

**THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL, JABALPUR**

CGIT/LC/R/48/2021

Present: P.K.Srivastava

H.J.S..(Retd)

**Shri Rajpal Sharma,
Head of Branch Bhartiya Mazdoor Sangh
Rewa Block, R/o Nearby Kalyan Petrol Pump,
Panna Naka, Umri, Satna (MP) – 485001**

Workman

Versues

**The Superintendent,
Railway Mail Services, Jabalpur Division,
Jabalpur - 482001**

Management

AWARD

(Passed on this 16th day of July, 2026)

As per letter dated 10.11.2021 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. **L-41011/33/2021-(IR(B-I))** dt 10.11.2021. The dispute under reference relates to:

“Whether the dispute raised by the Bhartiya Mazdoor Sangh, Satna, against the management of Railway Mail Service, Jabalpur, over removal of 04 Dak Sorting Staff engaged, namely, (1) Shri Ravipal (2) Shri Dilip Kushwaha (3) Shri Umesh Kushwaha (4) Shri Brijbhan Pal from work is legal justified and valid? If not, as to what relief the workmen are entitled to?”

Notices were sent to the parties on the basis of reference. They appeared and filed their respective statement of claim.

Case of the workman filed through the Union is mainly that, they are members of the Union, Workman No.1 **Rajpal** was appointed as Dak Sorting Staff on daily rate basis by RMS on

15.07.2017, Workman No.2 **Umesh Kushwaha** was appointed in the same capacity on 10.09.2017, Workman No.3 **Dilip Kushwaha** was appointed on 25.05.2018 and Workman No. 4 **Brijbhan Pal** was appointed on 01.03.2016, on daily rate basis as Dak Sorting Staff by Management of RMS, under an oral order, their job was to sort out the Dak in the establishment of Management and to load and unload the Dak bags from the Train as well as packing of the Dak bags. They were paid minimum wages at the rupees fixed by the Central Government, but Management of RMS did not pay them the minimum wages as per law. This matter was reported to the Labour Commissioner. Case proceeded against the Management under Payment and Wages Act, in which the Management was held to have paid lesser wages to these workmen, and were directed to pay them the balance of wages.

These workmen continuously worked from date of their first appointment till, 03.02.2021 when they were disengaged by the Management after they made a complaint regarding payment of lesser wages by Management.

No notice pay or compensation as provided under Section 25F and 25G of the Act been paid to them. The Management is an industry under Section 2(j) of the Act. They are workman under Section 2(s) of the Act and this action of Management is retrenchment under Section 2(oo) of the Act. According to the workman Union, this action of Management is unjust, illegal and arbitrary. It amounts to victimization and adoption of unfair labour practice on the part of Management. It has been prayed that, setting-aside their disengagement, the workmen be held entitled to be reinstated with back wages and benefits.

Case of the Management of Superintendent of Rail Mail Services, as taken by them in their written statement of defense, is only that, the allegations of the workmen are false. There is no provision to engage anybody on daily wages against any post. In fact, mazdoors are hired on per hour basis by the Department in case of extreme urgency/excess workload/ for discharging petty nature of work, for which they are paid wages at the rate prescribed by the Government. None of the workmen was appointed by Management at any point of time, taking allegations alleged by the Workmen against law, they are mazdoors, who

were engaged on intermittently to discharge petty nature of work on per hour basis, who were paid accordingly.

Management further denied the case of the workmen that, they worked continuously from the date of their appointment till 03.02.2021 and has pleaded that in fact none of them worked for 240 days or more in any year, also pleaded that they are not an industry under Section 2(j) of the Act. The Workmen were not engaged on any vacancy following recruitment process. They have prayed that reference be answered against the workmen.

In their rejoinder, the workmen have mainly reiterated their allegations and have alleged that, they have been engaged for full time work, for which they were paid wages, but less than minimum wages, that they are granted balance of the wages by the prescribed authority under payment of Wages Act. They worked for 240 days or more in every year, till the date of their disengagement. The Department of RMS is an industry, under Section 2(j) of the Act.

In evidence, all these four workmen have filed their affidavit as their examination in chief. They have been cross-examined by the Management side. The Workmen side has filed and proved documents Ex. W-1 to W-5, these are letter dated 15.02.2021, issued by Labour Enforcement Commissioner to the Superintendent RMS, regarding payment of wages based on his inspection of the establishment on 28.01.2021 with certain documents, reply of the Management with respect to complaint dated 21.10.2020, made by Rajpal Sharma, the Union Representative, regarding payment of less wages. Vouchers and details regarding payment have also been filed by the workmen.

Management has filed an affidavit of Chairman P.N. Singour, Superintendent RMS. He has been cross-examined by workmen side.

The workmen side has filed Certified copy of order of prescribed by Authority under Minimum Wages Act, passed on 23.03.2023, directing the Department to pay the balance of wages and letter of Regional Labour Commissioner (Central) dated 03.08.2023 to D.D.O. in this respect, both obtained under RTI marked as **Ex. W- 6 & 7**.

I have heard argument of Learned Counsel for Workman Mr. Aditya Ahiwasi and Mr. Manoj Singh, Learned Counsel for the Management. I have gone through the record as well.

No written submission has been filed from both the parties.

The Learned Counsel for Workmen has relied upon the following judgments –

- 1. Tapash Kumar Paul V.s. BSNL & Another AIR 2015 (SC)357**
- 2. Director Fisheries Terminal Division V.s. Bhikubhai Meghajibhai Chavda AIR 2010 (SC) 1236**
- 3. Sanjay Kumar V.s. Chief Executive Officer, Janpad Panchyat, Ratlam 2010 Supreme(MP) 410**
- 4. Miscellaneous Writ Petition No. 910/2021 Rambhuwan Patel V.s. Load Officer Krishi Upaj Mandi & Another**

No case law has been referred to from the side of Management Department.

On perusal of record in the light of rival arguments, following issues arise for determination –

- 1. Whether the Railway Mail Service is an industry as defined under Section 2(j) of the Act?**
- 2. Whether, the workman has successfully proved his continuous engagement as per Section 25B, as alleged by him?**
- 3. Whether, the disengagement of workman is in violation of Section 25F and 25G and 25H of the Act?**
- 4. Subject to finding on issue No. 1 & 2, whether the workman is entitled to any relief?**

Issue No. 1 –

Undisputedly, Railway Mail Service is a part of Department of Post Offices.

It has been submitted by the Learned Counsel for the workmen that the Railway Mail Service is an Industry under the Act. He has referred to judgment of Hon'ble Supreme Court in the case of **General Management, Telecom Vs. A. Srinivasa AIR (1998) SC 656** and **Sub-Divisional Inspector of Post Vaikam and Other Vs Theyyam Joseph and others (1996) Vol. 8 SCC 489** in this respect. He submits that in the case of *General Manager Telecom (supra)*

Hon'ble Supreme Court has over ruled its judgment in the case of *Theyyam Joseph (supra)* and has held that the Department of Telecommunication is an 'Industry' under the Act.

Hence, in the light of above discussion, the Railway Mail Service is held an Industry as defined under Section 2(j) of the Act.

Issue no 1 is answered accordingly.

Issue no. 2 -

Section 25B of the Act is being reproduced as follows –

25B. Definition of continuous service.—

For the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Pleadings of the parties have been elaborated earlier on this issue.

The respective pleadings of the parties on this issue have been detailed earlier and they need not to be reiterated.

The Applicant Workmen have corroborated the allegations with respect to their continuous employment in their affidavits, filed by them as their examination in chief they have been cross examined by the Management department, they have denied that, they were called for work only when the regular employees were absent, they also denied that they used to work only for 10 or 12 days in a month.

They have reiterated that they have been continuously working with the Management Department for these years.

The order of prescribed Authority, based on Payment of Wages Act, shows that these workmen were working with the Department and they were paid less wages for the period July, 2020 to December, 2020. There were as many as 08 workers, including the four workmen who are in the case in hand, they have been entitled to be paid their balance of wages, amounting to Rs. 36,670/- for this period.

The workmen side has filed inspection memo prepared by the Labour Enforcement Officer on 15.02.2021, it shows that there were 11 Male workers working with the department at the time of his inspection, the hours of work were 08 hours, wages were paid on monthly basis and weekly holiday was on rotational basis.

He also found these four workmen and other workers total 08 in number, working at time of his inspection. He has prepared a chart regarding payment of wages to the workmen from July, 2020 to December, 2020 and shows that these workmen have worked 27 or 26 days in a month. This document has been admitted by Management. There is another document in form of sanction, regarding payment of wages, which corroborated that these workmen used to work from 10.00 AM to 05.30 or 09.00 or 10.00 PM in a day, i.e. 07 hours to 7.30 hours and more.

On the other hand, the Management witness, who has said in his statement as his examination in chief that these workmen were paid on hourly basis and never worked for 240 days or more in any year, rather they were engaged on as and when required

basis. This witness also admits that, order was passed with respect to these workmen and other similar type of employees under the Payment of wages Act. This witness further states that, the attendance of these workmen was noted in registers, but no such attendance register was filed. This witness states that, he is working from since 2025 and his affidavit has been filed on the basis of information received and document perused, but he could not detail the documents, which he had perused for preparation of his affidavit.

It is further to mention here that, the workmen side had filed an application for production of documents to be produced by the Management department, vide order of this Tribunal dated 26.11.2024, which were not filed. Hence, there is substance in the argument from the side of workmen that adverse interference will be drawn against the Management that had the documents been filed, they would have gone against the Department. Reliance has been placed in this respect on the Judgment of **Hon'ble High court of M.P. in Misc. Petition 910/2021 Rambhuvan Patel V.s. President through Load Officer, Krishi Upaj Mandi and Director, Fisheries Terminal Division V.s. Bhikubhai Meghajibhai Chavda AIR 2010 SC 1256.**

In the light of above discussion it is held that, the workmen have successfully proved their continuous engagement under Section 25B of the Act with the Management as alleged by them.

Issue No. 2 is answered accordingly.

Issue No 3 –

It is not disputed that no notice pay or compensation was given to these workmen, on their disengagement.

Section 25F and 25G of the Act are being reproduced as follows –

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—

(a) 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;

(b) 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

(c) 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.

25G. Procedure for retrenchment.—

Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

Following paragraphs of judgement of Hon' ble Supreme Court in case *Fisheries Terminal Division Vs Bhikubhai Maganjibhai Chawda* reported in (2010)1SCC47 are being reproduced as follows-

“11. It is now well settled by several judgments of this Court that, where a workman is employed for a seasonal work or temporary period, the workman cannot be said to be retrenched in view of Section 2(oo)(bb). It is relevant to take note of what is stated by this Court in Morinda Coop. Sugar Mills Ltd. v. Ram Kishan [(1995) 5 SCC 653 : 1995 SCC (L&S) 1279] : (SCC p. 654, para 5)

“5. That since the work done by the respondents] is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of Section 2(oo) of the Act.”

12. In the normal course, it is the decision of the appropriate Government which is final in determining whether the said industry is seasonal in nature. As has been observed by the Labour Court and the High Court, there has been nothing brought on record by the appellant to support its contention that fisheries is a seasonal industry. There has been no order from the

Government which has been produced by the appellant to state that the fisheries industry is seasonal. There has been no mention of any decision on the part of the appropriate Government with regard to declaring fisheries as a seasonal industry. Therefore, we concur with the finding of the Labour Court wherein they have concluded that the appellant cannot be classified as a seasonal industry.”

Hence, the disengagement of these workmen is held in violation of the Act.

Issue No 3 is answered accordingly.

Issue No. 4 -

Learned Counsel for the Workmen has submitted that, they are entitled to be reinstated with all back wages. He has referred to the Judgment of Hon’ble the Apex Court in the case of *Tapash Kumar Paul V.s. BSNL & Another AIR 2015 (SC)357* in this respect. Para 4,5&6 are being reproduced as follows-

“4. It is no doubt true that a court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (i) where the industry is closed; (ii) where the employee has superannuated or is going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated; and/or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.

5. In the instant matter, we are not satisfied that the appellant's case falls into any of the categories referred to hereinbefore which would justify compensation in lieu of reinstatement. We thus find no justification for the High Court so as to interfere with the award passed by the Tribunal which was affirmed even by the Single Judge, but the Division Bench thought it appropriate to set aside the order of reinstatement without specifying any reasons whatsoever, as to why it substituted reinstatement with compensation of a meagre amount of Rs 20,000 to the appellant.

6. In view of this we set aside the judgment and order [BSNL v. Central Govt. Industrial Tribunal, FMA No. 1514 of 2011, order dated 4-2-2013 (Cal)] of the High Court and restore the award of the Tribunal and the order of the Single Judge affirming the same. The appeal accordingly is allowed but without costs.”

Now coming on the facts in the light of aforesaid propositions, the workmen had taken a plea in Para 11 of Statement of claim that other persons who had been junior to them in the same category are still in employment and the Management has appointed other persons in place of the Applicant Workmen.

The case of the Management taken by them in their Written Statement of defense is that they have denied the contents of this paragraph.

In their evidence, the workmen have not disclosed about the details of the persons who still continued in spite of the fact that they were junior to them and the details of the persons who are working on the job which the Applicant Workmen had been working. Since there is nothing on record to show that the jobs/posts still exist in the Department, it is not a fit case for reinstatement of the Applicant Workmen.

In the light of all these findings, the Judgments in the case of **Rambhuwan Patel V.s. President THR Load Officer & Ors. M.P. No.910/2021** and **Sanjay Kumar V.s. Chief Executive Officer 2010 Supreme(MP)410** can be cited on facts.

Keeping in view the tenure of the Workmen they were engaged in the job with Department of Railways and other circumstances, **a lump sum compensation of Rs. 4,00,000/- (Rupees Four Lacs) payable to each of the Applicant Workmen in lieu of all their claims within 90 days from the date of Award will be a just and proper relief. These Applicant workmen are also entitled to interest @6% per annum from the date of Award till payment if the payment is not made within the time prescribed in the Judgment/Award.**

Issue No. 4 is answered accordingly.

On the basis of above discussion and findings, the reference is answered as follows.

AWARD

Holding the action of the management of Railway Mail Service, Jabalpur, over removal of 04 Dak Sorting Staff namely, (1) Shri Ravipal (2) Shri Dilip Kushwaha (3) Shri Umesh Kushwaha & (4) Shri Brijbhan Pal from work is unjust, illegal & arbitrary, they are held entitled to a lump sum compensation of Rs. 4,00,000/- (Rupees Four Lacs) payable to each of the Applicant Workmen in lieu of all their claims within 90 days from the date of Award, failing which interest @6% per annum from the date of Award till payment.

No order as to cost.

DATE:- 16/07/2026

**(P.K.SRIVASTAVA)
PRESIDING OFFICER**

