

IN THE SEVENTH INDUSTRIAL TRIBUNAL, WEST BENGAL

Present: Ms. Yogita Gaurisaria , Judge, Seventh Industrial Tribunal.

Case No. 002 of 2020

Under Section 2A(2)

**SUBHENDU KUMAR PAL, S/o Late Ashok Kumar Pal residing at
Vill & P.O. Purulia, Belemath South (Opposite of Maa Tara Builders),
P.S. Shantipur, District- Nadia- 741402,**

.....Applicant

-VS-

**M/s. Galpha Laboratories Ltd. Having its office at C/o. Minas
Enterprise, AA-6, Prafulla Kanan (West), Near Councillor Office of
Ward No. 26, Kolkata- 700101 and Head Office at- 221, E Wing,
Kanakia Zillon, LBC Road, BKC Annex, Kurla (W), Mumbai- 400070**

.....Opposite Party

This Award delivered on Friday, this the 27th day of December, 2024

A W A R D

The instant case has been initiated by the applicant Subhendu Kumar Pal (hereinafter referred to as the applicant/workman) by filing the application under Section 2A(2) of the Industrial Disputes Act, 1947 against his employer M/s. Galpha Laboratories Limited (herein referred as O.P/Company) in connection with the illegal termination of his service vide letter dated 27.09.2019 with the prayer to pass an award of his reinstatement with full back wages and other consequential benefits.

The case of the applicant/workman in a nutshell is that the applicant joined the Company with effect from 26th November, 2018 as Regional Field Manager. The applicant further stated that though he was designated as regional Field Manager, he used to do the job of clerical and routines in nature and having no power to take any decision independently and that he was provided with Medical Sales Representative to ascertain the market condition of the product and promote the same and also that he was not given any power to grant leave to Medical Sales Representative and/or to take any disciplinary action against them. The applicant further stated that on suddenly on 17.06.2019, the reporting portal was blocked without showing any reason and he repeatedly informed the management for such dislocation of the workman and the management harassed the workman in different manner and directed the applicant to submit resignation. The OP/Company issued an order of transfer to Mumbai Head Quarter and the workman accepted such direction as made in the order of transfer and requested the OP/Company repeatedly about extra expenses which are required for staying in Mumbai but the OP/Company did not feel it necessary to consider the real and genuine grievances of the applicant instead issued an order of termination contending to be voluntary abandonment of service. The applicant challenged such overt action of the OP/Company and demanded immediate reinstatement with wages for the period of forced unemployment. The applicant, on failing to get response from the OP/Company, approached the Labour Commissioner against illegal and unjustified termination of service and after expiry of the statutory period as provided under the Industrial Disputes Act, 1947, the applicant approached this Tribunal for getting immediate relief. The applicant further stated that he is unemployed since after termination of his service and inspite of his best

efforts failed to get employment elsewhere and passing his days with severe financial hardships. The applicant further stated that the termination of his service is illegal and unjustified and he is entitled to get reinstatement with full back wages and other consequential benefits and prayed for declaring that the termination of service of the applicant by the OP/Company is illegal and unjustified and to pass an Award directing the OP/Company to reinstate him with full back wages and other consequential benefits.

The OP/Company appeared and filed written statement from its side on 18.04.2022 but later chose not to appear before this Tribunal even after service of show cause notice upon the OP/Company and this Tribunal vide order dated 15.05.2023 fixed this instant case for exparte hearing and accordingly, the instant case proceeded exparte against the OP/Company.

The applicant/ workman was examined as P.W.1 and some photocopies of documents have been marked as Exhibits 1 to 5. They are as follows-

1. Copy of the appointment letter (2 pages) is marked as Exbt. 1.
2. Copy of the monthly salary structure (1 Page) marked as Exbt.- 1/1
3. Print-out copies of the emails (13 pages) is marked as Exbt. 2 collectively
4. Copy of the letter of termination dated 27.09.2019 is marked as Exbt. 3
5. Copy of the letter dated 30.09.2019 of the applicant to the Labour Commissioner is marked as Exbt. 4.

Heard the Ld. Advocate for the applicant. The Ld. Advocate for the applicant submitted that the applicant is a workman within the definition of workman under section 2(s) of the Industrial Disputes Act, 1947 read with the West Bengal Amendment Act 33 of 1986 (with effect from 21.08.1984) and West

Bengal Act 57 of 1980 (with effect from 30.11.1981). The Ld. Advocate for the applicant/ workman submitted that the Sales Promotion employees are also within definition of workman in view of West Bengal Amendment. The Ld. Advocate for the applicant/ workman further submitted that the termination of the applicant/ workman vide letter dated 27.09.2019 is nothing but retrenchment as defined under section 2(oo) of the Industrial Disputes Act, 1947 and does not fall within the exceptions as provided under section 2(oo) of the said Act and is illegal termination of the service of the applicant/ workman since the OP/Company did not comply the condition precedent to retrenchment as laid down under section 25F of the said Act, 1947 being compulsory obligation on the company and as such the said retrenchment is illegal retrenchment. The Ld. Advocate for the applicant/ workman further submitted that the applicant/ workman has not been in any gainful employment elsewhere since his said illegal retrenchment and therefore is entitled to full back wages with reinstatement with all consequential benefits and prayed for continuity of service.

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

1. Ananda Bazar Patrika (P) Ltd and The Workmen 1969 FLR (SC) 186
2. Bikash Bhusan Ghosh & Ors And Novaratis India Limited (2007) II LLJ (SC) 837
3. Deepali Gundu Surwasu – vs- K.J.A. Mahavidyalaya (D.Ed.) & Ors
(2013) 10 SCC 324

Perused the case record alongwith the documents and the evidences, both oral and documentary.

The evidence of the applicant remained uncontroverted and unchallenged

In light of the aforesaid contentions as well as uncontroverted evidences of the applicant/ workman brought in support thereof by the applicant/ workman, I find that the applicant/ workman falls within the definition of workman as laid under section 2(s) of the Industrial Disputes Act, 1947 read with the West Bengal Amendment Act 33 of 1986 (with effect from 21.08.1984) and West Bengal Act 57 of 1980 (with effect from 30.11.1981). The applicant categorically averred in his application that though he was designated as Regional Field Manager, he used to do the job of clerical and routines in nature and having no power to take any decision independently and that he was provided with Medical Sales Representative to ascertain the market condition of the product and promote the same and also that he was not given any power to grant leave to Medical Sales Representative and/or to take any disciplinary action against them. He also deposed the same in his Affidavit-in-chief. Thus, the principle duty of the applicant brings the applicant within the definition of workman in view of West Bengal Amendment.

I further find that the OP/Company terminated the services of the applicant/ workman by letter dated 27.09.2019 (Exhibit-3).

This Tribunal finds that the OP/company despite being aware of the necessity of initiating disciplinary proceedings, has not conducted any disciplinary proceedings which is reflected from Exhibit-3 itself.

The termination of services of the applicant/ workman vide letter dated 27.09.2019 falls within the definition of retrenchment as laid under section 2(oo)

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

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

In view of the aforesaid facts and circumstances and the settled position of the law and unchallenged and controverted evidence of the applicant/ workman, this Tribunal finds that the applicant/ workman has been able to prove his case by cogent and consistent evidence that his alleged termination vide letter dated 27.09.2019 is bad, illegal and unjustified and is liable to be set aside and that the applicant/Workman is entitled to reinstatement with full back wages and consequential reliefs and the services of the applicant/ workman be deemed to be continuous service without any break.

Hence, it is

ORDERED

that the instant case being No. 02/2020 u/S 2A(2) of the Industrial Disputes Act, 1947 be and the same is allowed exparte with costs of Rs. 50,000 (Rupees Fifty Thousand only) against the OP/Company. The letter of termination dated 27.09.2019 (Exhibit-3) is set aside being bad, illegal and unjustified.

The OP/Company is directed to reinstate the applicant/ workman in service with full back wages alongwith all other consequential benefits thereto arising out of such reinstatement and continuity of service and the service of the applicant/ workman shall be deemed to be continuous service without any break.

The aforesaid is the Award of this Tribunal passed in this instant case no. 02/2020/ 2A(2).

The case no. 02/2020/ 2A(2) stands disposed of ex parte.

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

Dictated & corrected by me.

Judge

(Yogita Gaurisaria)
Judge
7th Industrial Tribunal
Kolkata
27.12.2024

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

No. Labr/ 71 / (LC-IR)/22015/1/2025

Date : 15/01/2025

ORDER

WHEREAS an industrial dispute existed between M/s. Galpha Laboratories Ltd. Having its office at C/o. Minas Enterprise, AA-6, Prafulla Kanan (West), Near Councillor Office of Ward No. 26, Kolkata- 700101 and Head Office at- 221, E Wing, Kanakia Zillon, LBC Road, BKC Annex, Kurla (W), Mumbai- 400070 and their workman Shri Subhendu Kumar Pal, S/o Late Ashok Kumar Pal residing at Vill & P.O. Purulia, Belemath South (Opposite of Maa Tara Builders), P.S. Shantipur, District- Nadia- 741402, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);


AND WHEREAS the 7th Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 27.12.2024 in Case No. 002 of 2020 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/ 71 /1(5)/(LC-IR)/ 22015/1/2025

Date : 15/01/2025

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

1. M/s. Galpha Laboratories Ltd. Having its office at C/o. Minas Enterprise, AA-6, Prafulla Kanan (West), Near Councillor Office of Ward No. 26, Kolkata- 700101 and Head Office at- 221, E Wing, Kanakia Zillon, LBC Road, BKC Annex, Kurla (W), Mumbai- 400070.
2. Shri Subhendu Kumar Pal, S/o Late Ashok Kumar Pal residing at Vill & P.O. Purulia, Belemath South (Opposite of Maa Tara Builders), P.S. Shantipur, District- Nadia- 741402.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Assistant Secretary

No. Labr/ 71 /2(3)/(LC-IR)/ 22015/1/2025

Date : 15/01/2025

Copy forwarded for information to :-

1. The Judge, 7th Industrial Tribunal, N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect 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