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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 31st January 2008

No. 1062—li/1(SS)-33/2003-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st November 2007 in Industrial Disputes Case No. 27 of 2003 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the management of M/s Hindustan Trading Company, At Siraj Bhawan, Rourkela, Dist. Sundargarh and its workman Md. Ibrahim at Bisra, P.O. Rourkela, Dist. Sundargarh was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE COURT OF INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE No. 27 OF 2003

Dated the 21st November 2007

*Present :*

Shri Srikanta Nayak, o.s.j.s. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Rourkela.

*Between :*

M/s Hindustan Trading Company, .. First Party—Management  
At Siraj Bhawan, Rourkela,  
Dist. Sundargarh.

And

Md. Ibrahim, .. Second Party—Workman  
At Bisra, P.O. Rourkela,  
Dist. Sundargarh.

*Appearances :*

For the First Party—Management	..	Shri G. Pujari, Advocate
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For the Second Party—Workman	..	Shri A. Dutta, Advocate

## AWARD

This Award arises out of a reference made by the Government under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 to the effect that :

“Whether the termination of services of Md. Ibrahim with effect from the 1st January 2000 by the management of M/s Hindustan Trading Company, Rourkela is legal and/or justified ? If not, what relief is Md. Ibrahim entitled to ?”

2. The case of the second party (hereinafter referred to as ‘workman’) is that Harikishan Agrawal who was the Manager of M/s Hindustan Trading Company employed him from the 17th August 1964. Subsequently the said Company was dissolved and renamed as Hindustan Trading Company in the year 1972 and the workman was employed from the year 1972 and since then he was working continuously till his service was terminated. No proceeding was ever instituted against him and his work was found satisfactory. On the 13th December 1999 the founder Harikishan Agrawal asked him to leave the job, no notice was served nor any payment was made to him. So he referred the matter to the Labour Office and after the conciliation was failed, the dispute was referred to this court.

3. The case of the management (hereinafter referred as to the “Management”) is that the second party was dead about more than 65. In the year 1999, he left the service voluntarily. His service was never terminated by the first party and on the other hand he asked the workman to work. But he refused to work on the ground of his illness. This fact was also intimated to the Labour Officer. Since the workman left the service voluntarily, he is not entitled to any relief.

4. On the aforesaid pleadings of the parties, the following issues were framed :

- (i) Whether the reference is maintainable ?
- (ii) Whether the termination of services of Md. Ibrahim with effect from the 1st January 2000 by the management of M/s Hindustan Trading Company, Rourkela is legal and/or justified ?
- (iii) If not, what relief is Md. Ibrahim entitled to ?

5. The management examined two witnesses whereas the workman examined one witness.

6. *Issue No. (ii)*—It is not disputed that the burden lies on the workman to prove that he worked in the establishment continuously for 240 days and in the decision reported in 2006-108-FLR-Supreme Court at page No. 213 (R. M. Yellatti *Vrs.* Assistant Executive Engineer) Their Lordship have held that “the burden of proof is on the claimant to show that he had

worked for 240 days in a given year. This burden is discharged only upon the workman stopping in the witness box. The burden is discharged upon the workman adducing cogent evidence both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment”.

W. W. No. 1 deposed that he was working as Salesman in the Hindustan Trading Company and worked as Billing Clerk from 1972 till the date of removal. He was getting the salary of Rs. 3,000 per month at the time of removal from service. He was never awarded with any punishment at any point of time during service period. On the 31st December 1999 the son of Harikishan Agrawal told him to leave the job as was in advanced stage. On the 1st January 2000 he reported for duty. But no work was given to him. No notice was served on him. The fact that the workman under employment from 1972 to 1999 is not at all disputed. The specific case of the management is that he left the service voluntarily. In such a case the burden is on the management to prove that the workman left the job voluntarily. In a decision reported in 2004-Vol. 103-FLR-Supreme Court at page No. 102 (M/s Nicks (India) Tools Vrs. Ram Surat (S.C.) Their Lordship have held that “the burden of proving that he voluntarily left service then falls on the appellant-management”.

M. W. No. 1 deposed that he is one of the partners of Hindustan Trading Company. The workman was working in the establishment. He left the service voluntarily and he addressed a letter on the 28th August 2002 to the Assistant Labour Officer-*cum*-Conciliation Officer and Ext. A is the said letter and asked the Accountant to call him to join the duty. M. W. No. 2 deposed that he was working as Accountant and the workman failed to join the duty, being directed by the management, he went to the village of the second party and requested him to report for duty in the office. But he did not turn up and told that he was sick and he cannot go for work. M. W. No. 2 admitted in cross that he cannot give the proper destination of the second party. If as per M. W. No. 2 he has no idea about the destination of the second party then it is not known how he reached there. The version of M. W. No. 2 runs counter to the human conduct. So reliance cannot be placed on him. Ext. A is a letter addressed by the management to the Labour Officer. It was the 26th August 2002. As per the version of the workman, his service was terminated in the year 1999 which is not disputed but Ext. A was issued in the year 2002, i.e. after lapse of two years. If at all the management had sincere desire to keep the workman in employment, a letter should have been issued immediately. The delay of two years clearly shows that when the dispute was raised and the matter was referred for conciliation, the management wrote such a letter to avoid their responsibility. Under such circumstances, the version of M. W. No. 1 and M. W. No. 2 and Ext. A cannot be relied upon and there is no material to hold that the workman voluntarily left the service.

7. Admittedly no notice was served on the workman. So there is violation of law and the termination order is illegal one.

8. *Issue Nos. (i) and (iii)*—No material was placed to hold that the reference is not maintainable. As per the workman, he was aged about 65 years age. When he gave evidence he is more than 70 years age. So at this stage it will not be proper to direct for reinstatement. But the workman is entitled to get compensation. In the decision reported in 2004-Vol. 100-FLR, at page 784 (Rajasthan) (Mubarock Khan Vrs. State of Rajasthan), Their Lordship held that “in a fit case it may not be expedient to order for reinstatement on setting aside of the

order of termination. In such a case compensation in lieu of reinstatement may be more desirable". As per the workman he was drawing the salary of Rs. 3,000 per month. But no document was filed to that effect. Ext. A is the letter addressed by the management. It is mentioned in Ext. A that his last month salary was Rs. 1,800. So the workman is entitled to Rs. 1,800, his last month pay and Rs. 30,000 towards compensation, in lieu of reinstatement. Hence the reference is answered accordingly.

Dictated and corrected by me.

SRIKANTA NAYAK  
21-11-2007  
Presiding Officer  
Industrial Tribunal, Rourkela

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21-11-2007  
Presiding Officer  
Industrial Tribunal, Rourkela

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By order of the Governor  
K. TRIPATHY  
Under-Secretary to Government