein could not be transferred from the Head Office to any other office or Jute Mill relying on Paragraph 7 thereof.

Let me reproduce the said paragraph 7 (of Exhibit-11) for better understanding of the same--

“(7) As a result of introduction of computer system, there shall be no transfer of any of the employees from the Head Office to any place.”

I find no substance in the argument of the Ld. Advocate for the Union the said paragraph 7 of Exhibit 11 is a facility and is covered by Exhibits 11/1 , 11/2 or 11/3.

On closer scrutiny of Exbt-11, this Tribunal finds that the Exhibit-11 revolved around the introduction of computer in the Company way back in 1993. The words in paragraph 7 “.. there shall be no transfer of any of the employees from the Head Office to any place” is preceded by the words “As a result of introduction of computer system,”. As such, this Tribunal has

no hesitation to infer that only those transfers of the employees from the Head Office to any other place are debarred which are “ As a result of introduction of computer system” and other transfers do not get any protection therefrom (i.e. from paragraph 7 of Exbt-11). The agreement (Exbt-11) was made in 1993 and the transfer order(s) made in 2011 and such transfer orders clearly specify the reason being “exigencies” and the Union has failed to prove by any cogent evidence that such transfer was as a result of introduction of the computer. As such transfer orders even in the wildest of the imagination could not be thought to be as a result of introduction of computer system.

It appears from the exhibits Exbt-3/5, 4/4, 5/4, 6/4, 7/4, 8/4, 9/3 and 10/4 that out of these eight employees, six have superannuated and two of them resigned from their job(s). Also that PW-1 in his cross-examination stated that “The Company never issued any termination letter to the employees herein.” These all itself proves that these are not the case(s) of termination as alleged by the Union.

This Tribunal as such, has no hesitation to conclude that the transfer of (i) Sri Dilip Chakraborty w.e.f. 19.05.2011, (ii) Sri Ratan Kumar Chakraborty w.e.f. 19.05.2011 (iii) Smt. Merch Ghosh w.e.f. 21.11.2011 , (iv) Sri Amiya Charan Maity w.e.f. 21.11.2011 (v) Sri Biman Kumar Ghosh w.e.f. 25.05.2011 (vi) Sri Rabindra Kumar Bhunia w.e.f. 19.05.2011 (vii) Sri Salil Kumar Roy w.e.f. 19.05.2011 and (viii) Sri Diwan Kumar Pariyar w.e.f. 19.05.2011 from the Head Office at Calcutta to Jute Mill at Howrah by the management of M/s. Delta Limited is not in violation of Exhibit-11 or Exbt-11/1, 11/2 or 11/3. This Tribunal further holds that the same cannot

be termed as termination in the guise of the management policy. The said transfer orders are justified within the Exbt-11 series.

The issue no.1 stands answered accordingly.

14. **Now let me come to Issue No.2-- To what relief, if any, the workmen are entitled ?**

This Tribunal finds that the Issue no.1 has been decided holding the transfer orders of these eight workmen as legal and justified. This Tribunal also finds that it is undisputed between the parties that these eight workmen did not report for duties at the transferred place at Jute Mill at Howrah of the Company. As such, this Tribunal has no hesitation to conclude that these eight workmen are not entitled for any of the relief or reliefs as prayed for. They are not entitled for the back wages for the said period as prayed for in the written statement by the Union I.e from the effective date of order of transfer till the date of respective employees' superannuation for six employees and till the date of resignation for two employees. Be it mentioned that the order of this Tribunal shall not adversely affect the retirement benefits or resignation benefits, as the case may be, of the respective employees herein as may be entitled under the provisions of the laws.

The Issue no.2 stands answered accordingly.

15. **Now, coming to Issue No. 3-- Whether the instant case under Industrial Disputes Act, 1947 is maintainable in law and facts ?**

This issue was framed as ancillary issue by this Tribunal. In view of the discussions made while adjudicating Issue No. 1, this Tribunal finds that the instant case is not maintainable in law and facts too.

This issue no.3 stands decided accordingly.

16. In the circumstances as aforesaid as well as the evidences on record and in the light of the law(s) laid down and also the Issues decided hereinabove, this Tribunal is of the view that the instant case deserves to be dismissed with the order of reference answered as hereinabove.

Hence, it is

ORDERED

that the instant case being Case No. VIII-07/2019 be and is hereby dismissed on contest but without any order as to costs. In the light of the Issues decided hereinabove, the reference as made to this Tribunal stands answered accordingly.

The transfer of (i) Sri Dilip Chakraborty w.e.f. 19.05.2011, (ii) Sri Ratan Kumar Chakraborty w.e.f. 19.05.2011 (iii) Smt. Merch Ghosh w.e.f. 21.11.2011 , (iv) Sri Amiya Charan Maity w.e.f. 21.11.2011 (v) Sri Biman Kumar Ghosh w.e.f. 25.05.2011 (vi) Sri Rabindra Kumar Bhunia w.e.f. 19.05.2011 (vii) Sri Salil Kumar Roy w.e.f. 19.05.2011 and (viii) Sri Diwan Kumar Pariyar w.e.f. 19.05.2011 from the Head Office at Calcutta to Jute Mill at Howrah by the management of M/s. Delta Limited is not in violation of Agreement dated 05.02.1993 and/or subsequent Memorandum of Settlements 19.12.1994, 21.11.2001 and 23.02.2008 (Exhibit-11 series). This Tribunal further holds that the said transfers cannot be termed as termination in the guise of the management policy. The said transfer orders are justified not violative of the Agreement dated 05.02.1993.

This Tribunal further holds that these eight workmen are not entitled for any of the relief or reliefs as prayed for. They are not entitled for the back wages for the said period as prayed for in the written statement by the Union I.e from the effective date of order of transfer till the date of respective employees' superannuation for six employees namely Sri Dilip Chakraborty, Sri Ratan Kumar Chakraborty, Smt.

Mercy Ghosh, Sri Amiya Charan Maity, Sri Biman Kumar Ghosh and Rabindra Kumar Bhunia and till the date of resignation for two employees namely Sri Salil Kumar Roy and Sri Dewan Kumar Pariyar. Be it mentioned that the order of this Tribunal shall not adversely affect the retirement benefits or resignation benefits, as the case may be, of the respective employees herein as may be entitled under the provisions of the laws.

The aforesaid shall constitute as Award on contest.

The copies of the Award be sent to the concerned authorities for information and necessary action thereupon.

Dictated & Corrected by me

Judge

(Yogita Gaurisaria)
Judge
Seventh Industrial Tribunal
Kolkata
30.09.2024

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

No. Labr/ 13 / (LC-IR)/22015(16)/528/2018

Date : 03-01-2025

ORDER

WHEREAS under reference of Labour Department's Order No. Labr/415/LC-IR)/22015(16)/528/2018 dated 24.04.2019 reference of the Industrial Dispute between M/s. Delta Limited, 4, Council House Street, Kolkata - 700001 and their workmen represented by Delta Jute (H.O.) Employees' Union, 12A, Netaji Subhas Road, Kolkata- 700 001, regarding the issues mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Seventh Industrial Tribunal, Kolkata.


AND WHEREAS the said Seventh Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 30.09.2024 in case No. VIII-07/2019 on the said Industrial Dispute vide E-mail dated 02.01.2025 in compliance of u/s 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 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/ 13 /1(5)/(LC-IR)/ 22015(16)/528/2018

Date : 03-01-2025

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

1. M/s. Delta Limited, 4, Council House Street, Kolkata - 700001.
2. Delta Jute (H.O.) Employees' Union, 12A, Netaji Subhas Road, Kolkata- 700 001.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, 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/ 13 /1(3)/(LC-IR)/ 22015(16)/528/2018

Date : 03-01-2025

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal, Kolkata, N.S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata-700001 with reference to his E-mail dated 02.01.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary