

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, No. 2, DELHI**

ID No. 49/2018

Sh. Anuj Pandey,

R/o B-16, Shiv Apartment, Dayal Bagh,
Surajkund, Near Sardar Patel School,
Faridabad, Haryana.

Versus

M/s Kotak Mahindra Bank Ltd.,

Ex. Vice Chairman and Managing Director,

Kotak Infiniti, Building No.-21, Zone-4,
2nd Floor, Infinity Park, Off Western Express Highway,
General AK Vaidya Marg, Malad (East),
Mumbai (MH)-400097.

M/s Kotak Mahindra Bank Ltd.

Vice President Human Resources,

Kotak Infiniti, Building No.-21, Zone-4,
2nd Floor, Infinity Park, Off Western Express Highway,
General AK Vaidya Marg, Malad (East),
Mumbai (MH)-400097.

M/s Kotak Mahindra Bank Ltd.,

Human Resources Zonal Head,

Building No.-5, Tower-B, 14th Floor,
DLF Cyber City, Gurgaon (Haryana)-122002.

M/s Kotak Mahindra Bank Ltd.,

Senior Manager,

A-266, Bhisham Pitamah Marg,
Defence Colony, New Delhi-110024.

Present: Sh. Rajiv Kumar Sinha, Ld. AR for the claimant.
 Sh. Rajesh Kumar Gautam, Ld. AR for the management.

Award
09.07.2025

This is an application **under section 2-A of the Industrial Disputes Act (hereinafter referred as the “Act”)**. The claimant has stated in his claim statement that he was initially given a job at a salary of Rs. 4,50,000/- per annum vide its appointment letter reference no. 433364 dated 02.11.2016, where his designation and condition of employment was specified. He worked diligently and honestly with the management and performed various duties assigned by the Bank from time to time. His services were terminated on 26.09.2017 by the management while he was on probation, which is bad in law. He also narrated an incident involving an e-mail sent to the management regarding misbehavior and abusive language used by a management’s representative of the management. lastly, he prayed that he be reinstated with full back wages.

All the managements filed the common reply. Management took the preliminary objection stating that the claimant is not a “workman” as defined under section 2(s) of the Act, because he was appointed as a “Deputy Manager.” It was further submitted that, as per the terms of the employment contract, the jurisdiction of any dispute lies with courts in Mumbai. The management also pointed out that the claimant himself admitted that his services were terminated while he was on probation. It is a well-settled law that an employer can terminate an employee's services during the probation period with or without assigning any reason. Since the claimant’s services were admittedly terminated on 26.09.2017, the management argues the dispute is misconceived and not maintainable in law, and therefore, should be dismissed with cost.

Rejoinder has been filed by the claimant, denying the averments made by management in his written statement and affirmed the facts made in his claim statement.

After completion of the pleadings, following issues were framed :

1. If the act of termination of the workman is legal, proper & justified.
2. If the workman is entitled to reinstatement to the job.
3. If the management is liable to pay compensation to the workman.
4. To what other relief, the parties are entitled to.

In order to prove his claim, workman has examined himself as WW1. He has relied upon the following documents i.e.:

- **Ex. WW1/1:** Copy of appointment letter dated 02.11.2016 issued by the management. (Colly. - page no. 10 to 17)
- **Ex. WW1/2:** Copy of email communications dated 28.09.2017 alongwith its trailing emails. (Colly.- page no. 18 to 20)
- **Ex. WW1/3:** Copy of termination letter dated 26.09.2017 issued by the management.
- **Ex. WW1/4:** Copy of demand legal notice served to the managements dated 07.10.2017 on behalf of the workman. (Colly.- page no. 22 to 27)
- **Ex. WW1/5:** Copy of conciliation petition filed by the workman before the conciliation officer, Assistant Labour Commissioner (C), New Delhi on dated 13.12.2017. (Colly.- page no. 36 to 41)
- **Ex. WW1/6:** Copy of the legal notice served to managements dated 20.02.2018 on behalf of the claimant. (Colly.- page no. 42 to 45)
- **Ex. WW1/7:** Copy of reply on behalf of managements dated 20.02.2018 filed before the conciliation officer, Assistant Labour Commissioner (C), New Delhi. (Colly.- page no. 46 to 49)
- **Ex. WW1/8:** Rejoinder on behalf of claimant before the Conciliation officer, Assistant Labour Commissioner (C), New Delhi. (Colly.- page no. 50 to 53)
- **Ex. WW1/9:** The certificate dated 23.03.2018 issued before the Conciliation Officer, Assistant Labour Commissioner (C), New Delhi.

- **Ex. WW1/10:** Statement of claim on behalf of the claimant. (Colly.- page no. 01 to 07)
- **Ex. WW1/11:** Copy of rejoinder affidavit to the written reply/counter affidavit filed on behalf of managements.

During cross-examination, the claimant admitted that he was called to the branch of the bank and given the termination letter. His acknowledged that he was appointed as a Deputy Manager, but stated that he was required to perform field duties to source accounts from different individuals. He further admitted to have sent e-mail dated 28.09.2017, wherein he admitted about his underperformance.

Management has examined one witness Sh. Nagendra Prasad, Vice President of the management, who reiterated the fact as mentioned by him in the written statement and relied on:

- **Ex. DW1/D1:** Copy of resolution dated 30.10.2021 authorizing the deponent to represent the management bank in the legal proceeding.
- **Ex. DW1/D2:** Copy of letter dated 26.09.2017.
- **Ex. DW1/D3:** Copy of contract of appointment dated 02.11.2016.
- **Ex. DW1/D4:** Copy of calculation sheet making payment as full and final settlement to the claimant.

In cross-examination, the management witness admitted that the probation period was initially for six months, extendable for another six months if performance was unsatisfactory. The claimant's probation began on 10.11.2016 and ended on 10.05.2017. It was extended by three months twice, though no supporting documentation was produced.

The claimant's case solely rests upon the premise that his services were terminated illegally by the management without assigning any reason, despite having worked for around ten months and completed at least 240 days in the organization. Although, he was appointed as a Deputy Manager at the salary of Rs. 4,50,000 per

annum, he claimed he was not assigned supervisory duties and had to report to a superior.

The management's case revolves around three facts. First, It is asserted that the claimant is not a 'workman' under **section 2(s)** of the Act because he had been designated as a Deputy Manager and his salary was around at least 37,500/- per month. Secondly, the management relies on the contract of appointment dated 02.11.2016 (Ex. WW1/1), which contains a jurisdiction clause stipulating that any dispute arising out of the employment shall be subject to the jurisdiction of courts in Mumbai. Third, the management asserted that the claimant was on probation and as per terms of his appointment, his services could be terminated during the probationary period.

In this regard, the appointment letter marked as Ex. WW1/1 is important. By that letter dated 02.11.2016, as per 'Annexure-A' enclosed with the appointment letter, the designation and salary were mentioned as Deputy Manager with an annual package of ₹4,50,000/-. The salary was bifurcated under several heads: ₹15,000/- as 'Basic Salary', ₹7,500/- as 'HRA', ₹7,229/- as 'Professional Allowance', ₹1,600/- as 'Conveyance Allowance', ₹1,250/- as 'Medical Reimbursement', ₹1,000/- as 'LTA', and ₹1,400/- as 'Bonus'. It was also mentioned in condition no. 1 of the appointment letter that the appointment was subject to a probation period of six months, and based on performance, the probation could either be extended or dispensed with. Paragraph no. 24 of the said letter states that the Courts of Mumbai shall have exclusive jurisdiction in respect of any disputes arising out of or in connection with the contract. Ex. WW1/3 is the termination letter, which was issued on 26.09.2017.

The records of evidence produced and brought before this Tribunal reveal that the claimant's probation was initially for a period of six months, from 28.11.2016 to May 2017. Subsequently, as per the documents produced by the management, page no. 26 shows that the claimant's employment was further extended for a period of three months, i.e., till 27.08.2017. MW1 further admitted that the

probation was extended a second time for another three months. Though he admitted during his cross-examination that the reasons for extending the probation period from time to time are available in the bank's records, he has not produced any such record.

Coming to the first objection about whether the claimant is a 'workman' under section 2(s) of the Act.

In this regard, definition of section 2(s) of the I.D. Act is required to be produced herein:

2 [(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity, draws wages exceeding 3 [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

As per the above-mentioned section, a person qualifies as a 'workman' if they are engaged in any work of a manual, unskilled, skilled, technical, operational, clerical, or supervisory nature. However, the latter part of the section excludes certain categories of employees, including those employed in a supervisory capacity who are drawing wages exceeding ₹10,000 per month.

It is well settled that the determining factor for whether a person is a 'workman' under Section 2(s) of the Industrial Disputes Act is the principal nature of the duties and functions performed by the employee in the establishment, and not merely the designation of the post. Further, the onus to prove the nature of employment lies on the person claiming to be a workman within the meaning of Section 2(s) of the I.D. Act.

In the present case, the management witness, during his cross-examination, admitted that there was no one who reported to the claimant. Instead, he deposed that the reporting manager, the regional business head, the area business manager, and the HR manager were the persons responsible for assessing the performance of the employee. No specific duties were assigned in the appointment letter; however, it was stated that the claimant shall perform such duties as may be assigned to him by the bank from time to time, relating to the position to which he has been appointed.

In view of the above discussion, since no specific duties were prescribed to the claimant and he had no supervisory control over any subordinate, merely designating him as a Deputy Manager does not exclude him from the definition of a 'workman'. The management has failed to prove that the claimant was assigned tasks of an administrative or supervisory nature. Therefore, the first objection raised by the management—that the claimant is not a workman as defined under Section 2(s) of the I.D. Act—does not hold any merit. On the basis of the preponderance of evidence, it is clear that the claimant qualifies as a workman.

Now, regarding the second objection, the management has contended that, as per clause 24 of the appointment letter, the jurisdiction for any dispute between the parties lies in Mumbai.

However, it is a well-settled principle of law that jurisdiction cannot be ousted merely by agreement. The appointment letter (Ex. WW1/1) clearly shows that the claimant had worked in Delhi. Therefore, this Tribunal has the appropriate jurisdiction to try the present case.

Before proceeding to decide the **issue no. 1**, the definition of retrenchment as defined under section 2(oo) of the and the conditions precedent as defined under section 25-F of the I.D are required to be reproduced herein:

Section 2(oo):

“retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

voluntary retirement of the workman; or

retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

termination of the service of a workman on the ground of continued ill-health;]

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less

than one year under an employer shall be retrenched by that employer until-

the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

notice in the prescribed manner is served on the appropriate government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

Clauses (a), (b), (bb), and (c) carved out exceptions from the definition of retrenchment. Clause (bb), which was inserted by Act 49 of 1984 with effect from 18.08.1984, states that termination of service as a result of the non-renewal of the contract of employment upon its expiry does not amount to retrenchment.

In the present case, the appointment letter (Ex. WW1/1) does not mention any fixed period of contract. It only states that the initial appointment of the claimant was for a probation period of six months, which could either be extended or dispensed with earlier or later, until confirmation. Admittedly, the claimant's probation was extended not just once but twice. The management has not placed any material on record to show the grounds on which it chose to extend the probation instead of terminating the services. It is undisputed that the claimant worked from 28.11.2016 to 26.09.2017, i.e., for about 10 months.

Section 25-F of the Industrial Disputes Act lays down the conditions precedent to retrenchment of a workman. Section 25-B

defines continuous service and states that a workman, other than one employed below ground in a mine, is deemed to be in continuous service if they have worked for at least 240 days during the twelve calendar months preceding the relevant date. Sundays and holidays are also included in the calculation of these 240 days. It is admitted that the claimant completed more than 240 days in the calendar year—approximately 300 days.

The key issue here is whether the claimant completed 240 days in a year and whether his services were terminated without complying with the conditions prescribed under Section 25-F of the Act. Admittedly, no notice was given, nor was any notice pay provided in lieu thereof, as required before termination. The management's assertion that it was at liberty to terminate the claimant's services during the probation period, as per the appointment letter (Ex. WW1/1), is not sustainable. Industrial law does not make any special provision for probation. What matters is that the claimant qualifies as a workman and has completed 240 days of service in the calendar year—nothing more, nothing less. The management never treated the employment as fixed-term; in fact, the appointment letter mentions a retirement age of 60 years upon confirmation. Therefore, Clause (c) does not come to the aid of the management.

In view of the above discussion, Issue No. 1 is decided against the management and in favour of the workman. It is held that the termination of the workman's services was illegal. Issues No. 2, 3, and 4 are to be considered together, as they relate to the entitlement of the workman.

Issue no.2, 3 & 4 pertains to relief. As a general rule, when termination is declared illegal, the appropriate relief is **reinstatement with full back wages**. However, the management (Kotak Mahindra Bank) is a Private Sector Bank registered under the Companies Act, 1956. Reinstating the claimant would only lead to a bitter relationship between the parties. Moreover, much time has already passed since the termination, and there is no positive evidence to show that the claimant was unemployed since his termination.

Further, it was held by the Hon'ble Supreme Court of India in the case titled as **Employers, Management of central P & D Inst. Ltd. Vs Union of India & Another, AIR 2005 Supreme Court 633** that it is not always mandatory to order reinstatement even after the termination is held illegal. Instead, compensation can be granted by the industrial adjudicator. Similar views were expressed by Hon'ble High Court of Delhi in the case titled as **Indian Hydraulic Industries Pvt. Ltd. Vs. Kishan Devi and Bhagwati Devi & Ors., ILR (2007) Delhi 219** wherein it was held by the court that even if the termination of a claimant is held illegal, the industrial adjudicator is not supposed to direct reinstatement along with full back wages and the relief can be moulded according to the facts and circumstances of each case and the court can allow compensation to the claimant instead of reinstatement with back wages. Same view has been expressed by the Apex Court in **Maharashtra State Road Transport Corporation vs. Mahadeo Krishna Naik 2025 Latest Caselaw 157 SC** stating that upon dismissal, being set aside by a court of Law, reinstatement with full back wages is not an automatic relief. In some cases, lump sum compensation is a better relief.

Given these circumstances, a lump sum compensation of Rs. 5,00,000/- (Rupees Five Lakhs Only) is considered an appropriate relief. Hence, the management is hereby directed to pay a compensation of **Rs. 5,00,000/- (Rupees Five Lakhs Only)** to the claimant within two months of notification of this award, failing which the management shall also pay interest @ 8% per annum on the aforesaid amount from the date of award till the date of realization. A copy of this award be sent to the appropriate government for notification under section 17 of the I.D Act. The file is consigned to record room.

Dated 09.07.2025

ATUL KUMAR GARG
Presiding Officer
CGIT – cum – Labour Court – II