Ref. (I. T. C.) Case No.168/2025.

Exh.17.

GJRJ160002312025	Received on :	05.04.2013		
	Registered on :	05.04.2013		
	Decided on :	**30.03.2026**		
	Duration :	**12**	**11**	**25**
		Yrs.	**Mths.**	**Days**

Before the Hon'ble Member and Presiding Officer of

Industrial Tribunal at Rajkot.

Ref. (I. T. C.) No.168/2025

[Old Ref. (CGITA) No.48/2013]

First Party:: **1.** The Chairman,
Kandla Port Trust,
Administrative Office Building,
Post Box No.50, Gandhidham (Kutch),
Gujarat – 370201.

V/S

Second Party:: **1.** The General Secretary,
Transport & Dock Workers Union,
Address: 21, Yogesh Building,
Plot No.586, 12-C,
Gandhidham (Kutch) – 370201.

##########

Reference under sec.10 of the I. D. Act.

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For First Party : Ld. advocate Mr. Y. C. Rajyaguru.

For Second Party : Ld. advocate Mr. N. H. Rathod.

: Award :

(1). The first party herein is the establishment named, Kandla Port Trust (in short known as KPT) whereas the second party is the Union of the employees working in said establishment. The above first as well as second party for the sake of brevity and deciding this industrial dispute are referred as '*the opponent*' and '*the applicant*', respectively.

(2). The present industrial dispute was forwarded for adjudication by the Ministry of Labour under the Government of India to the Central Government Industrial Tribunal-cum-Labour Court, Ahemdabad, as the conciliation proceeding before it could not fructify, *vide* letter dtd.01.03.2013, as per it's order No.L-37011/07/2012-IR(B-II) and the exact terms of reference are as under :

"Whether the action of the KPT Management in terminating the services of Shri Ramji Narain Maheshwari Lascar w.e.f. dt.24.12.2009 is legal and justified? What relief the workman is entitled to?"

(3). Now before going to the chequered history of this reference case, it is required to note that the present dispute has emerged in the year 2010 and since the first party / opponent was the establishment under the control of Central Government, so as per sec.2(a) of the Industrial Dispute Act, the appropriate Government for it is the Central Government, hence the dispute was raised before the authority under the Central Government. Since the compromise could not fructify so the dispute was

referred to the CGIT, Ahemdabad. Then after as per the Order No.L-20025/01/2025-IR(CM-I) dtd.02.05.2025 and Corrigendum No.L-20025/01/2025-IR(CM-I) dtd.07.08.2025 of the Deputy Director, Ministry of Labour and Employment, Government of India and on basis of the Office Order No.ADT/1/2025/5516 dtd.29.08.2025 passed by the President, Industrial Court, Ahemdabad, the present case along with other cases were transferred to this Tribunal for adjudication since the disputes were pertaining to territorial jurisdiction of this Tribunal. Hence, the present case was issued new number as Ref. (I.T.C.) No.168/2025.

(3.1). After the case was transferred to this Tribunal it was registered by issuing new number and notices were issued to the parties, wherein both parties have remained present through their respective advocates and has proceeded from the stage of evidence of the applicant side.

(4). Now if we peruse the case proceeding then the applicant Union has submitted their statement of claim at Exh.5. The facts of it in nutshell is as below:

The applicant Union has stated that the concerned employee Shri Ramji Narain Maheshwari is the member of their Union and he is covered under the definition of ‘workman’ as defined in sec.2(s) of the I. D. Act and the establishment of the opponent Kandla Port Trust (in short KPT) is covered under the definition of an industry as defined under sec.2(j) of the I. D. Act. It is contended that this Tribunal has jurisdiction to adjudicate the

present industrial dispute referred herein by the Central Government by it's letter dtd.01.03.2013.

It is contended that the concerned employee was employed as daily rated Marine Khalasi on compassionate ground on basis of recommendation of the Committee constituted for said purpose and approval of the competent authority w.e.f. dt.09.11.1997 *vide* letter No.GA/PS/1016. Subsequently he was appointed as a Marine Khalasi on regular basis w.e.f. dt.30.04.2001 *vide* office order No.MR/PS/1210. Then after he was promoted to the post of Lascar *vide* office order No.GA/PS/3504/163 dtd.08.07.2003. He was discharging his services with honesty and he was never issued any sort of memo nor was there any complaint against him.

It is contended that all of a sudden *vide* Memorandum No.MR/PS/6001/1833 dtd.22.11.2005, the KPT had served show cause notice to the concerned employee, for the charge related to guilty of suppressing material facts for personal gains while seeking appointment on compassionate ground, seeking his explanation as to why he should not be removed from services without conducting departmental inquiry as per the Kandla Port Employees (CCC) Amendment Regulation, 2004. In response to said show cause notice the concerned employee has submitted his representation on dt.16.12.2005 by narrating factual aspects. After the receipt of said representation, immediately the Dy. Conservator and Disciplinary Authority has *vide* Memorandum No.MR/PS/6001/145 dtd.16.01.2006 framed charges against the concerned employee under the Kandla Port Employees (CCC) Amendment Regulation, 2004 for conducting

departmental inquiry. In response to said memorandum, the concerned employee had submitted detail representation dtd.10.02.2006 and has denied every charges leveled against him.

The applicant has stated that without considering the representation of the concerned employee, the Inquiry Officer was appointed and the departmental inquiry was initiated against him by order dtd.15.02.2006. After the inquiry was concluded, the Inquiry Officer has submitted his report by observing that the action of concerned employee can be termed only as negligence on his part in filling up the forms and consequently the charges that he lacks faithfulness, honesty and trustworthiness, which are violation of Regulation 3(1) and 3(8) of the Kandla Port Employee (Conduct) Regulation, 1964 are not proved. In spite of the said report of the Inquiry Officer, wherein the concerned employee was exonerated from the charges, the Dy. Conservator and Disciplinary Authority had issued order No.MR/PS/6001 (RNM)/210 on dt.17.01.2009 stating that, he has disagreed with the findings recorded by the Inquiry Officer and has imposed the punishment of dismissal from the Board's service with immediate effect under Regulation 9 of the Kandla Port Employees (CCC) Amendment Regulation, 2004 after finding him guilty of suppressing material facts for personal gains while seeking appointment on compassionate ground in the Kandla Port Trust.

It is contended that the Dy. Conservator and Disciplinary Authority has neither considered representation submitted by the concerned employee with material facts nor has considered the report of the Inquiry Officer, who after conducting

a detail departmental inquiry and considering the records submitted by the Presenting Officer and defense of the concerned employee has categorically exonerated the concerned employee from the charges, so the action of the KPT is illegal, unfair and against the principle of natural justice hence is required to be quash and set aside.

The applicant Union has stated that the concerned employee has preferred an appeal on dt.28.01.2009 before the Dy. Chairman and Appellate Authority, against the said order of punishment which was not considered and was rejected. Therefore, the concerned employee has preferred an Appeal before the Chairman on dt.07.12.2009, which was also rejected by him *vide* order dtd.24.12.2009 without assigning any reasons.

The said act is clearly an act of victimization of the concerned employee and the action of management is contrary to the principles of natural justice as well as it is against the rules and regulations of the management.

The applicant has stated that the real facts is that, the concerned employee had passed the SSC Examination in Gujarati Medium long back in the year 1980 and Hindi was only the second language, so he was having only preliminary knowledge of Hindi language. The form seeking the employment on compassionate ground was filled up by someone else by giving all details and it was witnessed by two employees of the Port. Since the concerned employee was knowing little bit of Hindi language, so he was not in position to fill up the form as he was not having full knowledge of Hindi typography. The said real facts was explained by the concerned employee before the

Inquiry Officer, which was considered by him but somehow same was not considered by the appointing authority on the pretext that, it is prime duty of the signatory of any document to inquire about correctness of it's contents. After the sad demise of his father, he was put in to very difficult situation since he was fully dependent on his late father, so at such stage the forms filled by some persons was signed by the concerned employee and it was not proved in any way that he was knowing each and every contents of the various columns of the forms and details given therein. The appointing authority has stated that the concerned employee has passed SSC Examination with Hindi as a second language in the year 1980 so his claim that he does not know / understand Hindi language was denied. This clearly proves that conclusion of the appointing authority is not as per the spirit of the facts and same is based on their convenience to disagree with the findings of the Inquiry Officer.

The applicant has stated that one question was raised about the letter dtd.12.02.1997 issued by the President of Ganeshnagar Maheshwari Samaj and it's legality was challenged. With respect to the same the concerned employee has replied in his representation dtd.03.12.2008 that he belongs to Schedule Caste community, which is the poorest and backward community. Further it is practically impossible for his community to approach the Courts by engaging advocates and spending huge amounts of legal fees, therefore system is there for deciding issues in their Samaj (Community) by the panchas and their decisions are even being honoured by all. The President of Samaj who had issued the letter was called as defense witness before the Inquiry Officer

and he was examined by both sides. After considering the same, the Inquiry Officer has submitted his report and has concluded that the charges are not proved, so the contention of the appointing authority in questioning the legality and validity of the said letter is based on assumption and presumption of facts, which is bad in eye of law and against principles of natural justice. The said factual situation submitted by the concerned employee in his representation was totally ignored by the appointing authority while passing order of punishment.

The applicant has stated that since the concerned employee was illiterate so the form seeking compassionate appointment was got filled by one of his relative who has inquired while filling the form that after the death of his father whether he has left any earning source in his family. He has informed him that due to some dispute between his father and mother, both of them were living separately and he was living with his late father and he does not have any connection whatsoever with his mother, hence his relative has accordingly filled columns in the form. His form was verified and concerned officials have conducted detail verification and after taking statements of his family members, his application was duly considered by the Committee constituted for this purpose and recommended the employment on daily rated basis and accordingly he was engaged as Khalasi on daily rated basis.

It is further contended that the concerned employee was not living with his mother and his address in form is also different from his mother’s address. The concerned employee had never concealed any facts regarding her employment. There is no

malafide intention on the part of concerned employee.

It is contended that the concerned employee had put almost 12 years of continuous service with the opponent and during such period he has also received promotion and no complaint was there against him. Further considering the inquiry report it was merely negligence on part of the concerned employee so the punishment imposed by the KPT of dismissal / termination from service is harsh and disproportionate in comparison to the gravity of said misconduct and same is not even intentional. It is further contended that this Tribunal has jurisdiction under sec.11-A of the I. D. Act to quash and set aside the impugned punishment, which is not proved during the course of departmental inquiry and there is merely minor lapse in filling up the form for employment, for which the punishment of dismissal issued is harsh so same is required to be set aside by directing the opponent KPT to reinstate the concerned employee on his original post with continuity of service along with full back wages and all consequential benefits for interim period. Therefore, the applicant has prayed to allow the reference by way of quashing and setting aside the punishment order w.e.f. dt.17.01.2009 which was confirmed in the Appeal on dt.24.12.2009 passed by the Chairman and thereby direct the opponent KPT to reinstate the concerned employee on his original post with continuity of service along with full back wages for interim period with all the consequential benefits.

(5). The opponent i.e. the management of KPT has submitted written statement *vide* Exh.06, wherein it has denied

the contentions of the applicant and has stated further that this Tribunal has no jurisdiction to entertain this reference; the reference is incompetent and bad in law; it is time barred and deserves to rejected on the ground of delay and latches; the terms of reference are vague and hence the reference is required to be rejected; this Tribunal cannot travel beyond the terms of reference and the grievance raised by the Union cannot be termed as an industrial dispute and so it is required to be rejected. The opponent has stated that the contentions raised by the applicant Union are to be proved by documentary evidence. The opponent has stated that without prejudice to their above contention, it is contended that the applicant has not approached before this Tribunal with clean hands and has suppressed the material facts. It is stated that it is not in dispute that the father of concerned employee was working with the opponent and has passed away on dt.11.04.1997. It is also an admitted fact that the retirement / terminal dues of his father were received by his mother as a legal heir. In the application for appointment on compassionate grounds, it is specifically mentioned that his mother is unemployed, moreover it is also mentioned that his mother has received the retirement dues and is also in receipt of pension. Not only that, it is specifically mentioned that he resides with his mother, secondly his mother had also given an application stating that she is old so she waives her right for compassionate appointment, which may be given to the concerned employee. Moreover his brother has also given a similar application dtd.24.09.1997, wherein also it is mentioned that he also waives his right and the appointment may be given to his brother i.e. the

concerned employee. It is also mentioned in the said application that he and his brother resides with their mother, so the concerned employee has deliberately shown his mother as house wife / unemployed in his application and then after as an after thought has concocted a story of separation of his mother and father. So from the above facts it is crystal clear that the concerned employee has concealed material facts and applied for compassionate appointment by fraudulently succeeding in the same. Then after when he was charged he has again concocted another lie of separation of his parents to cover up his mischief. So such a person cannot be retained in a Public Sector Undertaking, hence the action taken by the management does not warrant any interference by this Tribunal. Further as per settled law when a person has sought appointment fraudulently then his appointment itself stands canceled therefore as such there is no need for any dismissal order, inquiry, etc., yet the opponent has followed the entire process diligently so the reference is required to be dismissed.

It is contended further that the entire application, forms, etc. are filled up in Hindi language and the concerned employee was a signatory of all the said forms. Further the applications of waiver by the brother and mother are in Hindi language. Thirdly, the concerned employee has himself passed in SSC with Hindi language as a subject. Further the concerned employee has done various other correspondence with the opponent in Hindi language and no one can be believed to be such negligent so as to give details which are false and are going to come in his way of securing appointment. If it was just

negligence then why did the brother as well as the concerned employee himself wrote that they were residing with their mother. This clearly shows that he has deliberately played mischief, gave false details, suppressed material facts and thereby has secured appointment. Further the fact that his parents were separated also falls flat on looking to the application of the concerned employee as well as the waiver applications of his brother and mother.

It is contended further that as soon as above facts came to surface, the opponent has sought explanation from the concerned employee which was not found to be satisfactory so charge sheet was issued to him. The reply for the same was not satisfactory so inquiry proceedings was initiated. In the inquiry the applicant was represented by a defense assistant. He was given fullest of the opportunities for his defense by providing all documents, cross examination of the management witness relied by them, further producing documents and witness from his side. On conclusion of the inquiry, the concerned employee has submitted his written notes and the Inquiry Officer has submitted his findings on dt.18.12.2008. However, the disciplinary authority has not concur with said findings and therefore gave a Memorandum dtd.27.11.2008 to show cause as to why major penalty should not be imposed on him. The concerned employee has replied to it on dt.03.12.2008 which was not satisfactory, so the authority *vide* order dtd.17.01.2009 has passed the dismissal order. Against the same the concerned employee has preferred an appeal before the Dy. Chairman on dt.18.06.2009 which also has met same fate. So it is crystal clear that the concerned employee

was given fullest opportunity at all stages and the inquiry was conducted in fair and impartial manner and in compliance with the principles of natural justice. Therefore, there is no problem with the decision making process as same is apparent and nor is the case of the concerned employee that he was not given opportunity. So when there is no fault in the decision making process hence this Tribunal ought not to interfere with the decision taken by the domestic Tribunal. Such a person who has secured appointment fraudulently cannot be retained in a public sector undertaking and any relief granted will tantamount to giving the benefits of one's own wrong, to a person in whom the management has lost confidence.

It is further contended that the applicant side is seeking relief of reinstatement in service w.e.f. dt.24.12.2009 but the reference is filed in the year 2013. So apparently there is delay of almost around 4 years and the concerned employee has not even cared to explain or substantiate such a gross and inordinate delay. If the concerned employee was very really aggrieved then he could have approached the machinery under the I. D. Act at the relevant point of time, so the reference is required to be rejected on the ground of delay and latches alone. The opponent has further stated that the Port Trust has followed all the principles of natural justice but in case if this Tribunal comes to a conclusion that the inquiry was not conducted properly then they should be given an opportunity for de-novo inquiry before this Tribunal for establishing the charges leveled against the concerned employee, so has prayed to reject the reference case of the applicant Union.

(6). The following evidence is produced from applicant side.

: Oral Evidence :

1	Exh.07.	Affidavit of chief examination of applicant's witness namely Ramji Naran Maheshwari.

: Documentary Evidence :

1	Mark-15/1.	Resolution dtd.12.02.1997 passed by Shri Ganeshnagar Maheswari Samaj for separate living of parents of concerned employee.

The applicant side has submitted pursis at Exh.11 accepting the legality of inquiry but not accepting the final findings. The applicant side has submitted evidence closure pursis at Exh.13.

(7). The opponent side has not lead any oral evidence but has produced following documentary evidence in this case.

: Documentary Evidence :

1	Mark-12/1.	Papers related to disciplinary action taken against the concerned employee. (Pages Nos.1 to 85)

The opponent side has submitted evidence closure pursis at Exh.14.

(8). The Ld. advocates of both sides have argued orally as well as the opponent side has even submitted written arguments at Exh.16. Both sides have even relied on some citations in support of their arguments. These arguments and citations of respective sides will be discussed at relevant stage.

(9). Having heard the learned advocates of respective sides and having gone through the record, this Tribunal finds that three issues have emerged for consideration and judicial decision in the present industrial dispute.

(1). Whether the applicant Union proves that the order of punishment issued against the concerned employee is illegal, thereby is required to be set aside and quashed?

(2). Whether the applicant Union proves that the concerned employee is entitled for the relief of reinstatement on his original post with back-wages and ancillary benefits? or is entitled for any other relief?

(3). What order?

The answers to the above issues are as below:

(1). Affirmative.

(2). Affirmative. Since the concerned employee has already reached the age of superannuation so there is no scope for granting relief of reinstatement.

However, he will be entitled for all the retirement benefits in toto i.e. 100%, which are available to the employees of his cadre by considering his service as continuous till the date of his retirement. Further he will also be entitled for with back-wages and all ancillary benefits including promotion benefits, if any, at the rate of 50% for the interregnum period i.e. from date of dismissal from service till date of superannuation by considering his service as continuous.

(3). As per final order.

(10). <u>Reasons for issues</u>:

(10.1). Before going to the reasoning portion for the above issues, it is necessary to take note of the ***admitted facts*** which are as below:

1. The dispute herein pertains to dismissal of service of the concerned employee namely, Ramji Narain Maheshwari. The father of the concerned employee namely Narain Ladha was also working in the opponent establishment as an Ex-Lascar, Mechanical department, who has died on dt.11.04.1997, while he was in service. The concerned employee, herein has submitted an application dtd.18.09.1997 before the management of KPT seeking compassionate appointment in place of his father, which was verified by the Labour Section and the Committee after considering the facts has recommended for his appointment as

daily rated labour on dt.10.10.1997, which was accepted by the Chairman, so he was employed as daily rated Marine Khalasi w.e.f. dt.09.11.1997 *vide* letter No.GA/PS/1016.

2. Then after he was appointed as a Marine Khalasi on regular basis w.e.f. dt.30.04.2001 *vide* office order No.MR/PS/1210. The concerned employee was then after promoted to the post of Lascar *vide* office order No.GA/PS/3504/163 dtd.08.07.2003.

3. Then after in the vigilance investigation it was found that the mother of the concerned employee was working as a Shore Worker bearing No.R-196 in KPT, though concerned employee while submitting the application / form seeking compassionate appointment in place of his deceased father, has suppressed this material fact, which would have disentitle him for appointment. The vigilance section has submitted their report on dt.11.11.2005, so a show cause notice dtd.22.11.2005 was issued by the Deputy Conservator to the concerned employee saying that he has committed misconduct which amounts to lack of faithfulness, honesty and trustworthiness and he is not a fit person to be retained in the Government service, so accordingly proposes to impose on him penalty of dismissal from service. Hence, concerned employee was given opportunity of making representation on the penalty proposed against him. The concerned employee has given his representation dtd.16.12.2005 denying the allegations and submitting that his father has separated from his mother in February 1997 and after separation

he was residing with his father. He had no connection with his mother and after demise of his father he has no source of earning. He has said that letter dtd.12.02.1997 was issued by the President of Shri Ganeshnagar Maheshwari Samaj regarding separation of his parents as per the caste structure. So he has denied all the imputations.

4. Then after the opponent has issued Memorandum dtd.16.01.2006 to the concerned employee for holding inquiry against him under Regulation 12 of the Kandla Port Employees (CCA) Amendment Regulations, 2004 along with statement of articles of charges, statement regarding imputation of misconduct in support of each article of charge and list of documents by which the articles of charges are proposed to be sustained. It was stated that the said act on part of the concerned employee shows lack of faithfulness, honesty and trustworthiness which amounts to grave misconduct in violation of Regulation 3(1), 3(8)(i) of the Kandla Port Employees (Conduct) Regulations, 1964. The applicant has submitted representation dtd.10.02.2006 against the said Memorandum.

5. Then after departmental inquiry was conducted, wherein the Inquiry Officer has submitted his inquiry report dtd.18.08.2008 and therein he has stated that the charges of lack of faithfulness, honesty and trustworthiness against the concerned employee, which are violation of Regulation 3(1) and 3(8)(i), are not proved and at the most the action of concerned employee in filling up the form can be termed as negligence on

his part.

6. The Deputy Conservator of KPT has then after issued Memorandum dtd.27.11.2008 to the concerned employee by not accepting the findings submitted by the Inquiry Officer and holding the charges framed against him to be proved and to submit explanation as to why major penalty as per clause No.(v) to (ix) of Regulation 9 of the Kandla Port Employees (Classification, Control & Appeal) Amendment Regulation, 2004 should not be imposed on him. The concerned employee has submitted his reply on dt.03.12.2008.

7. Then after as per order dtd.17.01.2009, the concerned employee was issued punishment of dismissal from Board's service with immediate effect under Regulation 9 of the Kandla Port Employees (Classification, Control & Appeal) Amendment Regulation, 2004.

8. Against the said order of dismissal the concerned employee has preferred departmental appeal dtd.18.06.2009, which was rejected on dt.16/24.12.2009 by the Deputy Conservator, KPT.

9. Then after being aggrieved by the same he has raised the present industrial dispute before the appropriate Government, wherein the compromise could not fructify so it was referred for adjudication to the concerned Tribunal, which is eventually transferred to the present Tribunal for adjudication.

10. In the present case, the applicant has not challenged the legality of the departmental inquiry but has challenged the findings *vide* pursis of Exh.11 dtd.02.01.2026. The applicant has submitted oral and documentary evidence whereas the opponent KPT has only produced documentary evidence.

11. During the pending proceeding the concerned employee has already reached the age of superannuation, therefore if the applicant Union succeeds in this case then also now the relief of reinstatement cannot be granted.

(11). <u>Issue Nos.1 & 2</u>::

(1). As the facts of both these issues are interconnected so the discussion of the same is done together to avoid repetition. So keeping the above factual aspects and admitted facts in the backdrop of mind, let us go to explanation for answer to the said issues. Now looking to issue No.1, it is to be decided that whether the punishment issued to the concerned employee for the charges leveled against him is illegal as the charges or accusation is not proved against him or the punishment is not proportionate to the charges leveled against him?

(2). Now here in the instant case the applicant side has not challenged the procedure of departmental proceeding. So now what further thing is to be done or can be done, is required to be discussed in this case. At this juncture, it is required to

peruse and refer some enunciation on this point of discussion. The first is the case before ***hon'ble Apex Court*** between ***Mavji C. Nakum v/s Central Bank of India***. It is necessary to quote some portion of para 20.1 of the said citation which is as below:

> *Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair-play were observed. That does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under Sec.11-A has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical, but there should be good reasons.*

(3). Further, looking to the citation which is the case before ***hon'ble Apex Court*** between ***Cooper Engineering Ltd.***

v/s P. P. Mundhe, wherein it is necessary to refer para no.29 which is as below:

> ***29.*** *It is equally important to understand the difference between validity of finding and validity of departmental inquiry. The finding is not a part of departmental inquiry. Both are different and distinct entity in entire departmental proceedings. If validity of departmental inquiry is not challenged by workman, then, he can challenge the validity of finding which is separate and independent being a conclusion or result of departmental inquiry. So, both the things can be challenged by workman independently from each other. Therefore, the view taken by Apex Court in JT 2007 (13) SC 404 and JT 2008 (2) SC 272, if, it has to be implemented and held that in case when validity of inquiry is not challenged by employee, then, finding cannot be examined by Labour Court, then, it amounts to redundant the amendment of Sec.11-A which brought into statute with a particular object to remove the effect of decision of Apex Court in case of M/s. Indian Iron & Steel Co. Ltd. & Anr., reported in AIR 1958 SC 130. Therefore, looking to the decision of Apex Court in case of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. (supra), what would be the legal effect of amendment of Sec.11-A, Labour Court has certainly power to examine the finding given by Inquiry Officer independently irrespective of challenge against departmental inquiry and Labour Court can differ with the conclusion of Inquiry Officer like an appellate authority. If*

this decision of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. (supra), of Apex Court, where, the entire law has been discussed after following the various decisions on the subject is binding as a precedent, otherwise, if it is not followed in light of recent two decisions of Apex Court, then, it amounts to restoring the original position which was prevailing prior to decision of Apex Court in M/s. Indian Iron & Steel Co. Ltd. & Anr., reported in AIR 1958 SC 130, then, amendment of Sec.11-A becomes totally redundant, that is not the ratio laid down by Apex Court in aforesaid two recent decisions as referred above. There is no provision in Industrial Disputes Act made that how the departmental inquiry is to be conducted and what procedure is to be followed. But, in Industrial Law, the procedure to be followed in departmental inquiry has been developed on the basis of various decisions given by Apex Court being an unwritten law and decision of Apex Court being a binding precedent being a law of land binding to all the Courts of India.

So from the above two decisions of hon'ble Apex Court, it is very much clear that even if the employee hasn't challenged the proceedings of inquiry, he or she can separately challenge the findings of inquiry and the Labour Court or the Industrial Tribunal as the case may be, can examine the findings and if the findings are based on no evidence or evidence other then which is lead in the inquiry then can declare the findings to be perverse.

(4). Hence, in case were the employee is terminated or issued punishment of dismissal after conducting the departmental inquiry, then the Labour Court or the Industrial Tribunal has following powers, *viz*, firstly, if there is challenge to inquiry proceedings than it can go in to the validity and legality of said proceedings, secondly can go into the perversity of findings given by Inquiry Officer and finally can also decide that whether the punishment inflicted is appropriate or not and in case of punishment of dismissal or discharge from service, can decide the said aspect of proportionality of punishment by exercising the powers under sec.11-A of the I. D. Act and can even modify such punishment.

(5). Now with this back ground if we goes to the allegations leveled against the applicant and the counter version which is put forth by the applicant, then as per charge sheet, it was alleged that the concerned employee in his application dtd.18.09.1997 against column No.7, Serial Nos.1 to 7 has declared that none of his family members are employed anywhere. However, subsequently on detailed verification it was found that Smt. Kunwarbai Gaba, the mother of the concerned employee was residing together in house on Plot No.243, Sector-5, Gandhidham and she is employed in KPT as Shore Worker (R-196), since the year 1973. So the said act on part of the concerned employee shows lack of faithfulness, honesty and trustworthiness which amounts to grave misconduct in violation of Regulation 3(1), 3(8)(i) of the Kandla Port Employees (Conduct) Regulations, 1964.

However, it is pertinent to note that the Inquiry Officer has held the charges as not proved and has observed that the said act on part of concerned employee at the most can be termed only as negligence on his part in filling up the forms. The Disciplinary Authority has not agreed with said findings of the Inquiry Officer so has issued a Memorandum dtd.27.11.2008 by assigning reasons in para No.4 and has issued show cause notice to the concerned employee as to why any of the major penalty as enumerated under clause No.(v) to (xi) of Regulation 9 of the Kandla Port Employees (Classification, Control & Appeal) Amendment Regulations, 2004, should not be imposed upon him.

(6). The opponent side has argued that Disciplinary Authority has powers to go against the findings submitted by the Inquiry Officer and issue punishment to the concerned employee after issuing show cause notice. It is contended that as per the Regulations of 2004 and more particularly as provided in Clause 15 in said Regulations, the Disciplinary Authority can disagree with the findings of the Inquiry Authority and in that case has to assign brief reasons for the same. The opponent side has relied on the citation which is the case before ***hon'ble Apex Court*** between ***Punjab National Bank and ors. v/s Sh. Kunj Behari Misra***, wherein it is held that whenever the disciplinary authority disagrees with the inquiry authority on any article of charges then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent an opportunity to represent before it records its

findings. The next citation is also the case ***before hon'ble Supreme Court*** between ***High Court of Judicature of Bombay v/s Shashikant S. Patil and anr.***, wherein also same thing is held and has stated further that if the Disciplinary Authority does not have powers to disagree with the findings of Inquiry Authority then the position of the Disciplinary Authority would get relegated to a subordinate level.

There cannot be any doubt regarding the above ratio and with respect to said powers being available to the Disciplinary Authority to disagree with any of the findings for any of the charge which is submitted by the Inquiry Officer.

(7). So now it is to be discussed that whether the findings submitted by the Disciplinary Authority that the charges raised against the concerned employee is proved on basis of the evidence which has appeared in the inquiry.

(7.1). If the same is discussed then the whole episode has initiated after a period of eight years. The concerned employee was given compassionate appointment as a daily rated Marine Khalasi in the year 1997 after verifying the facts. Then after he was regularized on said post in the year 2001 and was subsequently granted promotion to the post of Lascar. In the year 2005 for the first time in vigilance inquiry it has appeared that the concerned employee in the form submitted for getting compassionate appointment in place of his deceased father, has

suppressed material facts, wherein though his mother was working as an employee of KPT, the said fact was not mentioned and it was declared that she is unemployed. So for the first time after a period of eight years show cause notice dtd.22.11.2005 was issued to the concerned employee by the KPT, wherein itself it was mentioned that after careful consideration of the proved misconduct such as unfaithfulness, dishonesty and untrustworthiness on his part, the administration cannot rely on him and the Deputy Conservator of KPT has come to the conclusion that he is not a fit person to be retained in the Government service and accordingly proposes to impose on him the penalty of dismissal from service under the provisions of Kandla Port Employees (CCA) Amendment Regulations, 2004. So the concerned employee was given an opportunity for making representation against the said proposed penalty. This itself shows that the Disciplinary Authority has with a predetermined mind initiated the whole proceedings of the inquiry.

(7.2). Against the said show cause notice the concerned employee has submitted his representation on dt.16.12.2005, wherein he has stated that after separation of his father and mother in the month of February 1997, he was residing with his father till death of his father. He had no any connection with his mother whatsoever as he was residing with his late father and after his demise he has no source of earning. So while making application for compassionate appointment he has submitted that there is no earning member in his family. The letter

dtd.12.02.1997 issued in this respect by the President of the Shree Ganeshnagar Maheshwari Samaj, which was commission for settlement as per his caste structure, was submitted for ready reference. It was stated that these facts was verified by the concerned officials of Labour Section who has called him personally and only after verification of particulars submitted by him in his application, his case was processed. Therefore, he has not concealed the facts in the attestation form. He has stated that he has submitted factual position because his mother was residing separately from his mother and he was residing and fully dependent on his father.

(7.3). After the concerned employee has submitted above explanation the Memorandum / charge sheet was issued to him and departmental inquiry was conducted. At the end of the departmental inquiry, the Inquiry Officer has submitted his findings stating that the charges of lack of faithfulness, honesty and trustworthiness are not proved and at the most his action can be termed as negligence on his part in filling up the forms. It is required to refer some of the reasons assigned in said findings by the Inquiry Officer which are as under:

It is an open fact that came out of the inquiry that Smt. Kunwarbai Gaba is the mother of the Shri Ramji Narain and was staying in House No.243 Sector – 5. The examination of the President of the Samaj as well as the Nomination forms shows that she had made her nominations in favour of his younger son

leaving aside Mr. Ramji and his family, probably because she was staying with his young son separately in the said house. It is also seen from the examination and re-examination that the form was filled up in Hindi and Shri Ramji was not in knowledge of the contents. Further said form was got filled up by his mother and others have duly verified which was attested by other known port employees. It was utmost duty of the management to get the application verified properly from the applicant himself which would have confirmed the facts mentioned in the application for employment. Thus a major lacuna had occurred on the part of management side. No cogent reasons for not getting the same verified was also forthcoming from the management side. Not only that the said forms were got duly verified through the concerned department but none of the officials pointed out the above facts, based on the service records available with them nor the Presenting Officer could bring any witness who was directly connected with the case. It is further seen that at the time of verification, Smt. Kunverbai had not stated about her job with the KPT nor admitted the same while applying for pension from KPT. It is also on record to show that all the witnesses to Kunverbai's statement were KPT employees. It is not understood as to why the above witnesses were not got examined by the Presenting Officer. Further the statement of Shri Ramji that he don't know Hindi has not been refuted by the management side. The examination of Shri Shankar Jivaji by the management side exposes the whole calculated move by Smt. Kunverbai Gabha who had got changed the nominations in favour of her younger son and got the application for employment filled in and

submitted to the office with the connivance of the employees of the management.

It was further observed by the Inquiry Officer that it cannot be said that the concerned employee had suppressed the facts as suppression means the willful concealment of the facts. The only thing that has been proved in the inquiry is that Smt. Kunverbai had concealed the fact about her employment and that Shri Ramji and Navin are her sons as per records and that she had later on changed the nominations in favour of Mr. Navin. Thus throughout the inquiry, it shows that the suppression of material facts were carried out by Smt. Kunverbai Gaba to ensure that Shri Ramji gets the employment and all her earnings, etc. goes to younger son named Shri Navin, by nominating him. This is further amplified by the fact that the forms were got filled up by various persons at different times by different persons and witnessed by her known persons working in her department as well as other department.

The Inquiry Officer has even referred the Orders of Government dtd.25.11.1998 and further clarification issued which were prevailing prior to the year 1998 and same states that the concept of compassionate appointment is largely related to the need for immediate assistance to the family ofna the passing away of the Government servant in harness and further in deserving cases eve where there is an earning member in the family, a son daughter / near relative of a Government servant who dies in harness leaving his family in indigent circumstances may be considered for appointment to the post. There being no

laid down policy framed by the KPT, which could not be produced during inquiry, it cannot be said that even if an earning member is there, the son is debarred from applying and getting compassionate appointment. In this case, Shri Ramji is having large family which was dependent upon the earnings of his father and thus he could have been considered by the Committee for employment, even if the fact about the mother's employment was mentioned correctly.

The Inquiry Officer has further observed that the composition of the Committee for considering compassionate appointment include the representatives of the Unions in addition to official members, and all were involved in the process of recommending the cases to Chairman. Thus it cannot be said that inspite of their active liasoning with the workers no one was knowing that the mother of Shri Ramji, who was in Traffic Department, was not employed. It can be presumed that the Committee was well within the knowledge of her employment while considering the case of Shri Ramji's appointment though the fact was got suppressed in the application form by the active connivance of Smt. Kunverbai Gabha, who should have been dealt with under the rules immediately on noticing the fact by the management. As far as the culpability of Shri Ramji Narian is concerned, at the most his action can amount to failure on his part to confirm the contents of the application and the same can be termed as negligence on his part.

(8). Looking to the above reasons of the findings

submitted by the Inquiry Officer they were very much convincing and logical. There was no scope for the Disciplinary Authority to disagree with the same and held otherwise, though the Disciplinary Authority has disagreed with the same and has issued Memorandum dtd.27.11.2005 to the concerned employee seeking his explanation by holding the charges to be proved and as to why major penalty prescribed should not be imposed on him. It is required to refer and discuss the reasons mentioned in the said Memorandum for holding the charge as proved. The same are as under:

(8.1). It is stated that the concerned employee in his defense statements and depositions during the departmental inquiry has mentioned that the application dtd.18.09.1997 seeking compassionate appointment was filed in by someone in Hindi and as such the contents therein were not understood since he is ignorant of Hindi language. However, it is evident from record that he has passed SSC with Hindi as second language in the year 1980 and as such his claim that he does not know / understand Hindi language is denied. If the same is discussed then in the departmental inquiry such evidence was not produced by the management though same has been considered while disagreeing with the findings of the Inquiry Officer.

(8.2). The next reason mentioned by the Disciplinary Authority for disagreeing with the findings of Inquiry Officer is that letter dtd.12.02.1997 of the President, Ganeshnagar Maheshwari Samaj cannot be considered as a legal document to establish separation

of his late father and mother, with one son each reportedly due to irreconcilable dispute between the duo because had it been a legal separation the employee would have definitely submitted the documents to his department in February 1997 itself i.e. when he was alive even though same has no legal validity. Hence, said letter is issued after proposal of initiating disciplinary action by the Port Trust against the concerned employee which was known to him. Further, it is imperative to note that Smt. Kunwarbai only had claimed the terminal benefits of deceased employee as his legal wife / heir and she is in receipt of family pension.

If the same is discussed then the Inquiry Officer in his findings has specifically stated that the act of concealment and suppression of facts was not done by the concerned employee but same was done by his mother Smt. Kunverbai so she was required to be dealt with under the rules immediately on noticing the said fact by the management. However, no action was taken against her by the management.

(8.3). Further it is pertinent to note that the applicant side in the instant proceedings has produced at mark-15/1, the letter dtd.12.02.1997 issued to the parents of the concerned employee by Shri Ganeshnagar Maheshwari Samaj, wherein it is stated that the said Samaj has received applications dtd.02.11.1996 and dtd.10.11.1996 from the parents of the concerned employee. It is stated therein that the Samaj cannot give decision of living separately however the panch has heard both of them, their two sons and four daughters and has resolved that both of them can

live separately as per their wishes and can maintain themselves independently. It was further decide that the elder son Ramji i.e. the concerned employee as per his wish will live with the father and younger son Navin will live will the mother Smt. Kunvarbai. It was even stated by the panch in form of advice that if both of them makes efforts for living conjointly then panch will assist them. The said letter was signed by the President of the samaj namely Samatbhai Dhuva who was even examined as a defense witness in the departmental inquiry and he has submitted such facts in his statement before the Inquiry Officer. It is further required to note that the father of the concerned employee has died on dt.11.04.1997 i.e. within two months from the date of said letter i.e. dtd.12.02.1997, wherein the arrangement was made by the Samaj for living separately. In this circumstances after the said arrangement was done the father of the concerned employee has died within two months so it was but natural that he could not have informed about his separation from his wife to the management of KPT. Further it has even appeared on record that Smt. Kunvarbai has changed the nomination and has got entered name of his younger son as her nominee. This itself suggests that it was got done as per arrangement done by the Samaj *vide* it's letter dtd.12.02.1997, wherein the elder son was to live with father and younger son with the mother. Further the inquiry was initiated in the year 2005 and the said arrangement for living separately was done in the year 1997 so it cannot be said that the letter or the said evidence of the President of the samaj was brought up as a false defense.

(8.4). The third contention raised by the Disciplinary Authority is that the concerned employee has made declaration of his mother as housewife and during inquiry proceedings held on dt.23.01.2008 he has admitted that he was aware of the fact that she was working somewhere but not knowing that she was working in KPT, which itself contradicts his own versions. However, if the contention raised by the concerned employee is discussed then he has stated that the form was got filled by some other person in Hindi language and he has informed him that his mother is living separately so the said facts were mentioned by the person who has filled the form and he was unaware about Hindi language so he was not knowing about the said facts mentioned in the form. If the same is discussed then the Inquiry Officer has held him guilty of negligence for the said act i.e. not reading and verifying the contents of the form. However, intentional act of suppression of material facts on the part of the concerned employee is held not proved.

So the reasons assigned by the Disciplinary Authority for disagreeing with the findings which were submitted by the Inquiry Officer and holding the concerned employee as guilty for charges framed against him and awarding him maximum punishment are not sufficient enough.

(9). If we further discuss then the Inquiry Officer has observed in his findings that the composition of the Committee for considering compassionate appointment include the representatives of the Unions in addition to the official members,

and all were involved in the process of recommending the cases to Chairman. Thus it cannot be said that inspite of their active liasoning with the workers no one was knowing that the mother of Shri Ramji, who was in Traffic Department, was not employed. It can be presumed that the Committee was well within the knowledge of her employment while considering the case of Shri Ramji's appointment though the fact was got suppressed in the application form. However, the opponent management of KPT has not produced any documentary evidence related to recommendation by the committee either before the Inquiry Officer or in this proceedings before this Tribunal.

(10). It is further required to note that the Inquiry Officer in his findings has referred the Orders of Government dtd.25.11.1998 and further clarification issued which were prevailing prior to the year 1998 and has stated that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the passing away of the Government servant in harness and further in deserving cases even where there is an earning member in the family, a son daughter / near relative of a Government servant who dies in harness leaving his family in indigent circumstances may be considered for appointment to the post. There being no laid down policy framed by the KPT, which was not produced during inquiry, so it cannot be said that even if an earning member is there, the son is debarred from applying and getting

compassionate appointment. In this case, Shri Ramji is having large family which was dependent upon the earnings of his father and thus he could have been considered by the Committee for employment, even if the fact about the mother's employment was mentioned correctly.

(10.1). If the same is discussed then the opponent KPT *vide* list of Exh.12 at page Nos.71 to 77 has produced the Scheme for compassionate appointment in the Kandla Port Trust. It is required to refer clause No.11 of the said scheme which is as under:

> ***11. Where there is an earning / employed member:***
>
> ***In deserving cases, even where there is already an earning employed member in the family of the deceased or medically retired Port Employee, a dependent family member may be considered for making appropriate recommendation for compassionate appointment by the Committee and will satisfy itself that recommendation for grant of compassionate appointment is justified, having regard to the number of dependents, assets and liabilities, left by the Port Employee, income of the earning as also his liabilities including the fact that the earning member is residing with the family of the Port Employee and whether he should not be a source of support to other***

members of the family.

So, considering the above provision of the scheme for compassionate appointment there is provision of granting compassionate appointment even in such cases, wherein there is already an earning / employed member in the family. But the Committee has to make an appropriate recommendation in such cases justifying such compassionate appointment by considering the number of dependents, assets and liabilities left by the deceased Port Employee and the income of the earning member as also his liabilities. Hence, there is no such negative mandate in above provision which says that if any dependent family member of the deceased Port Employee is earning or employed then other dependent family member will not be entitled to get compassionate appointment. Hence, considering the said provision also it can be said that the Committee even after knowing that the mother of the concerned employee Ramjibhai, namely Smt. Kuverbai was an employed member in KPT, has made recommendation by giving justification to grant him compassionate appointment.

(10.2). Therefore, the findings submitted by the Inquiry Officer with respect to the departmental inquiry, wherein he has held the charges of lack of faithfulness, honesty and trustworthiness on part of the concerned employee as is prescribed under Regulation 3(1) and 3(8)(i) of the Kandla Port Employees (Conduct) Regulations, as not proved and considering the act of the concerned employee to be only negligence on his

part in filling the forms, was totally just and legal. There was no scope for the Disciplinary Authority to interfere with it by disagreeing with the said findings. Hence, this proves that the findings reached by the Disciplinary Authority was unjust, illegal and perverse since it was not based on any positive evidence and was also against the provisions enacted in scheme for granting compassionate appointment.

(11). Now the other aspect regarding proportionality of punishment is to be discussed. Herein as discussed above the act of concerned employee was merely an act of negligence however the Disciplinary Authority by considering the charges of lack of faithfulness, honesty and trustworthiness, as proved has issued capital punishment of dismissal from service. The concerned employee was dismissed from service as per order dtd.17.01.2009 of the Deputy Conservator. The concerned employee has preferred appeal against the said order of dismissal which was rejected by the Chairman as per letter No.MR/PS/6001/[RNM]/177/1342 dtd.16/24.12.2009.

(11.1). So it is to be discussed that whether said punishment is disproportionate, excessive and harsh in comparison to the act of negligence in filling forms on part of the concerned employee. For the said discussion it is required to refer the provisions of sec.11-A of the I. D. Act which is as under:

Sec. 11A :- Powers of Labour Courts, Tribunals and

National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. ---

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is ***satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case my require****:*

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

So considering the above provision when the Tribunal is satisfied that punishment of dismissal or discharge or removal from service is not justified then the Tribunal is provided with powers to modify the same by awarding lesser punishment considering the facts of particular case. This powers are discretionary in nature and any discretion provided to the Court or Tribunal by the statute is to be used in a judicious manner.

(11.2). At this juncture lets us dwelt in the enunciation which is the case between ***Davalsab Husainsab Mulla v/s North West Karnataka Road Transport Corporation***, wherein it was held by ***hon'ble Supreme Court*** that,

> *"when employer had chosen to exercise its power of discharge and dismissal for stated reasons and proven misconduct, the interference with such order of punishment cannot be made by Labour Court in a casual manner or for any flimsy reasons."* It will be necessary to refer the para no.8 and 9 of said citation which are as under:
>
> *"8. As far as the discretionary power of the Labour Court under Section 11-A of the Act is concerned, the exercise of such power will always have to be made judicially and judiciously. Under the said provision, wide powers have been vested with the Labour Court to set aside the punishment of discharge or dismissal and in its place award any lesser punishment. Therefore, high amount of care and caution should be exercised by the Labour Court while invoking the said discretionary jurisdiction for replacing the punishment of discharge or dismissal. Such exercise of discretion will have to depend upon the facts and circumstances of each case. Before exercising the said discretion, the Labour Court has to necessarily reach a finding that the order of discharge or dismissal was not justified. A reading of Section 11-A of the Act makes it clear that before reaching the said conclusion, the Labour*

Court should express its satisfaction for holding so. It has to be remembered that the question of exercise of the said discretion will depend upon the conclusion as regards the proof of misconduct as held proved by the management and only if it finds that the discharge or dismissal was not justified. Therefore, the satisfaction to be arrived at by the Labour Court while exercising its discretionary jurisdiction under Section 11-A of the Act must be based on sound reasoning and cannot be arrived at in casual fashion, inasmuch as, on the one hand the interference with the capital punishment imposed on the workman would deprive him and his family members of the source of livelihood, while on the other hand the employer having provided the opportunity of employment to the concerned workman would be equally entitled to be ensured that the employee concerned maintains utmost discipline in the establishment and duly complies with the rules and regulations applicable to the establishment. In that sense, since the relationship as between both is reciprocal in equal proportion, when the employer had chosen to exercise its power of discharge and dismissal for stated reasons and proven misconduct, the interference with such order of punishment cannot be made in casual manner or for any flimsy reasons.

9. In this context, it will be appropriate for the Labour Court to assess the gravity and magnitude of the misconduct found proved against the employee concerned, the past conduct of the employee, the repercussion it will

have in the event of interference with the order of discharge or dismissal in the day to day functioning of the establishment which will have far reaching effects on the other workmen and so on and so forth. It should always be remembered that any misplaced sympathy would cause more harm to the establishment which provides source of livelihood for many numbers of employees than any good for the employee concerned.

(12). So considering that when the prime charges of lack of faithfulness, honesty and trustworthiness were not proved and the act on part of concerned employee was mere negligence, therefore the issuance of capital punishment of dismissal from service is very much harsh, excessive and disproportionate which shakes the conscience of this Court. Therefore, the said punishment is required to be modified by considering the powers under sec.11-A of the I. D. Act.

(13). Now herein the concerned employee has already retired during pending present proceeding and in his cross examination recorded below Exh.7, he has said that at present his age is more than 60 years. Further looking to the documentary list of Exh.12 produced by the opponent, wherein on page No.70 the birth date of concerned employee is mentioned as dt.29.10.1965, which means he has crossed the age of superannuation i.e. 60 years on dt.30.10.2025. Hence, now he cannot be granted the relief of reinstatement. So, it is to be decide that what other appropriate relief can be granted to the applicant

side in this case.

(14). It is pertinent to note that the opponent side herein has raised one of the defense regarding delay and latches being occurred in raising the dispute by the applicant side. It is stated that due to delay and latches in raising the dispute no relief can be granted to the applicant side. The opponent side has relied on the citation which is the case before ***hon'ble Supreme Court*** between ***Prabhakar v/s Joint Director, Sericulture Department & Anr.***, wherein it is held that if the dispute is raised belatedly and the delay and latches has remained unexplained, then it would be presumed that the workman has waived his right or acquiesced into the act of termination and therefore at the time when the dispute is raised it had become stale and was not an existing dispute. In such case the applicant is to be denied the relief. The next citation is the case before ***hon'ble High Court of Gujarat*** between ***Dilipbhai Lavjibhai Parecha v/s The Deputy Executive Engineer***, wherein also by relying on judgment of ***Prabhakar (supra)*** and noticing the huge delay of 18 years, the award of Labour Court rejecting the reference was confirmed.

If the facts of the present case are perused then the concerned employee was dismissed from service on dt.17.01.2009. The appeal against the same preferred before the Chairman by the concerned employee was rejected on dt.16/24.12.2009. Further looking to the documentary list of Exh.12 produced by the opponent side, wherein at page No.84 is the reply dtd.29.11.2010 submitted by the management of KPT to the ALC (C), Adipur with respect to industrial dispute raised by

the Union, which itself says that the applicant Union has raised the present dispute within a period of one year after rejection of his appeal by the Chairman of KPT. So it cannot be said that the dispute was raised after an inordinate huge delay but on the contrary it appears that the dispute was raised without any delay within a period of one year after the rejection of appeal. It is required to be noted that that said conciliation proceeding was reported as a failure and then after the Central Government has referred the dispute for adjudication on dt.01.03.2013. So the delay was occurred in said conciliation proceedings and by the appropriate Government in referring the dispute for adjudication. Hence, the contention of delay and latches raised by the opponent side cannot be accepted nor will it be a ground to deny appropriate relief to the concerned employee.

(15). Now first of let us refer the other citation which is relied by the opponent side. The same is the case before ***hon'ble Supreme Court*** between ***Union of India & Ors. v/s Prohlad Guha, etc.***, wherein the facts was that respondent employees were appointed on compassionate appointment but the authority found that their appointments were based on forged / fabricated and bogus documents, so their services were terminated after holding departmental inquiry. It was held that the principle of compassionate appointment, has been put in place to ameliorate suffering that is cast upon members of a family upon the sudden death of the earning member. An equally well recognized principle is that compassionate appointment cannot be claimed as a matter of right. The person claiming an appointment on such

ground, has to demonstrate his relationship to the deceased person and eligibility for appointment. The same cannot be done without placing all relevant documents before the competent authority. In the above referred case the respondent employees had not submitted any document to establish their claim and submitted forged and bogus documents. So it was held that fraud vitiates all proceedings. The compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away. So where persons seeking appointment on such ground attempt to falsely establish their eligibility then such positions cannot be allowed to be retained. It is even held that when the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *'Sublato fundamento cadit opus'* – a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim *'nullus commodum capere potest de injuria sua propria'* applies. So in the above case the compassionate appointment was seized by way of forged / fraud documents but herein there is no such facts nor is such allegation proved and it is proved that the act of concerned employee in filling the forms for seeking compassionate appointment was merely an act of negligence. Therefore, the above citation does not assist the opponent side.

(15.1). Now simultaneously let us refer the citations relied by the applicant side, the first of which is the case before ***hon'ble***

Supreme Court between ***P. V. Mahadevan v/s M. D. Tamil Nadu Housing Board***, wherein charge sheet was issued to the employee after a period of 10 years for which the management has not offered any explanation for such an inordinate delay in initiating the disciplinary action. So it was held that that the protracted disciplinary inquiry against a government employee should, therefore, be avoided not only in interests of the employee but also in public interest and also in the interests of inspiring confidence in the minds of the government employees. Herein also the inquiry was initiated almost after a period of eight years by showing that vigilance department has unearthed the same but the recommendation of the Committee granting compassionate appointment sent to the Chairman has not been produced by the opponent side. The next citation is the case between ***Union of India & Ors. v/s Dilip Kumar Mallick***, wherein it is held that a non-disclosure of material information itself could be a ground for cancellation of employment or termination of service. In said case the facts of criminal case was not disclosed. Therein it is held that in case of suppression, when the facts later come to the knowledge of employer, different course of action may be adopted by the employer depending on the nature of fault as also the nature of default and if the case is of trivial nature, the employer may ignore such suppression of fact or false information depending on the factors as to whether the information, if disclosed, would have rendered incumbent unfit for the post in question. The third citation is the case between ***Pawan Kumar v/s Union of India & anr.***, wherein it is held that mere suppression of material / false information in a

given case does not mean that employer can arbitrarily discharge / terminate the employee from service. In such case the employer has to exercise their powers judiciously in a reasonable manner with objectivity having due regard to the facts of the case on hand. So, the ratios of the above citations do assists the applicant side in this case.

(16). So now let us decide about the important question as to which relief will be just and appropriate enough that can be granted to the concerned employee. Herein the concerned employee was dismissed from service on dt.17.01.2009 and after rejection of his departmental appeal he has immediately raised the dispute in they year 2010 through his Union, which was referred for adjudication in the year 2013. As discussed earlier due to non availability of Presiding Officer at CGIT, Ahemdabad the cases have remained pending for adjudication for a period of 2 to 3 decades. The present case akin to the same has remained pending for all these years and in the year 2025 it was transferred to this Tribunal which was pending at the stage of evidence of applicant side. Meanwhile the concerned employee has reached his age of superannuation on dt.30.10.2025. Hence, relief of reinstatement is not viable enough but considering the act of negligence on part of the concerned employee in filling forms for seeking compassionate appointment and considering the period of conciliation proceeding and adjudicatory proceeding as well as the cross examination of the concerned employee, wherein he has admitted that after removal from service he used to work casually wherever he used to get the same, therefore appropriate rate of

back-wages is required to be granted. Further the opponent has not brought on record the last drawn salary of the concerned employee nor has it appeared on record as to what was earning of the employee after his dismissal from service till his age of superannuation. On the point of granting back-wages, the citation which is the case before ***hon'ble Apex Court*** between ***Deepali Gundu Surwase v/s Kranti Junior Adhyapak & ors.***, is required to refer. The relevant para No.33 of the same is as under:

> ***33.*** *The propositions which can be culled out from the aforementioned judgments are:*
>
> *i) In cases of wrongful termination of service,* ***reinstatement with continuity of service and back wages is the normal rule***.
>
> *ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration* ***the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors***.
>
> *iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If* ***the employer wants to avoid payment of full back wages, then it has to plead and also***

lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the

statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. ***The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages***.

vi) In a number of cases, ***the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between***

the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame*. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).*

vii) The observation made in J. K. Synthetics Ltd. v. K. P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to herein above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

(17). So considering the ratio of above judgment and the facts of the present case as well as length of the dispute it cannot be said that the concerned employee would have remained totally ideal without earning anything for maintaining his family. Hence it will be appropriate and judicious enough that the concerned employee is granted all the retirement benefits in toto i.e. 100%,

which are available to the employees of his cadre by considering his service as continuous till the date of his retirement. Further he will also be entitled for back-wages and all ancillary benefits including promotion benefits, if any, at the rate of 50% for the interregnum period i.e. the date of dismissal from service till date of superannuation by considering his service as continuous.

(18). Therefore, on basis of the forgoing reasons the issue Nos.1 & 2 are accordingly replied in ***"affirmative"***. At this juncture, one more thing is to be discussed before concluding and departing. As discussed in the forgoing paras, the Tribunal has passed the award and granted relief on basis of the past record as well as present facts of the case but it may happen that the concerned employee may not receive the same within short span of time and may be many years will be passed further. So in that case when the concerned employee actually receives the said benefits, it's monetary value may be decreased further to a greater extent. In such situation, the award passed and justice done, both might be frustrated and indirectly injustice may be further done to the concerned employee. To nullify such situation, if interest is awarded on the said amount then only proper justice might be done. At this juncture, the citation of ***hon'ble Supreme Court*** in case between ***Asst. Engineer, Rajasthan Dev. Corp. & ors. v/s Gitam Singh*** will be fruitful to consider. In said case, the hon'ble Supreme Court had awarded the compensation to the workman which was to be paid within six weeks failing which, it was ordered that, the same will carry interest @ 9 percent per annum. However the said judgment was of the year 2013 and we are in

the present year of 2026, so the interest rate at present can be on reduced side @ 7.5%. Hence in this case it will be appropriate enough to direct the opponent that the concerned employee should be paid the said amount of benefits within fixed time period and if the same is not paid within specified time then order to pay interest on it can be passed as per ratio laid in above dictum. So the final order for issue No.3 is passed as below in the larger interest of justice.

:: ORDER ::

(1). The reference case is hereby partly allowed.

(2). The punishment with respect to dismissal of service issued to the concerned employee by the management of opponent KPT is held to be an illegal act. The said punishment is hereby modified by exercising the powers under sec.11-A of the I. D. Act and since the concerned employee has reached the age of superannuation so he will not be entitled for relief of reinstatement but instead he will be entitled for all the retirement benefits in toto i.e. 100%, which are available to the employees of his cadre by considering his service as continuous till the date of his retirement. Further he will also be entitled for with back-wages and all ancillary benefits including promotion benefits, if any, at the rate of 50% for the interregnum period i.e. from the date of dismissal of service till date of superannuation by considering his service as continuous.

(3). The concerned employee should be paid the said amount of benefits as directed above within 60 days from publication of this award failing which the said amount of benefits then after i.e. on completion of sixty days, same will carry interest @ 7.5 percent per annum till its realization. The opponent is also directed to provide the copy of calculation sheet of said benefits to the concerned employee, which are to be paid to him, so that he can verify its veracity and correctness.

(4). No order as to cost.

Date : 30.03.2026 **Parvezahemad A. Malaviya**

Place: Rajkot **Member,**

Industrial Court, Rajkot.

Code No. GJ00837.
