

I/486710/2024

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

No. Labr/. 182 / (LC-IR)/ 11L-13/17

Date: 20-02 2024

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. 290/(LC-IR)/IR/11L-13/2017 dated 17/03/2017 the Industrial Dispute between M/s Belle Vue Clinic, 9, U.N. Bramhachari Road (formerly Loudon Street), Kolkata – 700017 and Sri Tapadhan Mukherjee represented by Belle Vue Clinic Workmen's Union, Maruti Buildings, Ground Floor, 12, Loudon Street, Kolkata - 700017 regarding the issue 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 Judge, Fifth Industrial Tribunal, West Bengal.

AND WHEREAS the said Fifth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 12/02/2024 in Case No. VIII-01/2017 on the said Industrial Dispute vide memo no Dte/5<sup>th</sup> IT/011/2024 dated – 12/02/2024.

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,

Sd/-  
Assistant Secretary  
to the Government of West Bengal



1/486710/2024

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No. Labr/ 182/1(5) (LC-IR)

Date: 20-02-2024

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

1. M/s Belle Vue Clinic, 9, U.N. Bramhachari Road (formerly Loudon Street), Kolkata - 700017.
2. Sri Tapadhan Mukherjee represented by Belle Vue Clinic Workmen's Union, Maruti Buildings, Ground Floor, 12, Loudon Street, Kolkata - 700017.
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, 11<sup>th</sup> 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/ 182/2(2) (LC-IR)

Date: 20-02-2024

Copy forwarded for information to:

1. The Judge, Fifth Industrial Tribunal, West Bengal with reference to his Memo No.Dte/5<sup>th</sup> IT/011/2024 dated - 12/02/2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Assistant Secretary

H.A.(IT) / Dipankar Sen  
20/02/2024

Dipankar  
20/02/2024



## BEFORE THE 5<sup>TH</sup> INDUSTRIAL TRIBUNAL, KOLKATA



PRESENT

SHRI KAMAL SARKAR, JUDGE  
FIFTH INDUSTRIAL TRIBUNAL, KOLKATA

Date of Order: 12.02.2024

Case No.: VIII – 01/2017

The instant case has initiated on receipt of a copy of G. O. No. Labr./290/(LC-IR)/IR/11L-13/2017, dated 17.03.2017 from Labour Department, Government of West Bengal referring an Industrial Dispute exists between M/s Belle Vue Clinic, 9, U. N. Bramhachari Road (formerly Loudon Street), Kolkata – 700 017 and their workman Sri Tapadhan Mukherjee represented by Belle Vue Clinic Workmen's Union, Maruti Buildings, Ground Floor, 12, Loudon Street, Kolkata – 700 017 for adjudication.

### THE CASE OF THE WORKMAN

That the workman Shri Tapadhan Mukherjee was an employee of Kolkata's one of the renowned nursing home Belle Vue Clinic. He was appointed as a Stenographer in the said clinic on and from April, 1982 and was working in the said capacity with entire satisfaction of his superiors without any black spot on his service record. He was getting incremental benefits and other service benefits as usual and he used to get double increment in addition to his annual increment in each and every 5 year. His next double increment was due w.e.f. 01.04.2017.

That the workman was the Stenographer of Dr. K. K. Ahuja, Director of Pathology Department, Belle Vue Clinic. The workman was very active in respect of demands of the employees/co-workers and used to participate in the negotiations with the management and by this way he became the eye-sore of the management. The situation became more aggravated when the workman became the Organizing Secretary of the Union affiliated to I.N.T.U.C.

That the CCTV, which are always in operation and every moment at the main gate including other places of the clinic was introduced in Belle Vue Clinic for surveillance on the staff/patients. Checking is specifically done by the Security Staff posted at the main gate specially to workers/employees if necessary. The record of CCTV is preserved by the management.

That on 23.09.2014, which was "Mahalaya" at about 07:00 PM while leaving his duty place in a hurry, was about to cross the main gate Security Guard Sri Subhojit Dutta asked the workman to stop and told that he would check the workman's bag when suddenly the workman recalled that he had forgotten to switch off his computer system and he also told the security guard that he had forgotten one thing in the department and he would be coming back very soon when Sri Subhojit Dutta calling his immediate boss Mr. Kundu. The workman then & there

*S. Sarkar*  
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entered into his room and switched off his computer set (CPU, Monitor, Printer etc.) and came back to the security spot within a few minutes asked the security guard to check his bags. The security guard inspite of checking the workman's bag replied him "Ekhon Arr Ki Hobe" and thereafter workman crossed the main gate and went away.

That on the date of incident i.e. 23.09.2014, the workman while on his duty observed that a young aged security guard intermittently watched the workman's activities and whereabouts who reported to the management and the story was concocted on that very evening as when your petitioner was leaving early at about 07:00 PM, 1 (one) hour earlier than other days.

For that incident the management issued a letter vide No. BVC/2014-2015/1718, dated 27.09.2014 to the workman for written explanation.

That the workman on receipt of the said letter replied to the management vide application dated 29.09.2014 stating the fact that when suddenly he recalled that he forgot to shut down his computer set (CPU, Monitor, Printer etc.) as he was in hurry to go somewhere and after a few minutes he went through the same gate.

That on receipt of the workman's reply regarding explanation the Management served a letter to the workman vide No. BVC/2014-2015/1737, dated 02.10.2014 stating that the reply was not satisfactory and the management decided to hold a domestic in the matter of charges.

That the management vide their letter No. BVC/2014-2015/1903 dated 21.10.2014 intimated the workman that the domestic enquiry will be held on 03.11.2014 and Mr. Hamidul Quader, Advocate was appointed as Enquiry Officer to conduct the Domestic Enquiry. Accordingly the workman attends the said Enquiry.

That the Chief Executive Officer of Belle Vue Clinic, Mr. P. Tondon vide his letter No. BVC/20115-2016/336 dated 29.04.2015 along with report of Enquiry Officer with findings, which was submitted by the Enquiry officer on 28.04.2015, intimated the workman that the Enquiry Officer submitted the Enquiry Report and finding holding the workman guilty of the charges labelled against the workman vide the charge sheet dated 27.09.2014 and the management dispassionately considering the report and findings of the Enquiry Officer decided to dismiss the workman from service and asked to show cause in writing within 3 days of receipt of the said letter as to why the proposed punishment would not be given effect.

That on receipt of the said dismissal letter No. BVC/20115-2016/336 dated 29.04.2015 the workman vide his application dated 04.05.2015 to the Chief Executive Officer prayed for 7 (seven) days time to give reply in respect of the letter of dismissal as the workman was mentally upset, as his wife was sick at home. But his prayer was not considered rather the management vide another letter intimated the workman that his case would not be considered and advised the petitioner to withdraw his all dues from the Accounts Deptt.

That in reply to that letter of the management the workman submitted an application dated 19.05.2015 to the Chief Executive Officer praying for considering the decision of his removal from the service but his application was not heeded to.

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Not only that the Chief Executive Officer prohibited the workman's entry to the clinic in spite of having agreement with the unions that the retired employees are entitled to get medical benefits as well as to get consulted by the doctors as per choice.

That the management produced two witnesses (MWI & MWII) - Sri Subhojit Dutta (MWI) and Sri Susanta Chattopadhyay (MWII) before the Enquiry Officer to prove the charge labelled against the workman, but none of them were able to prove the charges labelled against the workman. The workman also submits that at the time of cross examination of MWI by Sri A. P. Rao, Representative of the workman, MWI could not reply satisfactorily and simply said that he did not check the bags when the workman returned but could not say the reason for non checking the bags.

That the workman submits that as the datas are preserved by the management for long period so it is obvious that movement of the workman including security guards on that particular day i.e. 23.09.2014 are also preserved by the management to established their contention. But at the time of cross examination Sri Manas Chakraborty, Management's Representative refused to produce video footage of that day along with other days' checking video footage at the main gate by saying that management is not bound to exhibit the video.

The matter was taken up by the Deputy Labour Commissioner, Government of West Bengal to discuss the issue with the management. But no settlement could be arrived at due to adamant attitude of the management. Ultimately The Deputy Secretary to the Government of West Bengal was kind enough to refer the matter to the 7<sup>th</sup> Industrial. The petitioner workman prays relief as per prayer.

That the workman was suffering financially on those had economic days with his wife and his 5 dependents, his dwelling house which was to be repaired due to dilapidated condition, he became compelled to withdraw amounts of P.F. and gratuity. But the whole Leave Travel Allowance and Medical Allowance are still lying with the management.

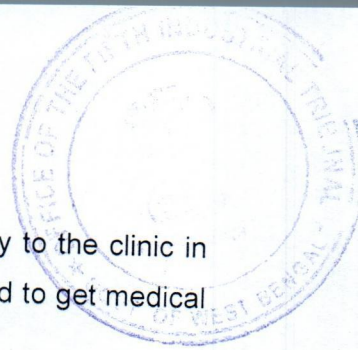
### THE CASE OF THE COMPANY

On the other hand the case of the company is that company has denied all the material allegations being put against the company by the workman.

That the company in Part 'A' of their Written Statement demands that the instant reference is bad, misconceived, erroneous and not maintainable either in facts or in law.

That the union named under order of reference has no locus standi to spouse the cause of the concerned employees or any of the employees of the Belle Vue Clinic.

That the union under order of reference is not contesting the instant case, the employee Sri Tapadhan Mukherjee is contesting the case in individual capacity by filing written statement, which is not permissible under the provisions of the statute and therefore, the instant case is liable to be rejected. The company also demanded that the concerned employee Sri Tapadhan



*R. Ahluwalia*  
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Mukherjee never raised any dispute of his own with the conciliation officer appointed under the Industrial Disputes Act 1947.

That what has been referred is not an 'Industrial Dispute' within the meaning of Industrial Disputes Act 1947, therefore, Ld. Tribunal lacks jurisdiction to adjudicate the issue referred under the instant reference.

That what had been raised has not been referred by the appropriate Government and what have been referred had never been raised before the Conciliation officer, therefore, the instant reference is neither maintainable nor sustainable in terms of the settled law of the land.

That the appropriate Government while referring the dispute has considered the instant dispute as retrenchment whereas the service of Sri Tapadhan Mukherjee has been ceased by way of punishment of dismissal for committing gross misconducts, therefore, the instant reference is not sustainable in the eye of law.

That none of the issues referred under the instant order of reference are forming part of the Second Schedule of the Industrial Tribunal Disputes Act 1947, therefore, the reference is bad and suffers from non application of mind as such neither sustainable in the eye of law.

That the instant reference is a stale reference, therefore, cannot stand to the test of law and liable to be rejected summarily.

That the aforesaid objections are vital and each one goes to the root of the instant reference, touching the jurisdiction of this Ld. Tribunal. It is, therefore, prayed that the Learned Tribunal may graciously be pleased to hear and dispose of the same as a preliminary issues and if the same go against the employer then only it will take endeavour to proceed on the merit of the case.

Part 'B' of the Written Statement of the Company deals with the facts of the case.

That the Opposite Party/Company is a reputed nursing Clinic of Kolkata.

That Sri Tapadhan Mukherjee had been employed in the Pathology Department of the Clinic as a Steno Typist w.e.f. 01.04.1982 and thereafter the incident of 23.09.2014.

The company demands on 23.09.2014 at about 07:00 PM while the concerned workman was leaving the Clinic after completing his duty he was asked by the Security on duty to allow him to check his bag but instead of offering his bag for checking he being guilty conscious, took a U turn and ran back to his work place at first floor and then returned after a few minutes.

That the company asked the concerned workman to explain his such conduct in writing vide letter dated 27.09.2014.



The concerned workman submitted his explanation in writing vide his letter dated 27.09.2014, which was considered unsatisfactory and management decided to conduct a domestic enquiry into the matter.

That Seikh Hamidul Quader, an independent Advocate was appointed as Enquiry Officer to conduct the Domestic Enquiry.

That while conducting domestic enquiry the Enquiry Officer has recorded the proceedings in his own handwriting and followed the principles of natural justice strictly. It is submitted that during the aforesaid enquiry the enquiry officer allowed the concerned workman to be represented by a man of choice and has given a copy of the day to day proceedings at the end of each session. The concerned workman and his representative put their signature on the proceedings without any grudge or protest testifying that the proceedings in the matter had been recorded correctly.

It is further submitted by the Clinic that the proceedings of the enquiry were explained by the enquiry officer in Bengali and witnessed were examined in presence of the parties and were cross-examined by respective representatives of the parties.

That after completion of the enquiry a copy of enquiry report and findings had been sent to the concerned workman by the management vide its letter dated 29.04.2015.

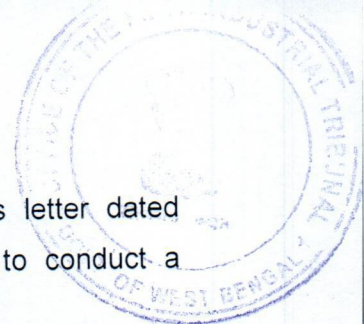
It is demanded by the company that although the concerned workman received the company's letter dated 29.04.2015 on 02.05.2015 but he choose not to respond to the same and finding no alternative the disciplinary Authority of the Belle Vue Clinic dismissed Sri Tapadhan Mukherjee vide its letter dated 05.05.2015.

That the concerned workman Sri Tapadhan Mukherjee accepted his full and final dues on 23.09.2015 and thereby accepted the punishment of dismissal.

That the union named under order of reference approached the Conciliation machinery under the Industrial Disputes Act, 1947 challenging the order of dismissal of Sri Tapadhan Mukherjee after acceptance of final dues by the said Sri Mukherjee. The company submitted that the management vide its letters dated 08.02.2016, 13.05.2016 and 20.07.2016 explained the facts of the case to the Conciliation Officer. It is further submitted that the authorized representative of the Clinic appeared before the Conciliation Officer in person and explained the circumstances of the case but the Conciliation Officer lost the sight of the matter and erroneously submitted a failure report to the appropriate Government instead of closing the conciliation. The appropriate Government considered the said failure report of the conciliation officer and made the instant reference framing erroneous issue of retrenchment thereby completely ignoring the facts of dismissal of service of Sri Tapadhan Mukherjee for committing gross conducts.

That the Company Belle Vue Clinic initially relies on the validity of domestic enquiry, conducted by it and in case if the same is found to be vitiated then crave leave of the Ld. Tribunal to adduce additional evidence in support of the charges.

*S. B. Chowdhury*  
12.02.2024





Part 'C' of the Written Statement is the reply of the employer to the various averments, contentions, statement, submissions and allegations raised by Sri Tapadhan Myukherjee in his statement of claim.

That the averments and allegations made vide paragraphs 2 and 3 are disputed and denied save and except what appears from records.

That the averments and allegations made vide paragraphs 5, 6 and 7 are disputed and denied save and except the incident when the Security Guard of the Clinic asked the concerned workman to check his bag on 23.09.2014 and the concerned workman ran back to his office room and thereafter issuance of the letter dated 27.09.2014 by the Clinic and submission of its reply by the concerned workman vide his letter dated 29.09.2014.

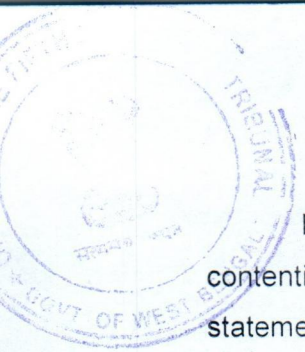
With regard to the averments made vide paragraph 11 the employer Belle Vue Clinic submits that the letter dated 04.05.2015 of the concerned workman was received by the Clinic after issuance of dismissal letter dated 05.05.2015.

The company disputes and denies the averments and allegations of the workman as mentioned in paragraphs 12 & 13 except receipt of report and findings of the enquiry officer and forwarding a copy of the same to the concerned employee under cover of its letter dated 29.04.2015 as well as the receipt of the letter dated 04.05.2015 from the concerned employee after issuance of letter of dismissal dated 05.05.2015. It is further submitted that Sri Tapadhan Mukherjee failed to submit any representation to the report and findings of the Enquiry Officer as directed vide Clinic's letter dated 29.04.2015, the management had passed the order of his dismissal.

That the Belle Vue Clinic disputes and denies the entire averments and allegations as mentioned vide paragraphs 14, 15, 16, 17 & 18 save and except that appears from records and submits that what prevented the concerned employee to offer his bag for checking when the Security posted at the main gate wanted to check on 23.09.2014. It is further submitted that the workman ran back with view not prevent the concerned security from checking his bag as certainly he was having some materials of employer in his bag. The charges proved against him in the domestic enquiry where only on the basis of preponderance of probability, in terms of settled law of the land. It is submitted that the domestic enquiry is not a criminal trial where guilt is required to be proved beyond doubt. It is further submitted that there is no C. C. T. V. Camera in the room where the concerned Tapadhan Mukherjee sits.

With regard to the averments and allegations made vide paragraph 21 the employer Belle Vue Clinic submits that the concerned employee has accepted his final dues and contesting this case on second thought and it is disputed that any amount is due to the said Tapadhan Mykherjee on account of Leave Travel Allowance and Medical Allowance.

That the Belle Vue Clinic disputed and denied the entire averments and allegations made vide paragraphs 21 & 22. It is submitted that the enquiry conducted by the employer is in



*Signature*  
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accordance with principles of natural justice and the report and findings of the enquiry officer is a reasoned one based on materials on records.

With regard to the averments made vide paragraph 23 the employer Belle Vue Clinic submits that the concerned employee should not be allowed to add, alter, amend, its statement of claim to cause prejudice to the employer.

That the prayers of Sri Tapadhan Mukherjee are frivolous and vexatious, therefore, liable to be rejected with exemplary costs and the employer Belle Vue Clinic craves leave of this Tribunal to add, amend, alter, modify, supplement and/or file additional Written Statement at any stage of the proceedings if required for the ends of justice and prayed that this Tribunal may graciously be pleased to reject the prayer of Sri Tapadhan Mukherjee and pass an Award in favour of the employer Belle Vue Clinic holding that Sri Tapadhan Mukherjee is not entitled to any relief.

In view of the above facts and circumstances the Government has been pleased to frame some issues for adjudication of this Tribunal as follows:

### ISSUES

- 1) Whether the termination of service of Shri Tapadhan Mukherjee by the management of Belle Vue Clinic w.e.f. 05.05.2015 is justified?
- 2) if not, what relief they are entitled to?

In support of the case the petitioner is examined himself as PW-1 and filed some documents as follows:-

- a) The photocopy of letter dated 27.09.2014 is marked as Exhibit-A.
- b) The photocopy of letter dated 29.09.2014 is marked as Exhibit-B.
- c) The photocopy of letter dated 04.05.2015 is marked as Exhibit-C.
- d) The photocopy of letter dated 06.05.2015 is marked as Exhibit-D.
- e) The photocopy of letter dated 19.05.2015 is marked as Exhibit-E

On the other hand the Company under reference to counter and defend the case has brought one witness named as follows:

- 1) Sri Prasenjit Debnath, Security Guard posted at Belle Vue Clinic provided by M/s Kolkata Response Group, a security service provider as MW - 1.
- 2) Sri Birendra Kumar Singh, Security Guard/Durwan of Belle Vue Clinic since 1987 as MW - 2.
- 3) Sri Ashes Kumar Sen, Senior Manager Personnel, Belle Vue Clinic since 10.01.1996 as MW - 3.
- 4) Sri Muktipada Samanta, Computer Hardware and Network Technician, Belle Vue Clinic since 01.02.2011 as MW - 4.

*S. B. Sen*  
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5) In support of their contention the management has filed following documents which are as follows:-

- 1) Photocopy of Authorization letter. Marked as **Exhibit – 01**.
- 2) Photocopy of Aadhar Card. Marked as **Exhibit – 02**.
- 3) Photocopy of Authorized letter of Mr. Birendra Singh. Marked as **Exhibit – 03**.
- 4) Photocopy of Aadhar Card of Mr. Birendra Singh. Marked as **Exhibit – 04**.
- 5) Original authorization letter dated 16.08.2022. Marked as **Exhibit – 03/A**.
- 6) Self attested photocopy of Aadhar Card. Marked as **Exhibit – 04/A**.
- 7) Photocopy of Identity Card of A. K. Sen. Marked as **Exhibit – 5**.
- 8) Photocopy of appointment letter dated 31.01.2011. Marked as **Exhibit – 05/A**.
- 9) Photocopy of letter dated 24.09.2014. Marked as **Exhibit – 06**.
- 10) Original Identity Card. Marked as **Exhibit – 06/A**.
- 11) Photocopy of letter dated 27.09.2014. Marked as **Exhibit – 07**.
- 12) Photocopy of Receipt of letter dated 27.09.2014. Marked as **Exhibit – 07/A**.
- 13) Original CD dated 26.09.2014. Marked as **Exhibit – 07/B**.
- 14) Photocopy of letter dated 29.09.2014. Marked as **Exhibit – 08**.
- 15) Photocopy of letter dated 02.10.2014. Marked as **Exhibit – 09**.
- 16) Photocopy of letter receipt dated 02.10.2014. Marked as **Exhibit – 09/A**.
- 17) Photocopy of letter dated 29.04.2015. Marked as **Exhibit – 10**.
- 18) Photocopy of receipt of letter dated 29.09.2015. Marked as **Exhibit – 10/A**.
- 19) Photocopy of letter dated 04.05.2015. Marked as **Exhibit – 11**.
- 20) Photocopy of letter dated 05.05.2015. Marked as **Exhibit – 12**.
- 21) Photocopy of receipt of letter dated 05.05.2015. Marked as **Exhibit – 12/A**.
- 22) Photocopy of letter dated 06.05.2015. Marked as **Exhibit – 13**.

**Decision with reason:**

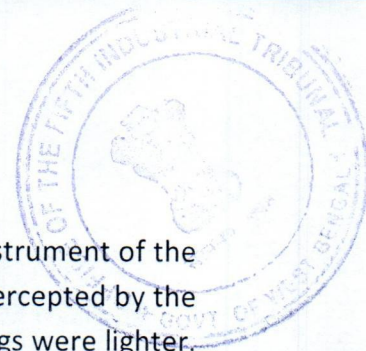
It has already discussed earlier that the order of reference contains only two issues. Now for proper adjudication of the case both the issues are taken up together.

Ld. Advocate for both the parties have advanced their argument in support of their respective cases and also file their respective written notes of argument.

During hearing of the argument Ld. Advocate for the management submitted that the concerned employee Mr. Tapadhan Mukherjee not disputed or denied that the charge i.e. habitual in defying the checking, even the witness No. 1, 2 & 3 of the management had not been challenged on this point during their cross – examination. He also contended that so far the first charge that the incident of 24.09.2014 also been admitted by the worker. And the defence took by the concerned employee is not tenable specially in view of the Exhibit- 7/B i.e the CD which proved the volume of the bags when he was intercepted by the security personal and when he returned from his room and offered himself for checking. When the security intercepted, volume of the bag was heavy but when he returned from his room the volume of bags were light. He further submitted that Ld. Advocate for the workman argued that no materials was recovered but it is pertinent to mention that when checking of the bags was not allowed by the concerned employee thus how the materials will be recovered. In Industrial Law the misconduct is not required to be proved to the tilt rather preponderance of probability is required to be proved about the charges. He further submitted that in the present case from the conduct of the concerned employee and from Exhibit-7/B i.e the CD probable view is

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derived that the concerned employee was carrying some property/medicine, instrument of the tool of the employer of Belle Vue Clinic while going out on 16.09.2014 when intercepted by the security guard because his bags were heavier and when he return bags those bags were lighter. In this respect Ld. Advocate for the employer relies upon the decisions of the Hon'ble Apex Court reported in "(2021) 11 SCC 321" paragraph 24-28 and also relies about the decisions of the Hon'ble Apex Court reported in "(1991) 2 SCC 716". Ld. Advocate for the management also submits that acceptance of the provident fund and gratuity without any protest is sufficient to conclude that the employee concerned has accepted the punishment and thereafter stopped from challenging the same in terms of the settled law of the land. He further relies upon the decisions of the Hon'ble Supreme Court reported in "(2005) 5 SCC 1991", and also relies upon the decisions of the Hon'ble High Court, Calcutta reported in "(2012) SCC (on line) Calcutta

1669" where Hon'ble court held that "thus when the petitioner had accepted those cheques he not also accepted them without prejudiced but he also accepted those payments were made in full and final settlement of his claim". It may be mentioned that the letter of intimation dated January 2012 where it is clearly mentioned that the compensation would be paid in full and final settlement of the petitioner's due and discharge of valid receipts but that end by him. Ld. Advocate for the management also relies upon a decision reported in "(2022) LLR 140". He further argued that the union under reference has failed to prove it is locus standi rather the union is not contesting the case but the concerned employee is contesting the case in his individual capacity which is not permissible as the reference is in the name of the union to that effect the Hon'ble Calcutta High Court in a case reported in "(1996) Lab I.C. 1597" where it has held that when locus standi is challenged the union is bound to prove the same. Ld. Advocate for the management further advance his argument by submitting that the present employee has filed the instant case with guilty mind and by suppressing the facts of accepting provident fund and gratuity i.e. final dues without any protest and for the said reason the concerned employee is not entitled to get any relief. The employee also never dispute the fact pleaded in the written statement of the employer rather during cross-examination of employer's witness No.3 attempt was being made to prove since no document had been produced by the employer the contention was wrong. In his cross-examination the concerned employee with dishonest intention initially replied that he had not receives his final dues but while replying the next question he admitted that he had received the provident fund and gratuity. To the effect of Hon'ble High Court of Karnataka observed in a case reported in "(2022) LLR 745" where it has held that the employees who are found guilty of suppression are not entitled to any relief.

It also argued by the Ld. Advocate for the management that the reference is not sustainable because the Government has referred the matter of termination treating the same as retrenchment where the concerned employee has been dismissed by way of punishment and the Government has treated the matter as specified in second schedule but the retrenchment is mentioned in third schedule. He also stated that the argument of the Ld. Advocate for the workman has not footing where he has stated that the employee would not recover anything from the possession of the concerned workman but while he did not allow to check the bag, therefore, preponderance of probability will come in picture probability is that the concerned workman was carrying something in his bags which he should not and the volume of the bags pump heavy from the CD (Exhibit-7/1). He also stated that there is no differences between charge sheet and show cause, therefore the argument laid by the Ld. Advocate for the workman that the charge sheet was not issued is not tenable in the eye of law. Ld. Advocate further argued that the concerned establishment is not a factory rather it is

one service sector and the renowned nursing home, Kolkata were the VVIPs like Prime Minister, President and other foreign Dignitaries used to be treated where one should is kept is reserve

*[Signature]*  
12.02.2024



for them by the Government. The discipline in such establishment is required for higher degree than in any factory and the admitted misconduct of habitual natures cannot be tolerated. The concerned employee was deputed in pathology where costly medicines and tools are kept and if he is treated loosely there may be chances of theft and pilferage of such medicines and tools for which the employer had no option then to dismiss him to deter that others not to attempt such misconduct. Accordingly Ld. Advocate prays for passing an award in favour of the employer Belle Vue Clinic holding that the dismissal of Mr. Tapadhan Mukherjee is legal and justified and Mr. Mukherjee is not entitled to get any relief. In support of his contention Ld. Advocate for the management relies upon the decisions of the Hon'ble Apex Court as well as the Hon'ble High Court of different States which are as Follows:

- 1) Union of India and Others vs Dalbir Singh (2021) 11 Supreme Court Cases 321 (para 24 of 28).
- 2) Maharashtra State Board of Secondary and Higher Secondary Education vs K. S. Gandhi (1991) (2) Supreme Court Cases 716 (para 37).
- 3) Haryana State Co-Operative land Development Bank Limited: Haryana State Co-operative Land Development Bank vs Neelam (2005) (5) Supreme Court Case 91 (Para-18).
- 4) Tushar Kanti Roy vs. Eighth Industrial Tribunal (2012) Supreme Court Cases ONLINE Call 11669 Cal.
- 5) Pratap Singh and Others vs Jaspal Kaur Public School and Another's (2022) LLR 140 Delhi High Court (para 11).
- 23) Food Corporation of India vs Central Government Industrial Tribunal and Others (1996) LAB I. C. 1957 Calcutta High Court (para 18).
- 6) Karnataka State Road Transport Corporation Tumkur Division vs Assistant Labour Commissioner and Appellate Authority under the Payment of Gratuity
- 7) Act Division – 3, Bangalore & Others (2022) LLR 745 Karnataka High Court (para 18 - 20).

On the contrary Ld. Advocate for the workman also submitted his written notes of argument that the workman was appointed as stenographer under that company from April 1982 and all on a sudden one impugned argument notice was issued on 27.09.2014 and as per said show cause notice one enquiry took place and ultimately the workman was dismissed from service on 05.05.2014. The workman raised one Industrial Dispute challenging the dismissal and ultimately the appropriate Government has referred the case on 17.03.2017 with following Issues:

- 1) Whether the termination of service of Shri Tapadhan Mukherjee by the management of Belle Vue Clinic w.e.f. 05.05.2015 is justified?
- 2) if not, what relief they are entitled to?



*Sahar*  
12.02.2024  
Judge,  
5th Industrial Tribunal  
Govt. of West Bengal

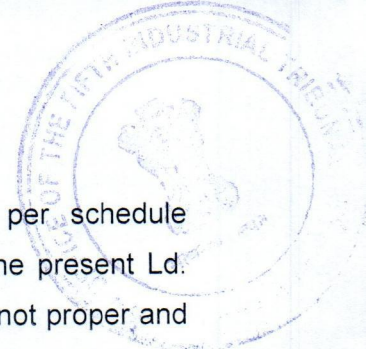


Therefore, both the parties appeared before this Tribunal and as per schedule proposition of law the validity of domestic enquiry took up for hearing where the present Ld. Tribunal was pleased to hold that said enquiry initiated by the management was not proper and not maintainable and thereafter as per provision of law the company adduced evidence to prove charges leveled against the workman in the impugned show cause. He further stated that as per scheduled proposition of law where the enquiry has been vitiated the onus of the company to prove the charges by adducing evidences. The management had adduced several witnesses before this Tribunal in support of the alleged charges leveled against the workman. Now from the alleged show cause in its paragraph-2 it has mentioned that "In the context of the above, it has been observed by the management that you are in the habit of defying checking at the time departure as per our record." From the above said observation the management to prove either by oral evidence or by documentary evidence that the workman was in the habit of defying the checking system as alleged but from the evidences both oral and documentary nothing a transpired before this Tribunal that the workman even defied checking system as alleged. Further witnesses of the company admitted in their oral evidence that there is service rules of the company but as per the service rule of the company no such charge sheet was issued, the impugned enquiry was held in terms of the impugned show cause notice which is prima facie illegal and not maintainable in law. Further there is no iota of evidence that from the date of his appointment till the date of his dismissal the workman never face any single show cause notice/charge sheet from the management regarding the allegation of habitual defying checking. He further stated that the company has palpably fail to prove the allegation has leveled in the impugned show cause when the service and the service record of the workman is claimed and there is no remark negative against him and he is entitled to re-instate in his service but as he has already attended the age of retirement during the proceedings he is entitled to get the back wages till the period of his retirement. As per Section-11A of the Industrial Disputes Act it will be found that in spite of having opportunity the management failed to prove that the applicant workman never defied the checking system as alleged against him and the management also failed to produce any sorts of documents in support of the alleged contention. He also submitted that the workman has received the retirement benefit which was necessary in his existence with his family members and he never made his demand before the management for making payment of any retirement benefit. Finally Ld. Advocate for the workman submitted that the case laws referred by the Ld. Advocate for the management are not at all applicable as the facts and circumstances of the matter are beyond their pleadings which are not acceptable either in law or in facts.

The Ld. Counsel for the Workman files a judgement of Hon'ble Delhi High Court: M/s. Bhagat Brothers vs Paras Nath Upadhyay 2008 LLR 807 Delhi High Court.

Further he submitted that the company in their written statement never mentioned that the present case is barred by principle of estoppels, waiver and acquiescence. He further argued that the management did not file any document to show that they had paid full and final payment to the workman. He also stated that during the entire service period of the workman there was no black spot, therefore, the contents of the show cause that the workman was habitual of defying checking is not at all tenable against him. Moreover, the head of the Pathology Department Dr. Ahuja under whom this workman used to do work never made any complaint against him. There was no prior allegation against the workman and no bag was searched no article was found the possession of the workman mere on the basis of suspicion

*S. Ahuja*  
12.02.2024  
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Govt. of India





dismissal of the workman is not justified. Ld. Advocate further submitted that MW-3, Shri Ashes Kumar Sen, Senior Manager personnel of the management has admitted in his evidence that the management never show caused the present workman prior to the present incident in any reason. MW-3 in his cross-examination dated 09.11.2022 stated that they did not file any document to show that the workman has accepted the punishment of dismissal and prior to the present incident no security personnel had made any complaint regarding defying of checking by the present workman. According to the Ld. Advocate for the workman prima facie the show cause notice was baseless, it is a case of victimize and unfair labour practice and nothing was recovered from his possession as the entire allegation was baseless and false.

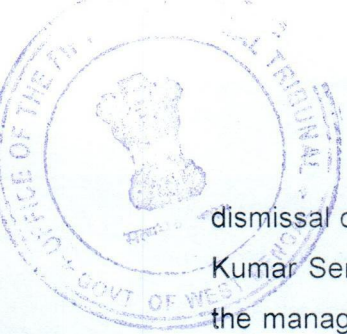
This Tribunal has gone through the written statements of both the parties, the referral order and the evidence on record both oral and documentary as well as the decisions referred by the Ld. Advocate for the parties.

The gist of the applicant's case is that he has been wrongly dismissed from his service with false allegation on the basis of a vague report by the Enquiry Officer. Now to that effect this Tribunal wants to discuss the matter which has been raised by the company by stating that the union under reference has failed to prove its locus standi rather the union is not contesting the case and the concerned employee is contesting the case in his individual capacity which is not permissible as the reference is in the name of the union and to that effect Ld. Advocate for the management has referred the decisions of the Hon'ble Calcutta High Court reported in "1996 Lab I.C. 1597." In this context this Tribunal is of the view that Section 2A (1) of the Industrial Disputes Act stated as follows:

"where an employer discharges, dismissed, retrenches or otherwise terminate the services of an individual workman, any dispute or differences between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an Industrial Dispute notwithstanding that no other workman nor any union of workman is a party to the dispute. "Accordingly, on the basis of Section 2A (1), if in any case the union raised the dispute before the appropriate authority regarding some disputes in which the particular workman is involved, said workman himself can raise the dispute even the union does not come forward and there is no bar in law to refer the matter before the appropriate authority in the name of an individual workman."

To that effect the Hon'ble Calcutta High Court has been decided in a case reported in "Laws (Cal) 2021 (9) 78 where the Hon'ble High Court has been observed which is as follows:-

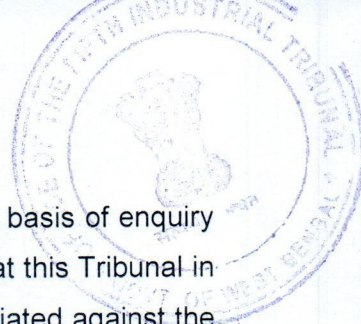
*"In other words, the dispute between a workman terminated from service and his employer shall be deemed to be an industrial dispute even without participation of the union in the dispute. The ratio of the Judgement relied upon by the union is squarely applicable to the present case. The Judgement reiterated proposition of law in the statute itself to the effect that the concerned employees are the real parties to the dispute and their cause may be represented by the union. It is immaterial as to whether the union has any locus standi to represent the workman or spouse their cause and also where it is represent a minority of workmen. Even if the respondent union is unable to produce documents as called for by the petitioner, the affect workman can continue to contest the case and the proceeding may be continued as if it is a reference under Section 2A of the Industrial Disputes Act."* In view of the observation of the Hon'ble High Court, this Tribunal is also of the opinion that the present case is well maintainable as per provision of the Industrial Disputes Act.



*12.02.2024*

Judge,  
Sub Industrial Tribunal  
Govt. of West Bengal





Admittedly, the workman was dismissed from his service on the basis of enquiry report submitted by the Enquiry Officer. It is pertinent to be mentioned here that this Tribunal in its order dated 28.04.2022 had hold that the Domestic Enquiry proceedings initiated against the present workman Mr. Tapadhan Mukherjee was bad, unfair and invalid and the findings of the Enquiry Officer are not based on reasons and also not binding upon the concerned workman.

Admittedly, the management did not prefer to move before the higher forum against that particular order. Thereafter the case has been heard on merit where the management has adduced evidence to prove the contents of show cause against the present workman.

Let this Tribunal considers that how much the management has able to prove their case i.e the content of show cause by adducing evidences both oral and documentary.

It has already discussed earlier that altogether four persons have deposed on behalf of the management namely Shri Prasenjit Devnath, the security guard, Mr. Birendra Kumar Singh and another security guard, Shri Ashes Kumar Sen, Senior Manager personal and Shri Muktipada Samanta, Computer Hardware and Net ware technician.

MW-1 Prasanjit Devnath has stated in his cross-examination that he personally did not ask any question to the worker, nor he had lodged any complaint against the worker before his higher authority and he also not adduced any evidence in Domestic Enquiry proceedings, neither he filed any document to show that during theft of belongings he was instructed by his superior to carry out the checking of the employees'. It further reveals from the cross-examination of MW-2, Mr. Birendra Kumar Singh that he was never present before the Domestic Enquiry proceedings and he was also not present on the date of the incident and he has not aware about the contents of the written statement. It further reveals from the cross-examination of MW-1 that he personally did not lodge any complaint against Mr. Tapadhan Mukherjee before any higher authority.

MW-3, Shri Ashes Kumar Sen has categorically stated in his cross-examination that Mr. Tapadhan Mukherjee had not been going at the checking point and used to defy such practice but for his such practice the authority of Belle Vue Clinic never issued any show cause notice earlier and save and except the last occasion Shri Tapadhan Mukherjee was never been show caused by the authority of Belle Vue Clinic in any reason.

MW-4, Shri Muktipada Samanta only proved the CD.

From the above pieces of evidences of the management witnesses nothing has transpired before this Tribunal to hold that the management has been successfully able to prove the contents of the charge i.e. the workmen was in habit of defying checking at the time of departure. As per the record of the management save and except only incident dated 23.09.2014 no other date/dates have been stated by any of the management witnesses to show that the delinquent workman Shri Tapadhan Mukherjee had habit of defying checking, even not a single scrap of document has been filed on behalf of the management to

*Q. Ahmed*  
12.02.2024



substantiate their case that save and except the incident dated 23.09.2014 Mr. Tapadhan Mukherjee had defied checking.

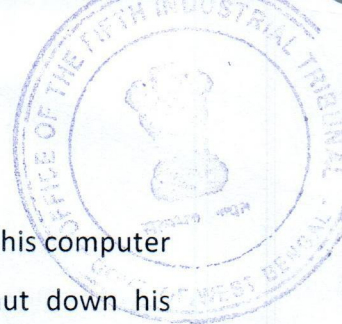
This Tribunal has discussed earlier in its order dated 28.08.2022 that the workman has adduced sufficient evidence that why he was turned up from the gate towards his computer room where he was stopped by the security personnel. It further reveals from Exhibit-6 i.e. the main complain letter dated 24.09.2014 duly written by one security personnel namely Mr. Subhajit Dutta where he had written the letter addressing to the site supervisor of Belle Vue Clinic and from that Exhibit-6 nothing has transpired before this Tribunal that said Subhajit Dutta had mentioned there that the volume of the bags carried by Mr. Tapadhan Mukherjee on 23.09.2014 were heavy when said Subhajit Dutta had stopped Mr. Mukherjee for checking and the volume of the bags were less when Mr. Mukherjee returned back from his office.

From the show cause letter dated 27.09.2014 where the management has categorically stated to Mr. Tapadhan Mukherjee that he is in the habit of defying checking at the time of departure as per their record and also asked him to explain regarding his U-turn and disregard to the checking on 23<sup>rd</sup> idem. The workman Mr. Tapadhan Mukherjee had given reply to the show cause letter dated 27.09.2014 where he has categorically stated that when he reached to the main gate suddenly he recall that he had forgotten to shut down his computer (CPU), (Monitor and Printer) as he was in hurry to go to somewhere and immediately he came back to the department about which the management stated as U-turn and he had switched off the power for safety and thereafter he went back on the same way. It has earlier discussed elaborately by this Tribunal in its order dated 28.04.2022 that the explanation given by the delinquent workman was corroborated by three others witnesses namely Shri Rahul Soe Mondal, Shri Amit Chatterjee and Shri Sanjay Sarker before the Enquiry Officer. Mr. Rahul Soe Mondal had stated before the Enquiry Officer that Mr. Tapadhan Mukherjee used to carry two bags which contains water bottle, Tiffin box etc. and also stated in his cross-examination that Mr. Tapadhan Mukherjee was a stenographer who used to sit just behind the chemist and his duty hours was from 12 noon to 8 p.m. and Mr. Mondal and Mr. Mukherjee used to take their tiffin together and their tiffin time was also same. Mr. Amit Chatterjee has deposed before the Enquiry Officer that Mr. Tapadhan Mukherjee returned back while the security guard wanted to check his bag and then Mr. Chatterjee asked him the reason of his return back on which Mr. Tapadhan Mukherjee stated that the system of the computer was on and he had entered into the department. Even in his cross-examination before the Enquiry Officer Mr. Amit Chatterjee stated that though he was not in the main gate at that time but he saw that Mr. Mukherjee was returning back and also allowed the security guard to check his bag, and Mr. Mukherjee returned back to his department within 2 to 3 minutes. Another witness Mr. Sanjoy Sarker has stated before the Enquiry Officer that he saw Mr. Tapadhan Mukherjee at his computer room and being asked Mr. Mukherjee told him that he had forgotten to shut down his computer. Mr. Sarker also stated that Mr. Mukherjee used to carry two plastic bags in his hand which generally contained tiffin carrier and water bottle and no cross-examination on the part of the

*Rohas*  
12.02.2024

5th Industrial Tribunal  
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management to Mr. Sanjoy Sarkar that he did not see Mr. Tapadhan Mukherjee in his computer room or Mr. Mukherjee never told him that Mr. Mukherjee forgotten to shut down his computer. This Tribunal also elaborately discussed in its order dated 28.04.2022 that the Enquiry Officer did not consider the evidences of the three witnesses namely Mr. Rahul Soe Mondal, Mr. Amit Chatterjee and Mr. Sanjoy Sarkar and submitted his report completely relying upon the evidence of the management witnesses. It is also pertinent to be mentioned here that the witnesses who deposed before the Enquiry Officer on behalf of the management did not come before this Tribunal to substantiate the management case. Apart from that this Tribunal also viewed the CC TV footage in the open court from where nothing has transpired before this Tribunal to hold that the volume of the bags of Mr. Tapadhan Mukherjee was heavy when he was proceeding towards the main gate or the volume of his bag were less when for the second time he returned back. To that effect the decision as referred by the Ld. Advocate for the management are not at all applicable in this case as each case has its own merits and varies from case to case. Therefore, it is crystal clear before this Tribunal that the dismissal of the delinquent workman namely Shri Tapadhan Mukherjee is not justified as the charges leveled against him have not been proved and this Tribunal has no hesitation to hold that the dismissal order dated 29.04.2015 is not justified and as such the action taken by the management cannot be held to be legal and justified.

Now admittedly the delinquent workman Shir Tapadhan Mukherjee has already been retired from his service. So the question of reinstatement does not arise at all. Ld. Advocate for the workman in his usual frankness submitted that the question of reinstatement does not arise at present but the workman is entitled to get to full back wages from the date of his illegal dismissal of employment till the date of his attaining the age of superannuation. The workman in his written statement submitted that he has been suffering financially in his hard economic days with his sick wife along with his five dependents and also his dwelling house is in dilapidated condition for which he compelled to withdraw his PF and Gratuity amount but whole leave travel allowances and medical allowances are still lying with the management. Nothing has transpired before this Tribunal to hold that since the date of dismissal from service till the attaining the age of superannuation the concerned workman did not have any independent income of his own. It is necessary for the employee to plead that he was not gainfully employed from the date of his dismissal. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income, then the burden will shift to the employer. There is no dispute that the concerned workman was an employee of Belle Vue Clinic. It is admitted position that due to such illegal dismissal, the workman could not participate in the functioning of the Belle Vue Clinic from the date of his dismissal and during this long period he contributed nothing towards the productivity of Belle Vue Clinic and the said period was spent unproductively. In view of the decisions reported in 2009 IV LLJ 304

*Rahul*  
12.02.2024  
JUDGE,  
OFFICE OF THE FIFTH INDUSTRIAL TRIBUNAL,  
GOVT. OF WEST BENGAL



Metropolitan Transport Company Vs. V. Venkatesan) this Tribunal is of the opinion that interest of justice will be served if the management of M/s. Belle Vue Clinic is asked to pay the delinquent workman Mr. Tapadhan Mukherjee 75% of back wages since the period of illegal dismissal of employment till the age of his superannuation.

Accordingly the Management of M/s Belle Vue Clinic is hereby directed to pay the workman Mr. Tapadhan Mukherjee the back wages @ 75% for the said period besides his statutory dues within one month from the date of receipt of this Award. Issue No.2 is thus disposed of.

This is Award of this Tribunal.

The AWARD be sent to the Government.

Dicted & Corrected by me

(Kamal Sarkar)

Judge

5<sup>th</sup> Industrial Tribunal , Kolkata

Date: 12.02.2024

Judge,  
5th Industrial Tribunal  
Govt. of West Bengal

(Kamal Sarkar)

Judge

5<sup>th</sup> Industrial Tribunal, Kolkata

Date: 12.02.2024

Judge,  
5th Industrial Tribunal  
Govt. of West Bengal

