THE SECOND LABOUR COURT, KOLKATA

IN THE MATTER OF

Application No. 07 OF 2014 Under Section 10(1B)(d) Industrial Dispute Act,1947

ON

RAISING OF DISPUTE BY INDIVIDUAL WORKMAN

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SHRI SUDIP DAM

Son of Late Amal Krishna Dam,

Residing at "Ananta Abasan",

40/B, Jessore Road (South),

Flat NO. A/7, 2nd Floor, Post Office–

Bara sat, Kolkata–700024

VERSUS

1. **CROSSLAND-II**

Presently CROSSLAND LIFE

Having its Head Office at Western Edge-1,

Unit No. 201-204, 2nd floor, Western Express Highway,

Borivali (East), Mumbai–400066 and

Regional office at M/s. Ranbaxy Laboratories Ltd.

1 No. Ananda Neogi Lane,

Bag bazar, Kolkata–700003.

2. **AMIT KUMAR PAUL,**

4R Partner "Olisa House" 2nd floor,

4, Govt. Place (North), Kolkata– 700001,

Presently shifted to M/s. Ranbaxy Laboratories Ltd.

1 No. Ananda Neogi Lane, Bag bazar, Kolkata– 700003.

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Appearance

1. MR/~~MRS~~ **ANINDYA LAHIRI, LD. ADVOCATE FOR THE APPLICANT**

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2. MR/~~MRS~~ **TATHAGATA MAZUMDER, LD. ADVOCATE FOR THE OP. COMPANY**

REFERENCE	Dispute raised by individual workman within the meaning of Section 10(1)(B) (d) ,as applicable to the State of West Bengal .
POWER OF THIS COURT TO ENTERTAIN THE CAUSE IN HAND	Section 7 of Industrial Dispute Act,1947 Read with Entries under 2nd Schedule to the Industrial Dispute Act AND DEPT Notf no. 101-IR/12L-14/11dated 2nd February 2012 in Partial modification of Dept Notf no 1085- IR dated 25-07-1997
PROCEDURE ADOPTED IN DEALING WITH THE CASE	**Karnataka state Road Corporation** **Vs** **Smt Lakshidevamma and another (2001)5 SCC 433** *Locus cassisus* on the point that strict rules of evidence and procedure shall not govern the proceedings under the Industrial Dispute Act,1947.
BINDING NATURE OF AWARD	Dispute being raised individually, shall only bind the parties herein **(Section 18 of the Industrial Dispute Act**)
COMPLAINCES	Copies of award be submitted to appropriate government for publication. **(Section 15** of the **Industrial Dispute Act**).

CASE LAWS FURNISHED BY THE PARTIES.

THE APPLICANT

CITATION	SETTLED POSITION INTENDED TO BE SHOWN BY THE APPLICANT
STATE OF UTTARAKHAND AND OTHERS VERSUS SMT SURESHWATI	Some rules and standing orders must precede domestic inquiry
PREM NATH BALI VS REG, HIGH COURT OF DELHI AND OTHER AIR 2016 SC 101	Punishment to be imposed in terms of Rules
RASIKLAL VAGHAJIBAI PATEL VS AHMEDABAD MUNICIPAL CORPORATION 1985 AIR 504	Applicant must have adequate notice of charges of misconduct
RIPU DAMAN BHANOT VS THE PRESIDING OFFICER, LABOUR COURT (1997)ILLJ557 P AND H	Medical representatives are workman.

THE OPPOSITE PARTY

CITATION	SETTLED POSITION INTENDED TO BE SHOWN BY THE OP
HR Adyanthaya Versus Sandoz (India) Ltd 1994 AIR SC 2608	Medical representatives are not workman within the ID Act
Novartis India Limited VS VIPIN SHRIVASTAVA ,2017, MP	Medical Representative is not a workman
AM BHATCHARRYA VS PHILIP INDIA LTD 1992 2 CALLT 41	In absence of rules, principles of Natural justice to be followed
WEST BENGAL MEDICAL AND SALES REPRESENTATIVE UNION AND OTHERS VS STATE OF WEST BENGAL 2021 ILR 56	Validity of transfer order must be judged in light of terms of appointment.

PRESENT: MISS SREEJITA CHATTERJEE

JO CODE; WB0001252

DATE OF AWARD : 18 . 12 .2024

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1) PROLOGUE

The affirmation of security to workman through labour legislations can have no base unless the spirit of these legislation are recognized as foundation of the legal mansions, and their *'objects and reasons'* is accepted as the fit and noble materials, out of which legislature constantly weaves the garb of these statutes and courts build the unending series of mansions of interpretation. Not only, then, is the accordance of the benefits of legislations to its beneficiaries complete but it is the only logical completion of rule and an effort that seems fundamental for securing benefits of industrial laws. It seeks to reconcile and affirm the foundation of principle of social welfare, as an attempt to secure the avowed objects of the Act.

The instant application for reinstatement and back wages of applicant of the alleged ***"Workman"*** *seeks to* ***unearth Status of applicant as an workman under*** *Industrial Disputes Act , 1947* (hereinafter referred to as the Act) ,though the subject invites this court's discussions on certain overlapping and unattended areas under different Acts that is *Industrial Disputes Act , 1947* (hereinafter referred to as the Act) and the Sales Promotion Employees(Conditions of Service Act) 1976 , in the backdrop of the spirit of these law and sacred objects and reasons of these legislations.

2) FACTS BY THE APPLICANT /WORKMAN IN DETAIL IN HIS WRITTEN STATEMENT

The application is founded upon the plea that the applicant was initially appointed on 8th July 1965, as Medical Representative to the post of Field Sabs Officer at HQ, Bararsat, Kolkata by the Crossland II Division of Ranbaxy.

He was so designated for 14 years until his promotion to the next post as District Manager. The said post is submitted to have taken effect from 7th January 2010 and except the revision of pay and allowances, the rest of the conditions of service remained the same. The applicant manifested equally good performance even on promotion, having shown outstanding sales performance from January 2012 to May 2012 for which he was presented a Certificate of Appreciation.

It is his plea that the nature of his job was basically to promote sales promotion and he has no authority to bind any employee. The ornamentation of language" *manager*" has nothing to do with his job as he never held any managerial post. He was supposed to work *in tendem* with 6 other medical representatives and he was never invested the authority to dismiss any employee or take any disciplinary action against them. He was only required to inspire them towards meeting the targets. Even for the allotment of sales, he had no decision-making powers. The applicant was only there to implement the policies of the company. Again, the applicant was placed in charge of territory of Andaman and Nicobar Islands which goes to show essence of his post, as workman and not the managers are not allotted territories.

The situation turned bitter when suddenly on 13 /02/13, he was presented with a show cause notice by the Zonal HR Manager, on the allegation that he reported a false visit to DR SK Kar and DR Ramesh Chandra Saha. He was asked to reply to the S/C within 72 hours of its receipt. Charge sheet was submitted against him on 26.04.2014. He was directed to present himself for the domestic inquiry at 14.00 hrs. on 26.04.2014 at the Eastern regional office of Ranbaxy laboratories. He replied to the chargesheet on 5.5.2013, exposing the vengeance of MR Subhadip Mukherjee and Mr Amit Pal, the HR partner. The company though initiated a domestic inquiry, was constrained to give a clean chit to him and this was duly communicated to him by the letter of withdrawal of suspension dated 28.06.2013.

It is urged that to his utmost dismay, he received a letter from the company on 14.08.2013, directing him to join the Chennai branch, and it was to take effect from 1st September 2013. The sole purpose of this order is submitted to get rid of the applicant. In turn, the applicant vide letter dated 22.08.2013, answered expressing his inability to join the transferred place due to family issues which was rejected vide letter dated 26.08.2013. In the meantime, the applicant received a phone call on 24th July from MR Manish Koti, National Sales Coordinator, asking him to join a conference at Mumbai. The company duly made all the arrangements for the purpose. But on arrival at the meeting, it was clear to him that the "*Sales Review Meeting*" was a hoax and the actual purport was to pressurize him to quit his post and this act of pressurization was undertaken by MS A HADAP SBU Head and MS Joseph Abraham, Cluster Manager, Human Resource. This incident was reported at the Barasat police station by the applicant. All this suggests the motive of the company. It is also added that if there was any routine intention of transfer, it could have been done to any nearby place in the eastern zone but the company has transferred him to far off place with a sinister motive.

Taking exception to his act of defying the transfer order, the company issued a charge sheet cum notice of inquiry on 12th December 2013, which the applicant replied on 21.12.13. The company fixed 22.01.2014 as the date of inquiry and the date was posted on 11th February 2014. The applicant requested a number of times to conduct the inquiry in Kolkata but the company was adamant to proceed at Chennai. The applicant failed to appear and this resulted in an exparte enquiry and termination of service since 14th March 2014.

The applicant was thus constrained to seek intervention of Assistant Labour Commissioner by a letter curling out all the above facts. The said letter reflected the oblique motive which was shrouded by a coercive order of transfer. The company never made sincere efforts of conciliation. This in turn depicted that the transfer was sham.

The applicant received salary till March 2013. He received subsistence allowance from April 2013 to June 2014. He has not received wages or allowance to attend enquiry.

The applicant is therefore constrained to file this application on the following prayers;

i) That the termination of the service in the shape of refusal of employment by the company, is unjust and illegal, consequently praying for reinstatement and back wages since termination up to actual date of reinstatement.

ii) ***Consequential relief***.

3) FACTS BY OP/COMPANY IN DETAIL IN HIS WRITTEN STATEMENT

The Opposite party denies and deprecates all the above.

It is his specific plea that's the instant case is not maintainable on the following grounds;

i) The applicant doesn't fall within the definition of workman under Section 2(s) of the Industrial Dispute at 1947.

ii) Employee of a company and supervisors and managers are distinct terms and cannot be lumped together into a single whole in order to bring them within the definition of workman. The applicant is mainly responsible for managerial and supervisory tasks and medical representatives used to report to him. He had the authority to sanction the bills, travelling allowances.

iii) The company acceded to the contention that applicant was appointed to the company but the terms and conditions in the letter of appointment suggest that his job is transferable for the business purpose. The applicant is bound to abide by such orders of transfer. The applicant however neglected to abide by the said order a number of times. It was then a charge sheet was issued followed by domestic inquiry though the applicant neglected to present himself before the inquiry officer. It is at this juncture the enquiry committee was constrained to conduct exparte enquiry.

It is urged that the transfer was solely on exigencies of work.

The OP company repudiated the claim of vengeance and vendetta against the applicant and in support of their contention, it is put forward that the independent inquiry held at the beginning was dismissed against the applicant which itself suggests a free and fair enquiries are held by the company. It is submitted in addition that the costs of the first domestic inquiry held by the company, as referred by the applicant, was borne by the company. There was no intention to deprive him even this time but the enquiry proceeded exparte as he failed to present himself.

It is the plea of the OP that this is a glaring example of defiance of order of transfer issued by the company. The letter requesting company to withdraw the transfer, is suggestive of applicant's dissatisfaction with transfer order of the company and has nothing to do with his termination of service.

Hence the application deserves dismissal.

4) ISSUES OF REFERENCE

The subject matter of the litigation which has resulted in the present application is refusal of employment to the applicant / workman herein, followed by his alleged punitive transfer to Chennai from West Bengal branch.

The grounds which emerge for consideration from the above facts, may be formulated thus;

Firstly, whether the cause is maintainable.

Secondly, a termination of service and refusal of employment of medical representative can be challenged in light of his status as workman.

Thirdly, the above query in turn pulls this court into a decision on the validity of domestic inquiry and consequent termination.

Fourthly, a clamorous finding on the entitlement to relief.

The issues of the case are thus framed as follows; -

1. *Whether the applicant is a workman as per provision of Industrial Dispute Act.*
2. *Is the case maintainable in its proper form and law?*
3. *Whether the disciplinary proceeding and the enquiry against the applicant/workman is legal and valid?*
4. *Is the order of termination, if any valid and justified?*
5. *Is the applicant entitled to get relief as prayed for?*

5) EVIDENCE

APPLICANTS WITNESS

Serial No.	Name	Description of witness
PW1	SUDIP DAM	Applicant

OPPOSITE PARTY'S WITNESS

Serial No.	Name	Description of witness
OPW1	AMIT KUMAR PAUL	SENIOR MANAGER(H &R)

LIST OF EXHIBITS FOR APPLICANT

Sl. No.	Exhibit No	Nature of document	Objection to the documents if any
1.	EXHIBIT1	COPY OF THE LETTER DATED 14.01.2010	No objection
2	EXHIBIT 2	SHOW CAUSE LETTER ISSUED TO THE PETITIONER	Do
3	EXHIBIT 3	COPY OF REPLY TO SHOW CAUSE	Do
4	EXHIBIT 4	COPY OF CHARGE-SHEET AND LETTER OF SUSPENSION.	Do
5	EXHIBIT 5	COPY OF LETTER OF DEFENCE BY THE APPLICANT	Do
6	EXHIBIT 6	COPY OF WITHDRAWAL OF SUSPENSION BY THE OP.	Do
7	EXHIBIT 7	THIS IS THE COPY OF AIR –TICKET AND BOARDING PASS FOR TO AND TRAVEL TO MUMBAI FOLLOWING A CALL FROM H.O.	Do
8	EXHIBIT 8	COPY OF THE COMPANY DECISION OF BLOCKING ALL SYSTEM OF THE APPLICANT.	Do
9	EXHIBIT 9	COPY OF COMMUNICATION DT. 04.08.2013 FOR NON-PAYMENT OF EXPENSE STATEMENT OF THE APPLICANT.	Do
10	EXHIBIT 10 series	COPIES REGARDING APPLICANT'S COMMUNICATION ABOUT STOPPING OF FIELD WORK AND ATTENDING D. M'S MEET IN HYDERABAD.	Do
11	EXHIBIT11	COPY OF TRANSFER ORDER TO CHENNAI DT. 14.08.2013.	Do
12	EXHIBIT 12	COPY OF THE LETTER DT. 22.08.2013 REQUESTING MODIFICATION OF TRANSFER ORDER BY THE APPLICANT	Do
13	EXHIBIT 13	COPY OF THE REGRET LETTER.	Do
14	EXHIBIT 14	COPY OF THE LETTER DT. 29.08.2013	Do
15	EXHIBIT 15	COPY OF THE REPLY TO THE LETTER DT. 29.08.2013.	Do
16	EXHIBIT 16	COPY OF THE LETTER DT.18.02.2013 BY THE APPLICANT DEMANDING REVIEW OF THE TRANSFER ORDER.	Do
17	EXHIBIT 17& 17/1	COPIES OF THE LETTER DT.22. .2013 & 04.11.2013 REQUESTING REVIEW OF TRANSFER ORDER.	Do
18	EXHIBIT 18	COPY OF THE CHARGE-SHEET NOTICE OF ENQUIRY DT. 12.12.2013 BY THE OP COMPANY.	Do
19	EXHIBIT 19	COPY OF THE LETTER OF DEFENCE DT.21.02.2013 BY THE APPLICANT	Do
20	EXHIBIT 20	COPY OF THE REPORT ST.22.01.2014 BY THE OP COMPANY.	Do
21	EXHIBIT 21	COPY OF THE LETTER DT.29.01.2014 BY THE OP COMPANY.	Do
22	EXHIBIT 22	COPY OF THE REPLY DT. 03.02.2014	Do
23	EXHIBIT 23	COPY OF THE E-MAIL COMMUNICATION TO OP COMPANY DT. 21.02.2014 AND 24.02.2014 BY THE APPLICANT.	Do
24	EXHIBIT 24	COPY OF FINAL REPORT OF ENQUIRY DT. 01.03.2014 ON BEHALF OF THE OP COMPANY.	Do
25	EXHIBIT 25	COPY OF THE SHOW CAUSE BY THE APPLICANT DT.04.03.2014	Do
26	EXHIBIT 26	COPY OF THE REPLY TO THE SHOW CAUSE BY THE APPLICANT DT. 10.03.2014.	Do
27	EXHIBIT 27	COPY OF THE LETTER OF TERMINATION OF THE APPLICANT FROM SERVICE DT.14.03.2014	Do
28	EXHIBIT 28	COPY OF LETTER DT. 20.03.2014 BY THE APPLICANT TO THE OP COMPANY TO WITHDRAW TERMINATION LETTER	Do
29	EXHIBIT 29	COPY OF MEMORANDUM DT.03.04.2014 BY THE APPLICANT TO THE LEARNED COMMISSIONER TO THE LABOUR.	Do
30	EXHIBIT 30	COPY OF THE FORM 16 I.T	Do
31	EXHIBIT 31	COPY OF THE W.R. TO LEARNED COMMISSIONER OF LABOUR DT. 27.06.2014.BY THE COMPANY.	Do.
32	EXHIBIT 32	COPY OF THE CERTIFICATE OF APPLICATION.	Do
33	EXHIBIT 33	COPY OF REPRESENTATION DT.07.07.2014 BY THE APPLICANT TO THE LD. DY. LABOUR COMMISSIONER	Do
34	EXHIBIT 34	COPY OF CERTIFICATE ISSUED BY THE LD. COMMISSIONER OF LABOUR DT. 25.07.2014	Do
35	EXHIBIT 35	COPIES OF LEAVE MANAGEMENT	Do
36	EXHIBIT 36	COPY OF THE LETTER DT. 05.05.2012.	Do .

LIST OF EXHIBITS FOR OPW-1

Sl. No.	Exhibit No.	Nature of document	Objection to the documents if any
01.	EXHIBIT A	COPY OF APPOINTMENT LETTER OF THE APPLICANT (4 PAGES)	NO OBJECTION
02	EXHIBIT B	COPY OF PROMOTION LETTER WHEN HE HAS BEEN PROMOTED AS DISTRICT MANAGER FROM PROFESSIONAL SERVICE REPRESENTATIVE.	DO
03	EXHIBIT C	COPY OF JOB DESCRIPTION OF THE APPLICANTAFTER HIS PROMOTION AS DISTRICT MANAGER.(4 PAGES)	DO
04	EXHIBIT D	ENQUIRY PROCEEDINGS (48 PAGES).	DO
05	EXHIBIT E	FINAL REPORT OF THE ENQUIRY OFFICER (6 PAGES)	DO
06	EXHIBIT F	MAIL COMMUNICATION DOCUMENTS (67 PAGES)	DO
07	EXHIBIT G	STATEMENT OF FULL AND FINAL SETTLEMENT	DO
08	EXHIBIT G/1.	DOCUMENT SHOWING THE PREPARATION OF CHEQUE	DO

6) ISSUE NO 2(WHETHER *THE PRESENT CASE IS MAINTAINABLE*)

The authority of this court (formed under notification no 1727-IR/IR3A-58dated the 26th April, 1967) to investigate into these matters under Section 10(1B) (d), is derived from **notification number 101/IR/12L-14/11 Dated 2/2/2012, as applicable when this instant applicable was instituted** .

Hence there is no infirmity as the situs of the company confirms to the notification.

Caviling relate to clause no 23 in the condition of employment and it is submitted by the OP that clause clearly lays down the following; -

"*Any dispute arising out of and /or related to your employment with the company shall be subject to Bombay Jurisdiction only*"

It is thus submitted that this court is not invested with the jurisdiction to proceed with this case.

The law on the subject is clear that consent of the parties cannot confer jurisdiction which a court otherwise doesn't possess. But where there are more than one courts, they are free to agree on a "*court of choice*" and such agreement is not contrary to public policy and doesn't contravene Section 28 or Section 23 of Indian Contract Act 1872. But this is highly qualified in the sense that courts might uphold such agreements but are not bound by them. **Hakam Singh Vs Gammon (India) LTD AIR 1971 SC 740.**

It seems that in the present facts there is a specific notification conferring jurisdiction upon this court. The OP has not shown anything to this court to suggest that both the parties herein have agreed to a court of choice, save and except the condition of service, which are always subject to the law in vogue and objections by adversary. There is nothing in the record save and except a bare suggestion.

Thus, this court is unable to agree with the contention of OP that the suggestion and incorporation of this clause, if any, has the authority to eclipse a valid notification in existence. The cause is thus maintainable.

7) ISSUE NO 1(*WHETHER THE APPLICANT IS A WORKMAN AS PER PROVISION OF INDUSTRIAL DISPUTES ACT*)

This is the anvil which decides the course of this case.

The applicant is a medical representative. '*Medical representatives'* are not defined under any Act but generally they are meant to include **medical or pharmaceutical sales representatives who sell and promote the companies' solutions, medicines, drugs, medical equipment's and prescribed drugs**. Their principal work is promotion and canvassing sales. All the other jobs invested to them are ancillary to this purpose.

Medical representatives can thus be termed as Sales Promotion Employees and there is no dispute on this point. This conclusion is plain from bare reading of Section 3 of THE SALES PROMOTION EMPLOYEES (CONDITION OF SERVICE) ACT 1976 which expiates that the Central Government may declare any industry to be notified for the purpose of the Act *"not being pharmaceutical industry*", thereby leading to the inference that whole pharmaceutical industry is included by default and doesn't demand any separate notification for its application, unlike other industries.

It therefore remains to be seen: -

Whether such medical representatives / sales promotion employees are workman within the meaning of the Industrial disputes Act 1947?

The answer to this question traces its origin to a case titled **May and Baker India Ltd Versus Workman**, followed by introduction of statute titled **THE SALES PROMOTION EMPLOYEES (CONDITION OF SERVICE) ACT 1976** and various interpretations thereon**.**

Be it mentioned in this regard that the 'Labour' is subject of concurrent list with the effect that even states legislate on it. The definition of "*Workman*" under the Industrial Disputes Act,1947 has been amended by states according to their requirement. West Bengal chartered an independent course by adopting " *or work for promotion of sales* " , into the definition of workman under the Industrial Dispute Act ,1947 (WB amendment 33 of 1986) . This suggests an inclusion of sales promotion employees into the definition of workman and it is in this parlance that it is generally submitted that medical representatives are workmen in West Bengal, irrespective of any other judicial interpretations, or existence of **The Sales Promotion Employees (Conditions of service)Act 1976** . It is generally submitted that the amendment is sufficient to cover their case and no other extraneous source of interpretations are necessary.

It is here that this court hastens to add that the **said Bengal Amendment Act neither defined the terms Sales promotion employee or medical representative , nor there was consequent introduction of provisions to further illustrate as to what sales promotion employee is intended to mean, who are included and who are excluded in its purview and scope of definition and the inclusion vis -a-vis other statues . There is the fallacy.** This amendment appears to be similar to definition of "wages" under Section 2 (rr) of the Industrial Disputes act as any *"commission payable on promotion of sales or business or both*" or the definition of "industry" as " *..any activity relating to promotion of sales or business or both carried on by an establishment* "(which was substituted though it is not yet enforced), , which though were amended , did not resolve the dispute. **Both these definitions intended to include sales promotion commission or establishments into the Central Act but the differences in interpretation of the Central Act still persist in terms of applicability of definition of Workman under Industrial Dispute Act 1947 to The Sales Promotion Employees (Conditions of service)Act 1976 , because these terms sales promotion commission etc. do not find any definition or further illustration in the Industrial Dispute Act,1947. This is apparent from catena of cases including the judicial**

pronouncement in HR Adyanthaya Versus Sandoz (India) Ltd 1994 AIR SC 2608 and various other pronouncements proceeding from **Hon'ble High Courts.** In the given premise, it remains that though **in essence, the amendments are incorporated, their meaning implication and effect are required to be imported from The Sales Promotion Employees (Conditions of service) Act 1976 and in this regard, Bengal is no different as the mother Act continues to remain the Act of 1976.**

This observation is also relevant considering the timings of incorporation of this West Bengal state amendment, which is corollary to the Central Amendment Act of 1986 to Industrial Dispute Act, which intended to incorporate changes into these legislations in light of these sales' promotion employees. Hence the matters being interlinked, question of applicability of the definition of workman to medical representatives, has to be decided in light of all the statutes, though there might exist an amendment in Bengal. It needs to be decided in light of Industrial Dispute Act, The Sales Promotion Employees (Conditions of service) Act 1976 1976 and the amendment in state and judicial interpretations and cannot be said to operate in a complete isolation. In view of this discussion, it is impossible for this court to adopt the course suggested by the applicant /medical representatives that medical representatives are workmen by default in West Bengal.

Now, the judicial pronouncement **May and Baker India Ltd Versus Workman 1961** intended to directly deal with the question as to whether medical representatives of a company are workman within the meaning of Industrial Disputes Act 1947 and whether the order of reinstatement passed by the industrial tribunal was proper. The court referred to the disputed nature of the duties of the employees and as it was observed that the main work of a medical representative was that of canvassing sales and any amount of clerical or manual work done by them was only incidental to the said work. It was thereby held that the tribunal's conclusion that medical representatives of workman was incorrect. The court also observed that the employees had no supervisory duties and had to work under their superior officers.

This created a lot of hue and cry in the pharmaceutical industry as the medical representatives considered themselves as deprived of the benefits of workman. On the petition made by the Federation of medical Representatives Association of India, the Committee on Petitions (Rajya Sabha) in its 13th report submitted on 14 March 1972, adumbrated the need for a special legislation to redress the plight of the medical representatives and thus **The Sales Promotion Employees (Conditions of service) Act 1976 was brought into existence with effect from 06.03.1976 .**

The Statement of Objects and Reasons of the Act expiate; -

"*As a result of the Supreme Court's judgement in the case of a* ***May and Baker India Ltd Versus Workman 1961*** *the person engages in sales promotion do not come within the purview of the definition of "workman" under Industrial Disputes Act, 1947 and as such they have no protection regarding security of employment and other benefits under the act. These persons, particularly the medical representatives in the pharmaceutical industry have been demanding from time to time that they should be covered by the Industrial Disputes Act. On the petition made by the Federation of Medical Representatives Association of India, the Committee on the Petitions (Rajya Sabha) in its thirteenth report submitted on March 14, 1972, came to the conclusion that "the ends of social justice to this class of people will not be met only by suitably amending the definition of the term "workman" in the Industrial Disputes Act, 1947 in a manner that Medical representatives are also covered by the definition of "workman" in the said Act.*

2. Keeping in view the justification of demands of the sales promotion employees, and, the recommendation made by the Committee on Petitions, and taking other relevant aspects into consideration, it is considered more appropriate to have a separate legislation for governing the conditions of service of sales promotion employees, instead of amending the Industrial Disputes Act 1947 to bring such employees within its purview."

Though the Act in force, it could not redress the excruciating status of the Sales Promotion employees and particularly the medical representatives, at once. References were presented to the Hon'ble Courts from various corners. The Industrial Dispute Act, 1947 in the light of **The Sales Promotion Employees (Conditions of service)Act 1976** was laid open to interpretations from various corners and this state of affairs prevailed until the judgment **of HR Adyanthaya Versus Sandoz (India) Ltd 1994 AIR SC 2608**, which is still considered as an authority on the subject.

The case **of HR Adyanthaya Versus Sandoz (India) Ltd 1994 AIR SC 2608** demands an abridged discussion. This case invited the Hon'ble Apex Court to deal with the question directly whether the medical representatives are workman within the meaning of Section 2 (s) of the Industrial Disputes Act , 1947, in light of **The Sales Promotion Employees (Conditions of service)Act 1976**. Out of a batch of references made in the case, some of which fell before the amendment to 1976 Act and one reference was after such amendment, the Hon'ble court was pleased to dismiss the claim of the former and direct a reference of dispute by State government, with respect to the later, by invocation of article 142 . The gist of the judgement suggests that the court arrived in the course of discussion that medical representatives do not fall strictly within the definition of workman under Section 2(S) and in consequence the reference made by the medical representatives was not maintainable under the Maharashtra Act, though the provisions of Industrial Disputes Act are applicable to medical representatives after March 6, 1976 (as it is inferred from the direction of the Hon'ble Court to the State government to initiate a reference U/S 10(1)(b) .

Out of the batch of references made, only one reference is worth mentioning and it is in respect to a dispute which arose on 16 /2/ 1988. While disposing off the case, Hon'ble court was pleased to direct reference under section 10 (1)(b) in this regard in the following terms; - .

" although we hold that the complaint filed by the workman is not maintainable under Maharashtra Act we are of the view that taking into consideration the fact that a long time has elapsed since the filing of the complaint, it is necessary that we exercise of powers under article 142 of the Constitution which we do hereby , direct the State government to treat the employees of the state complaint as an Industrial Dispute under Industrial Dispute Act and refer the same under section 10 (1)(b). The industrial tribunal shall dispose of the reference within six months of the date of reference."

This judgment is often relied upon by the companies/OP to suggest an exception to their cases and prove the point that medical representatives are not workmen, before the tribunals, Labour courts and also Hon'ble High Courts. Upon these facts, in the present case in hand before this court, it is the plea of the OP that the disposition of Hon'ble Court still holds as there is no further pronouncement on the subject. The judgment is authority in the respect that it dealt with all the laws relating to the subject along with the position of all the judicial decisions till the pronouncement. Per contra, the applicant distinguishes the position and submits that the

judgment was passed sub-silentio and per-in curium . Further the said case only applies to the state of Maharashtra.

A careful perusal of the judgment suggests that it opens with the following declaration; -

"the question that falls for consideration in these matters is whether the medical representatives as they are commonly known, are workmen according to the definition of workman under Section 2(s) of the Industrial Dispute Act 1947....." .

Though the court in the course of the decision decided a reference of Maharashtra but it cannot be said that it was only confined to Maharashtra. Again, it appears that sub silentio judgments are passed without proper deliberation of and without argument and reference to the crucial words of the rule and any citation of authority" (*Lancester Motor Co Ltd vs Bremith Ltd*) while a decision per in curium means " in utter disregard of law "and is said to be so when the court of record has acted in ignorance of any previous decision of its own , or the subordinate court has acted in ignorance of the decision of the court of records. (Hyder Consulting (UK) Ltd VS State of Orissa).

The case **HR Adyanthaya (supra)** is an authority on the subject and it has discussed the position from the inception till date and had taken into consideration all the present statutes and amendments till date . Hence such submissions of the applicant that the judgment is sub-silentio do not hold water in the court of law .

It is thus plain that the arguments pressed by the applicant cannot be strictly resorted.

However, upon the consideration of the statutes and HR Adyanthaya (supra) judgment, this court is unable to accept the proposition which this Court has been pressed to recognize by the OP that medical representatives are not workman.

The reasons are numerous and illustrated hereunder; -

Firstly, at the outset, to address the most perilous distortions and misleading imaginations on the scope of reliance to be placed on the judicial pronouncements, the Hon'ble Apex Courts following observation In Commissioner of Central Excise, Bangalore VS Srikumar Agencies etc , 2008 observed;-
"*Courts should not place reliance on the decisions without discussing as to how the factual situation fits in with the fact's situation of the decision on which the reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes*."

In light of the above observation, as far as the interpretation of authority **HR Adyanthaya Versus Sandoz (India) Ltd 1994 AIR SC 2608** is concerned , it might be inferred , if minutely introspected, that the facts mainly dealt with matters before the final amendment to **Sales Promotion Employees (Conditions of service) Act 1976 .** The scope of that Act has expanded now.

Conversely, in respect of the only reference which fell post amendment to the 1976 Act, it seems the effects would be that the if the provisions of Industrial Dispute Act were not applicable to the employees covered by 1976, there could have been no occasion for the Hon'ble court to give a direction for reference to the dispute. The judgments, though applicable to the peculiar case facts, also hinted a reference and this question was left open. **Hence judgment cannot be inferred to**

have rendered a quietus to the non-inclusion of medical representatives, in the definition of workman.

Secondly, it is an elementary principle that the workman is required to satisfy the requisites of definition U/S 2(s) Industrial Dispute Act 1947, in order to be covered under its protective umbrella. In emerging thus, the definition of workman calls for consideration which has undergone a vast change over the time.

Workman is defined under Section 2(s) of the Industrial Disputes Act 1947. The definition as it stood originally, when the Act came into force with effect from 1 April 1947 was as follows;-

"*Workman means any person employed including an apprentice in any industry to any skilled or unskilled, manual or clerical work for hire or reward and includes for the purpose of any proceedings under this act in relation to any industrial dispute, a workman discharge during the dispute, but does not include any person employed in any naval, military, or your service of the crown*"

It was amended by **amending act 36 of 1956** which came into force on 28th August 1956 and reads as follows; -

'*Exercises, either by the nature of the duties attached to the office or by reasons of the power vested in him, functions mainly of managerial'*

The first change brought about by this amendment was that whereas earlier only those who are doing unskilled or skilled manual work were included in the said definition, now those who did any unskilled or skilled work, whether manual or not, were also included with within it. Another change was those persons who were employed to do operational work were also brought within the fold of the said definition.

The definition as it stands today reads as; -

" "Workman "any person (included an apprentice) employed in any industr4y to do any manual, unskilled, skilled , technical, operational, clerical or supervisory work for hire or ;reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or ;retrenched in connection with, or as a consequences of, that dispute, or whose dismissal , discharge or retrenchment has led to that dispute, but does not include any such person-

(i) Who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957: or
(ii) Who is employed in the police service or as an officer or other employee of a prison; or
(iii) Who is employed mainly in a managerial or administrative capacity; or
(iv) Who being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature) "

Now, it is trite that the court is not to proceed on the assumption that every person is a workman unless he fell under one of the four exceptions to the definition, unless his principal work is covered within the terms 'skilled' or 'unskilled' 'manual' work, 'supervisory' work, 'technical' work, 'clerical' work and these terms are construed ejusdem generis.

In that perspective, strictly speaking, a medical representative is not a workman as his principal job is that of canvassing sales and any amount of skilled or unskilled manual work, supervisory work, technical work, clerical work is ancillary to his main business.

However, attention of this court is particularly drawn to subsection 2 of section 6 of **The Sales Promotion Employees (Conditions of service) Act 1976** which provides that the provisions of Industrial Disputes Act 1947 as in force for the time being, shall apply to or two promotion employees as they apply in relation to workman within the meaning of the act for the purposes of any proceedings and relation to industrial dispute.

Section 6 of that Act made Workman's Compensation Act of 1923, Industrial Dispute Act 1947, Minimum Wages Act 1948, Maternity Benefit Act 1961, Payment of Bonus Act 1965, Payment of Gratuity Act 1972 applicable forthwith to medical representatives. Subsection 2 of the said section, by making the provisions of Industrial Disputes Act, as in force for the time being applicable to medical representative, states as follows;

"*the provisions of industrial disputes in 1947 as in force for the time being, shall apply to, or in relation process promotion employees as they apply to, or in relation to, workman within the meaning of the act and for the purposes of any proceedings under that act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee who has been dismissed, discharged retrenched in connection with or as a consequence of the dispute and whose dismissal, discharge and retrenchment had led to the dispute*"

From this deeming provision, it is apparent that the Parliament recognized that the class for the benefit of which legislation was being undertaken, was not covered by the definition of Workman under the Industrial Dispute Act 1947 **and that was the reason to include that category by deeming provision** which was incorporated. To say, therefore, that the person who did the job of sales promotion did not belong to an identifiable category would be to deprive this class of the benefit which the parliament intended to bestow. Further, the implication and effect of Section 6(2) of the Act would be rendered otiose if that is the course of interpretation adopted by the courts.

This court hastens to add here that these rights are creatures of statute as service conditions are not fundamental rights. They are creation of statute or contract of employment. What conditions of service would be available to a particular subject would be matter of the statute or contract. Hence if a legislation extends a protective umbrella to employees of a particular class, it cannot be set aside so long as the classification is intelligible and has a reasonable nexus with the object which is sought to be achieved. The object of this legislation **The Sales Promotion Employees (Conditions of service) Act 1976 appears** to be to give protection to the service conditions of a section of employees belonging to the set category.

Thirdly, the definition of "*Sales Promotion employees*" has undergone a great change in the sense that "sales promotion employee means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business or both , but does not include any such person -

(i) who draws wages being wages not including any commission not exceeding ₹ 750 per mensem

(ii) draws wages being wages including commission or commission only, in either case, not exceeding ₹ 9000 in aggregate in the 12 months immediately preceding the month in which this Act applies to such establishment and continues to draw such wages or commission in the aggregate not exceeding the amount as aforesaid in the year, but does not include any such person who is employed or engaged mainly in managerial or administrative capacity."

Thus **The Sales Promotion Employees (Conditions of service) Act 1976 was** amended in the year 1986 which came into force on 6th May 1987. By the said amendment, amongst others, the definition of sales promotion employee was expanded so as to include also promotion employees without the ceiling on their wages except those employed are engaged in a supervisory capacity drawing wages exceeding ₹ 1600 per mensem and those employed are engaged mainly in managerial or administrative capacity.

Now.the ambit of the provisions is also thus extended.

Fourthly, another aspect cannot escape the attention of this court.

The Industrial Dispute (amending act) of 46 of 1982 simultaneously intended to bring certain changes in the definition of" wages" under Section 2 (rr) of the industrial disputes act to" include any commission payable on promotion of sales or business or both" and also envisioned to include within Section 2(s) the definition of "industry" as " *any activity relating to promotion of sales or business or both carried on by an establishment "* The said amendment also intended to exclude Section 6(2) from the operation of the **The Sales Promotion Employees (Conditions of service) Act 1976** vide clause 24 of the amending Act. The said act was brought into the statute book and certain provisions of the act was given into effect to. The definition of wages was effected from 21.08.1984, thus including commission on promotion of sales. The definition of industry was substituted though it is not yet enforced. **Most interestingly, the clause 24 was however never brought into existence. By application of mind to 21st August notification of the Central government 1984, it appears that the intention of the legislation was reaffirmed that the benefits of Industrial Disputes Act,1947 be extended to the medical representatives by virtue of section 6(2) of THE SALES PROMOTION EMPLOYEES (CONDITION OF SERVICE) ACT, 1976 .**

Taking into consideration all the above facets and perspectives, the conclusion is irresistible that sales promotion employees are indeed workman, though not by the actual definition, but by the legal fiction and the deeming provision of the Act. Once it is so, **medical representatives are workmen by virtue of the said The Sales Promotion Employees (Conditions of service) Act 1976, which was reaffirmed by the state amendment.**

Once it is barren that they are workman, the next question which surfaces is whether the present applicant was holding supervisory or managerial functions as the definition specifically excludes these categories from the purview of workman.

The written statement of the applicant suggests that he was not holding any managerial post and the post of 'District Manager" was only ornamental. He had no part in strategic planning of the sales. He was invested with the charge of Andaman territory, which is only given to the workman. He never had any power to sanction leave or expenses (TA or DA). He never had any administrative or managerial functions. The OP rebuts it on the count that he was invested with the authority to sanction leaves and thus held a managerial post.

Evidences of the parties on this point which are germane to the present cause are discussed hereunder; -

The extracts of cross examination of PW1 are as follows; -

" In the year 2010 after my promotion 6 employees deputed to work with me. The six employees were also medical representatives. I use to forward the application. In some cases, without my sanction 6 employees were granted leave. Then says, I never sanctioned any leave of an employee but I used to forward leave application.

.... I did not play any role regarding the performance report of the persons who assisted me. On some occasions the persons used to send travelling bills directly to the management of the company. On some occasion, I used to send travelling bills of the said persons to the management of the company ".

It is plain from the above evidence of the applicant that he intends to stick to the point that no authority was invested to him to sanction leaves and neither the employees were placed under him. He worked together with them to meet the targets.

Again, the cross examination of OPW1 suggests the following; -

"*Exhibit C is tendered to the witness. The witness replies that Exhibit C is the job description of the applicant after his promotion as the district manager. The witness replies that Exhibit C is meant for District Manager because it is mentioned in Exhibit C that the first line manager reports to the regional manager. First line manager means the District Manager. First Line Manager is generic name used by the pharmaceutical company. I cannot say exactly whether or not the Exhibit C was sent to the applicant after his promotion as District Manager. One of the functions of the District Manager is to fulfill a cumulative target for the achievement of sales of the six professional service representatives.*

Exhibit B is tendered to the witness. The witness replies that it is a promotion letter when he was promoted as a District Manager from professional service representative. The last line of Exhibit B "all other terms and conditions of the employment shall remain unaltered means some certain conditions which have already been mentioned in the appointment letter remain same.

Exhibit 21 is tendered to the witness. I have filed the relevant documents in order to show applicant had the power to sanctions the leave of sales promotion employees.

The statement which I have made in Para 16 of my affidavit in chief is not totally corroborative of my written statement. I shall not be able to submit any document in respect of my allegation stated in Para 26 of my examination in chief. I want to mean the word "supervisory" used in Para 31 that 6 medical representatives / sales promotion employees were under the supervision of the workman of this case. He also makes tour plans of those employees. Then says, after the preparation of the program me, the same was sent to Mr Dam , the applicant and he used to approve the same. I want to mean by "managerial power" that Mr Dam used to control those 6 sales promotion employees."

The affidavit in chief has reference in Paragraphs 31, 33, 34 that he was in charge of other employees and holding managerial and supervisory functions.

In respect of documents, Exhibit A is relevant being the appointment letter as professional sales employee. This is followed by Exhibit C, which is the most relevant document to the present subject. It sets forth the job description of First Line Manager. One of the entrustments under the title administrative responsibility seems to be the following; -

"Supervising the daily field related activities

Approving travel plan

Approving leaves/ deviation from travel plans

Conducting business review meetings."

The OP relies upon this document to make out his case of a supervisory or managerial post.

It is the rule of evidence that one who alleges is required to prove a fact. In the present facts, the Op alleges the supervisory and managerial position of the applicant and is required to prove it. The oral evidences by the OP are backed by Exhibit A and Exhibit C. This Exhibit C is a job description which contains so many entrustments apart from these quoted as supervisory.

The said document does spell out "approving leaves/deviation from travel plans". It is here this court is convinced that it should not be ignored that organizational structures and modern forms of businesses are subject to checks and balances but this cannot determine a status. These days corporate organizations are carefully crafted process of checks and balances. In this structure, rarely would an employee have authoritarian control over business decisions. The employees are subjects to both vertical and horizontal checks and balances. The decisions of employees are subject to verifications and control**. Managers do not become workman and workman do not become managers because of such structured process of approval**. Absolute autonomy is not a norm in the managerial decision making**. Nor does the law insist on the absolute discretion or absolute autonomy for persons to be managers.**

The status of workman must be deciphered from the dominant nature of duties and responsibilities and this is reiterated in **CHAMPDANY INDUSTRIES LTD VS STATE OF WB AND OTHERS 2018LLR137**

In the given premise, the supervisory powers as submitted by the OP, if any, are only in these forms of checks and balances. Interestingly, it is found to be so. For example, Exhibit C refers to "*Approving leaves/ deviation from travel plans" which* suggests that approval of the leaves rest for the purpose of design of travel plan which is business idea. It is not for the purpose of sanction but to put a check and balance on their availability. On this count, the applicant is seen to submit and clarify in his cross examination that though he used to forward the leaves at times, he had no authority of sanction.

Nor there is any reference in the context to suggest that the applicant had authority to take disciplinary action against the 6 employees or that they were strictly placed under him.

On the contrary, his appointment letter marked as Exhibit A herein suggests that his posting as District Manager would not entail any change in the job descriptions. Hence his positions as supervisory or managerial employee is not clearly shown.

These discussions gravitate this issue in favour of the applicant.

8) ISSUE NO 3,4 (WHETHER *THE DISCIPLINARY PROCEEDING AND THE ENQUIRY AGAINST THE APPLICANT/WORKMAN IS LEGAL AND VALID AND IS THE ORDER OF TERMINATION, IF ANY VALID AND JUSTIFIED*)

It is the plea of the applicant that the domestic inquiry by the company is null and void to the effect that the pharmaceutical industries do not have any Model Standing Orders or Rules which would govern such an inquiry and merely the principles of natural justice are no avail unless there are

rules clearly laying down the process of inquiry and punishments setting out the consequences of demeanor by the employees.

It is also submitted that the applicant should have been granted some allowance to attend the Domestic Inquiry against him and this is a norm in the industries. This was not followed. The inquiry is therefore vitiated and liable to struck down and no inquiry at all, leave alone its validity.

The submission of ld Advocate for the applicant that there are no such standing orders in force which would govern the domestic enquiry of workers in the pharmaceutical industry, is backed by letter no S -42012/1/2003 DATED 22.03.2005, which is an invitation by Central Government urging upon the pharmaceutical companies to frame working rules for sales promotion employees. It is thus submitted that domestic enquiry held by any employer in the pharmaceutical industries as per se illegal and therefore no question of a validity of a domestic enquiry arises. Such domestic enquiries, if any, conducted are void ipso facto and ab initio. Reliance is placed upon *STATE OF UTTARKHAND AND OTHERS VS SMT SURESHWATI 2021 AND PREM NATH BALI VS REG, HIGH COURT OF DELHI AND ANOTHER AIR 2016 SUPREME COURT 101*. Ld. Advocate has also relied **upon Rasiklal Vighajibhai Patel vs Ahmedabad Municipal Corporation 1985 AIR 504** to suggest that " *certified standing orders or service regulations is necessary for the employer to prescribe what would be the misconduct so that the workman/ employee knows the pitfall he should guard against* ."

Per contra, the Op submits that in spite of repeated notices upon the applicant, applicant was adamant and he never intended to get himself transferred from his present place of posting. Exhibit A suggests that his appointment was subject to such clauses of transfer. In answer to exparte enquiry, it is submitted that due to his absence on repeated occasions, the inquiry proceeded exparte. The inquiry is valid and in accordance with law. Learned Advocate relies upon (1992) 2 Cal LT 41, 1992 SUPREME (Cal) 47 to suggest that in the absence of a procedure in the standing orders, the principles of natural justice have to be followed.

The above contentious issues invites the court to decide on the following points; -

Whether a domestic inquiry in the pharmaceutical industry is always illegal in view of the contention that they do not have any rules and standing orders governing the procedure?

Whether the domestic inquiry held in this case was valid and proper?

Domestic / internal inquiries are held by the companies for the purpose of fixing the liabilities of the employees in any establishment in case of charge of misdemeanor. Just as any proceedings before any forum are governed by certain substantive and procedural laws, in the area of domestic enquiry, rules of domestic enquiry have been framed to some extent under the Industrial Employment Standing Order Act of 1946 (Herein after referred to as (IE)SO) ACT 1946) read with the Standing Order Rules of 1946, as the Industrial disputes Act does not specifically provide for these substantive rules. Some establishments have adopted Model Rules and Standing Orders, as their substantive rule. The procedure adopted in such inquiries is a strict adherence to the principles of natural justice.

The argument of the applicant that there are no Model Standing Orders to govern the domestic inquiries of pharmaceutical companies, in substance, proceeds on the assumption that there is a

conflict between the various statutes governing the sales promotion employees and as the laws are highly unsettled, sales promotion employees cannot be treated at the same pedestal of other workman.

This court is not inclined to accept the contention of the applicant that there is a complete vacuum in the procedure od domestic inquiry . Since this court is not satisfied with any such conflict, it is not necessary to consider what would have been the result if this court had taken the view that there was any such conflict between the Acts, though certain preliminary discussions are relevant for the purpose of dealing with the present case.

It seems that this difference is to be settled in the light of various Acts which are involved in its construction. Laws exists for the state, society and its subject. Wherever there are industries and differences between employers and employees, the procedure for settlement is a fair domestic inquiry and history suggests that it was so even before incorporation of these laws and in the pre industrialization era. With the advent of legislations and regulations, certain definite procedures were founded, with some grey area though, as law is ever evolving and a dynamic social science.

Careful scrutiny of the Industrial Standing Orders Act 1946(herein after referred to as Act) which was passed on 23rd April 1946 , even prior to the Industrial Disputes Act 1947 , with effect from 1st April 1947 , suggests that they intended to define with sufficient precision, the conditions of employment and to make known the said conditions to all employed under them. The legislature thought that in many industrial establishments, the conditions of employment were not always uniform and sometimes not even reduced to writing and that led to considerable confusion which ultimately resulted in industrial disputes. . That is why the legislature passed the Act making it compulsory for establishments to reduce the conditions of employment and get them certified as provided under the Act. . Plain reading of Act suggests that the establishments were required to submit before the certifying officers, a draft under Section 3 of the said Act within six months from the date of on which this Act becomes applicable. The procedure for submission is covered under the Standing Orders of 1946 as laid down in Schedule II form 1 of the said rules.

Certifying officers were required to consider whether the standing orders submitted for certification confirmed to Model Standing Order, in terms of Section 3(2) of the Act which provides that Standing Orders shall run in conformity to the Model Standing Orders. The appropriate government could frame such Model Standing Orders in terms of Section 15 of the Act. Entry 9 appended to the Schedule to this Act reads as follows "**suspension *of dismissal for misconduct, and sought commissions which constitute misconduct"*** This is one of the subjects which is dealt by this Act that is rules of DOMESTIC INQUIRY .

The provisions of Section 12 A of the Industrial employment (Standing Orders) Act ,1946 is relevant and quoted hereunder; - " 12A] Temporary application of model standing orders:- (1) Notwithstanding anything contained in Sections to 12, for the period commencing on the date on which this Act becomes applicable to an Industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under section-7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of Section 9, sub-section (2) of section 13 and section 13-A shall apply such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in Sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government of the State of Gujarat or the Government of the State of Maharashtra]Section 12-A,--Where there are two categories of workmen, daily rated workmen, and the other in respect of the monthly rated workmen, if there are certified standing orders in respect of the daily rated workers only, the prescribed model standing orders should be deemed to have been adopted for those who are employed on the monthly basis until such categories have their own certified standing orders."

The effect of the said provision is; -

(i) the model standing orders framed under the Act automatically become applicable to the industrial establishment from the date when the Act becomes applicable to that industrial establishment, and

(ii) the model standing orders which had so become applicable to an industrial establishment cease to be applicable from the date on which the standing orders prepared by the management of that establishment as finally certified comes in to operation.

Section 13 B of the said Act restricts its applicability to certain establishments which does not include the pharmaceutical establishment or establishments under the sales promotion employees. Hence pharmaceutical industry is not specifically excluded.

The discussion of preceding issue took this court to the finding that though the sales promotion employees are not strictly workmen, they are deemed to be so by virtue of certain provisions in the **Sales Promotion Employees (Conditions of service) Act 1976.** The establishment/ organization in which they are employed can be a composite one having factories, registered offices, administrative branches, thus coming under the definition of the term "*industrial establishment"* u/S 2(e) IE(SO)ACT 1946**.** It is now settled that "*the functional integrality, interdependence and community of financial control, recruitment or discipline, the manner in which employer has organized the different activities, whether he has treated them as independent of one another or as interconnected or interdependent are some of the tests to find out whether two units are part of one and the same establishment*". **WESTERN IN DIAN MATCH COMPNAY VS THEIR WORKMAN (1964 AIR 472)** In the given premise, there is no logic that if any persons employed in an establishment are deemed to be workmen, though not workmen (like sales promotion employees) and they have the effect and benefit of workman, then why shall they not attract the liabilities and other implications of workmen, unless otherwise law expressedly excludes the class from its operation . The pressing need of a harmonious interpretation cannot long be resisted and shut up in the brilliant shell of narrow interpretations, by those who confuse it with technicalities and reason it with faithful repetition.

The essence of the interpretations as it stands today is the temporary application of the Model Standing Orders in the Industrial Employment (Standing Orders) Act 1946 and that the Model Standing Orders shall be deemed to be adopted into the industrial establishment and they become automatically applicable (**Bishwanath das vs Ramesh Chandra 1979 IC 319**.

In emerging thus, **The Sales Promotion Employees (Conditions of service)Act 1976** might not have adopted (IE)SO) ACT 1946, as it has adopted various others under Section 6 but these Acts , harmoniously construed, there appears to be no repugnancy in the pith and substance. Only in a complete affirmation can all the multiform and apparent contradictory interpretations be harmonized.

Further, it is worthy to note here that the distinction which this court has been pressed to recognize cannot be countenanced in view of the decision of Apex Court in **W.M AGNANI VS BADRI DAS and others (1963)1 LLJ 684** where his LORDSHIP JUSTICE PB GAJENDRAGADKER , K.N WANCCHOO AND K.C DASGUPTA have recognized *" when standing orders are framed, there is no difficulty because they define misconduct. **In the absence of standing orders, the question will have to be dealt with reasonably and in accordance of common sense**".* Thus, even if for the sake of argument, the contention of Ld Advocate for the applicant is upheld and it is accepted that there is no valid rules by the said industry in the nature of Model Orders, there are certain miscellaneous provisions which exists to rescue to such emergent situations and they can be pressed into service. The miscellaneous procedure is governed by common sense and fair play. In that perspective also, domestic enquiries cannot be struck down and it cannot be laid down as invalid simply because the law is unclear resulting from non-incorporation and adoption of the standing orders.

Conversely, to say that there would be no domestic enquiry in absence of clear laws is to keep the fate of employees hanging over years and in turn to give an impetus to the companies to remove employees without an inquiry which would in that case be a practice with the companies not to adopt any model orders and to escape inquiries. Hence it is difficult to accept such contention of the applicant. It is duty of courts to secure the benefits to the its beneficiaries. The attempt to deny or stifle a truth because it is obscure in its outward working is itself a kind of obscurantism.

In emerging thus, Domestic inquiries or internal inquiries are thus to be tested in the light of settled principles of judicial interpretations and laws.

Turning to the facts leading to the domestic inquiry, it is deciphered from the written statements in gist that while the company transferred the applicant to Chennai from Kolkata. It is the contention of the applicant that this transfer resulted from a vengeance and vendetta of superiors who were jealous of his performance. He went on to add that there were sufficient seats lying vacant within the eastern zone and there appears to be no valid reason to transfer him to south, where he couldn't make himself available due to his family constraints. It is also submitted that medical representatives are required to communicate with doctors and as he is not versed with any south Indian languages. Thus, it is not easy for him to communicate and meet targets at that place.

OP cites the reason of transfer on the grounds of business exigency.

It is a settled proposition from various case decisions presently that transfer is an incidence of service and cannot be interfered with, unless maladies are shown and the same is prohibited by rule or on account of incompetency of authority. An employee has no right to be posted at any particular place and cannot challenge the transfer on the ground of validity (**Yorendra Singh Chouhan vs Intas Pharmaceutical LTD MP 2021)**

But the wide scope of jurisdiction of industrial courts to interpret contract of service, piercing through the veil of malafides, is now well established. This is particularly apparent when the domestic inquiries are conducted in violation of the rules or principles of natural justice. This charge weighs with special heaviness when it is averred that there are no rules or model standing orders at all in existence, to govern such domestic inquiries.

Before proceeding to delve into this point, it is important to note that to avail the benefit of leading evidence in support of the charges labeled in the domestic inquiry, the first condition is that the option in this regard should be exercised by the employer at the filling of filling the written statement. In the cases of termination of workman preceded by domestic inquiry and such termination is challenged, the Hon'ble Supreme Court has held that in case the domestic inquiry is initiated on account of violation of Principles of Natural Justice, or that the workman was not afforded opportunity, the employer can be permitted to lead evidence to prove charges in the labour court itself. But the procedure was laid down in **Karnataka state Road Corporation Vs Smt Lakshidevamma and another (2001)5 SCC 433 must be followed, which is reproduced hereunder; -**

"*it is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before labour courts/ industrial tribunals but essentially the rules of natural justice are to be observed in such proceedings. Labour courts and tribunals have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in given situation. We reiterate that in order to avoid unnecessary delay and multiplicity in proceedings****, the management has to seek leave of the court / tribunal in written statement itself to adduce additional evidence to support its action in alternative and without prejudice to its rights and contentions****."***

The written statement of the OP however doesn't seek such a leave. There appears to be no plausible explanation either. In the considered opinion of this court, it occurs that though this is a matter of practice and prudence and ought to have been exercised, this case is distinguished in the sense that here it is not the validity of domestic inquiry which is in question but the entire law of applicability of domestic inquiries to these industries which was under scanner. It is in light of this observation that this court shall proceed to decide the domestic inquiry on merits and take into account the evidence of OP , inspite of the omission . Reliance shall be placed upon the materials in the record by both the sides along with the material relied upon by the inquiry officer.

It is pertinent to note that the present domestic inquiry was preceded by another domestic enquiry the fate of which was a clean chit to the employee. The pivot of the present inquiry is disobedience of the order of transfer. The reason cited for such transfer was exigency of business. It is the contention of the applicant in written statement, evidence that he had manifested a star performance at the present job site for which he was rewarded with a promotion. This contention has remained unassailed . This is reiterated in para 11 of Written chief and evidence "it *was my reward for my good performance. I got a certificate also which I have filed in this court"*.

The communication of order of transfer suddenly was a turn of the events which is marked as Exhibit 11. Exhibit 12 is a request by the applicant to withdraw the said order of transfer, citing family reasons, the health of his ailing mother, and the requirement of his three children. This was accompanied by a copy of medical certificate of his mother. The certificate suggests that his mother was suffering from ischemic heart disease apart from other ailments. The genuineness of this document is not in question.

Exhibit 13 is very pertinent as this is the first time it has appeared in the documents of the company that he was transferred for *"business exigencies*", citing that there is nothing unusual about it. . The letter also cites the inability of the management to modify the transfer order, in light of "business priorities."

Exhibit 15 is very pertinent and para 4 requires to be quoted; - "That*, you had mentioned certain headquarters in Bengal, where you feel vacancy exists. Please take note of the fact that it shall be the sole decision of the SBU to decide, if they are willing to accept you in that particular territory and business vertical .It is not just filling vacancies. Certain other factors such as skill set, competency are taken in to consideration*".

In this connection, it is important to remember that just as the employer's right to exercise his option in case of terms of contract has to be recognized so is the employee's right to expect security to be taken into account. Business exigencies sometimes demand prompt transfer from one station to another and transfer being an incidence of service, there is nothing which prevents the companies from taking resort to them.

But the facts of the present case are peculiar in themselves. The company suddenly commenced a domestic inquiry and that was aborted and clean chit was given to the employee. Again, within a very short span, an order of transfer was issued to him and that to at a far off place, when there appears at least no denial from Exhibit 15 of the company letter that no posts are available nearby. The applicant was communicated the order of transfer when he prayed for leave and there is nothing on record to suggest that he had joined transferred post for a single day. Strangely, the domestic inquiry could have been assumed at Kolkata but in its stead, it was held at Chennai, the reason of which is unknown.

The evidence of the applicant remains assailed on the point of his star performance. Nothing prevented the company from producing any further documents in the form of clarification or other wise to suggest the valid cause of such a transfer. The manner in which the applicant had discharged his duties are not disputed rather appreciated. Therefore, the transfer to Chennai citing business exigencies is not free from questions and rather appears to be punitive. The management has not taken any specific stand as to why he was so transferred. The bald averment of business exigences is a vague averment and unsubstantiated, either before this court or from the enquiry report of the enquiry officer, marked herein as Exhibit E.

Now, turning to the inquiry by the enquiry officer, the report is marked as Exhibit E.

The substance of inquiry was the validity of transfer order and subsequent refusal of the employee to join the transferred post. Strangely, the report of enquiry officer, even though arrived at in the absence of the CSE (charge sheeted employee) is expected to decide both the ends by a speaking order. Instead of arriving at the cause of transfer, the report seems to suggest that the transfer was on the ground of exigency and "there *is no point questioning the authority of the company in transferring its employees to a place of its choice. The right of the transfer is vested with the company. It is the bounden duty of the CSE to abide by the direction of the company*". There is not a single document manifested and exhibited in the course of Domestic inquiry citing the pressing need of the company to transfer the employee to a distant place.

If the order quoted above is the disposition of the enquiry officer, then what was it that was required to be decided in the enquiry. **The finding of inquiry officer is thus non- speaking, cryptic and ipse dixit order**.

It is plain from the above contentions on the refusal of the applicant to joint his transferred place of posing that is from Kolkata to Chennai, he was dismissed from his post by way of a domestic inquiry which was held at Chennai. For the reasons discussed above, this court is neither convinced of the validity of the domestic enquiry held by the enquiry officer nor there sufficient materials before this court in evidence to substantiate the same.

This issue gravitates in favour of the applicant.

(9) ISSUE NO 5 (*IS THE APPLICANT ENTITLED TO GET RELIEF*)

The above discussions indubitably lead this court to the conclusion that the applicant is entitled to reinstatement.

This brings the court to the final issue of this case where the relief in the form of back wages and other relief, if any, needs to be decided.

In terms of the law on the subject, it seems that the determining factor for such award of back wages are multifarious ranging from the post held by the employee, special qualifications required in the job, the age and qualification possessed by him , the fact that he may not be in position to get another employment, his length of service, nature of

employment-temporary or permanent, followed by his wrongful termination. These factors are weighed and balanced in arriving at the just decision of the quantum of back wages.

In terms of the burden of proof of being gainfully employed elsewhere during the course of proceeding, earlier it was insisted that the employer must plead and prove the same.

It is now well settled, though, having regard to Section 109 of Bharatiya Sakshi Adhiniyam 2023 (corresponding to Section 106 of Indian Evidence Act, 1872), such a plea must be raised by the applicant in the written statement at least. This initial burden in upon him.

Upon discharge thereof, the employee can bring materials on record to rebut the claim. While the employee cannot be asked to prove the negative, he has to at least assert on oath that he was not gainfully employed or engaged in any business or venture and that he didn't have any income. Further, the misconception of continuity of service and full consequential benefits on reinstatement has been done away with and judicial mind is applied to decide on this aspect.These results are deducible from the decisions *General Manager, Haryana Roadways VS Rudhan Singh AIR 2005 SIPREME COURT 3966 , Deepali Gundu Surwase VS Kranti Junior Adhyapak ..., Hindustan Tin Works Private Limited VS Employees of Hindustan Tin Works Private Limited AIR 1979, SC 75, UP State Brassware Corporation Ltd VS Udai Narain Pandey 2006 (1) SCC 479 , Kendriya Vidyalaya Sangathan VS S.C Sharma 2005 (2) SCC 363*.

NOW TO THE FACTS. There is nothing in the written statement of the applicant or his evidence to suggest an averment that he was not gainfully employed. Only certain statements have appeared from his cross examination which are reproduced hereunder;-

"*At present I somehow manage my livelihood with the income derived from tuition done by my daughter and by pension of my mother and some money from my savings. My mother gets family pension of Rs 12,000/-. I have not filed any papers in order to show my savings ....*"

Nowhere in the written statement he has pleaded that he was out of employment since his termination. Nowhere in his evidence it has appeared that he was unemployed after termination. The statements in cross examination only indicate additional income in the family but is silent on his status of employment in all these years.

It appears that he was in employment with this management from 8th July 1966 which is for about quite a considerable term.

In view of the fact that it is neither pleaded nor proved that he was out of employment for all these years, this court, having regard to the facts herein and his tenure of employment, this court is inclined to award a back wage of 50 % from the termination.

10) **Gauged in the above factual and legal matrix , the issues are decided hereunder;-**

SL NO	ISSUE OF REFERENCE	DECISION
1.	*Whether written Statement and case filed by the applicant under section 10(1B)(d) of the Industrial Disputes Act 1947 (Bengal Amendment)is maintainable in-law?*	YES
2.	*Whether the applicant is a workman as per provision of Industrial Dispute Act?*	YES
3.	*Whether the disciplinary proceeding and the enquiry against the applicant/workman is legal and valid and whether the order of termination is valid?*	NO
4.	*Is the applicant entitled to get relief as prayed?*	YES

11) EPILOGUE

It is therefore a good augury that after the prolonged discussions and barren contradictions, there arises harmony in dispensation and denial of any attempt of negation of beneficial construction. The denials, although more insistent and immediately successful, are more facile in their appeal, leading to a perilous refusal of the essence for which the legislations exist. For law carries within itself its cure, seized by objects and reasons, reinvigorating to its beneficiaries.

The cause of the applicant is thus upheld.

IT IS ORDERED

The application under Section 10 1B)(d) of the Industrial Dispute Act 1947 be and the same is

HEREBY ALLOWED On contest without any order as to cost.

The OPPOSITE PARTY NO1 was not justified in terminating the applicant.
The applicant is hereby entitled to reinstatement at the same status.

The applicant is entitled to receive 50% back wages from date of termination till the actual reinstatement with all consequential benefits.

OP is directed to make payment and comply the award, lest the applicant shall be free to take legal recourse.

Let necessary compliances be made in terms of service of the copies to concerned Government authorities in terms of Section 17AA of the Industrial Dispute Act ,1947.

The case is hereby disposed off.

Note in the relevant register.

-SD /-TYPED BY
(SREEJITA CHATTERJEE)
JUDGE

-S/D
(SREEJITA CHATTERJEE)
JUDGE
SECOND LABOUR COURT,
KOLKATA

I/592188/2025

Government of West Bengal
Labour Department, I. R. Branch
N. S. Building, 12th Floor, 1, K. S. Roy Road, Kolkata – 700001

No. Labr/ 05 /(LC-IR)/22015(16)/1/2025 Date : 03-01-2025

ORDER

WHEREAS an industrial dispute existed between (1) M/s. Crossland-II Presently Crosslandlife, Having its Head Office at Western Edge-1, Unit No. 201-204, 2nd floor, Western Express Highway, Borivali (East), Mumbai-400066 and Regional office at M/s. Ranbaxy Laboratories Ltd. 1 No. Ananda Neogi Lane, Bag bazar, Kolkata-700003 & (2) Amit Kumar Paul, 4R. Partner "Olisa House" 2nd floor, 4, Govt. Place (North), Kolkata- 700001, Presently shifted to M/s. Ranbaxy Laboratories Ltd. 1 No. Ananda Neogi Lane, Bag bazar, Kolkata- 700003 and their workman Shri Sudip Dam Son of Late Amal Krishna Dam, Residing at "Ananta Abasan", 40/B, Jessore Road (South), Flat NO. A/7, 2nd Floor, Post Office - Barasat, Kolkata-700024, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947) ;

AND WHEREAS the 2nd Labour Court, Kolkata has submitted to the State Government its Award dated 18.12.2024 in Case No. 07 of 2014 on the said Industrial Dispute vide e-mail dated 20.12.2024 in compliance of u/s 10(2A) of the I.D. Act, 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

Assistant Secretary
to the Government of West Bengal

No. Labr/ 05 /1(6)/(LC-IR)/ 22015(16)/1/2025 Date : 03-01-2025

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/s. Crossland-II Presently Crosslandlife, Having its Head Office at Western Edge-1, Unit No. 201-204, 2nd floor, Western Express Highway, Borivali (East), Mumbai-400066 and Regional office at M/s. Ranbaxy Laboratories Ltd. 1 No. Ananda Neogi Lane, Bag bazar, Kolkata-700003.
2. Shri Amit Kumar Paul, 4R. Partner "Olisa House" 2nd floor, 4, Govt. Place (North), Kolkata- 700001, Presently shifted to M/s. Ranbaxy Laboratories Ltd. 1 No. Ananda Neogi Lane, Bag bazar, Kolkata- 700003.
3. Shri Sudip Dam Son of Late Amal Krishna Dam, Residing at "Ananta Abasan", 40/B, Jessore Road (South), Flat NO. A/7, 2nd Floor, Post Office - Barasat, Kolkata-700024.
4. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
6. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Assistant Secretary

No. Labr/ 05 /1(3)/(LC-IR)/ 22015(16)/1/2025 Date : 03-01-2025

Copy forwarded for information to :-

1. The Judge, 2nd Labour Court, N. S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 20.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary