



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-सा.-19052022-235873
CG-DL-W-19052022-235873

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 19]

नई दिल्ली, मई 8—मई 14, 2022, शनिवार/ वैशाख 18—वैशाख 24, 1944

No. 19]

NEW DELHI, MAY 8—MAY 14, 2022, SATURDAY/ VAISAKHA 18—VAISAKHA 24, 1944

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 7 मई, 2022

का.आ. 453.—केंद्र सरकार, राजभाषा [संघ के शासकीय प्रयोजनों के लिए प्रयोग] नियमावली, 1976 (यथा संशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में कार्मिक और प्रशिक्षण विभाग के अधीनस्थ कार्यालय केंद्रीय अन्वेषण ब्यूरो के अधीन निम्नलिखित कार्यालयों, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी भाषा का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:-

1. भ्रष्टाचार निरोधक शाखा, कोलकाता
2. विशेष अपराध शाखा, कोलकाता
3. आर्थिक अपराध शाखा, कोलकाता

4. भ्रष्टाचार निरोधक शाखा, गोवाहाटी
5. भ्रष्टाचार निरोधक शाखा, गोवा

[फा. सं. ई -15023/1/2020-हिंदी]

रश्मि चौधरी, अपर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 7th May, 2022

S.O. 453.—Central Government in pursuance of Sub-Rule (4) of Rule 10 of official languages [Use for official purpose of union] Rules, 1976 (as amended in 1987, 2007 and 2011) hereby notifies the following offices under the Central Bureau of Investigation, a subordinate office of Department of Personnel and Training whose more than 80 percent staff has acquired working knowledge of Hindi language:-

1. Anti Corruption Branch, Kolkata
2. Special Crime Branch, Kolkata
3. Economic Offences Branch, Kolkata
4. Anti Corruption Branch, Guwahati
5. Anti Corruption Branch, Goa

[F. No. E-15023/1/2020-Hindi]

RASHMI CHOWDHARY, Addl. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 13 मई, 2022

का.आ. 454.—ह्यूमन इम्यूनिटी डिफेंसिवी वायरस और अक्वायर्ड इम्यूनिटी डिफेंसिवी संरक्षण (निवारण और नियंत्रण) अधिनियम, 2017 (2017 का 16) की धारा 12 यह उपबंध करती है की केंद्रीय सरकार ऐसी रीति में, जो विहित किया जाये, स्थापनों के लिए मॉडल ह्यूमन इम्यूनिटी डिफेंसिवी वायरस और अक्वायर्ड इम्यूनिटी डिफेंसिवी संरक्षण निति अधिसूचित करेगी;

और अध्याय 2 ह्यूमन इम्यूनिटी डिफेंसिवी वायरस और अक्वायर्ड इम्यूनिटी डिफेंसिवी संरक्षण (निवारण और नियंत्रण) नियम 2018 के पश्चात, स्थापनों के लिए, एच आई वी और एड्स निति की रीति का उपबंध करता है,

अतः, अब केंद्रीय सरकार ह्यूमन इम्यूनिटी डिफेंसिवी वायरस और अक्वायर्ड इम्यूनिटी डिफेंसिवी संरक्षण (निवारण और नियंत्रण) नियम, 2018 के नियत ३ के साथ पठित ह्यूमन इम्यूनिटी डिफेंसिवी वायरस और अक्वायर्ड इम्यूनिटी डिफेंसिवी संरक्षण (निवारण और नियंत्रण) अधिनियम, 2017 (2017 का 16) की धारा 12 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना से उपबंध अनुसूची के अनुसार स्थापनों के लिए ह्यूमन इम्यूनिटी डिफेंसिवी वायरस और अक्वायर्ड इम्यूनिटी डिफेंसिवी संरक्षण निति, 2022 अधिसूचित करती है।

अनुसूची
स्थापनों के लिए एचआईवी और एड्स नीति 2022
विषय सूची की तालिका

संक्षिप्त रूप

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भारत में स्थिति

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2. उद्देश्य
3. कार्यक्षेत्र

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 - (7) रिपोर्टिंग तंत्र
 - (8) गोपनीयता
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 6. स्वास्थ्य और परिवार कल्याण मंत्रालय (राष्ट्रीय एड्स नियंत्रण संगठन) और राज्य एड्स नियंत्रण समितियों की भूमिका परिशिष्ट क

संक्षिप्त रूप

एड्स	अक्रायर्ड इम्यूलनो डेफिशिएंसी सिंड्रोम
एआरटी	एंटी-रेट्रोवाइरल थेरेपी
सीएसआर	कॉर्पोरेट सामाजिक उत्तरदायित्व
डीएएलएसए	जिला विधिक सेवा प्राधिकरण
डीएपीसीयू	जिला एड्स रोकथाम और नियंत्रण इकाई
डीएमसी	डाटा प्रबंधन समिति
एचआईवी	ह्यूमन इम्यूनोडिफिशिएंसी वायरस
आईसीटीसी	एकीकृत परामर्शन और परीक्षण केंद्र
आईईसी	सूचना, शिक्षा और संप्रेषण
एलएफए	एड्स संबंधी विधायी फोरम
नाको	राष्ट्रीय एड्स नियंत्रण संगठन
एनएसीपी	राष्ट्रीय एड्स और एसटीडी नियंत्रण कार्यक्रम
पीईपी	पोस्ट एक्सपोजर प्रोफिलैक्सिस
पीएलएचआईवी	एचआईवी के साथ जी रहे व्यक्ति
एसएसीएस	राज्य एड्स नियंत्रण सोसाइटी
एससीए	राज्य एड्स परिषद
एसडीजी	सतत विकास लक्ष्य
एसओपी	मानक परिचालन प्रक्रिया
एसटीआई	यौन संचारित संक्रमण

अध्याय-1

पृष्ठभूमि और भारतीय स्थिति

1. (1) **पृष्ठभूमि-** आज तेजी से विकसित हो रहे विश्व में स्पष्ट आर्थिक और सामाजिक विकास सुनिश्चित करने के लिए स्वास्थ्य अन्य प्राथमिकताओं में से एक है। स्वास्थ्य और अर्थव्यवस्था का एक दूसरे के साथ चोली दामन का साथ है, जिन देशों ने स्वास्थ्य, समानता तक सार्वभौमिक अभिगम्यता सुनिश्चित करने और स्वास्थ्य परिचर्या की गुणवत्ता में सुधार लाने का लक्ष्य रखा है वे बाकी दुनिया से आगे रहे हैं। मजबूत और सक्षम कार्यबल समग्र उत्पादकता को बढ़ाता है और सकारात्मक आर्थिक नतीजों के माध्यम से सरकार और देश को फलने-फूलने में मदद करता है और इस प्रकार राष्ट्रीय खुशहाली में अपना योगदान देता है।

एचआईवी और एड्स उत्पादनशील कार्यबल के लिए एक खतरा है। इससे अधिक जिंदगियां प्रभावित हुई हैं, जिससे लोग अपनी ज्ञात या मान ली गई एचआईवी पॉजिटिव स्थिति के कारण भेदभाव का शिकार होते हैं। उनकी नौकरी चली जाती है और इस प्रकार वे भयानक गरीबी में रहने को मजबूर कर दिए जाते हैं जिसका तत्काल प्रत्यक्ष प्रभाव उनके निकट पारिवारिक सदस्यों और बच्चों पर पड़ता है जिनकी शिक्षा और स्वास्थ्य पर बहुत कम खर्च हो पाता है। इस प्रकार, एचआईवी प्रभावित व्यक्ति एक ओर आय और आजीविका चले जाने तथा दूसरी ओर भेदभाव का सामना करने का दोहरा संकट झेलने पर विवश हो जाता है।

एचआईवी से संक्रमित व्यक्ति पर अनेक ओर से भेदभाव (सामाजिक भेदभाव, कार्यस्थल, स्वास्थ्य परिचर्या केंद्र, शैक्षणिक संस्थान पर भेदभाव), आजीविका की हानि, अधिकारों के प्रति असमानता और उल्लंघन आदि का बहुत गहरा असर पड़ता है। चूंकि एचआईवी संक्रमण जीवनपर्यंत होता है, इसलिए एचआईवी संक्रमित जीवित व्यक्ति को अपना शेष जीवन इसी के साथ व्यतीत करना होता है।

ह्यूमन इम्यूनोडिफिशिएंसी वायरस और एक्वायर्ड इम्यूनोडेफिशिएंसी संलक्षण (निवारण और नियंत्रण) अधिनियम, 2017 एक ऐतिहासिक कानून है जिसमें एचआईवी और एड्स से संक्रमित और प्रभावित लोगों को हितकर वातावरण प्रदान करने का प्रावधान किया गया है। इस अधिनियम का उद्देश्य है इससे जुड़े कलंक और भेदभाव को दूर करना ताकि एचआईवी से संक्रमित और प्रभावित व्यक्तियों को घरों में, स्थापन केंद्रों और स्वास्थ्य परिचर्या केंद्रों पर भेदभाव का सामना न करना पड़े। सुरक्षा, आवागमन, सरकारी और निजी पद धारण, आवास आदि के प्रति उनके अधिकारों को प्रचलित विधियों और नीतियों के अनुसार कायम रखा जाना चाहिए। इस अधिनियम में एचआईवी और एड्स से संक्रमित और प्रभावित लोगों के संवैधानिक, कानूनी और मानवाधिकारों को पुनः प्रतिष्ठित भी किया गया है। इसमें संस्थापनाओं में शिकायत अधिकारी और राज्य स्तर पर लोकपाल के रूप में एक सुदृढ़ शिकायत निपटान तंत्र का भी प्रावधान किया गया है।

2. भारत में स्थिति- भारत एचआईवी अनुमान 2019 रिपोर्ट¹ के अनुसार, यहां एचआईवी से संक्रमित लोग अनुमानतः 23.49 लाख हैं, जिनमें वयस्क (15 से 49 वर्ष) एचआईवी व्याप्तता 0.22% है। अनुमान है कि वर्ष 2019 के दौरान यहां लगभग 69,220 नए एचआईवी संक्रमण थे, जो 2010 से 2019 में नए एचआईवी संक्रमणों में 37.4% की गिरावट दर्शाता है। इसी अवधि में, एचआईवी और एड्स से जुड़ी मौतों में भी 66.1% की गिरावट आई है।

अध्याय-2

नीति का मूलाधार, उद्देश्य और कार्यक्षेत्र

इस अध्याय में एचआईवी और एड्स के बारे में बुनियादी तथ्यों के साथ-साथ कथित नीति के मूलाधार, उद्देश्य और उनके कार्यक्षेत्र को प्रस्तुत किया जाता है।

1. **मूलाधार-** (i) ह्यूमन इम्यूनोडिफिशिएंसी वायरस और अक्वायर्ड इम्यूनोडेफिशिएंसी सिंड्रोम (निवारण और नियंत्रण) अधिनियम, 2017 की धारा 12 में अधिदेश दिया जाता है कि 'केंद्रीय सरकार स्थापना के लिए ह्यूमन इम्यूनोडिफिशिएंसी वायरस और अक्वायर्ड इम्यूनोडेफिशिएंसी सिंड्रोम नीति' के लिए प्रारूप बनाए। इस प्रकार, यह नीति

एचआईवी और एड्स (निवारण और नियंत्रण) अधिनियम, 2017 से निकली है। नीति को अधिसूचित करने की रीति केंद्रीय सरकार के नियमों के तहत अधीन अधिकृत की गई है।

स्रोत: भारत एचआईवी अनुमान, 2019 रिपोर्ट

<http://naco.gov.in/sites/default/files/INDIA%20HIV%20ESTIMATES.pdf>

(2) “अच्छा स्वास्थ्य और तन्दरूस्ती” के सतत विकास लक्ष्य-3 के अधीन 3.3 राज्यों का वर्ष 2030 तक एड्स की महामारी समाप्त करने का लक्ष्य है इसके अतिरिक्त, एचआईवी से संबंधित कलंक और विभेदीकरण का उन्मूलन करना इस लक्ष्य को प्राप्त करने के लिए एक परमाधिकार है।

2. लक्ष्य - नीति के उद्देश्य निम्नानुसार हैं-

(1) स्थापनों में एचआईवी और एड्स के संबंध में जागरूकता पैदा करना।

(2) कर्मियों में एचआईवी संक्रमण के संचरण को रोकना।

(3) एचआईवी और एड्स से संक्रमित तथा प्रभावित लोगों के अधिकारों की सुरक्षा करना।

(4) स्थापनों में समानता और गरिमा को सुनिश्चित करते हुए सुरक्षित, गैर-कलंकित तथा गैर-विभेदी वातावरण को सुनिश्चित करना।

(5) संरक्षित व्यक्तियों के लिए अनुकूल कार्य वातावरण प्रदान करने और एचआईवी से संबंधित डाटा की गोपनीयता को बनाए रखने के लिए बाध्यता का मानकीकरण।

3. कार्य-क्षेत्र- यह नीति सभी स्थापनों पर लागू होती है, कोई स्थापन एक कारपोरेट निकाय या सहकारी सोसाइटी या कोई संगठन या संस्था या दो या दो से अधिक व्यक्ति होते हैं जो संयुक्त रूप से माल या सेवाओं के उत्पादन, आपूर्ति या वितरण के लिए बारह मास या उससे अधिक की अवधि के लिए एक या एक से अधिक स्थानों पर एक सुव्यवस्थित कार्यकलाप क्रियावित्त करते हों।

‘नियोक्ताओं और कर्मकारों का संगठन’ राष्ट्रीय, राज्य तथा जिला स्तरों पर सरकारी मंत्रालयों या विभागों, सार्वजनिक तथा निजी क्षेत्र की कंपनियों, भारत में संचालित बहु-राष्ट्रीय कंपनियों और अन्य समाजिक भागीदारों को अपने संबंधित कार्यों में एचआईवी और एड्स नीति को क्रियान्वित करने में इस नीति के कार्य ढांचे का प्रयोग करने के लिए अधिदेशित किया जाता है।

यह नीति एचआईवी और एड्स के बारे में निम्नलिखित तथ्यों पर आधारित है-

(1) ह्यूमन इम्पूनोडेफिशिएंसी विषाणु के संचरण के ज्ञातमार्ग है-

(क) एचआईवी संक्रमित किसी व्यक्ति के साथ असुरक्षित यौन संबंध से;

(ख) एचआईवी संक्रमित सुइयों और सिरिंजों को साझा करने से;

(ग) गर्भावस्था, प्रसव या स्तनपान के दौरान एचआईवी संक्रमित माता से बच्चे को;

(घ) एचआईवी संक्रमित रक्त या रक्त उत्पादों का रक्त-आधान से।

(2) एंटी-रेट्रोवायरल थिरेपी के आगमन से, अब एचआईवी अन्य अनेक गैर-संचारी रोगों जिनमें, मधुमेह, उच्च रक्तचाप और अस्थमा शामिल है, की तरह एक चिरकालिक प्रबंधकीय रोग है। यह सुझाने के लिए कोई भी वैज्ञानिक या जानपदिक-रोग विज्ञान साक्ष्य नहीं है कि साधारण कार्यस्थल संपर्क (व्यक्ति से बात करना अथवा व्यक्ति को छूना, एचआईवी संक्रमित व्यक्ति के रूप में कार्यालय के एक ही उपकरण, औजारों, बर्तनों या प्रसाधन कक्ष का प्रयोग करना) के माध्यम से एचआईवी का संक्रमण हो सकता है। विशेष स्थितियों में, जहां संपर्क में आने का संभावित जोखिम हो उदाहरणार्थ स्वास्थ्य परिचर्या कर्मी, जो रक्त या रक्त-उत्पादों के जोखिम में आ सकेंगे, विनिर्दिष्ट और उपयुक्त संक्रमण-नियंत्रण उपाय, जिसे सार्वभौमिक सावधानियों के नाम से जाना जाता है, उनका अनुसरण किया जाना चाहिए। अतः संक्रमण नियमित कार्य स्थल विन्यास में संभावित नहीं है।

(3) एचआईवी से संक्रमित लोग, जो एंटी-रिट्रोवायरल थेरेपी नियमित रूप से करते हैं अपने संक्रमण के बावजूद अनेक वर्षों तक स्वस्थ रहते हैं तथा कार्य करने के योग्य रहते हैं।

(4) एंटी-रिट्रोवायरल थेरेपी उपलब्ध होने से, एचआईवी के साथ जीवनयापन कर रहे लोगों का जीवन पर्याप्त रूप से दीर्घावधि का रहा है और वे सामान्य उत्पादक जीवन व्यतीत करते हैं।

अध्याय-3

स्थापनों के लिए मार्गदर्शक सिद्धान्त

स्थापनों के लिए एचआईवी और एड्स नीति ह्यूमन इम्यूनडिफिशिएंसी वायरस और अक्वायर्ड इम्यूनोडेफिशिएंसी सिंड्रोम (निवारण और नियंत्रण) अधिनियम, 2017 में उल्लिखित किए गए प्रमुख सिद्धान्तों को अंगीकार करती है। इन सिद्धान्तों को सभी स्थापनों द्वारा उसी भावना में अंगीकार किया जाना चाहिए जिसमें उनका उल्लेखन किया गया है।

इन सिद्धान्तों में ये शामिल हैं: -

- (1) एचआईवी और एड्स से संक्रमित तथा प्रभावित लोगों के विरुद्ध भेदभाव न करना।
- (2) किसी व्यक्ति की एचआईवी स्थिति तथा एचआईवी संबंधित डाटा के संबंध गोपनीयता।
- (3) स्थापनों में शिकायत अधिकारी के रूप में शिकायत निवारण तंत्र और राज्य स्तर पर लोकपाल। इन सिद्धान्तों को अधिनियम से निगमित गया है और एचआईवी से संक्रमित लोगों को एक समर्थनकारी वातावरण का उपबंध करने के लिए निर्णायक हैं।

अध्याय - 4

गैर-भेदभाव

1. गैर भेदभाव – गैर-भेदभाव सभी अंतराष्ट्रीय और मानव अधिकार संबंधी विधियों का एक मौलिक सिद्धान्त है। अनुमानित या वास्तविक एचआईवी स्थिति के आधार पर स्थापनाओं में कोई भेदभाव नहीं किया जाना चाहिए। यह संरक्षण केवल एचआईवी पॉजिटिव व्यक्ति को ही उपलब्ध नहीं कराया जाए, बल्कि उनके निकटतम परिवारिक सदस्यों और संतान को भी प्रदान किया जाए जो एचआईवी प्रभावित व्यक्ति के घर में उनके साथ रहते हैं या रह रहे हैं।

यहां न केवल एचआईवी और एड्स संक्रमित व्यक्ति के प्रति, बल्कि एचआईवी और एड्स प्रभावित लोगों के प्रति भी भेदभाव निषिद्ध है। इसमें किसी एचआईवी पॉजिटिव किसी व्यक्ति के साथ रह रहे, सहवास कर रहे और निवास कर रहे अन्य व्यक्ति भी शामिल हैं। इसमें गत समय में एचआईवी पॉजिटिव किसी व्यक्ति के साथ रह रहे, निवास कर रहे सहवास कर रहे अन्य व्यक्ति भी शामिल किए जाते हैं।

किसी भी विन्यास पर एचआईवी स्थिति के आधार पर किसी व्यक्ति के साथ भेदभाव नहीं किया जा सकता है और निम्नलिखित सिद्धान्तों का अनुपालन अपेक्षित है-

(1) रोजगार और व्यवसाय में भेदभाव न किया जाना- किसी भी व्यक्ति के साथ एचआईवी स्थिति के आधार पर स्थापनाओं में भेदभाव नहीं किया जाना चाहिए। यहां भेदभाव में रोजगार या व्यवसाय से मना करना, उसकी समाप्ति करना और इसके साथ-साथ स्थापनाओं में अनुचित व्यवहार शामिल है। नियोक्ता एचआईवी के साथ-साथ जीवन यापन करने वाले लोगों को, यदि आवश्यकता हो, एक उचित आवास भी उपलब्ध कराये। उपयुक्त आवास से किसी रोजगार या कार्य के लिए अल्प समायोजन अभिप्रेत है, जो एचआईवी पॉजिटिव व्यक्ति को समर्थ बनाता है जिनके लिए वह समान लाभ प्राप्त करने या यथास्थिति किसी रोजगार या कार्य के आवश्यक भाग को निष्पादित करने, के लिए अर्हता योग्यता प्राप्त है।

युक्तियुक्त आवास के बिना समापन एक अपवाद होना चाहिए और स्वास्थ्य परिचर्या प्रदाता के साथ-साथ नियोक्ता द्वारा भी विभिन्न दस्तावेज प्रस्तुत करना अपेक्षित होना चाहिए। एक अर्हता प्राप्त और स्वतंत्र स्वास्थ्य परिचर्या प्रदाता, जो

सक्षम है को यह बताते हुए लिखित निर्धारण की एक प्रति प्रस्तुत करनी चाहिए कि संबंधित व्यक्ति से स्थापन में अन्य व्यक्ति को एचआईवी के संचरण का महत्वपूर्ण जोखिम है या वह रोजगार के कर्तव्यों को निष्पादित करने में अक्षम है। नियोक्ता यह बताते हुए कि संबंधित व्यक्ति को युक्तियुक्त आवास उपलब्ध न कराने के लिए प्रशासनिक या वित्तीय जोखिम की प्रकृति और विस्तार के लिए लिखित कथन की में एक प्रति भी प्रस्तुत करनी चाहिए।

(2) स्वास्थ्य परिचर्या और शैक्षणिक विन्यास - किसी भी व्यक्ति के साथ एचआईवी स्थिति के आधार पर स्वास्थ्य परिचर्या और शैक्षणिक विन्यास में भेदभाव नहीं किया जाना चाहिए। यहां भेदभाव में शैक्षणिक विन्यास और स्वास्थ्य परिचर्या विन्यास में अनुचित व्यवहार, सेवाओं से मना करने या उनका समाप्त करना शामिल है।

(3) सार्वजनिक सुविधाएं और संसाधन- किसी भी व्यक्ति के साथ एचआईवी स्थिति के आधार पर सार्वजनिक सुविधाओं का उपयोग करने तथा संसाधनों को साझा करने के प्रति भेदभाव नहीं किया जाना चाहिए। यहां भेदभाव में मालो तक पहुँच तथा प्रयोग को मना करना या समाप्त करना, जिसके अंतर्गत आवास, दुकानों, सार्वजनिक रेस्टोरेंट, होटल तथा सार्वजनिक मनोरंजन के स्थानों, नलकूप, टैंकों, स्नान घाटों, सड़कों, कब्रिस्तानों या अंतिम संस्कार तथा सार्वजनिक रिसॉर्ट आदि शामिल है।

(4) सरकारी और निजी कार्यालय में कार्य करना- एचआईवी स्थिति को ध्यान में न रखते हुए, कोई भी व्यक्ति सरकारी या निजी कार्यालयों में कार्य कर सकता है और उसके साथ भेदभाव नहीं किया जा सकता है। भेदभाव में यहां सरकारी या निजी कार्यालयों में बने रहने के अवसर में उन्हें मना करना, समाप्त करना या अनुचित व्यवहार करना शामिल है।

(5) अभिरक्षा में लेना - एचआईवी स्थिति के आधार पर सरकारी/निजी संगठनों में किसी भी व्यक्ति के साथ भेदभाव और अनुचित रूप से व्यवहार नहीं किया जाना चाहिए। ऐसे किसी भी सरकारी या निजी स्थापन जिसकी देखरेख अथवा अभिरक्षा में संबंधित व्यक्ति है, उसके पास पहुँचने से मना करना या अनुचित व्यवहार निषिद्ध है। वे व्यक्ति जो राज्य की देखरेख और अभिरक्षा में है, एचआईवी रोकथाम, परामर्श, परीक्षण और समय-समय पर राष्ट्रीय एड्स नियंत्रण संगठन द्वारा जारी किए गए दिशा-निर्देशों के अनुरूप उपचार सेवाओं के अधिकार के भी हकदार हैं।

(6) गतिविधि का अधिकार- गतिविधि का अधिकार संविधान के भाग-3 के मौलिक अधिकारों के अनुच्छेद 19 के अधीन प्रदान किया गया एक मौलिक अधिकार है। किसी भी व्यक्ति को गतिविधि के अधिकार के संबंध में सेवाएं समाप्त करने या अनुचित व्यवहार करने के शर्ताधीन मना नहीं किया जाना चाहिए।

(7) पृथकरण- किसी व्यक्ति को एचआईवी स्थिति के आधार पर पृथक नहीं किया जाना चाहिए। इस प्रकार, उसे या अन्य लोगों को एचआईवी स्थिति के आधार पर अलग-थलग और बहिष्कृत नहीं किया जा सकता है।

(8) रोजगार प्राप्त करने के लिए पूर्वापेक्षा के रूप में एचआईवी जांच प्रतिबद्ध है- रोजगार प्राप्त करने या स्वास्थ्य परिचर्या सेवाओं, शिक्षा सेवाओं तक पहुंचने या इसे जारी रखने के लिए या किसी अन्य सेवा या सुविधा लेने के लिए एक पूर्वापेक्षा के रूप में एचआईवी जांच पूर्णतः प्रतिबद्ध है।

(9) निवास करने का अधिकार- निवास, संपत्ति के क्रय, किराए व कब्जे के अधिकार के संबंध में किसी व्यक्ति को मना नहीं किया जाना चाहिए या उसके साथ अनुचित व्यवहार नहीं किया जाना चाहिए। एचआईवी से संक्रमित और प्रभावित प्रत्येक व्यक्ति को साझा परिवार से बाहर न किए जाने का अधिकार होना चाहिए और ऐसे साझा परिवार की सुविधाओं का गैर-भेदभावपूर्ण तरीके से आनंद लेने व उपयोग करने का अधिकार होना चाहिए।

एचआईवी और एड्स से संक्रमित और प्रभावित व्यक्तियों के खिलाफ भेदभाव सभी व्यावसायिक, शैक्षिक और स्वास्थ्य व्यवस्थाओं में प्रतिबद्ध है तथा इसके अतिरिक्त, एचआईवी जांच रोजगार प्राप्त करने या स्वास्थ्य परिचर्या या शिक्षा संस्थानों तक पहुंचने हेतु पूर्वापेक्षा नहीं हो सकती। सामुदायिक स्थानों पर और संसाधनों के उपयोग के लिए भेदभाव प्रतिबद्ध है।

उपर्युक्त अधिकारों के उल्लंघन के मामले में, स्थापनाओं में शिकायत अधिकारी के रूप में एक मजबूत शिकायत समाधान तंत्र और राज्यों में लोकपाल का प्रावधान किया जाना चाहिए। पीड़ित व्यक्ति के पास शिकायत अधिकारी या

लोकपाल के पास शिकायत दर्ज कराने का विकल्प होता है। शिकायत दर्ज करने के संबंध में कोई पदानुक्रम नहीं है। अधिनियम के अधीन अपराधों का संज्ञान प्रथम श्रेणी के न्यायिक मजिस्ट्रेट के न्यायालय द्वारा लिया जाएगा।

अध्याय - 5

एचआईवी स्थिति और एचआईवी संबंधी आंकड़ों के संबंध में गोपनीयता

1. एचआईवी स्थिति से संबंधित गोपनीयता- एचआईवी पॉजिटिव व्यक्ति को अपनी या अपनी स्थिति या कोई अन्य एचआईवी संबंधित जानकारी को बताने के लिए बाध्य नहीं किया जा सकता है। एचआईवी से संबंधित जानकारी से किसी व्यक्ति की एचआईवी स्थिति से संबंधित किसी भी तरह की जानकारी अभिप्रेत और इसमें शामिल है: (क) एचआईवी जांच करने के लिए दिए गए आश्वासन या एचआईवी जांच के परिणाम से संबंधित जानकारी (ख) उस व्यक्ति की परिचर्या, सहायता या उपचार से संबंधित जानकारी; (ग) ऐसी जानकारी जो उस व्यक्ति की पहचान करा सकती है; और (घ) उस व्यक्ति से संबंधित कोई अन्य जानकारी, जिसे एचआईवी जांच, एचआईवी उपचार या एचआईवी से संबंधित अनुसंधान या उस व्यक्ति की एचआईवी स्थिति के संबंध में एकत्र, प्राप्त, उपलब्ध किया या रिकॉर्ड किया गया है।

किसी भी व्यक्ति को एचआईवी स्थिति बताने के लिए तब तक बाध्य नहीं किया जाना चाहिए जब तक कि अदालत का यह आदेश न हो कि इस तरह की जानकारी को बताना उसके समक्ष मामले में मुद्दों के निर्धारण के लिए न्याय के हित में आवश्यक है।

वैश्वासिक के संबंध के संदर्भ में एक अस्वीकरण है। यहां किसी भी व्यक्ति को किसी अन्य व्यक्ति की विश्वास करने या विश्वासी स्वरूप के संबंध में प्रकट की गई एचआईवी स्थिति या किसी अन्य निजी जानकारी को सूचित सहमति के सिवाय प्रकट नहीं करना चाहिए। सूचित सहमति व्यक्ति से स्वयं या उनके प्रतिनिधियों के माध्यम से ली जा सकती है। जहां एचआईवी संबंधित जानकारी के प्रकट किए जाने हेतु सूचित सहमति अपेक्षित नहीं होती है के अपवाद है, -

- (1) यदि किसी स्वास्थ्य सेवा प्रदाता द्वारा किसी अन्य स्वास्थ्य सेवा प्रदाता को प्रकटीकरण किया जाता है जो ऐसे व्यक्ति की देखभाल, उपचार या परामर्श में शामिल है।
- (2) न्यायालय के आदेश द्वारा कि ऐसी जानकारी का प्रकटीकरण आवश्यक है।
- (3) व्यक्तियों के बीच वाद या रिधिक कार्यवाही में, जहां ऐसी जानकारी का प्रकटीकरण आवश्यक और वैध रूप से अधिकृत है।
- (4) सांख्यिकीय जानकारी के संबंध में जिससे उस व्यक्ति की पहचान की उम्मीद नहीं की जा सकती थी।
- (5) किसी भी लाइसेंस प्राप्त ब्लड बैंक में स्क्रीनिंग के प्रयोजन से।
- (6) केंद्रीय सरकार या राज्य सरकार या संबंधित राज्य सरकार के राज्य एड्स नियंत्रण सोसायटी के अधिकारियों द्वारा निगरानी, मूल्यांकन या पर्यवेक्षण के प्रयोजन के लिए।

2. एचआईवी पॉजिटिव व्यक्ति के जीवन साथी को स्थिति का प्रकटन - एचआईवी पॉजिटिव व्यक्ति के जीवन साथी को स्थिति के प्रकटीकरण के मामले में, चिकित्सक या परामर्शदाता के सिवाए कोई भी स्वास्थ्य सेवा प्रदाता उनके जीवन साथी को किसी व्यक्ति की एचआईवी पॉजिटिव स्थिति का खुलासा नहीं करेगा। इस प्रकार का प्रकटन किया जा सकता है यदि, -

- (1) स्वास्थ्य सेवा प्रदाता का मानना है कि जीवन साथी को ऐसे व्यक्ति से एचआईवी के संचरण का महत्वपूर्ण जोखिम है।
- (2) एचआईवी पॉजिटिव व्यक्ति को जीवन साथी को सूचित करने के लिए परामर्श दिया गया है।
- (3) स्वास्थ्य सेवा प्रदाता संतुष्ट है कि एचआईवी पॉजिटिव व्यक्ति जीवन साथी को सूचित नहीं करेगा।
- (4) स्वास्थ्य सेवा प्रदाता ने एचआईवी पॉजिटिव व्यक्ति को उनके जीवन साथी को एचआईवी पॉजिटिव स्थिति का खुलासा करने के आशय से सूचित किया है।

एक और बहुत महत्वपूर्ण पूर्व शर्त यह है कि प्रकटीकरण व्यक्तिगत रूप से और उचित परामर्श के पश्चात किया जाना है। स्वास्थ्य सेवा प्रदाता द्वारा एचआईवी पॉजिटिव व्यक्ति के जीवन साथी की पहचान करने या उसका पता लगाने का कोई दायित्व नहीं होगा।

स्थापनों, शैक्षिक, व्यावसायिक, कारागार, निष्ठा-आधारित संगठनों, कॉर्पोरेट-घरानो आदि के मामले में यह सुनिश्चित करना नियोक्ताओं की जिम्मेदारी है कि सभी स्टाफ सदस्य एचआईवी और एड्स से संबंधित सहमति, प्रकटीकरण और गोपनीयता की अवधारणाओं पर उन्मुख हों और यह कि वे एचआईवी से संबंधित जानकारी का खुलासा न करें। सहकर्मियों और अन्य स्टाफ सदस्यों की यह भी नैतिक जिम्मेदारी है कि वे गोपनीयता भंग करने वाली गतिविधियों में शामिल न हों।

3. एचआईवी से संबंधित डाटा की गोपनीयता - एचआईवी से संबंधित जानकारी संवेदनशील प्रकृति की है और एचआईवी से संबंधित जानकारी का रिकॉर्ड रखने वाले प्रत्येक स्थापना को अनपेक्षित या अवांछित प्रकटीकरण तथा डाटा की गोपनीयता भंग की रोकथाम सुनिश्चित करने के लिए डाटा सुरक्षा उपायों को अपनाना चाहिए।

एचआईवी से संबंधित जानकारी में शामिल हैं-

- (क) एचआईवी परीक्षण करने वाले या एचआईवी परीक्षण के परिणाम से संबंधित जानकारी;
- (ख) ऐसे व्यक्ति की देखभाल, सहायता या उपचार से संबंधित जानकारी;
- (ग) जानकारी जो ऐसे व्यक्ति की पहचान कर सकती है; तथा
- (घ) ऐसे व्यक्ति से संबंधित कोई अन्य जानकारी, जो एचआईवी परीक्षण, एचआईवी उपचार या एचआईवी से संबंधित अनुसंधान और ऐसे व्यक्ति की एचआईवी स्थिति के संबंध में एकत्र, प्राप्त, ली गई या दर्ज की गई है।

संरक्षित व्यक्तियों की एचआईवी से संबंधित जानकारी का रिकॉर्ड रखने वाले प्रत्येक स्थापना के लिए डाटा सुरक्षा उपायों को अपनाना अनिवार्य है। डाटा सुरक्षा उपायों में शामिल हैं- सूचना को प्रकटीकरण से बचाना, सूचना तक पहुँचने की प्रक्रिया, किसी भी रूप में संग्रहीत जानकारी की सुरक्षा के लिए सुरक्षा प्रणालियों का प्रावधान और स्थापनों में व्यक्तियों की जवाबदेही और दायित्व सुनिश्चित करने के लिए तंत्र।

(1) एचआईवी से संबंधित जानकारी के प्रकटीकरण का संरक्षण करना - एचआईवी से संबंधित जानकारी एकत्र करते समय गोपनीयता और निजता बनाए रखनी होती है। संरक्षित व्यक्तियों से संबंधित एचआईवी की जानकारी एकत्र करने के इच्छुक प्रत्येक स्थापना द्वारा अधिकृत व्यक्तियों या कर्मचारियों को सूचना की गोपनीयता हेतु एक वचनपत्र पर हस्ताक्षर करना चाहिए।

(2) एचआईवी से संबंधित जानकारी तक पहुँच: केवल अधिकृत व्यक्तियों या कर्मचारियों को ही पहुँच दी जानी चाहिए। प्राधिकृत व्यक्ति द्वारा सूचना की गोपनीयता के लिए औपचारिक वचनपत्र पर हस्ताक्षर करने का प्रावधान होना चाहिए।

(3) एचआईवी से संबंधित जानकारी के लिए सुरक्षा प्रणालियों का उपबंध - रजिस्टर, रिपोर्ट आदि जैसे भौतिक अभिलेखों के लिए सुरक्षित अलमारी या कैबिनेट होनी चाहिए और अरक्षित छोड़े जाने पर इसे ध्यानपूर्वक बंद कर देना चाहिए और ऐसे इलेक्ट्रॉनिक रिकॉर्ड की सुरक्षा हेतु पर्सनल कंप्यूटर या मोबाइल या टैबलेट या किसी अन्य हार्डवेयर को पासवर्ड से सुरक्षित किया जाना चाहिए या लॉग ऑफ या लॉक किया जाना चाहिए।

(4) डाटा प्रबंधन समिति - डाटा सुरक्षा उपायों के संबंध में समीक्षा और उचित सिफारिश प्रदान करने के लिए प्रत्येक स्थापना में डाटा प्रबंधन समिति का गठन किया जाना चाहिए और डाटा प्रबंधन समिति को इसे सुनिश्चित करने के लिए जिम्मेदार होना चाहिए। जहां स्थापना में डाटा प्रबंधन समिति नहीं है, वहां स्थापनों के प्रमुख को डाटा प्रबंधन समिति की जिम्मेदारी और कार्य सौंपा जाना चाहिए।

(5) एचआईवी से संबंधित जानकारी का निपटान: संरक्षित व्यक्तियों की एचआईवी से संबंधित भौतिक और इलेक्ट्रॉनिक रिकार्डों या जानकारी वाली फाइलों के निपटान के संबंध में संस्थापनों में मानक संचालन प्रक्रियाएं होनी चाहिए।

(6) एचआईवी से संबंधित जानकारी की सुरक्षा की जवाबदेही और दायित्व डाटा प्रबंधन समितियों या संबंधित संस्थापनों के प्रमुखों की होनी चाहिए।

अतिरिक्त जानकारी के लिए, स्वास्थ्य और परिवार कल्याण मंत्रालय (राष्ट्रीय एड्स नियंत्रण संगठन) के दिशा-निर्देश और आधिकारिक वेबसाइट समय-समय पर देखी जा सकती हैं।

अध्याय- 6

शिकायत निवारण तंत्र

शिकायत निवारण तंत्र एचआईवी तथा एड्स से संक्रमित एवं प्रभावित लोगों को पूर्ण भेदभावपूर्ण रहित वातावरण उपलब्ध कराने के लिए अति महत्वपूर्ण है। अधिनियम में स्थापनों में शिकायत अधिकारी के रूप में तथा राज्य स्तर पर लोकपाल के रूप में एक मजबूत तंत्र का प्रस्ताव किया गया है।

स्थापना के लिए अनिवार्य है कि किसी व्यक्ति को शिकायत अधिकारी, जो स्थापना में अधिनियम के उपबंधों के उल्लंघनों की शिकायतों का निपटारा करेगा, के रूप में नामनिर्दिष्ट करने के लिए उसके पास सौ अथवा उससे अधिक व्यक्ति हों। स्वास्थ्य परिचर्या स्थापनाएं बीस अथवा उससे अधिक व्यक्तियों के मामले में अपने यहां एक शिकायत अधिकारी को नामनिर्दिष्ट करेंगी। यहां वह व्यक्ति कोई कर्मचारी अथवा अधिकारी अथवा सदस्य अथवा निदेशक अथवा न्यासी या फिर प्रबंधक, जैसा भी मामला हो, हो सकता है। इसी प्रकार राज्य स्तर पर, राज्य की आवश्यकता के अनुरूप एक अथवा अधिक लोकपालों की नियुक्ति की जाएगी अथवा उन्हें नामनिर्दिष्ट किया जाएगा। लोकपाल भेदभाव के विरुद्ध तथा स्वास्थ्य परिचर्या सेवाएं उपलब्ध कराने से संबंधित अधिनियम के प्रावधानों के उल्लंघन संबंधी शिकायतों की जांच करेंगे।

यह नोट किया जाए कि शिकायत दर्ज करने के मामले में कोई पदानुक्रम नहीं है; यदि कोई स्थापना किसी शिकायत अधिकारी को नामनिर्दिष्ट करने में असमर्थ रहती है तो उस स्थापना से संबंधित व्यक्ति लोकपाल को शिकायत दर्ज करा सकता है। साथ ही, यदि स्थापना में शिकायत अधिकारी है, तो यह व्यथित कर्मचारी के विवेक पर निर्भर करता है कि वह शिकायत अधिकारी अथवा लोकपाल को अपनी शिकायत दर्ज कराए।

(1) शिकायत अधिकारी: कर्तव्य, शक्ति और उत्तरदायित्व- (1) शिकायतों को स्वीकार करना:- शिकायत अधिकारी शिकायत दर्ज करता है। शिकायतकर्ता द्वारा स्थापना में अधिनियम के संदिग्ध रूप से उल्लंघन के बारे में जानकारी होने की तिथि से तीन महीने के भीतर शिकायत की जानी चाहिए। यदि शिकायत अधिकारी उन परिस्थितियों से संतुष्ट होता है, जिनके अधीन निर्धारित अवधि के भीतर शिकायत करने से शिकायतकर्ता को रोका गया था, तो उसके लिए और तीन महीने की अवधि मंजूर की जानी चाहिए।

(2) शिकायत दर्ज कराने में सहायता करना:- प्रत्येक शिकायत परिशिष्ट क पर प्ररूप में लिखित रूप में शिकायत अधिकारी को की जाएगी। यदि लिखित में शिकायत दर्ज नहीं की जा सकती है तो शिकायत अधिकारी शिकायतकर्ता को लिखित में शिकायत दर्ज कराने के लिए सभी उपयुक्त सहायता उपलब्ध कराएगा।

(3) शिकायतों की पावती और रजिस्ट्रीकरण:- शिकायत अधिकारी द्वारा शिकायत प्राप्त होने पर शिकायतकर्ता को पावती उपलब्ध करानी चाहिए तथा शिकायत को इलैक्ट्रॉनिक रूप में रिकार्ड करना चाहिए। शिकायत के समय तथा शिकायत पर की गई कार्रवाई को भी रिकार्ड किया जाना चाहिए। प्रत्येक शिकायत को क्रमानुसार नंबर दिया जा चाहिए। शिकायत अधिकारी को अधिनियम के अधीन की गई शिकायत पर निर्णय लेते समय एक उद्देश्य के साथ तथा स्वतंत्र तरीके से कार्यवाही करनी चाहिए।

(4) निर्णय करने हेतु समय -सीमा:- शिकायत अधिकारी को शिकायत पर तेजी से निर्णय लेना चाहिए तथा किसी भी मामले में सात कार्य दिवसों के भीतर निर्णय कर दिया जाना चाहिए। आपात स्थिति में अथवा स्वास्थ्य परिचर्या स्थापनों के मामले में, जहां शिकायत प्रावधानों में भेदभाव अथवा स्वास्थ्य परिचर्या सेवाओं की पहुंच अथवा व्यापक सावधानियों संबंधी प्रावधान से संबंधित हों, वहां शिकायत अधिकारी को शिकायत पर उसी दिन निर्णय लेना चाहिए जिस दिन उन्हें शिकायत प्राप्त हुई है।

(5) निर्णय लेने की शक्तियां:- शिकायत अधिकारी, यदि इस तथ्य से संतुष्ट है कि शिकायत में लगाए गए आरोप के अनुरूप ही अधिनियम का उल्लंघन किया गया है, तो प्रथमतः उल्लंघन में सुधार करने के लिए उपाय करने हेतु उन्हें स्थापना को निदेश देना चाहिए; दूसरे, उल्लंघन करने वाले व्यक्ति से पूछताछ की जानी चाहिए। ऐसे व्यक्ति को एचआईवी तथा एड्स के

संबंध में, अधिनियम, नियमों, दिशानिर्देशों तथा कलंक एवं भेदभाव के पहलुओं के बारे में प्रशिक्षण दिया जाना अपेक्षित है। इसके अतिरिक्त, एक निर्धारित अवधि के लिए समाज सेवा भी की जानी चाहिए, जिसमें एचआईवी एवं एड्स पर कार्य कर रहे गैर- सरकारी संगठन के साथ कार्य करना भी शामिल है। इसके लिए, संबंधित जिला एड्स रोकथाम एवं नियंत्रण इकाई अथवा राज्य एड्स नियंत्रण सोसाइटी से सहायता ली जानी चाहिए। उसी व्यक्ति द्वारा अधिनियम का पुनः उल्लंघन करने पर, शिकायत अधिकारी कानून के अनुसार अनुशासनात्मक कार्रवाई करने के लिए संस्थापना को सिफारिश कर सकता है।

(6) शिकायतकर्ता को सूचित करना:- शिकायत अधिकारी को शिकायतकर्ता को शिकायत के संबंध में की गई कार्रवाई तथा की गई कार्रवाई से शिकायतकर्ता के असंतुष्ट होने के मामले में लोकपाल अथवा किसी अन्य समुचित कानूनी कार्रवाई के लिए संपर्क करने के शिकायतकर्ता के अधिकार के बारे में शिकायतकर्ता को सूचित करना चाहिए।

(7) रिपोर्टिंग तंत्र:- शिकायत अधिकारी यह सुनिश्चित करेगा कि, शिकायत, उसकी प्रकृति तथा संख्या एवं की गई कार्रवाई के संबंध में प्रत्येक छः महीने में केंद्रीय सरकार (उप महानिदेशक, सूचना एवं संचार अथवा निदेशक- प्रशासन, राष्ट्रीय एड्स नियंत्रण संगठन) के अधीन समुचित प्राधिकारी को रिपोर्ट की जाती है। यदि पिछले छः महीनों में कोई शिकायत प्राप्त नहीं होती है, तो 'शून्य सूचना' प्रस्तुत करने की बाध्यता नहीं है।

(8) गोपनीयता:- यदि शिकायतकर्ता द्वारा अनुरोध किया जाता है, तो शिकायत अधिकारी को संरक्षित व्यक्ति की पहचान का बचाव निम्नलिखित तरीके से सुनिश्चित करना चाहिए, अर्थात:-

(1) शिकायत अधिकारी को दस्तावेज की एक प्रति जिसमें उस संरक्षित व्यक्ति का पूरा नाम, पहचान तथा पहचान का ब्यौरा दिया गया हो, फाइल करनी चाहिए, जिसे सील कवर तथा संरक्षित अभिरक्षा में शिकायत अधिकारी के पास रखा जाएगा।

(2) शिकायत अधिकारी शिकायत में शामिल संरक्षित व्यक्ति को उनके सम्मुख छद्मनाम उपलब्ध कराएंगे।

(3) शिकायतकर्ता की पहचान एवं पहचान का ब्यौरा किसी भी व्यक्ति अथवा सहायकों तथा स्टाफ सहित उनके किन्हीं भी प्रतिनिधियों द्वारा प्रकट नहीं किया जाना चाहिए।

(9) डेटा प्रबंधन:- शिकायत अधिकारी ह्यूमन इम्यूनिडेफिशिएंसी वायरस और अक्रायर्ड इम्यूनोडेफिशिएंसी संरक्षण (निवारण और नियंत्रण) अधिनियम, 2017 की धारा 11 तथा उसके अधीन संरक्षित व्यक्ति के डेटा की गोपनीयता के संबंध में दिशानिर्देशों के अनुसार डेटा संरक्षण की अनुपालना करेगा। स्थापनों के लिए एचआईवी एवं एड्स नीति की धारा 53 को भी संदर्भित किया जा सकता है।

अध्याय 7

पणधात्पिधारकों, नियोक्तों के कर्मचारियों इत्यादि की मुख्य कार्यनीति और उत्तरदायित्व

निति के प्रभावी कार्यान्वयन को सुनिश्चित करने के लिए, नियोक्तों, कर्मचारियों, प्रशासनिक स्टाफ के साथ- साथ एचआईवी पॉजिटिव व्यक्तियों सहित मंत्रालयों/ विभागों नियोक्ता एंजोसिएशनों, स्थापनों को निर्णायक भूमिका का निर्वहन करना होता है।

1. मुख्य कार्यनीति: (1) एचआईवी संचरण की रोकथाम एवं परिचर्या तथा एचआईवी संक्रमित कार्यबल की सहायता करना।

(2) एचआईवी के मूल आधार, संचरण के माध्यमों, मिथ्याओं तथा भ्रांतियों को दूर करने, व्यवहार परिवर्तन, व्यापक एहतियात, विगोपन पश्चात् प्रोफिलैक्सिस के संबंध में जागरूकता सृजन अथवा प्रशिक्षण।

(3) मानव संसाधन विभाग के प्रशिक्षणों में एचआईवी घटक का एकीकरण, कल्याण संबंधी उपाय, निगमित सामाजिक उत्तरदायित्व इत्यादि।

- (4) प्रत्येक संस्थापना में एचआईवी स्थिति के आधार पर शून्य- भेदभाव नीति। अनुकूल लचीलापन तथा एचआईवी से ग्रसित व्यक्तियों के लिए समुचित आवास उपलब्ध कराना।
- (5) भेदभाव के मामलों की जांच करने के लिए शिकायत निवारण तंत्र
- (6) सहायता कार्यक्रमों, स्वास्थ्य बीमा इत्यादि में एचआईवी को शामिल करने लिए समाजिक सुरक्षा कवरेज की व्यापक होती संभावनाएं।
- (7) मौजूदा क्रियाकलापों का सुदृढीकरण तथा असुरक्षितता संबंधी अध्ययनों एवं जोखिम आकलन के आधार पर अनियमित क्षेत्र के कर्मियों तथा प्रवासी मजदूरों के लिए नवीनतम क्रियाकलाप स्थापित करना।
- (8) गर्भनिरोधकों की पहुंच में वृद्धि करना, यौन संबंध के कारण संचारित संक्रमणों का उपचार, व्यापक सावधानियां तथा एचआईवी के लिए विगोपन पश्चात् प्रोफिलैक्सिस।
- (9) संसूचित नीति एवं कार्यक्रम संबंधी निर्णय लेने के लिए डेटा अथवा सूचना एकत्रित करने हेतु संस्थापन में जानपदिक रोगविज्ञान संबंधी निगरानी करना।

2. नियोक्ता संघ या चैंबर या उद्योगों की भूमिका:- (1) स्थापना नीति के अधीन परिभाषित मार्गदर्शी सिद्धांतों के कार्यान्वयन के लिए नियोक्ता एसोसिएशनों अथवा चैंबरों अथवा उद्योगों को प्रोत्साहित किया जाता है।

(2) एचआईवी काउंसिलिंग या टैस्टिंग या उपचार सुविधाएं स्थापित करने के लिए सदस्यों की अधिक संख्या वाली कंपनियों को प्रोत्साहित करने हेतु नियोक्ता एसोसिएशन अथवा चैंबर अथवा उद्योग के साथ- साथ कौशल विकास, आजीविका सृजन इत्यादि जैसे कल्याणकारी उपायों का प्रावधान करने के लिए निगमित उत्तरदायित्व के तहत समुचित निधियों का प्रावधान करना।

(3) नियोक्ता संघ या चैंबरों या उद्योगों को संस्थापना नीति के कार्यान्वयन में उनकी सदस्य कंपनियों को एकजुट करने के लिए समर्थनकारी प्रयास करने चाहिए।

(4) स्थापना नीति के कवरेज में बढोत्तरी करने तथा एचआईवी निवारण एवं परिचर्या के लिए सरकारी- निजी भागीदारियां स्थापित करने के लिए नियोक्ता एसोसिएशनों: अथवा चैंबरों या उद्योगों की राष्ट्रीय एड्स नियंत्रण संगठन अथवा राज्य एड्स नियंत्रण सोसाइटी के साथ भागीदारी

(5) नियोक्ता संगठनों या मंडलों को राष्ट्रीय एड्स नियंत्रण सोसाइटी अथवा राज्य एड्स नियंत्रण सोसाइटी तथा संगत एजेंसियों के साथ भागीदारी में अपनी क्षमता को सुदृढ करना चाहिए ताकि वे एचआईवी एवं एड्स कार्यस्थल कार्यक्रम प्रारंभ करने के लिए उनके सदस्यों को तकनीकी सहायता उपलब्ध करा सकें। इसी के साथ, उनके क्षमता निर्माण माँड्यूलों के भाग के रूप में, एचआईवी तथा एड्स के बारे में सूचना को एकीकृत किया जा सके।

3. प्रशासनिक कर्मचारियों सहित नियोक्ताओं की भूमिका--(1) नीति में परिभाषित मार्गदर्शक सिद्धांतों का कार्यान्वयन-- नियोक्ता को यह सुनिश्चित करना होगा कि एचआईवी ग्रस्त होने के आधार पर किसी भी कर्मचारी के साथ पक्षपात न किया जाए और सभी पांच मार्गदर्शक सिद्धांतों का पूरी तरह से कार्यान्वयन किया जा रहा है। नियोक्ता द्वारा इस नीति को वेबसाइट पर अपलोड करके जनता तक इसकी व्यापक पहुंच सुनिश्चित करनी होगी। नियोक्ता को यह भी सुनिश्चित करना होगा कि एचआईवी ग्रस्त होने के कारण किसी भी व्यक्ति को रोजगार से वंचित न रखा जाए या उसे निकाला न जाए। किसी भी अन्य प्रकार के पक्षपात जैसे उस व्यक्ति से बात करने, भोजन साझा करने, उसके साथ यात्रा करने आदि से बचना भी पूरी तरह से निषिद्ध है। यदि आवश्यक हो, तो नियोक्ता को ऐसे उचित आवास का प्रावधान सुनिश्चित करना चाहिए जहां कार्य स्थल पर मामूली समायोजन से एचआईवी पॉजिटिव व्यक्ति कार्य स्थल पर आनंद लेने में सक्षम होगा। यहां

पक्षपात मुक्त व्यवहार एचआईवी और एड्स से संक्रमित व्यक्ति तक ही सीमित नहीं है बल्कि इसमें इससे प्रभावित परिवार भी शामिल हैं। संस्थापना को गोपनीयता, सार्वभौमिक सावधानियां और शिकायत निवारण तंत्र सहित अन्य सिद्धांतों को लागू करने के लिए भी उचित कदम उठाने होंगे। स्वास्थ्य परिचर्या सेवाओं में लगे प्रत्येक संस्थापना को यह सुनिश्चित करना होगा कि) ह्यूमन इम्यूनडेफिशिएंसी वायरस और अक्वायर्ड इम्यूनो डेफिशिएंसी सिंड्रोम (निवारण और नियंत्रण) अधिनियम, 2017 (2017 का 16) के अधीन उल्लिखित कारणों को छोड़कर, संसूचित सहमति के बिना कोई एचआईवी परीक्षण न किया जाए।

(2)) ह्यूमन इम्यूनडेफिशिएंसी वायरस और अक्वायर्ड इम्यूनो डेफिशिएंसी सिंड्रोम (निवारण और नियंत्रण) अधिनियम, 2017 की मूल बातों पर कर्मचारियों का नियमित क्षमता निर्माण - नियोक्ता को एचआईवी और एड्स की मूल बातों, एचआईवी के संचरण, मिथकों और गलत धारणाओं, पक्षपात न करने और) ह्यूमन इम्यूनडेफिशिएंसी वायरस और अक्वायर्ड इम्यूनो डेफिशिएंसी सिंड्रोम (निवारण और नियंत्रण) अधिनियम । 2017 (2017 का 16) पर ध्यान केंद्रित करने के साथ तीन मार्गदर्शक सिद्धांतों के संबंध में कर्मचारियों के प्रशिक्षण के लिए प्रावधान करना होगा स्वास्थ्य सेवाओं में लगे नियोक्ताओं को उन लोगों को सार्वभौमिक सावधानियों और पोस्ट एक्सपोजर प्रोफिलैक्सिस के उपयोग के संबंध में सूचित करने और शिक्षित करने के लिए उचित उपाय करना होगा जिन्हें एचआईवी के व्यावसायिक एक्सपोजर का अत्यधिक खतरा है। नियोक्ता भावी आवश्यक सहायता के लिए पास के जिला एड्स रोकथाम और नियंत्रण इकाइयों या राज्य एड्स नियंत्रण सोसाइटी से संपर्क कर सकते हैं।

(3) शिकायत अधिकारी का पदनाम- (क) सौ या अधिक व्यक्तियों को रखने वाला कोई स्थापन, वरिष्ठ रैंक के व्यक्ति को, जैसा कि वह उचित समझता है, शिकायत अधिकारी के रूप में पदाधिकी कर सकता है;

(ख) बीस या अधिक व्यक्तियों वाले स्वास्थ्य परिचर्या स्थापन भी शिकायत अधिकारी को पदाधिकी कर सकते हैं। शिकायत अधिकारी संस्थापन में एचआईवी और एड्स (रोकथाम और नियंत्रण) अधिनियम, 2017 के प्रावधानों के उल्लंघन की शिकायतों का निपटान करेगा;

(ग) किसी स्थापन की कुल संख्या की गणना करते समय, सभी कर्मचारियों, अधिकारियों, सदस्यों, निदेशकों, न्यासियों या प्रबंधकों को शामिल किया जाए।

(4) शिकायत अधिकारी का प्रशिक्षण- (क) स्थापन को यह सुनिश्चित करना होगा कि पदाधिकी किये गए शिकायत अधिकारी को उत्तरदायित्वों को कुशलतापूर्वक पूरा करने के लिए प्रशिक्षित किया जाए;

(ख) नियोक्ता प्रशिक्षण आयोजित करने के लिए राज्य एड्स नियंत्रण सोसाइटी से सहायता प्राप्त कर सकता है;

(ग) स्वास्थ्य और परिवार कल्याण मंत्रालय द्वारा शिकायत अधिकारी के लिए विकसित एचआईवी और एड्स माड्यूल को राज्य एड्स नियंत्रण सोसाइटी को उपलब्ध कराया जाएगा।

(5) गोपनीयता बनाए रखना- (क) स्थापन पहचान के संदर्भ में गोपनीयता बनाए रखने और शिकायत अधिकारी के समक्ष शिकायत में शामिल संरक्षित व्यक्ति के विवरण की पहचान करने के लिए बाध्य है और किसी भी व्यक्ति या स्टाफ सहित उनके प्रतिनिधियों द्वारा कोई भी जानकारी प्रकट नहीं की जाएगी;

(ख) स्थापन को यह सुनिश्चित करना होगा कि कोई भी व्यक्ति शिकायत अधिकारी के समक्ष शिकायत के संबंध में किसी भी मामले को तब तक मुद्रित या प्रकाशित नहीं करेगा जब तक कि शिकायत में शिकायतकर्ता की पहचान संरक्षित न हो;

- (ग) स्थापन और शिकायत अधिकारी ह्यूमन इम्यूनिडिफिशिएंसी वायरस और अक्वायर्ड इम्यूनोडेफिशिएंसी सिंड्रोम (निवारण और नियंत्रण) अधिनियम, 2017 (2017 का 16) की धारा 11 के उपबंधों और उसके अधीन वहां संरक्षित व्यक्तियों के डेटा की गोपनीयता संबंधी दिशानिर्देशों के अनुसार डेटा संरक्षण उपायों का अनुपालन करेगा। मॉडल नीति की धारा 5.3 का संदर्भ भी लिया जा सकता है।

(6) शिकायत अधिकारी के कार्यालय की कार्यपद्धति- (क) विशिष्ट वेबसाइट, वेबपेज के माध्यम से शिकायत अधिकारी को शिकायतें प्रस्तुत करने के लिए या वेबसाइट के विकास पर आगे स्पष्टता लाने के लिए एक आधिकारिक ईमेल पता प्रदान करने, संबंधित राज्य एड्स नियंत्रण समितियों से संपर्क करने के लिए स्थापना का लिंक प्रदान करने, इलेक्ट्रॉनिक रूप में शिकायतों की प्राप्ति की पद्धति विकसित करने के लिए स्थापनाएं इनकी स्थापना करेंगी।

- (ख) इसके अतिरिक्त, संस्थापन शिकायत पर निर्णय लेने के लिए शिकायत अधिकारी को आवश्यक सुविधाएं भी प्रदान करेगा; और ऐसी सूचना भी उपलब्ध कराएगा जो शिकायत अधिकारी को शिकायत का समाधान करने की के लिए आवश्यक है।

(7) जागरूकता सृजन - प्रत्येक स्थापन जिसके लिए शिकायत अधिकारी की नियुक्ति करने की आवश्यकता होती है, अधिनियम और नीति के प्रावधानों से अपने कर्मचारियों को सुग्राही बनाने के लिए वार्षिक आधार पर कार्यशालाओं और जागरूकता कार्यक्रमों का आयोजन करेगा। संवेदीकरण में शिकायत निवारण तंत्र के कार्यक्रम को भी शामिल किया जाना चाहिए जिसमें, कौन शिकायत दर्ज कर सकता है, किस आधार पर शिकायत दर्ज की जा सकती है आदि, शामिल हैं। स्थापन के शिकायत अधिकारी का संपर्क विवरण लोगों को उपलब्ध कराया जाना चाहिए।

4. कर्मचारियों या सहकर्मियों की भूमिका, (1) एक सहकर्मी के रूप में व्यक्ति की यह जिम्मेदारी है कि वह एचआईवी स्थिति के आधार पर सहकर्मियों के खिलाफ भेदभाव न करे।

(2) कर्मचारियों को यह भी सुनिश्चित करना होगा कि यदि उन्हें एचआईवी स्थिति ज्ञात है, तो उसे एचआईवी पॉजिटिव व्यक्ति की संसूचित सहमति के बिना किसी को भी उजागर नहीं किया जाए।

(3) यदि वे एचआईवी स्थिति के आधार पर व्यक्ति के विरुद्ध किसी भी प्रकार के भेदभाव के साक्षी हैं, तो उन्हें इस तरह के व्यवहार को हतोत्साहित करना चाहिए और व्यक्ति को संगठन स्तर पर शिकायत अधिकारी या राज्य स्तर पर लोकपाल के साथ शिकायत दर्ज करने की सलाह देनी चाहिए।

(4) कर्मचारी नियोक्ता सहित किसी को भी एचआईवी ग्रसित व्यक्ति के नाम और पते सहित व्यक्तिगत ब्यौरे को उजागर नहीं कर सकता है जिसमें उसके परिवार के सदस्य, अन्य कर्मचारी या मीडिया एजेंसियां शामिल हैं।

5. एचआईवी से संक्रमित व्यक्ति की भूमिका- (1) एचआईवी से संक्रमित व्यक्ति को, यदि उसके साथ भेदभाव किया जाता है, तो उसे या तो उस स्थापन में शिकायत अधिकारी के पास शिकायत दर्ज करानी चाहिए जहां व्यक्ति कार्य कर रहा है या राज्य या जिला स्तर पर लोकपाल के समक्ष शिकायत दर्ज करानी चाहिए।

(2) प्रत्येक शिकायत संबंधित संस्थापन या राज्य की वेबसाइट पर प्रदान किए गए फॉर्म सेट में लिखित रूप में की जानी चाहिए। शिकायत डाक, टेलीफोनिक रूप से या इलेक्ट्रॉनिक रूप में भी की जा सकती है, लेकिन अंत में इसे शिकायत फॉर्म में अनुवादित किया जाना चाहिए। जहां लिखित में शिकायत नहीं की जा सकती है, वहां शिकायत अधिकारी की जिम्मेदारी है कि वह शिकायतकर्ता को लिखित में शिकायत दर्ज करने के लिए सभी उचित सहायता प्रदान करे।

(3) शिकायतें उस तारीख से तीन महीने के भीतर की जानी चाहिए जब शिकायतकर्ता को स्थापन में अधिनियम के कथित उल्लंघन के बारे में पता चला हो। यदि शिकायत अधिकारी संतुष्ट है कि परिस्थितियों ने शिकायतकर्ता को निर्धारित अवधि

के भीतर शिकायत करने से रोक दिया है, तो शिकायत करने की समय सीमा को तीन महीने की अन्य अवधि तक बढ़ाया जा सकता है।

(4) एचआईवी से संक्रमित व्यक्ति का दायित्व है कि वह एचआईवी के संचरण को रोके। प्रत्येक व्यक्ति, जो एचआईवी पॉजिटिव है और जारी किए गए दिशानिर्देशों के अनुसार उसे परामर्श दिया गया है या वह एचआईवी की प्रकृति और इसके संचरण से अवगत है, तो वह अन्य व्यक्तियों में एचआईवी के संचरण को रोकने के लिए सभी उचित सावधानी बरतेगा। व्यक्ति को जोखिम को कम करने के लिए कार्यनीतियों को अपनाना चाहिए या किसी भी व्यक्ति के साथ किसी भी यौन संपर्क से पहले या जिसके साथ सुइयों को साझा किया जाता है, उसे अपनी एचआईवी स्थिति को पहले से सूचित करना चाहिए।

6. स्वास्थ्य और परिवार कल्याण मंत्रालय (राष्ट्रीय एड्स नियंत्रण संगठन) और राज्य एड्स नियंत्रण समितियों की भूमिका-स्वास्थ्य और परिवार कल्याण मंत्रालय (राष्ट्रीय एड्स नियंत्रण संगठन) संवेदनशील आबादी, उनकी कार्य प्रवृत्तियों और प्राथमिकताओं, काम परिस्थितियों, धारणाओं और अन्य संबंधित मुद्दों की मैपिंग करने के लिए नियमित सर्वेक्षण और जोखिम मूल्यांकन अध्ययनों को सुविधा प्रदान करता है। ये अध्ययन नीति के प्रभावी कार्यान्वयन, प्रसार के तरीकों, स्वास्थ्य और परिवार कल्याण मंत्रालय (राष्ट्रीय एड्स नियंत्रण संगठन) से ध्यान देने की आवश्यकता वाले कार्य क्षेत्रों की पहचान करने में मदद करेंगे और नीति के कार्यान्वयन की निगरानी और कार्यबल की एचआईवी कमजोरियों पर इसके प्रभाव को भी सुविधाजनक बनाएंगे।

(1) सभी राज्य एड्स परिषदे राज्य श्रम विभागों, नियोक्ताओं और श्रमिक संगठनों के पर्याप्त प्रतिनिधित्व को सुनिश्चित करेगी।

(2) सभी राज्य प्रत्येक वर्ष एचआईवी और एड्स संबंधी विधान मंच और खोज एवं एचआईवी और एड्स संबंधी विधायन फोरम के सदस्यों की बैठकें आयोजित करेंगे ताकि यह सुनिश्चित किया जा सके कि संस्थापनों संबंधी नीति को अपने-अपने राज्यों में लागू किया जा रहा है।

(3) शिकायत अधिकारी के रूप में शिकायत निवारण तंत्र की स्थापना और नीति के प्रभावी कार्यान्वयन को सुनिश्चित करने के लिए राज्य नियोक्ता संघों और राज्य श्रम विभाग के साथ नियमित बैठकें आयोजित करेंगे।

(4) स्वास्थ्य और परिवार कल्याण मंत्रालय (राष्ट्रीय एड्स नियंत्रण संगठन) या राज्य एड्स नियंत्रण सोसाइटी नीति की आवधिक समीक्षा और निगरानी सुनिश्चित करेगी और निरंतर बदलती आंतरिक और बाहरी स्थिति के कारण आवश्यक विभिन्न समायोजनों और अनुकूलन के लिए आवश्यक सहायता प्रदान करेगी।

परिशिष्ट क

शिकायत अधिकारी को शिकायत करने के लिए प्ररूप

1. घटना की तिथि _____
2. घटना का स्थान _____
3. घटना का विवरण _____
4. घटना के लिए जिम्मेदार व्यक्ति / संस्थान _____

शिकायतकर्ता के हस्ताक्षर / अंगूठे का निशान *

नाम:

तिथि:

मोबाइल नंबर/ईमेल/फैक्स/पता:

केवल कार्यालय उपयोग के लिए:

शिकायत संख्या:

* जहां शिकायत मौखिक रूप से या टेलीफोनिक रूप से प्राप्त की जाती है और शिकायत अधिकारी द्वारा लेखन तक सीमित हो जाती है तो शिकायत अधिकारी फॉर्म पर हस्ताक्षर करेगा और तारीख लिखेगा।

[फा. सं. टी-11020/50/1999/नाको (पी एण्ड सी)- पाट 7(1)]

आलोक सक्सेना, अपर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 13th May, 2022

S.O. 454.—Whereas section 12 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (16 of 2017) provides that the Central Government shall notify model Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome policy for establishments, in such manner as may be prescribed;

And whereas, Chapter-II after Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention And Control) Rules, 2018 provides for the manner of notifying HIV and AIDS policy for establishments;

Now, therefore in exercise of the powers conferred by section 12 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (16 of 2017), read with rule 3 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Rules, 2018, the Central Government hereby notifies the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome Policy for Establishments, 2022 as per the Schedule annexed to this notification.

SCHEDULE

HIV and AIDS Policy for Establishments 2022

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APPENDIX A

Abbreviations

AIDS	Acquired Immuno-Deficiency Syndrome
ART	Anti-Retroviral Therapy
CSR	Corporate Social Responsibility
DALSA	District Legal Services Authority

DAPCU	District AIDS Prevention and Control Unit
DMC	Data Management Committee
HIV	Human Immunodeficiency Virus
ICTC	Integrated Counselling and Testing Centers
IEC	Information, Education and Communication
LFA	Legislative Forum on AIDS
NACO	National AIDS Control Organisation
NACP	National AIDS and STD Control Programme
PEP	Post Exposure Prophylaxis
PLHIV	People Living with HIV
SACS	State AIDS Control Society
SCA	State Council on AIDS
SDG	Sustainable Development Goals
SOP	Standard Operating Procedures
STI	Sexually Transmitted Infections

CHAPTER I

Background and Indian Situation

1. **(1) Background.**— Health is one of the priorities for assuring perceptible economic and social development in today's fast-growing world. Health and economy have been hands in gloves with one another, countries who have aimed at ensuring universal access to health, equity and raising quality of care have excelled. Strong and able workforce contributes to national prosperity by increasing overall productivity and helping the government and the country to thrive via positive economic outcomes.

HIV and AIDS is a threat to productive workforce. It has affected many lives where people face discrimination due to either their known or perceived HIV positive status. They lose their jobs, thus, are forced to live in abject poverty with immediate ripple effect on their close family members and children in terms of poor expenditure on education and health. Thus, HIV affected person is compelled to face double jeopardy of losing income and livelihood on one hand and facing discrimination on the other.

People living with HIV are greatly impacted by multifarious discrimination (societal, workplace, healthcare setting, educational institutions), loss of livelihood, inequality and infringement of rights. Since HIV infection is lifelong, People Living with HIV have to live with it for the rest of the life.

The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 is a landmark legislation to provide a conducive environment to people infected with and affected by HIV and AIDS. The Act aims to address stigma and discrimination so that people infected with and affected by HIV and AIDS are not discriminated in household settings, establishment settings and healthcare settings. Their right to insurance, movement, holding public and private office, residence etc. should be maintained as per the prevailing laws and policies. The Act also reinstates constitutional, statutory and human rights of people infected with and affected by HIV and AIDS. It also provides for a robust grievance redressal mechanism in form of Complaints Officer at establishments and Ombudsman at state level.

2. **Situation in India.**— According to India HIV Estimates 2019 Report¹, there are an estimated 23.49 lakh people living with HIV, with an adult (15 to 49 years) HIV prevalence of 0.22 per cent. It is estimated that there were around 69,220 new HIV infections in the country during 2019, indicating a 37.4 per cent decline in new HIV infections during 2010 to 2019. During the same period, HIV and AIDS related deaths also declined by 66.1 per cent.

CHAPTER II

Rationale, Aim and Scope of the Policy

The chapter outlines the rationale, aim and scope of the Policy along with basic facts about HIV and AIDS.

1. **Rationale.**— (1) Section 12 of the HIV and AIDS (Prevention and Control) Act, 2017 mandates the Central Government to draft 'HIV and AIDS Policy for Establishments'. Thus, the policy emanates from the HIV and AIDS (Prevention and Control) Act, 2017. The manner of notifying the policy is laid down under the Central Government Rules.

¹ Source : India HIV Estimates 2019 Report

(2) Under sustainable development goal 3 of ‘Good Health and Well Being’, target of 3.3 states ending the epidemic of AIDS by 2030. Furthermore, elimination of stigma and discrimination related to HIV is a prerogative to achieve this goal.

2. **Aim.**— The policy aims to,-

- (1) Generate awareness on HIV and AIDS in establishments.
- (2) Prevent transmission of HIV infection amongst workers.
- (3) Protect rights of those infected with and affected by HIV and AIDS.
- (4) Ensure safe, non-stigmatised and non-discriminatory environment assuring equity and dignity at establishments.
- (5) Standardise the obligation of every establishment in providing conducive working environment and maintaining the confidentiality of HIV-related data for protected persons.

3. **Scope.**— The policy applies to all establishments, an establishment is a body corporate or co-operative society or any organisation or institution or two or more persons jointly carrying out a systematic activity for a period of twelve months or more at one or more places for consideration or otherwise, for the production, supply or distribution of goods or services.

The employers’ and workers’ organisations, government ministries or departments at the national, state and district levels, public or private sector companies, multi-national companies operating in India, and other social partners are mandated to use this policy framework in implementing the HIV and AIDS policy at their respective works.

The Policy is based on following facts about HIV and AIDS,-

(1) The known routes of transmission of the Human Immunodeficiency Virus are through,-

- (a) Unprotected sexual contact with a HIV infected person;
- (b) Sharing of HIV infected needles or syringes;
- (c) From HIV infected mother-to-child during pregnancy, childbirth or breast feeding; and
- (d) Transfusion of HIV infected blood or blood products.

(2) With the advent of Anti- Retroviral Therapy, HIV is now a chronic manageable disease like many other non-communicable diseases, including diabetes, hypertension and asthma. There is no scientific or epidemiological evidence to suggest that HIV can be transmitted through ordinary workplace contact (talking to or touching the person, using the same office equipment, tools, utensils or bathroom as a person infected with HIV). In special situations where there may be a potential risk of exposure, for example healthcare workers who may be exposed to blood or blood products, there are specific and appropriate infection-control measures known as Universal Precautions that ought to be followed. Transmission is therefore not likely in the regular workplace setting.

(3) People with HIV who are regular on Anti- Retroviral Therapy remain healthy and fit to work for several years despite their infection.

(4) With the availability of Anti- Retroviral Therapy, the life of people living with HIV has prolonged substantially and they lead a normal productive life.

CHAPTER III

Guiding Principles for Establishments

The HIV and AIDS Policy for Establishments adopts three key principles mentioned in the HIV and AIDS (Prevention and Control) Act, 2017. These principles are to be adopted by all establishments in the spirit in which they are mentioned.

These principles include,-

- (1) Non-discrimination against people infected with and affected by HIV and AIDS.
- (2) Confidentiality related to one’s HIV status and HIV-related data.
- (3) Grievance redressal mechanism in the form of Complaints Officer at establishments and Ombudsman at State level. These tenets have been deduced from the Act and are pivotal to provisioning of an enabling environment to people infected with HIV.

CHAPTER IV

Non-Discrimination

1. **Non-discrimination.**— Non-discrimination is a fundamental principle of all international and human rights laws. There should be no discrimination at establishments on the basis of perceived or real HIV status. This protection is provided not only to an HIV positive person, but also extends to immediate family members and progeny who reside or have resided in the same house of HIV infected person too.

Here discrimination is prohibited not only against people infected with HIV and AIDS but also against people affected by HIV and AIDS. This may include other people living, cohabiting and residing with an HIV positive person. It also encompasses other people who have lived, resided or cohabited with an HIV positive person in the past.

A person cannot be discriminated on the basis of HIV status at any setting and the following tenets require compliance,—

(1) **Absence of discrimination at Employment and Occupation.**— A person should not be discriminated in the establishments on the basis of HIV status. Discrimination here includes the denial of, or termination from, employment or occupation and also unfair treatment at establishments. The employer may also provide a reasonable accommodation to people living with HIV if need be. Reasonable accommodation means minor adjustments to a job or work that enables an HIV positive person who is otherwise qualified to enjoy equal benefits or to perform the essential functions of the job or work, as the case may be.

Termination without reasonable accommodation should be an exception and should require furnishing of various documents by the healthcare provider as well as the employer. A qualified and independent healthcare provider who is competent should submit a copy of the written assessment stating that the person poses a significant risk of transmission of HIV to other person in the establishment or is unfit to perform the duties of the job. Employer should also submit a copy of a written statement stating the nature and extent of administrative or financial hardship for not providing the person reasonable accommodation.

(2) **Healthcare and educational settings.**— A person should not be discriminated at healthcare and educational setting on the basis of HIV status. Discrimination here includes unfair treatment, denial or discontinuation of services in educational settings and healthcare settings.

(3) **Public utilities and resources.**— A person should not be discriminated against using public utilities and sharing resources on the basis of HIV status. Discrimination here includes denial or discontinuation of access and usage of goods, accommodation, shops, public restaurants, hotels and places of public entertainment, wells, tanks, bathing ghats, roads, burial grounds or funeral ceremonies and places of public resort, etc.

(4) **Holding public and private offices.**— Irrespective of HIV status, a person can hold public or private offices and cannot be discriminated. Discrimination here includes the denial, discontinuation or unfair treatment in the opportunity to stand for or hold public or private offices.

(5) **Under custody.**— A person should not be discriminated and treated unfairly in government/private organizations on the basis of HIV status. Denial of access to or unfair treatment in government or private establishment in whose care or custody a person may be is prohibited. People who are in care and custody of State have also been entitled to the right to HIV prevention, counselling, testing and treatment services in accordance with the guidelines issued by National AIDS Control Organisation from time to time.

(6) **Right to Movement.**— Right to movement is a fundamental right entrusted under article 19 of Fundamental Rights of Part- III of the Constitution. No person should be denied or subjected to discontinuation or unfair treatment with regard to the right to movement.

(7) **Segregation.**— A person should not be segregated on the basis of HIV status. Thus, she or he or others cannot be isolated and ostracized on the basis of HIV status.

(8) **HIV testing as pre-requisite for obtaining employment is prohibited.**— HIV testing as a pre-requisite for obtaining employment, or accessing healthcare services, education services or for the continuation of the same or for accessing or using any other service and facility is completely prohibited.

(9) **Right to residence.**— A person should not be denied or treated unfairly with regard to the right to reside, purchase, rent and occupation of property. Every person infected with and affected by HIV should have the right not to be excluded from the shared household and right to enjoy and use facilities of such shared household in a non-discriminatory manner.

Discrimination against people infected with and affected by HIV and AIDS is prohibited in all occupational, educational and health settings and in addition, HIV test cannot be pre-requisite for obtaining employment or accessing healthcare services or education. Discrimination at community places and for use of resources is also prohibited.

In case of contravention of the aforesaid rights, a robust grievance redressal mechanism should be provided in terms of Complaints Officer at establishments and Ombudsman in States. Aggrieved person has a choice to file a complaint either with Complaints Officer or the Ombudsman. There is no hierarchy with respect to filing of the complaint. Cognizance of offences under the Act will be taken by the court of Judicial Magistrate of the first class.

CHAPTER V

Confidentiality related to HIV status and HIV-related data

1. Confidentiality related to HIV status.- HIV positive person cannot be forced to disclose her or his or their status or any other HIV-related information. HIV-related information means any information relating to the HIV status of a person and includes: (a) information relating to the undertaking given for performing the HIV test or result of an HIV test; (b) information relating to the care, support or treatment of that person; (c) information which may identify that person; and (d) any other information concerning that person, which is collected, received, accessed or recorded in connection with an HIV test, HIV treatment or HIV-related research or the HIV status of that person.

No person should be compelled to disclose the HIV status except by an order of the court that the disclosure of such information is necessary in the interest of justice for the determination of issues in the matter before it.

There is a disclaimer in context with relationship of fiduciary nature. Here no person should disclose the HIV status or any other private information of the other person imparted in confidence or in a relationship of a fiduciary nature except by informed consent. The informed consent can be taken from the person themselves or through their representatives. There are exceptions where informed consent for disclosure of HIV-related information is not required,-

- (1) In case the disclosure is made by a healthcare provider to another healthcare provider who is involved in the care, treatment or counselling of such person.
 - (2) By an order of a court that the disclosure of such information is necessary.
 - (3) In suits or legal proceedings between persons, where the disclosure of such information is necessary and authorised legally.
 - (4) In relation to statistical information that could not be expected to lead to the identification of that person.
 - (5) For screening purposes in any licensed blood bank.
 - (6) Officers of the Central Government or the State Government or State AIDS Control Society of the concerned State Government for the purposes of monitoring, evaluation or supervision.
2. Disclosure of status to partner of HIV positive person.- In case of disclosure of status to partner of HIV positive person, no healthcare provider, except a physician or a counsellor, shall disclose the HIV positive status of a person to their partner. This kind of disclosure can be made if,-
- (1) The healthcare provider believes that the partner is at the significant risk of transmission of HIV from such a person.
 - (2) The HIV-positive person has been counselled to inform the partner.
 - (3) The healthcare provider is satisfied that the HIV positive person will not inform the partner.
 - (4) The healthcare provider has informed the HIV positive person of the intention to disclose the HIV-positive status to the partner.

One more very important pre-condition is that the disclosure has to be made in person and after proper counselling. The healthcare provider shall have no obligation to identify or locate the partner of an HIV-positive person.

In case of establishments, educational, occupational, prison settings, faith-based organisations, corporate-houses, etc., it is the responsibility of employers to ensure that all staff members are oriented on concepts of consent, disclosure and confidentiality related to HIV and AIDS and that they don't disclose HIV-related information. It is also the moral responsibility of co-workers and other staff members to not engage in activities which breach confidentiality.

3. Confidentiality of data related to HIV.- HIV-related information is sensitive in nature and every establishment keeping the records of HIV-related information should adopt data protection measures to ensure prevention of unintended or unwanted disclosure and breach of confidentiality of the data.

HIV-related information includes—

- (a) information relating to the undertaking performing the HIV test or result of an HIV test;
- (b) information relating to the care, support or treatment of that person;
- (c) information which may identify that person; and
- (d) any other information concerning that person, which is collected, received, accessed, or recorded in connection with an HIV test, HIV treatment or HIV-related research and the HIV status of that person.

It is mandatory for every establishment keeping the records of HIV-related information of protected persons to adopt data protection measures. Data protection measures include- protecting information from disclosure, procedures for accessing information, provision for security systems to protect the information stored in any form and mechanisms to ensure accountability and liability of persons in the establishment,-

- (1) Protecting information from disclosure of HIV-related information,- Confidentiality and privacy is to be maintained while collecting HIV-related information. For each establishment which has collected/ is desirous of collection of HIV-related information pertaining to protected persons, authorised persons or staff should sign an undertaking for confidentiality of the information.
- (2) Access to HIV-related information: Access should be granted only to authorized persons or staff. There should be provision of signing a formal undertaking for confidentiality of the information from the authorised person.
- (3) Provision for security systems for HIV-related information,- There should be secured almirahs or cabinet for physical records like registers, reports etc. and it should be carefully locked when left unattended. Personal Computers or mobiles or tablets or any other hardware should be password protected and should be logged off or locked when left unattended for protecting electronic records.
- (4) Data Management Committee,- Data Management Committee should be formed at each establishment to review and provide appropriate recommendation regarding the data security measures and the Data Management Committee should be responsible to ensure the same. Wherever establishment does not have the Data Management Committee, the head of the establishment should be entrusted with the responsibility and function of the Data Management Committee.
- (5) Disposal of HIV-related information: Establishment should have standard operating procedures in place regarding disposal of physical and electronic records or files containing HIV-related information of protected persons.
- (6) Accountability and liability of security of HIV-related information should be with Data Management Committees or the heads of concerned establishment.

For additional information, Ministry of Health and Family Welfare (National AIDS Control Organisation's) guidelines and official website may be referred to from time to time.

CHAPTER VI

Grievance Redressal Mechanism

Grievance redressal mechanism is vital in order to provide a holistic non-discriminatory environment to people infected with and affected by HIV and AIDS. The Act also proposes a robust mechanism in the form of Complaints Officer at establishments and Ombudsman at State level.

It is obligatory for the establishment, having one hundred or more persons to designate a person, as it deems fit, as the Complaints Officer who shall dispose of complaints of violations of the provisions of this Act in the establishment. Healthcare establishments shall designate a complaints officer in case of twenty or more persons. Here person could be an employee or officer or member or director or trustee or manager, as the case may be. Similarly at State level, one or more Ombudsman shall be appointed or designated as the State desires. Ombudsman shall inquire into complaints of violations of provisions of the Act related to discrimination and providing of healthcare services.

It must be noted that there is no hierarchy in terms of filing of complaint; if any establishment does not qualify to have a Complaints Officer, then the aggrieved person belonging to that establishment can file a complaint to the Ombudsman. Also, if the establishment has a Complaints Officer, it is at the discretion of the aggrieved person to file the complaint to the Complaints Officer or Ombudsman.

1. Complaints Officer: Duty, Power and Responsibility.- (1) Acceptance of complaints.- Complaints Officer has to register the complaint. The complaint has to be made within three months from the date that the person making the complaint became aware of the alleged violation of the Act in the establishment. If the complaints officer is satisfied of circumstances that prevented the complainant from making the complaint within the stipulated period, extension of another three months should be granted.

(2) **Assistance in filing complaint.**— Every complaint would be made to the Complaints Officer in writing in the Form annexed at Appendix A. Where a complaint cannot be made in writing the Complaints Officer shall render all reasonable assistance to the complainant to file the complaint in writing.

(3) **Acknowledgement and registration of complaints.**— The Complaints Officer on receipt of a complaint should provide an acknowledgment to the complainant and record the complaint in electronic form. The time of the complaint and the action taken on the complaint should also be recorded. Every complaint should be numbered sequentially. The Complaints Officer should act in an objective and independent manner while deciding complaints made under the Act.

(4) **Timeline for decision making.**— The Complaints Officer should arrive at a decision of the complaint promptly and in any case within seven working days. In case of emergency or in the case of healthcare establishments where the complaint relates to discrimination in the provision of, or access to health care services or provision of universal precautions, the Complaints Officer should decide the complaint on the same day on which he receives the complaint.

(5) **Decision making powers.**— The Complaints Officer, if satisfied that a violation of the Act has taken place as alleged in the complaint, should firstly, direct the establishment to take measures to rectify the violation; secondly, counsel the person who has committed the violation and require such person to undergo training in relation to HIV and AIDS, provisions of the Act, rules, guidelines and aspects of stigma and discrimination. Additionally, social service should be done for a fixed period, which should include working with a non-governmental organization working on HIV and AIDS. For this, assistance from respective District AIDS Prevention and Control Unit or State AIDS Control Society should be undertaken. Upon subsequent violation of the Act by the same person, the Complaints Officer may recommend the establishment to take disciplinary action in accordance with the law.

(6) **Informing the complainant.**— The Complaints Officer should inform the complainant of the action taken in relation to the complaint and of the complainant's right to approach the Ombudsman or to any other appropriate legal recourse in case the complainant is dissatisfied with the action taken.

(7) **Reporting Mechanism.**— The Complaints Officer shall ensure that the complaint, its nature and number and the action taken are reported to the appropriate authority under the Central Government (Deputy Director General, Information Education and Communication or Director Administration, National AIDS Control Organisation) every six months. In case there are no complaints in last six months, submission of a 'nil report' is not a compulsion.

(8) **Confidentiality.**— The Complaints Officer if requested by the complainant should ensure the protection of the identity of the protected person in the following manner, namely:-

- a. the complaints officer should file one copy of the document bearing the full name, identity and identifying details of such protected person which shall be kept in a sealed cover and in safe custody with the complaints officer.
- b. the complaints officer shall provide pseudonyms to protected person involved in complaints before them.
- c. the identity and identifying details of the complainant should not be revealed by any person or their representatives including assistants and staff.

(9) **Data Management.**— The Complaints Officer shall comply with the data protection measures in accordance with the section 11 of the HIV and AIDS (Prevention and Control) Act, 2017 and Guidelines on Confidentiality of Data of protected persons there under. Section 5.3 of the HIV and AIDS Policy for Establishments may also be referred to.

CHAPTER VII

Key Strategies and Responsibility of the Stakeholders, Employers Employees etc.

In order to assure effective implementation of the Policy, Ministries/Departments, Employer associations, establishments including employers, employees, administrative staff and also HIV positive people have a pivotal role to play.

1. **Key Strategies.**- (1) Prevention of HIV transmission and care and support to HIV infected workforce.
- (2) Awareness generation or training on basics of HIV, routes of transmission, undoing myths and misconceptions, behavior change, Universal Precaution, Post Exposure Prophylaxis.
- (3) Integration of HIV component at trainings of human resource department, welfare measures, corporate social responsibility etc.

- (4) Zero-discrimination policy on the basis of HIV status at every establishment. Adapt flexibility and provide reasonable accommodation for People Living with HIV.
- (5) Grievance redressal mechanism to look into cases of discrimination.
- (6) Widen scope of social security coverage to include HIV in assistance programmes, health insurance etc.
- (7) Strengthening of existing interventions and setting up of newer interventions for informal sector workers and migrant workers based on vulnerability studies and risk assessment.
- (8) Enhance access to condoms, treatment of sexually transmitted infections, Universal Precautions and Post Exposure Prophylaxis for HIV.
- (9) Undertake epidemiological surveillance at the establishment to gather data or information for taking informed policy and programmatic decisions.

2. Role of Employer Associations or Chamber or Industries.- (1) Employer associations or chambers or industries are encouraged to implement the guiding principles defined under the establishment policy.

- (2) Employer associations or chambers or industries to encourage large member companies to set up HIV counselling or testing or treatment facilities and also appropriate funds under Corporate Social Responsibility for provisioning of welfare measures like skill-development, livelihood generation etc.
- (3) Employer associations or chambers or industries should undertake advocacy efforts to mobilize their member companies in implementing the establishment policy.
- (4) Employer associations or chambers or industries to partner with National AIDS Control Organisation or State AIDS Control Society for enhancing coverage of the establishment policy and setting up public private partnerships for HIV prevention and care.
- (5) Employer organisations or chambers should strengthen their capacity, in partnership with National AIDS Control Society or State AIDS Control Society and relevant agencies, to be able to offer technical assistance to their members for starting HIV and AIDS workplace programmes. Also, information on HIV and AIDS could be integrated as part of their capacity building modules.

3. Role of Employers including the administrative staff.— (1) Implementation of guiding principles defined in the policy.— Employer will have to ensure that no employee is discriminated on the basis of HIV status and that all the five guiding principles are being implemented in spirit. Employer has to ensure access of the policy to wider public by uploading it on the website. Employer also has to ensure that no person is denied or terminated from employment because of HIV status. Any other form of discrimination like avoiding talking to that person, sharing of meals, travelling etc. is also fully prohibited. If need be, employer should ensure provisioning of reasonable accommodation where minor adjustments at work would enable HIV positive person to enjoy equal benefits at work. Here discrimination free behavior is not limited to person infected with HIV and AIDS but also includes the families affected by it. Establishments will also have to take appropriate steps for implementing other principles including confidentiality, Universal Precautions and grievance redressal mechanism. Every establishment engaged in healthcare services has to make sure that no HIV testing is done without informed consent, except for reasons mentioned under the HIV and AIDS (Prevention and Control) Act, 2017 (16 of 2017).

- (2) Regular capacity building of staff members on basics of the HIV and AIDS (Prevention and Control) Act, 2017.— Employer has to make provisions for training of staff members on the basics of HIV and AIDS, transmission of HIV, myths and misconceptions, three guiding principles with focus on non-discrimination and the HIV and AIDS (Prevention and Control) Act, 2017 (16 of 2017). Employers engaged in healthcare services have to take appropriate measure for informing and educating people on use of Universal Precautions and Post Exposure Prophylaxis to people who are at significant risk of occupational exposure to HIV. Employers can contact nearby District AIDS Prevention and Control Units or State AIDS Control Society for further necessary help.
- (3) Designation of Complaints Officer.— (a) any establishment having hundred or more persons, may designate a person of senior rank, as it deems fit, as the Complaints Officer;
- (b) healthcare establishments, having twenty or more persons may also designate a Complaints Officer. Complaints Officer shall dispose of the complaints with regard to violation of the provisions of the HIV and AIDS (Prevention and Control) Act, 2017 in the establishment;
- (c) while computing the total strength of an establishment, all employees, officers, members, directors, trustees or managers may be included.

- (4) Training of Complaints Officer.— (a) the establishment has to ensure that the designated Complaints Officer is trained for carrying out the responsibilities efficiently;
- (b) Employer may seek assistance from State AIDS Control Society for conducting training;
- (c) HIV and AIDS Module developed for Complaints Officer by Ministry Of Health And Family welfare shall be made available to the State AIDS Control Society.
- (5) Maintenance of confidentiality.— (a) the establishment is obligated to maintain confidentiality in terms of identity and identifying details of the protected person involved in a complaint before the Complaints Officer and any information shall not be revealed by any person or his representatives including staff;
- (b) the establishment has to ensure that no person shall print or publish any matter in relation to a complaint before a Complaint Officer unless the identity of the complainant in the complaint is protected;
- (c) The establishment and Complaints Officer shall comply with data protection measures in accordance with the provisions of section 11 of the HIV and AIDS (Prevention and Control) Act, 2017 (16 of 2017) and Guidelines on Confidentiality of Data of protected persons there under. Section 5.3 of the Model Policy may also be referred to.
- (6) Functioning of the office of Complaints Officer.— (a) there shall be Establishments to establish a method for receipt of complaints in electronic form either through dedicated website, webpage or by providing an official email address for the submission of complaints to the Complaints Officer for further clarity on development of website or link, establishment to contact respective State AIDS Control Societies;
- (b) in addition, the establishment shall also provide necessary facilities for the Complaints Officer for deciding the complaint; and also make available such information as the Complaints Officer may require addressing the complaint.
- (7) Awareness generation.- Every establishment which requires appointing a Complaints Officer shall on an annual basis, organise workshops and awareness programmes for sensitizing its employees with the provisions of the Act and Policy. Sensitization to also include functioning of grievance redressal mechanism including who can file a complaint, on what basis complaint can be filed, how the complaint can be filed etc. Contact details of the Complaints Officer to be made available to the people at the establishment.
4. Role of Employees or co-workers,- (1) As a co-worker it is the responsibility of the person to not discriminate against colleagues on the basis of HIV status.
- (2) Employees also have to ensure that the HIV status if known to them is not disclosed to anyone without informed consent of the HIV positive person.
- (3) If they are witness to any form of discrimination against person on the basis of HIV status, they should discourage such behavior and advise the person to file a complaint with Complaints Officer at the organisation level or Ombudsman at the State level.
- (4) Employees cannot disclose the personal details including name and address of the person living with HIV to anyone including the employer, family members, other employees or media agencies.
5. Role of person infected with HIV,- (1) Person infected with HIV, if discriminated, should file a complaint either with Complaints Officer at establishment where the person is working at or with the Ombudsman at State or District level.
- (2) Every complaint should be made in writing in the Form set provided on respective establishment or State website. Complaint can also be made via post, telephonically, or in electronic form, but at the end it has to be translated to the Complaint Form. Where a complaint cannot be made in writing, it is the responsibility of the Complaints Officer to render all reasonable assistance to the complainant to file the complaint in writing.
- The complaints should be made within three months from the date the complainant became aware of the alleged violation of the Act in the establishment. If the complaints officer is satisfied that circumstances prevented the complainant from making the complaint within the stipulated period, then the time limit to make the complaint may be extended by a further period of three months.
- (3) Person infected with HIV has a duty to prevent transmission of HIV. Every person, who is HIV positive and has been counselled in accordance with the guidelines issued or is aware of the nature of HIV and its transmission, shall take all reasonable precautions to prevent the transmission of HIV to other persons. The person should adopt strategies for the reduction of risk or informing in advance his HIV status before any sexual contact with any person or with whom needles are shared with.

6. Role of Ministry of Health and Family Welfare (National AIDS Control Organisation) and State AIDS Control Societies.- Ministry of Health and Family Welfare (National AIDS Control Organisation) to facilitate regular surveys and risks assessment studies to map the vulnerable populations, their work habits and preferences, working conditions, perceptions and other related issues. These studies undertaken will facilitate in effective implementation of the policy, ways of dissemination, identification of work areas requiring focus from Ministry of Health and Family Welfare (National AIDS Control Organisation) and also facilitate the monitoring of implementation of the policy and its impact on the HIV vulnerabilities of the work force.
- (1) All State Council on AIDS to ensure adequate representation of the state labour departments, employers' and workers' organisations.
- (2) All States to hold meetings of Legislators Forum on HIV and AID Seach year and members of Legislators Forum on HIV and AIDS to ensure that the policy for establishments is implemented in their respective States.
- (3) States to hold regular meetings with employer associations and State labour department to ensure setting up of grievance redressal mechanism in the form of Complaints Officer and effective implementation of the policy.
- (4) Ministry of Health and Family Welfare (National AIDS Control Organisation) or State AIDS Control Society to ensure periodic reviewing and monitoring of the policy and provide necessary handholding for various adjustments and customisation required due to constantly changing internal and external situation.

APPENDIX A

Form for making Complaint to Complaints Officer

1. Date of Incident _____
2. Place of Incident _____
3. Description of incident _____
4. Person/ institution responsible for the incident _____

Signature/ Thumb Impression of Complainant*Name:

Date:

Mobile No./email/Fax/Address:

For Official Use only:

Complaint Number:

**Where the complaint is received orally or telephonically and reduced to writing by the Complaints Officer, the Complaints Officer shall sign and date the Form.*

[F. No. T-11020/50/1999/NACO (P&C)- Part VII (I)]

ALOK SAXENA, Addl. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 11 मई, 2022

का.आ. 455.—केंद्र सरकार तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3)(क) द्वारा प्रदत्त शक्तियों प्रयोग करते हुए श्री एस.सी.एल दास, महा निदेशक, हाइड्रोकार्बन महा निदेशालय को दिनांक 08.04.2022 से 07.04.2024 अथवा अगले आदेशों, इनमें से जो भी पहले हो, तक के लिए तेल उद्योग विकास बोर्ड के सदस्य के रूप में एतद्वारा नियुक्त करती है।

[फा. सं.जी-38011/41/2016-वित्त-I/ओएनजी-I]

आर. के. कुरील, निदेशक

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 11th May, 2022

S.O. 455.—In exercise of the Powers conferred by Sub-Section (3)(a) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri S.C.L Das, DG, DGH as a member of the Oil Industry Development Board w.e.f 08.04.2022 to 07.04.2024 or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-Fin.I/ONG-I]

R. K. KUREEL, Director

नई दिल्ली, 11 मई, 2022

का.आ. 456.—केंद्र सरकार तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3)(क) द्वारा प्रदत्त शक्तियों प्रयोग करते हुए सुश्री आरती आहूजा, सचिव, रसायन और पेट्रोसायन विभाग को दिनांक 08.04.2022 से 07.04.2024 अथवा अगले आदेशों, इनमें से जो भी पहले हो, तक के लिए तेल उद्योग विकास बोर्ड के सदस्य के रूप में एतद्वारा नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त-I/ओएनजी-I]

आर.के. कुरील, निदेशक

New Delhi, the 11th May, 2022

S.O. 456.—In exercise of the Powers conferred by Sub-Section (3)(a) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Ms. Arti Ahuja Secretary, Department of Chemicals & Petrochemicals as a member of the Oil Industry Development Board w.e.f to 08.04.2022 to 07.04.2024 or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-Fin.I/ONG-I]

R. K. KUREEL, Director

नई दिल्ली, 11 मई, 2022

का.आ. 457.—केंद्र सरकार तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3)(ग) द्वारा प्रदत्त शक्तियों प्रयोग करते हुए श्री मनोज जैन, अध्यक्ष एवं प्रबंध निदेशक, गेल को अगले आदेशों तक दिनांक 08.04.2022 से 31.08.2022 तक के लिए तेल उद्योग विकास बोर्ड के सदस्य के रूप में एतद्वारा नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त-I/ओएनजी-I]

आर.के. कुरील, निदेशक

New Delhi, the 11th May, 2022

S.O. 457.—In exercise of the Powers conferred by Sub-Section (3)(c) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri Manoj Jain, CMD, GAIL, as a member of the Oil Industry Development Board w.e.f 08.04.2022 to 31.08.2022, until further orders.

[F. No. G-38011/41/2016-Fin.I/ONG-I]

R. K. KUREEL, Director

नई दिल्ली, 11 मई, 2022

का.आ. 458.—केंद्र सरकार तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3)(घ) द्वारा प्रदत्त शक्तियों प्रयोग करते हुए डॉ. एसएसवी रामकुमार, निदेशक (अनुसंधान एवं विकास), इंडियन ऑयल

कार्पोरेशन लि. को दिनांक 08.04.2022 से 31.07.2023 अथवा अगले आदेशों, इनमें से जो भी पहले हो, तक के लिए तेल उद्योग विकास बोर्ड के सदस्य के रूप में एतद्वारा नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त-I/ओएनजी-I]

आर. के. कुरील, निदेशक

New Delhi, the 11th May, 2022

S.O. 458.—In exercise of the Powers conferred by Sub-Section (3)(d) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Dr. SSV Ramakumar Director (R&D), IOCL as a member of the Oil Industry Development Board w.e.f to 08.04.2022 to 31.07.2023 or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-Fin.I/ONG-I]

R. K. KUREEL, Director

नई दिल्ली, 12 मई, 2022

का.आ. 459.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रम के निम्नलिखित कार्यालय के 80 प्रतिशत से कम कर्मचारी वृन्द को हिन्दी का कार्यसाधक ज्ञान होने के कारण अनधिसूचित करती है।

ऑयल एंड नेचुरल गैस कॉर्पोरेशन लिमिटेड,

एमबीए बेसिन, टेक्नोपालिस बिल्डिंग,

सॉल्ट लेक सिटी, कोलकाता – 700091

[फा. सं. 11012/3/2021-ओएल]

शोभना श्रीवास्तव, उप निदेशक (राजभाषा)

New Delhi, the 12th May, 2022

S.O. 459.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the central Government hereby denotifies the following office of the Public Sector undertaking under the administrative control of the Ministry of Petroleum & Natural Gas, as less than 80 percent of the staff have working Knowledge of Hindi.

OIL and Natural Gas Corporation

MBA Basin, Technopolis Building,

Salt lake City, Kolkata – 700091

[F. No. 11012/3/2021-OL]

SHOBHANA SRIVASTAVA, Dy. Director (OL)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 27 अप्रैल, 2022

का.आ. 460.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इ.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 85/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2022 को प्राप्त हुआ था।

[सं. एल-20012/583/2000-आईआर (सी-1)]

राजेन्द्र सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th April, 2022

S.O. 460.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 85/2001) of the Central Government Industrial Tribunal-cum-Labour Court No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of E.C.L. and their workmen, received by the Central Government on 27.04.2022.

[No. 20012/583/2000 – IR (C-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.**Reference: No. 85/2001**

Employer in relation to the management of Mugma Area of M/s. E.C.L.

AND**Their workman****Present:** Shri Dinesh Kumar Singh, Presiding Officer**Appearances:**

For the Employers : None

For the workman. : None

State : Jharkhand.

Industry:- Coal

Dated 28.03.2022

AWARD

By Order No.L-20012/583/2000 (C-I) dated 22/26.03.2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“क्या कोयला मजदूर काँग्रेस की मांग कि ई.सी.एल., मुगमा क्षेत्र द्वारा कर्मकार श्री बदरी सिंह कि आयु 10.5.96 को 57^{1/2} वर्ष मानी जाए क्योंकि उक्त तिथि को चिकित्सा बोर्ड ने उनकी आयु 55 से 60 वर्ष के बीच निर्धारित की थी, उचित एवं न्यायसंगत है? यदि हाँ तो कर्मकार किस राहत के पात्र हैं?”

2. The reference is received on 16/04/2001 by this Tribunal in which the General Secretary, Koyla Mazdoor Congress, Asansol had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed but neither the union/workman nor the management appeared before the Tribunal. Now Case is pending since 16/04/2001 and workman/union as well as management is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 मई, 2022

का.आ. 461.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, 22, माल रोड, आगरा सर्कल, आगरा (यूपी); महानिदेशक, भारतीय पुरातत्व सर्वेक्षण, 11, जनपथ, नई दिल्ली, के प्रबंधन के संबद्ध नियोजकों और श्री राजू, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर पंचाट (संदर्भ संख्या 04 of 2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 04.05.2022 को प्राप्त हुआ था।

[सं. एल- 42012/106/2016- आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi the 5th May, 2022

S.O. 461.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04 of 2017) of the Central Government Industrial Tribunal cum Labour Court – Kanpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Archeologist ,Archeological Survey of India, 22, Mall Road, Agra Circle, AGRA (U.P.);The Director General, Archeological Survey of India, 11,Janpath, New Delhi, and Shri Raju, worker which was received along with soft copy of the award by the Central Government on 04.05.2022.

[No. L- 42012/106/2016- IR (DU)]

D. K. HIMANSHU Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT KANPUR

PRESENT : SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 04 of 2017

L-42012/106/2016-IR(DU) dated 19.01.2017

BETWEEN :

Shri Raju S/o Sh. Mahavir, Nai Aabadi,
Teen Ka Nagla, Tajganj,
AGRA(U.P)-282001

AND

1. The Superintending Archeologist
Archeological Survey of India,
22, Mall Road, Agra Circle,
AGRA (U.P.)-
2. The Director General,
Archeological Survey of India, 11
Janpath, New Delhi-

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India in letter no. L-42012/106/2016-IR(DU) dated 19.01.2017

SCHEDULE

“Whether the action of the management of Superintending Archeologist ASI, Agra in terminating the service of workman named Mr. Raju w.e.f 01.06.2015 from the post of casual labour without complying the provision of Sec 25(F) of ID Act is legal and justified. If not, what relief the said workman is entitled to and from which date? ”

On receipt of notification notice was issued to the parties on 7th February, 2017. In response to the notice the AR of the worker filed the claim statement on 10.04.2017. Later on 31.10.2017 AR of the management moved an

objection application. On 14.03.2018 AR for the worker filed the objection reply. From thereon the case was fixed at the stage of disposal of the objection application. On perusal of the record it is found that the worker failed to make his presence before this Tribunal for a long time.

On 05.04.2022, during the pendency of the dispute A.R of the worker filed a memo declining his interest to pursue the dispute. The worker failed to communicate with the A.R despite his several attempts to intimate the worker regarding the proceeding of the dispute. This clearly manifests the reluctance and non interest of the workman to pursue the case. Pleadings of the workman are not to be read as substantive evidence.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 5 मई, 2022

का.आ. 462.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक (दूरसंचार) भारत संचार निगम लिमिटेड, भोपाल जिला प्रबंधक के द्वारा, दूरसंचार, गुना (म.प्र.), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रघुनाथ, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/132/2012) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 05.05.2022 को प्राप्त हुआ था।

[सं. एल-40012/31/2012-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th May, 2022

S.O. 462.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/132/2012) of the Central Government Industrial Tribunal cum Labour Court – Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, (Telecommunications), Bharat Sanchar Nigam Ltd., Bhopal through District Manager, Telecommunication, Guna (M.P.) and Shri Raghunath, worker, which was received along with soft copy of the award by the Central Government on 05.05.2022.

[No. L- 40012/31/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/132/2012

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Raghunath,
S/o Shri Ramkrishan Mali,
R/o Behind Jila Sahkari Bank,
Talab Ki Badi, Chchod, District Guna.

...Workman

VERSUS

The Chief General Manager (Telecommunications)
Bharat Sanchar Nigam Ltd.,
Bhopal through District Manager,
Telecommunication, Guna (M.P.)

...Management

AWARD

(Passed on 6-4-2022)

As per letter dated 22/11/2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40012/31/2012-IR(DU) The dispute under reference relates to:

“Whether the claim of Shri Raghunath that he had worked for more than 240 days in a year before alleged termination from 9/2/2009 is justified? if yes, whether the action of the management in terminating his services from 9/2/2019 is legal and just? if not, then what relief the workman is entitled to? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.
2. According to the workman, he was initially appointed as a casual labour with effect from March-1993 in the office of management in Guna and worked there continuously up to 1997 without break. He was paid on monthly basis by the management. His services were terminated by management without any notice or compensation, hence against law. He raised a dispute, after failure of conciliation, a reference was made. According to the workman, his disengagement is against Section 25F, Section 25G and Section 25H of the Industrial Disputes Act, 1947. Accordingly the workman has requested for his reinstatement with all back wages and consequential benefits, setting aside his disengagement.
3. According to the Management, the workman never worked as a daily wager during the period which he has claimed. Hence his disengagement is not against law. The Management has requested that the reference be answered against the workman.
4. In spite of the fact that several dates were given to the workman. He did not appear and neither did he file any evidence. The Management has also not filed any evidence.
5. The workman did not appear for arguments nor has he filed any written argument. I have heard learned counsel for the Management Shri R.S.Khare and have perused the record.
6. **The reference is the issue for determination, in the case in hand.**
7. It is necessary to reproduce Section 25F, Section 25G and Section 25H of the Industrial Disputes Act, 1947 as below:-

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: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[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 3[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.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

8. The initial burden to prove his claim is on the workman. Since he has not filed any evidence in support of his claim, he is held to have failed in discharging this burden. Hence, holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.
9. On the basis of the above discussion, following award is passed:-
 - A. **The claim of Shri Raghunath that he had worked for more than 240 days in a year before alleged termination from 9/2/2009 and the action of the management in terminating his services from 9/2/2009 is held to be just and proper.**
 - B. **The workman is held entitled to no relief.**
10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 मई, 2022

का.आ. 463.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वरिष्ठ महाप्रबंधक, वाहन कारखाना, जबलपुर, के प्रबंधन के संबद्ध नियोजकों और श्री संदीप कुमार सोनी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/16/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 05.05.2022 को प्राप्त हुआ था।

[सं. एल- 14012/01/2018- आईआर-(डीयू)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 5th May, 2022

S.O. 463.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/16/2018) of the Central Government Industrial Tribunal cum Labour Court – Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Senior General Manager, Vehicle Factory, Jabalpur, and Shri Sandeep Kumar Soni, worker, which was received along with soft copy of the award by the Central Government on 05.05.2022.

[No. L-14012/01/2018- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/16-2018

Present: P.K.Srivastava H.J.S..(Retd)

Shri Sandeep Kumar Soni
SarraPeepal, Nai Basti,
Near Govt. School
Ranjhi, Jabalpur-482011

....Workman

Versus

The Senior General Manager,
Vehicle Factory, Jabalpur
Jabalpur-482009

...Managment

AWARD

(Passed on this 4-4-2022)

As per letter dated 28/3/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/01/2018-IR(DU). The dispute under reference relates to:

1. **“Whether the action of the management of Vehicle Factory, Jabalpur in imposing the punishment of dismissal from service on the workman Shri Sandeep Kumar soni, Machinist(worked from 25-2-2010) on 15-11-2013 is fair, just & legal? If not, to what relief the workman is entitled to?”**
2. After registering the case on the basis of reference, notices were sent to the parties.
3. The workman never appeared inspite of service of notice on him and nor has filed any written statement of claim.
4. The Management has filed its written statement of defence. The evidence filed by the Management is taken on record. Since no one appeared from the side of the workman on the dates fixed the reference proceeded ex-parte against the workman.

5. The Arguments of learned counsel for the Management Shri Saurabh Shukla were heard Ex-parte. I have gone through the record as well.
6. The initial burden to prove their claim lies on the workman. He has not filed any statement of claim nor has he filed any documents or evidence in his support. The workman has miserably failed to prove his case. Hence this tribunal is constrained to decide the reference against the workmen.
7. Accordingly an ex-parte award in favour of the Management is passed. The workman is held entitled to no relief.
8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 मई, 2022

का. आ. 464.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार संयुक्त नियंत्रक रक्षा लेखा, वेतन एवं लेखा कार्यालय, ग्रेनेडियर्स रेजिमेंटल सेंटर, जबलपुर, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री शिवराज सिंह सरोतिया, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/61/2007) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 05/05/2022 को प्राप्त हुआ था।

[सं. एल-14012/28/2003- आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th May, 2022

S.O. 464.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/61/2007) of the Central Government Industrial Tribunal cum Labour Court – Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Joint Controller Defence Accounts, Pay & Accounts Office, Grenadiers Regimental Centre, Jabalpur, and Shri Shivraj Singh Sarotia, worker, which was received along with soft copy of the award by the Central Government on 05.05.2022.

[No. L- 14012/28/2003- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/61/2007

Present: P.K. Srivastava H.J.S..(Retd)

Shri Shivraj Singh Sarotia,
S/o Late Shri Gangadeen Sarotia,
Near Shaktimandir, Kothi Bazar,
Hoshangabad (M.P.)

...Workman

Versus

The Joint Controller Defence Accounts,
Pay & Accounts Office,
Grenadiers Regimental Centre, Jabalpur

...Management

AWARD**(Passed on 8-4-22)**

As per letter dated 6/7/2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification

No.L-14012/28/2003-IR(DU). The dispute under reference relates to:

“Whether the action of the Joint Controller of Defence Accounts is an industry and if yes, whether the action of the management of Joint controller of Defence Accounts, Jabalpur in imposing a punishment of compulsory retirement on Shri Shivraj Singh Sarotia w.e.f 15-2-1990 is legal and justified? If not, to what relief the workman is entitled to? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was initially appointed as an Auditor on 24-6-1977 and was posted in PAO(ORS) signal, Jabalpur. He was issued a charge sheet . He denied the charges. The Disciplinary authority decided to conduct an inquiry against him. After Inquiry , the Inquiry Officer submitted his report holding the charges proved. According to the workman the inquiry held was not legal and proper. The Disciplinary Authority issued a notice on the basis of inquiry report and after taking his representation on the show cause, passed the order of compulsory retirement which according to the workman is not justified because the charges were also not proved from the inquiry and the punishment was disproportionate. Accordingly, the workman has requested for his reinstatement, setting aside the punishment order.

3. The case of the Management is mainly that firstly the reference is not maintainable before this Tribunal because the office of PAO(ORS) is not an industrial establishment, hence Industrial Disputes Act,1947 is not applicable. Further, it is the case of the management that the departmental inquiry was conducted against the workman for alleged mis-conduct of tampering official records and interpolating the financial documents by typewriting names against total shown in the individual Running Ledger Accounts (IRLA) sheets and changing the amounts shown in the payment authority issued by the then CDA(ORS) Central, Nagpur on account of DA for the journeys performed by the Indian Army soldiers on temporary duty to Bhutan and replaced the original IRLA sheets maintained by the task holder with the fresh copies of IRLA sheet prepared by him. The charges were inquired into. The Inquiry Officer submitted his representation holding the charges proved and after considering the representation of the workman on the show cause notice issued by the Disciplinary Authority with regard to Inquiry report, he was awarded punishment of compulsory retirement, taking a lenient view, thought the misconduct proved was of serious nature and called for major punishment of dismissal also.

4. The following issues were framed by my learned Predecessor vide order dated 3-9-2015 on the basis of pleadings of parties which are as follows:-

1.Whether the inquiry conducted against the workman is proper and legal?

2.Whether the Second Party is an Industry under the ID Act?

3.Whether the punishment imposed against the workman of compulsory retirement is legal?

4.If so, to what relief?

5. **ISSUE NO.1**

Issue No.1 was taken as preliminary issue and was decided on the basis of evidence on record, holding the departmental inquiry legal and proper vide order dated 18-2-2020. The parties were required to produce their evidence on remaining issue. None of the parties produced any other evidence on remaining issues, hence final argument have been heard by me. Shri Sajid Akhtar, learned counsel for the workman appeared and Shri S.K.Mishra, learned counsel for the Management appeared and submitted arguments. The management has filed written submissions also. I have gone through the written submissions as well.

6. **ISSUE NO.2:-**

As it has been submitted by Management, Joint Controller of Defence Accounts, Pay & Accounts Office, Grenadiers Regimental Centre Jabalpur is not an industry. This argument has been opposed by learned counsel for the workman . He has referred to the Seven Judges Bench decision of the Hon'ble the Apex Court in the case of **Bangalore Water Supply & Sewerage Board, Etc. VS. R. Rajappa & Others**(1978) 2 SCC 213 on this point.

7. The word industry is defined under Section 2J of the Industrial Disputes Act, 1947 (hereinafter referred to as the word Act).

2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

8. After considering the principle of law laid down in the case of *R. Rajappa & Others* (supra), it is established that the Joint Controller Defence Accounts is not directly involved in defence of the country, rather it works as a remote back office in discharging the duties of account works and is Industry as defined under Section 2(j) of the Act referred to above. Accordingly the Management is held to be an industry under Section 2(J) of the Act. **Issue No.2 is decided accordingly.**

9. **ISSUE NO.3:-**

Before entering into any discussion regarding proportionality of punishment, it is necessary to discuss the following judgments passed by Hon’ble the Apex Court on this point:-

1. Hon’ble Apex Court in *B.C. Chayurvedi v. Union of India, (1995) 6 SCC 749* while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

“The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

2. In *DG, RPF vs. Sai Babu (2003) 4 SCC 331*, Hon’ble Apex Court has observed that:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of a discipline required to be maintained, and the department /establishment which the delinquent person concerned works.”

3. In *United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364* Hon’ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

*The common thread running through in all these decisions is that the court should not interfere with the administrators’ decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.*

To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.”

4. In *Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257* Hon’ble Supreme Court reiterated the legal position as follows:

“..... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved.”

5. In *State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580* Hon’ble Supreme Court stated that:

“The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

7. Hon’ble Apex Court in *Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101* has observed that :

“The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

8. **Hon’ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721** has observed that:

It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

9. It is admitted proposition of law that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment; however, the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is harsh.

10. The charges against the workman have been elaborated earlier. I have gone through the inquiry papers filed and proved by the Management at the time of hearing on Issue No.1. These papers show that the statement of oath of Shri R.C.Kapoor, Shri M.P.Lakhara and Shri V.B.Banerjee was recorded during the inquiry. I have gone through their statement on oath. Their statements coupled with the documents are proved and found that the inquiry papers establish the charges against the workman. I find no occasion to disagree with the finding of the Inquiry Officer in his inquiry report. Accordingly, the charges are held proved against the workman. **Issue No.3 is decided accordingly.**

11. **ISSUE NO.4:-**

On the basis of the findings recorded in Issue No.3, the workman is held entitled to no relief. **Accordingly Issue No.4 is answered.**

12. On the basis of the above discussion, following award is passed:-

A. The action of the management of Joint controller of Defence Accounts, Jabalpur in imposing a punishment of compulsory retirement on Shri Shivraj Singh Sarotia w.e.f 15-2-1990 is held to be legal and proper.

B. The workman is held entitled to no relief.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 मई, 2022

का.आ. 465.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार क्षेत्रीय निदेशक, राष्ट्रीय मुक्त विद्यालयी शिक्षा संस्थान, क्षेत्रीय केंद्र, मानस भवन, श्यामला हिल्स, भोपाल (म.प्र.), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री जितेंद्र सिंह धाकड़, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/105/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 05.05.2022 को प्राप्त हुआ था।

[सं. एल- 42012/134/2018- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th May, 2022

S.O. 465.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/105/2018) of the Central Government Industrial Tribunal cum Labour Court – Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Regional Director, National Institute of Open Schooling, Regional Centre, Mansas Bhawan, Shyamla Hills, Bhopal (M.P.), and Shri Jitendra Singh Dhakad, worker, which was received along with soft copy of the award by the Central Government on 05.05.2022.

[No. L-42012/134/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/105/2018

Present: P.K. Srivastava NH.J.S..(Retd)

The Jitendra Singh Dhakad
H.No.78, Preetpal Kaur,
Neelkanth Colony,
Idgah Hills,
Bhopal (M.P.)

...Workman

Versus

The Regional Director,
National Institute of Open Schooling,
Regional Centre, Mansas Bhawan
Shyamla Hills, Bhopal (M.P.)

...Management

AWARD

(Passed on 5-4-2022.)

As per letter dated 22/11/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No .L-42012/134/2018-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Regional Director, National Institute of Open Schooling, Regional Centre, Bhopal in terminating the services of workman Shri Jitendra Singh Dhakad w.e.f. 29/9/2017 who was working w.e.f. 19/9/2008 and entrusted the work of maintenance of attendance register and biometric machine is just and proper?If not, what relief the workman concerned is entitled to?”.

1. After registering the case on the basis of reference, notices were sent to the parties.
2. The workman never appeared inspite of service of notice on him and nor has filed any written statement of claim.
3. None appeared from the side of the Management and nor have they filed any written statement of defence.
4. The initial burden to prove their claim lies on the workman. He has not filed any statement of claim nor has he filed any documents or evidence in his support. The workman has miserably failed to prove his case. Hence this tribunal is constrained to decide the reference against the workmen.
5. Accordingly the reference is decided against the workman.
6. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 मई, 2022

का.आ. 466.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक दूरसंचार, भारत संचार निगम लिमिटेड, काटजू नगर, रतलाम (म.प्र.), के प्रबंधन के संबद्ध नियोजकों और श्री रमेश, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट(संदर्भ संख्या CGIT/LC/R/101/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 05/05/2022 को प्राप्त हुआ था।

[सं. एल- 40012/41/2015- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th May, 2022

S.O. 466.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/101/2015) of the Central Government Industrial Tribunal cum Labour Court – Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General manager Telecom, Bharat Sanchar Nigam Limited Katju Nagar, Ratlam (MP), and Shri Ramesh, worker, which was received along with soft copy of the award by the Central Government on 05.05.2022.

[No. L- 40012/41/2015- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/101/2015

Present: P.K.Srivastava H.J.S..(Retd)

Shri Ramesh
S/o Mohanlal,
R/o Haat Ki Chowki Subhash Nagar
Ratlam(MP)-457001

...Workman

Versus

The General manager Telecom
Bharat Sanchar Nigam Limited
Katju Nagar, Ratlam(MP)

...Management

AWARD

(Passed on 6-4-2022.)

As per letter dated 5/10/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/41/2015-IR(DU). The dispute under reference relates to:

“Whether the action of the management of General manager Telecom, Bharat Sanchar Nigam Ltd. Ratlam in terminating the services of workman Shri Ramesh S/o Shri Mohanlal w.e.f. 7-7-2014 is justified?if not, what relief the workman is entitled to?”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defence.
2. According to the workman, he was engaged as a daily wager Safai Karmachari in the office of the Management on fix pay of Rs.600/- per month. He had been working since morning 6am to 10am and in the evening for 4 to 8 hours. His salary was enhanced to Rs.800/- per month in the month of March-2001 but later was re fixed at Rs.600/- per month. On the complaint made by the workman to the member of Parliament Satyanaran Jatia , the salary of the workman was enhanced to Rs.3900 per month. Another person Narendra Parmar was also appointed for sweeping purpose by management and Management thereafter started paying Rs.1950/- to the applicant workman and

Rs.1950 to Narendra Parmar. The last payment was made by cheque of the Krishna Security Services in favour of the claimant on 19-11-2014. His services were disengaged thereafter, without any notice or compensation, which is against law. The workman has requested for his reinstatement with back wages and benefits.

3. The case of the management is that the job of cleaning was entrusted to a contractor M/s Krishna Security Services. The workman was engaged by the contractor. There is no relation of employer and employee with the Management and the claimant workman. Payments were made by the contractor. The workman was never terminated by the Management because he was not engaged by the Management and accordingly the management has prayed that the reference be answered against the workman.

4. The workman has filed a bunch of photocopy papers which are denied by the Management. The burden to prove these documents was on workman. He did not prove these documents. The workman did not examine any witness in support of his claim. The management has also not examined any witness.

5. The workman was not present at the time of arguments, hence argument of Shri R.S.Khare, learned counsel for the Management were heard and record has been perused by me.

6. **The reference is the issue for determination, in the case in hand.**

7. It is necessary to reproduce Section 25B and Section 25G of the Industrial Disputes Act,1947, which is as under:-

Section 25 B:-

Definition of continuous service.-

(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.

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.

8. The burden to prove the fact of his continuous engagement with the Management Bank is on the workman, which he has not discharged. Hence, holding the claim of the workman not proved, the reference deserves to be answered against the workman.

9. On the basis of the above discussion, following award is passed:-

A. The action of the management of General Manager Telecom, Bharat Sanchar Nigam Ltd. Ratlam in terminating the services of workman Shri Ramesh S/o Shri Mohanlal w.e.f. 7-7-2014 is held to be just and proper.

B. The workman is held entitled to no relief.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 मई, 2022

का.आ. 467.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जिला दूरसंचार अभियंता, दूरसंचार, दमोह-(म.प्र.), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सुंदरलाल अहिरवार, कामगार के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/95/2011) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 05/05/2022 को प्राप्त हुआ था।

[सं.एल- 40012/63/2004- आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th May, 2022

S.O. 467.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/95/2011) of the Central Government Industrial Tribunal cum Labour Court – Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The District Telecom Engineer, Telecom, Damoh-(M.P.) and Shri Sunderlal Ahirwar, worker, which was received along with soft copy of the award by the Central Government on 05.05.2022.

[F. No. L- 40012/63/2004- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/95/2011

Present: P.K.Srivastava H.J.S..(Retd)

Shri Sunderlal Ahirwar,
S/o Shri Nathulal ahirwar,
Post Chenpura,
District Damoh (MP)

... Workman

Versus

The District Telecom Engineer,
Telecom,
Damoh (M.P.)

...Management

AWARD

(Passed on 4-4-2022)

As per letter dated 10/10/2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/63/2004-IR(DU). The dispute under reference relates to:

“Whether the action of the management of District Engineer, Telecom, BSNL, Damoh(MP) in terminating the services of Shri Sunderlal Ahirwar S/o Shri Nathulal Ahirwar w.e.f. 20/10/1990 is legal and justified? What relief the workman is entitled to? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.
2. The case of the workman as stated in his statement of claim is that he was working as a casual labour in the office of Telecom District Engineering from 1-8-1983 till 20-7-1990. He received an order from the office of SDO Telecom on 20-7-1990 informing him that he will not be taken to muster roll till his case is pending before the District Court Damoh against him is decided in his favour. He again received a letter dated 11-11-1991 from the office of SDO phones, according him the temporary status on 11-11-91. The temporary status was accorded to him on the condition that if the criminal Court passed the judgment against him, the status shall be withdrawn. The Court of judicial Magistrate acquitted him from all the charges after trial of criminal case No.1011/99 vide judgment dated 6-

10-1999. Thereafter he made a representation before the SDO Telecom and sent a letter to Assistant Director Recruitment on 17-1-2001 informing him that the workman has been acquitted from the criminal charge and has completed 240 days of service earlier, hence he may be taken back in service with TSM status. The office of the Assistant Director General Sanchar Bhawan, Delhi asked for certain information for reinstatement of workman vide letter dated 1-2-1999 which was sent to them vide letter dated 27-5-2002 sent by the Telecom District Engineer Damoh. But no order of his reinstatement was issued. Thereafter, he raised an industrial dispute. The Central Government refused to make reference of dispute vide its order dated 5-11-2004 which was challenged by the workman before Hon'ble High Court of M.P. in W.P.No.5160/2005. Further the High Court allowed the petition vide order dated 29-7-2001 and directed the Central Government to make reference to this Tribunal within 30 days from the date of communication of the order and thereafter this reference was made by the Central Government. According to the Workman, since he was acquitted from the charge, he is entitled for reinstatement also as he has completed 240 days of regular service in every year, thus his termination is bad in law and is unfair labour practice. The workman has prayed for his reinstatement with all back wages and benefits.

3. The case of management is mainly that the workman was engaged as a daily wage casual labour. He was not engaged for work on muster roll since July-1990 when it was found that a criminal case was pending against him. He was exonerated from the charge by the Criminal Court in the year 1999. Since he was a casual worker engaged on day to day basis subject to availability of work, he was not re-engaged as such. Also it has been pleaded that the communication referred to by the workman are internal communication and that the workman has not worked continuously for 240 days. Accordingly, the Management has prayed that the reference be answered against the workman.

4. The workman has filed his affidavit as his examination in chief. He has been cross-examined by management. He has proved the documents W-1 to W-6 to be referred to as and when required. The management has examined Shri Abhay Dubey, Divisional Engineer who has been cross-examined by workman.

5. I have heard arguments from both the sides. Shri Praveen Yadav, learned Counsel for the workman and Shri R.S.yadav, learned Counsel for the Management. The workman has filed written arguments also. I have gone through the written argument as well.

6. On perusal of record in the light of rival arguments, the following points come up for determination, in the case in hand:-

1. **“Whether the workman has successfully proved his continuous engagement for 240 days in every year?”**
2. **Whether the termination of service of the workman is legal and justified.?**
3. **Relief to which the workman is entitled to?”**

7. **ISSUE NO.1:-**

Before entering into any discussion, it is important to discuss Section 25-B of the Industrial Disputes Act, 1947, which is being reproduced as below:-

Section 25 B:-

Definition of continuous service.-

(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.

8. The case of the workman is that, he remained engaged as a casual labour from 1-8-1983 to 20-7-1990. He also alleges that he completed 240 days in continuous engagement of Management in every year. The Management has disputed this allegation. The workman has examined himself on oath. He has been cross-examined by management. He admits that no appointment letter was issued to him. He also admits that he has no documents to

show that he worked 240 days in every year but he has asserted that he has worked for 240 days continuously in every year.

9. The workman has proved some documents mainly Exhibit W-5 which is letter of District Telecom Engineer sent to Director regarding his reinstatement as a casual labour wherein he has admitted that the workman has worked for 240 days in every year and may be reinstated as he is eligible for reinstatement. The Management does not dispute this letter, rather, objects it that it is the internal communication. This letter cannot be discarded because it is internal communication. From this document the statement of the workman that he worked for 240 days in every year stands corroborated and on the other hand there is statement of the Management witness on oath wherein he states that the workman has not worked continuously for 240 days in every year. He further states that the muster roll is maintained only for five years and also that he was not posted when the workman was terminated. It is nowhere in his statement that the workman worked with him. The workman did work with the Management is not disputed. The only dispute is regarding continuous engagement for 240 days in a year. Comparing the evidence as referred to above adduced from both the sides, the case of workman which is corroborated by the internal document of Management itself. Exhibit W-5 appears more reliable, hence it is held that the workman has successfully proved his continuous engagement for 240 days in every year of his engagement .

Issue No.1 is answered accordingly.

10. **Issue No.2:-**

Section 25G of the Industrial Dispute Act,1947 requires to be reproduced here, which is as follows:-

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.

11. It is not the case of any of the parties that any notice or compensation was given to the workman. Hence the termination of workman is held against Section 25G of the Act. **Issue No.2 is answered accordingly.**

12. **ISSUE NO.3:-**

In the light of the findings recorded above, the point arises as to which relief the workman is entitled to?. The workman has prayed for his reinstatement with back wages and benefits. It is undisputed that the workman is a daily wage casual labour. He was not appointed against any sanctioned regular vacancy or appointed following recruitment procedure. The Management has stated that the practice of engagement of casual workers on muster roll has been done away now though learned Counsel for workman has referred to cases **Captain M.Paul Anthony Vs. Bharat Coal Mines Ltd.& Another** Indian Kanoo.Org.doc/888207 and decision of Madras High Court in **National Institute of Technology Vs. The Presiding Officer**, Indian Kanoo.org.doc.115600173 and **Mahesh Dhakad Vs. State of M.P.**, Indian Kanooon .ord.doc 198192033 these decisions can be easily distinguished on facts.

13. Learned Counsel for the management has referred to decision of case of **Assistant Engineer Rajasthan Development Corporation and another Vs., Gitam singh** (2013) 2SCC 369, **Secretary, State of Karnataka & Others Vs. Uma Devi and Others**(2006) 4 SCC 1 to further his argument that reinstatement with or without back wages is not justifiable relief in the case in hand.

14. Keeping in view the facts and aforesaid regarding reinstatement of the workman as mentioned above, the workman is held entitled to reinstatement with or without back wages in the back drop of all facts and circumstances of the case in hand, a lump sum compensation of Rs. 30,000/- in lieu of the claims of the workman will meet the ends of justice . **Issue No.3 is answered accordingly.**

15. On the basis of the above discussion, following award is passed:-

- A. **The action of the management of District Engineer, Telecom, BSNL, Damoh(MP) in terminating the services of Shri Sunderlal Ahirwar S/o Shri Nathulal Ahirwar w.e.f. 20/10/1990 is held not just and proper.**
- B. **The workman is held entitled to lump sum compensation of Rs.30,000/- (Rs. Thirty Thousand) in lieu of the claims of the workman as full and final settlement.**

16. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 मई, 2022

का.आ. 468.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सचिव, केन्द्रीय माध्यमिक शिक्षा बोर्ड 2-समुदायिक केंद्र, प्रीत विहार दिल्ली; मेसर्स मैनपावर सर्विसेज एंड सिक्योरिटी, 15, लोहिया मार्ग, इलाहाबाद; श्री फ्रैंक आर. मानेसी, 188/2, सुलेम सराय, इलाहाबाद; संयुक्त सचिव, केन्द्रीय माध्यमिक शिक्षा बोर्ड, क्षेत्रीय कार्यालय, 35-बीएमजी मार्ग, सिविल लाइंस, इलाहाबाद, के प्रबंधन के संबद्ध नियोजकों और श्री राज कुमार मिश्रा, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर पंचाट (संदर्भ संख्या 33 of 2008) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 05.04.2022 को प्राप्त हुआ था।

[सं. एल-12012/2/2008- आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th May, 2022

S.O. 468.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33 of 2008) of the Central Government Industrial Tribunal cum Labour Court – Kanpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Secretary, Central Board of Secondary Education, 2-Samudaik Centre, Preet Vihar Delhi; M/s Manpower Services & Security, 15, Lohia Marg, Allahabad; Mr. Frank R. Manessee, 188/2, Sulem Sarai, Allahabad; The Joint Secretary, Central Board of Secondary Education, Regional Office, 35-BMG Marg, Civil Lines, Allahabad., and Shri Raj Kumar Misra, worker which was received along with soft copy of the award by the Central Government on 05.04.2022.

[No. L- 12012/2/2008- IR (DU)]

D.K.HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT KANPUR

PRESENT : SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 33/2008

Ref. No. L-12012/2/2008-IR(DU) dated 11.03.2008

BETWEEN :

Shri Raj Kumar Misra S/o Shri K.K. Misra
R/o 474/26/10, Shiv Kuti
Allahabad

AND

1. The Secretary
Central Board of Secondary Education
2-Samudaik Centre, Preet Vihar
Delhi – 110092.
2. M/s Manpower Services & Security
15, Lohia Marg, Allahabad
3. Shri Frank R. Manessee
188/2, Sulem Sarai, Allahabad.
4. The Joint Secretary
Central Board of Secondary Education
Regional Office, 35-BMG Marg, Civil Lines
Allahabad.

AWARD

1. By order No. L-12012/2/2008-IR(DU) dated 11.03.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication to this CGIT-cum-Labour Court, Kanpur.

2. The reference under adjudication is:

“WHETHER THE CONTRACT BETWEEN THE MANAGEMENT OF CENTRAL BOARD OF SECONDARY EDUCATION AND THEIR CONTRACTOR M/S MANPOWER SERVICES AND SECURITY, WITH REGARD TO ENGAGEMENT OF SHRI RAJ KUMAR MISHRA IS SHAM AND ONLY SMOKE SCREEN? IF YES, THEN WHETHER THE ACTION OF THE PRINCIPAL EMPLOYER, AND IF NOT, THEN WHETHER THE ACTION OF THE CONTRACTOR, IN TERMINATING THE SERVICES OF THE SAID WORKMAN W.E.F. 30.12.99 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?”

3. The case of the workman, Raj Kumar Mishra, in brief, is that he was engaged by the management on 01.04.1996 as Junior Assistant at initial pay of Rs. 2500/- per month, which was enhanced from time to time and was getting @ Rs. 3000/- per month at the time of his oral termination w.e.f. 30.12.1999. The workman has submitted that the M/s Manpower Security Services never supplied man power to the Principal Employer i.e. CBSE Board; rather the M/s Manpower Security Services did not participate in the conciliation proceedings and the name of M/s Manpower Security Services has been brought to the array of opposite parties just to defeat the claim of the workman. The workman has submitted that he worked continuously since his engagement for more than 240 days; however, his services have been terminated on 30.12.1999 without any notice/notice pay, charge sheet/enquiry or any retrenchment compensation or assigning any reason in violation to the provisions contained in Sections 25 F of the Industrial Disputes Act; and accordingly, he has prayed that his termination be declared illegal and he be reinstated with consequential benefits including full back wages.

4. The management of CBSE Board has filed its written statement denying the claim of the workman. The management has pleaded that the opposite party is not an industry as defined under Section 2(j) of the I.D. Act. The management has referred to the pronouncement of Hon'ble Supreme Court in AIR 1963, SC 1873. The management has submitted that the appointments are being made in accordance with the appointment rules; however, in exigencies of work, a contract agreement of work for a specified period was entered into with M/s Man Power Services & Security, Allahabad for completion of certain work and the said contract came to an end on completion of contract period. The management has stated that the persons engaged by the contractor for completing work assigned to it, though working in the office of the Board, were supervised, controlled and paid their wages by the contractor. It is submitted by the management that the services of the workman had never been terminated by it at any point of time; rather the services of the workman who was an employee of the contractor had come to an end with the completion of the contract period, therefore, the alleged termination of the workman does not attract violation of any of the provisions of Industrial Disputes Act, 1947 at the part of the Board. Accordingly, the management of the Board has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed his rejoinder wherein apart from reiterating the averments already made in the statement of claim it has submitted that the management has inducted name of the contractor just to deprive the workman of his legitimate rights; whereas he worked with the opposite parties under their direct control and was being paid salary by the opposite party itself. It has also been submitted by the workman that the so called contractor did not have any license to supply labourers in capacity of Office Assistant cadre; however, the contractor may supply labourers for security only.

6. The parties filed documentary as well as oral evidence in support of their rival pleadings. The workman examined himself whereas the management examined Shri Vijay Singh, Section Officer (Legal) in support of their case. The parties availed opportunity to cross-examine witness of each other apart from submitting oral as well as written submissions.

7. Heard learned counsel of the parties at length and perused entire evidence available on record.

8. The learned counsel of the workman has argued that the workman had been engaged by the management on 01.04.1996 as Junior Assistant and he worked accordingly upto 30.12.1999 when his services had been terminated orally without assigning any rhyme or reason or serving any notice or notice party, in violation to the provisions contained in Section 25 F of the Act. It has also been contended by the learned counsel that the contractor viz. M/s Manpower Security Services never supplied man power to the Principal Employer i.e. CBSE Board; moreover, M/s Manpower Security Services did not participate in the conciliation proceedings and the name of M/s Manpower Security Services has been brought to the array of opposite parties just to deprive the workman of his legitimate rights. The authorized representative of the workman has also contended that the so called contractor did not have any license for labour supply as well and the contract/agreement, relied upon by the management is not in respect of

Junior Assistant; hence, the same is sham and bogus. He has vehemently contended that the agreement is not specific and does not match with the period of engagement of the workman, therefore, the same is not applicable in respect of the workman. He has relied upon:

- (i) *Bhuvnesh Kumar Dwivedi vs Hindalco Industries Ltd. 2014 STPL (Web) 337 SC*
- (ii) *Hon'ble Supreme Court in Secretary, H.S.E.B. vs Suresh & Ors Etc. decided on 30.03.1999.*
- (iii) *Bhilwara Dugdh Utpadak Sahakari S. Ltd. vs. Vinod Kumar Sharma AIR (SCW)-2011-0-5288*
- (iv) *Hon'ble Supreme Court in G.B. Pant University of Agriculture & Technology, Pantnagar vs. State of Uttar Pradesh & ors. decided on 10.08.2000.*
- (v) *Hon'ble Supreme Court in Bharat Heavy Electrical Ltd vs State of U.P. and ors. decided on 21.07.2003.*
- (vi) *Bank of Baroda vs Ghemarbai Harjibhai Rabari AIR (SCW)-2005-0-1817.*

9. In rebuttal, the learned counsel of the management has argued that the opposite party is not an industry as defined under Section 2(j) of the I.D. Act. The learned counsel has also submitted that the appointments in the opposite party establishment are being made in accordance with the appointment rules and the workman had never been appointed in consonance with the recruitment rules. The learned counsel has submitted that in exigencies of work, a contract agreement of work for a specified period was entered into with M/s Man Power Services & Security, Allahabad for completion of certain work and the said contract came to an end on completion of contract period and the persons engaged by the contractor for completing work assigned to it, though working in the office of the Board, were supervised, controlled and paid their wages by the contractor and their engagement automatically came to an end with the end of contract entered between the management of the Board and the contractor viz. M/s Man Power Services & Security, Allahabad. The authorized representative of the management has vehemently argued that the management of the Board never terminated the services of the workman at any point of time; rather the services of the workman who was an employee of the contractor had come to an end with the completion of the contract period, therefore, the alleged termination of the workman does not attract violation of any of the provisions of Industrial Disputes Act, 1947 at the part of the Board.

10. I have given my thoughtful consideration to the rival contention of parties and scanned entire evidence available on record in light thereto.

11. The management has raised preliminary objection regarding maintainability of the case with submissions that the CBSE Board is discharging sovereign function and accordingly it is not an 'industry' within the purview of the Section 2 (j) of the Act. Hon'ble Apex Court in *AIR 1978 Supreme Court 548 Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others* case; wherein it has been observed that

"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."

Hon'ble Apex Court has further observed that

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religions but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."

It is well known that the Education Boards across the country do the work of imparting education and they act as regulatory bodies to hold examination; and it charges the fee for the same. The opposite party was not discharging sovereign function at all; rather it is at par with other educational institutions and private universities. Also, it has indicated that the nature of work carried out by the CBSE Board well qualifies the triple test, formulated by Hon'ble Apex Court in *Bangalore Water Supply* case. Thus, in view of facts and circumstances of the case and above legal propositions, I am of considered opinion that CBSE Board, is an industry within the definition of 'industry' as provided u/s 2 (j) of the Act.

12. The management of the CBSE Board has also pleaded that the workman had been engaged through a contractor viz. M/s Man Power Services & Security, Allahabad and the payment was used to be made to the contractor who paid to the workman. However, the workman has pleaded that he has been paid by the management and the services for which agreement was entered into was not for office work rather it was for security purposes. The management has filed photocopy of agreement dated 01.01.1999 entered with the contractor in support of its contentions, Annexure – 2 to the written statement. A close scrutiny of the agreement dated 01.01.1999 reveals that the said agreement has been entered into between the CBSE Board and the contractor viz. M/s Man Power Services & Security, Allahabad for supply of specific services for specific period of time. The relevant para of the agreement dated 01.01.1999 is reproduced hereunder:

“Man Power Services & Security shall provide the number of security personnel as desired and required by the Board from time to time. Any reduction (with sufficient notice) and replacement in the staff provided by Man Power Services & Security can be done by the Board.

18. *The validity of this contract will be for a period of one year from 1st January, 1999 or date of commencement of work whichever is earlier to 31st December, 1999. The Agreement can be terminated at any time on giving a written notice of one month from either side PROVIDED THAT THE BOARD shall have the option to renew or continue this agreement on the same terms and conditions for a further period of one year, at a time from the date of expiry thereof.*

22.

The charges to be paid for security personnel for 8 hours shift duty per month be as under:-

<i>(a) Supervisor (1)</i>	<i>Rs. 2774.00</i>
<i>(b) Security Guards</i>	<i>Rs. 2058.53 each</i>
<i>(c) Sweeper</i>	<i>Rs. 2058.53</i>
<i>(d) Mali</i>	<i>Rs. 2058.53</i>
<i>(e) Electrician</i>	<i>Rs. 2774.00”</i>

Thus, going through the above quoted portion of the agreement dated 01.01.1999, it is crystal clear that the agreement in question was for specific period i.e. from 01.01.1999 to 31.12.1999; whereas the alleged engagement of the workman was for their period 01.04.1996 to 30.12.1999. Likewise, the it is pleaded by the workman that he was engaged in clerical nature of work and working as Junior Assistant; but there is no such mention in the agreement under question. The management witness, Shri Vijay Singh during his cross-examination stated that “they did not obtain any license being principal employer”. The management has filed photocopy of attendance sheet for the month of May and June, 1998 which finds reference of workman at serial number 02, which indicates engagement of the workman with the opposite party Board. Also, there is no agreement on record for the period the attendance sheet has been filed by the management

13. Also, the workman has contended that the contractor did not had any license to supply labourers to the principal employer. There is no iota of evidence in this regard that either the Board had registration as principal employer or the contractor had any license to supply labourers to the principal employer. However, from pleadings and evidence relied upon by the parties, it is established that the workman was engaged through the contractor to carry out the work perennial in nature and that contract too was for limited period i.e. from 01.01.1999 to 31.12.1999 only; and in absence of any registration of the Board as principal employer or the contractor viz. M/s Man Power Services & Security, Allahabad had license for labour supply, making the so called contract between the Board and the so called contractor mere camouflage.

14. It may be correct that the Contract Labour (Regulation & Abolition) Act, 1970 was violated by the opposite party/CBSE. It may also be correct to assert that record preservation guidelines have not been duly followed by the CBSE authority before destruction of the records pertaining to the engagement of claimant, Raj Kumar Misra in the establishment of the opposite party/CBSE; but it cannot be concluded that for above stated lapses Raj Kumar Misra shall be accepted as employee of the CBSE as such conclusion will amount to back door entry into one Government Institution, which is also governed by Recruitment Rules a found from the record. Needless to say back door entry with regard to employment has been negated by the Judgement of the Hon’ble Supreme Court in the case of 2006 (4) SCC 1 *Secretary, State of Karnataka & others vs Uma Devi*.

15. It is sent that Shri Raj Kumar Misra, claimant had worked under CBSE from 01.04.1996 to 30.12.1999 under such scenario, in view of the case laws, 2021 LLR 1035 (SC) *Ram Manohar Lohia Joint Hospital & ors. vs. Munna Prasad Saini & another*; and 2018 LLR 12 85 (SC) *Management of Hindustan Machine Tools Limited vs. Ghanshyam Sharma*, the claimant, Raj Kumar Misra is entitled to get compensation instead of reinstatement, regularization with back wages.

16. The disengagement occurred about twenty years back and at this distant point of time adequacy of compensation cannot be computed with mathematical exactitude. The compensation can be reasonably quantified by guess work.

17. Having regards to these facts that the workman has worked as casual worker for 03 years and 09 months i.e. from 01.04.1996 to 30.12.1999 and he was getting Rs. 4000/- per month at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management of the C.B.S.E. is directed to pay lump sum amount of compensation only.

18. Accordingly, the management of the C.B.S.E. is directed to pay a sum of Rs. 1,00,000/- (Rupees One Lakh only) to the workman as compensation for termination of his services in violation of section 25 F of the I.D. Act. The said amount shall be paid to the workman within 08 weeks of publication of the award, failing which; the same shall carry simple interest @ 6% per annum.

19. The reference under adjudication is answered accordingly.

20. Award as above.

KANPUR.

27th April, 2022

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 11 मई, 2022

का.आ. 469.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औरंगाबाद के पंचाट (संदर्भ संख्या 151/2017) को प्रकाशित करती है।

[सं. एल-12025/01/2022-आईआर (बी-1)-06]

डी. गुहा, अवर सचिव

New Delhi, the 11th May, 2022

S.O. 469.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 151/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Aurangabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2022- IR(B-1)-06]

D.GUHA, Under Secy.

ANNEXURE

IN THE COURT OF JUDGE, 1st LABOUR COURT, AURANGABAD

(Presided Over by SMT. M.Y. AMRUTKAR)

Ref-IDA/151/2017

(MHLC200014972016)

Santosh S/o. Karam singh Bidla
Age: 39 Years, Occ: Nil,
R/o.Samarth Nagar
Tq Kannad
Dist Aurangabad

...Second Party

VERSUS

1. The Branch Manager,
State Bank of India,
Branch Kannad
Tq. Kannad
Dist Aurangabad

...First Party

2. The Assistant General Manager,
State Bank of India,
Region 1 Town Center,
Aurangabad

Advocates: Shri. Raturaj Patil for First Party

Shri. M.R. Singh for Second Party

Claim :- Reference under Section 2A (2) of the I.D. Act, 1947.

AWARD

(Delivered on 11/10/2021)

1. The second party filed present Reference under Section 2A (2) of the Industrial Disputes Act, 1947 for reinstatement in service with continuity and full back-wages w.e.f. 15/02/2017.

2. The brief facts of the case as under:

The second party worked as a Sweeper on temporary basis from 01/08/2006 to 31/03/2017 for 10 years in place of his Father. His duty hours were 07.00 a.m. to 01.30 p.m. His last drawn salary was Rs. 1030/- p.m. The second party submitted that he worked for 240 days in each calendar year. However, he was illegally terminated on 31/03/2017. The first party never issued any charge sheet or warning letter to second party. The first party neither complied the provisions under section 25-H nor under Section 25-G of the Industrial Disputes Act, 1947 while termination of services of second party. The first party has not paid wages and over time wages to second party. The second party is entitled to get 1/3 of his monthly salary applicable to his nature of work, but first party never paid. After illegal termination, the second party was not gainfully employed. The termination is illegal without complying required provisions of law, therefore, second party approached to Central Labour Conciliation Officer, Pune and Delhi for intervention but no any responses or process were taken by both department. Therefore, second party approached to the Labour Court under section 2A (2) of the Industrial Disputes Act, 1947 for adjudication. The second party lastly prayed that he may kindly be reinstated in service with full back wages w.e.f. 15.02.2017.

3. The first party filed its Written Statement at Exh.C-3. The first party submitted that first party employed second party for Sundry work such as cleaning the branch on temporary basis for 1 to 2 hours i.e. 08.00 a.m. to 10.00 a.m. The second party has not worked for 240 days in any calendar year in 12 calendar month preceding the date of his voluntary cessation of work. The employment by the Bank is public appointment and recruitment is done as per well laid down Rules, Policies, and Procedures. Therefore, second party is not entitled for any relief. The first party denied entire facts of second party in toto. The first party lastly prayed that answered the Reference in negative.

4. After considering the contentions of both parties, my learned Predecessor framed issues vide Ex.O:3. They are reproduced as under along with my findings thereon for the reasons given below.

Sr.No.	Issues	Findings
1	Whether second party proves that he is 'workman' as defined under section 2 (s) of the Industrial Disputes Act, 1947 ?	Yes
2	Whether second party proves that, termination order dated 15.02.2017 is illegal and liable to be set aside ?	Partly affirmative
3	Whether second party is entitled for reinstatement in service with continuity along with back wages ?	No
4	What Award ?	Reference is answered partly affirmative

Reasons

5. The first party filed evidence affidavit vide Ex.U-8 and reiterated the same facts as alleged in statement of claim. He closed his evidence by filing evidence closing Pursis vide Ex.U-12. The first party filed evidence affidavit of witness Yakshvadhan Vijaykant Ingle in lieu of examination-in-chief and closed his evidence vide Ex.C-7.

As to issue no. 01:

6. The first party pleaded that the second party was not come under the definition of workman within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. The first party further pleaded that second party was working with them on temporary workman from 01/08/2006 to 31/03/2017.

7. As per Industrial Employment (Standing Orders) Act 1946, the workman shall classified as (a) Permanent workman (b) Probationer (c) Badlies or substitutes (d) Temporary workman (e) Casual workman (f) Apprentices. Therefore, I have no hesitation to come to the conclusion that the second party was come under the definition within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. Therefore, I answer Issue no. 01 in affirmative.

As to issues No. 02 & 03.

8. During the cross examination witness of the first party admitted that the second party work with first party as Safai kamgar from 1-8-2006 to 31-07-2017 on temporary basis for 1 hour. It means temporary employment of second party is not disputed. The length of service of second is also not disputed. The first party witness admitted that the second party was working with them on consolidated wages. It is also admitted fact that that the second party made correspondence to head office by letter dated 9th January 2009, 14th January 2009, 20 August 2009 and 29th September 2009 for appointment on 1/3rd scale wages. The witness of the first party also admitted that the letter dated 19th November 2012 sent by second party to first party for regularized him in service as a permanent employee. It is crystal clear that the second party worked with first party for more than 240 days in calendar year before the date of termination i.e. 31/03/2017 on temporary basis. However, it is admitted by second party that he has neither received any interview letter from first party nor interview taken by first party. He has not issued any appointment letter by first party.

9. I have considered the submissions made on behalf of both the sides and carefully perused the record. Before advertizing to discuss the rival contentions and the law laid down on the issue, it would be apposite to reproduce Section 25-F of I.D.Act, which reads thus:

"25-F. 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."

The term 'retrenchment' is defined under Section 2 (oo) of the I.D.Act, which reads thus :

"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 -

- (a) voluntary retirement of the workman; or
- (b) 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 (bb) termination of the service of the workman as a result of the non 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
- (c) termination of the service of a workman on the ground of continued ill-health;"

10. It is not disputed that the second party was engaged as a daily wagger and his appointment was not against any vacant post. It is thus clear that such a termination fits in the definition of retrenchment in terms of section 2(oo) of the Industrial Disputes Act and retrenchment was ordered without complying with conditions in terms of section 25-F of the Industrial Disputes Act, 1947 sub clause (a) and (b). The second party neither issued one month advance notice nor paid one month salary in lieu thereof. It is pertinent to note that no amount was paid to the second party as a compensation. Now question before this Court is whether his termination in absence of compliance of the mandatory conditions (a), and (b) of Section 25-F of the I.D.Act is illegal warranting his reinstatement? Considering the recent judicial pronouncement of Hon'ble Apex Court the answered to this question would be clear "No". The Hon'ble Apex Court in catena of decisions have clearly laid down that although, an order of retrenchment passed in violation of Section 25-F of the I.D. Act, may be set aside, the award of reinstatement should not be ordinarily passed especially in the case of a daily wagger, who does not hold a post as a permanent employee.

11. In case of Bharat Sanchar Nigam Ltd., v. Man Singh (2012) 1 SCC 558 and Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh [2013 (5) MHLJ 1].

It is held that the second party engaged as 'daily wagers' and they had merely worked for more than 240 days, hence the relief of reinstatement cannot be said to be justified and instead monetary compensation would meet the ends of justice.

12. It is clear that ordinarily principle of grant of reinstatement with full back wages, when termination is found to be illegal is not applied automatically in all cases while that may be a position where service of regular permanent workman are terminated illegally and by way of victimization unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatory requirement under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization as held in case, *State of Karnataka vs. Uma Devi (2006) 4 SCC 1*. Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

13. Now, with regard to quantum of compensation the second party was engaged as a daily wager from 01/08/2006 to 31/03/2017. He worked for 10 years with first party. The second party pleaded and deposed that he is not gainfully employed during pending of proceeding, hence, first party is liable to pay Rs. 1,00,000/- (Rupees One Lac only) to the second party as a retrenchment compensation would meet the ends of justice. Hence, I answered issue no. 2 in partly affirmative, issue no. 03 in negative and to answer issue no. 4 proceed to pass following Award.

AWARD

- 1) The Reference is answered partly affirmative.
- 2) The second party is entitled to get Rs. 1,00,000/- lump-sum from first party towards retrenchment compensation within period of two month from today failing which same shall carry interest @ 9% p.a. from the date of Judgment.
- 3) No order as to costs.
- 4) The copy of the Award be sent to the Appropriate Government for its publication.

M.Y.AMRUTKAR, Presiding Officer & Judge

नई दिल्ली, 13 मई, 2022

का.आ. 470.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 124/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.05.2022 को प्राप्त हुआ था।

[सं. एल-22012/141/2012-आईआर-(सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 13th May, 2022

S.O. 470.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 124/2012) of the Central Government Industrial Tribunal-cum-Labour Court, JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on 06.05.2022.

[No. L-22012/141/2012-IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/124/2012

Present: P.K. Srivastava, H.J.S..(Retd)

The Secretary,
 Koyla Shramik Sangh (CITU)
 Branch-Bangwar Project,
 P.O.-Bemhour, i,
 District Shahdol (M.P.)

...Workman

Versus

The General manager
 Sohagpur Area of SECL
 PO-Dhanpuri, District Shahdol
 M.P.

The Sub-Area manager
 Amlai Bnagwar-Damini sub Area
 PO Bemhour, District Shahdol(M.P.)

...Management

AWARD
(Passed on 4-4-2022)

As per letter dated 6/11/2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.

L-22012/141/2012-IR(CM-II). The dispute under reference relates to:

“Whether the action of the General manager, Sohagpur Area of SECL in not promoting Shri Rakesh Tiwari to Electrician CAT-IV is legal and justified? To what relief the claimant is entitled for, and from which date? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.
2. During the proceedings, the parties filed the settlement reached at between the parties and requested the reference to be decided in terms of the settlement. The settlement is on record, hence the dispute does not survive now in the light of this settlement. .
3. The reference is decided accordingly.
4. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer