

I/30380/2018

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

No. Labr./864/(LC-IR)/22015(16)/540/2018

Date 16.11.2018

ORDER

WHEREAS an industrial dispute existed between M/s Cratus Life Care [a division of Syncom Formulation (I) Ltd.], 5, Niraj Industrial Estate off Mahakali Caves Road, Andheri (East), Mumbai – 400093 and Regional Office at C/o Radha Krishna Enterprise, P- 13, C.I.T. Road, Scheme XM, Kolkata – 700010 and their workman Sri Sourav Chakraborty, S/o Ranendra Kumar Chakraborty, Thakurpukur (W), B.S.S. Road, Agarpara, Kolkata - 700109 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14 of 1947) to the Judge, Seventh Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the said Judge, Seventh Industrial Tribunal has submitted to the State Government its Award on the said Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes 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,



Deputy Secretary
to the Government of West Bengal

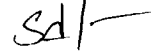
(2)

No. Labr./864/1(2)/(LC-IR)/22015(16)/540/2018

Date 16.11.2018

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 1979 – L.T. dated 26.09.2018.
2. The Joint Labour Commissioner (Statics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. Labr./864/2(5)/(LC-IR)/22015(16)/540/2018

Date 16.11.2018

Copy with a copy of the Award is forwarded for information & necessary action to:

- 1.M/s Cratus Life Care [a division of Syncom Formulation (I) Ltd.], 5, Niraj Industrial Estate off Mahakali Caves Road, Andheri (East), Mumbai – 400093 and Regional Office at C/o Radha Krishna Enterprise, P- 13, C.I.T. Road, Scheme XM, Kolkata – 700010.
2. Sri Sourav Chakraborty, S/o Ranendra Kumar Chakraborty, Thakurpukur (W), B.S.S. Road, Agarpara, Kolkata – 700109.
- 3.The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
- 4.The Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 5.The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

8
16/11/18

**In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata**

Present : Sri Avani Pal Singh,
Judge, Seventh Industrial Tribunal, Kolkata
West Bengal.

Case No.04/2A(2)/2017; u/S. 2A(2) of the I. D. Act, 1947

Sri Sourav Chakraborty,
S/o. Ranendra Kumar Chakraborty,
Thakurpukur (W), B.S.S. Road, Agarpara,
Kolkata – 700109.

... Applicant

Versus

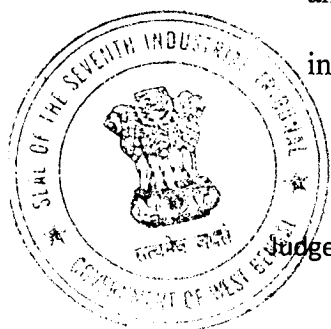
M/s. Cratus Life Care [a division of Syncom Formulation (I) Ltd.]
5, Niraj Industrial Estate off Mahakali Caves Road Andheri (East),
Mumbai-400093 and Regional Office at C/o. Radha Krishna Enterprise,
P-13, C.I.T. Road, Scheme XM, Kolkata – 700010.

... OP/Company

A W A R D

Dated : 11-09-2018

1. The instant **ex-parte** proceeding originated when Sri Sourav Chakraborty, hereinafter referred to as the **applicant**, filed an application purportedly under **Section 2A(2)** of the Industrial Disputes Act, 1947, read with West Bengal Act XXXIII of 1986, also read with West Bengal Industrial Disputes Rules, 1958 stating therein, inter alia, that his employment as '**Sales Officer**' w.e.f. 20.06.2014 in the OTC Division of M/s. Cratus Life Care (*division of Syncom Formulation (I) Ltd.*), referred to as **OP/Company** hereinafter, was suddenly **terminated** by the OP/Company by their letter dated **06.01.2017** with immediate effect, and further claiming therein that such termination was bad in law as it amounted to **illegal retrenchment**, and further the applicant prayed for an order of reinstatement of his services in the OP/Company in the same status, together with payment of back wages including increments, as payable and accrued, from the date of termination till date of reinstatement together with interest as admissible thereupon, with a further prayer for payment of interim relief.

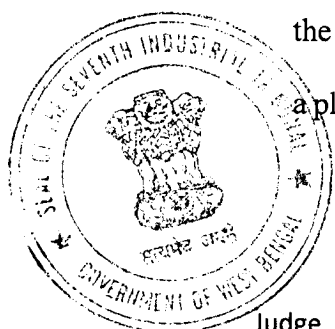


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Judge, 7th Industrial Tribunal, W.B.

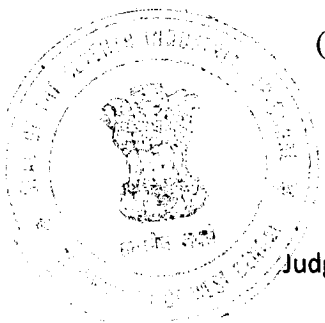
2. Upon filing of the aforesaid application, wherein the Manager of the local office of the OP/Company was also named a party, the instant case was registered on **04.05.2017** and thereafter a notice of the proceedings together with a copy of such application, were sent by registered post with A.D. to the OP/Company at their address given in the application, as well as to the Manager of the OP/Company at their local office at Kolkata, with a direction upon them to appear and file their written statement, if any, against the claims raised by the applicant. Records reveal that on 01.08.2017, the summons-report of the notice issued to the OP/Company at its registered office at Mumbai, was placed before the Tribunal **showing due service** upon the OP/Company, and further on 12.10.2017 the summons-report of the notice issued to the Manager at the Kolkata Office of the OP/Company, was placed before the Tribunal **showing due service** upon that office on 15.05.2017. Records further reveal that, on 12.10.2017 itself, this Tribunal, taking note of the failure of the OP/Company to appear in the proceedings despite due service of notice upon them, as aforesaid, directed that the instant case shall proceed **ex-parte against the OP/Company** and it has proceeded as such, till date.

3. The case, made out in the said application briefly, is that the applicant joined the OP/Company with the designation 'sales officer' at its North Kolkata Headquarters w.e.f. 20.06.2014 and as such, he worked with lots of enthusiasm and diligence and further that the applicant received a letter dated 06.12.2016 from the OP/Company whereby he was sought to be transferred from North Kolkata to Kudal in Maharashtra w.e.f. 22.12.2016 on the grounds of utilising his services at such new headquarters for the purpose of streamlining or reorganising the business of the OP/Company and with a plea that as the sales achievement of the applicant at the headquarter in North Kolkata



had not been upto the mark, so the OP/Company was accommodating him in his new place of posting at Kudal, and further that, the applicant believed that the allegation by the OP/Company against him that he was an under-performer was nothing but a mere subterfuge to transfer him from his home territory to a far off place in India, which in turn would force the applicant to leave the OP/Company. It is the further case of the applicant that he expressed his inability to join his new place of posting at Kudal due to his family problems, and by his e-mail dated 14.12.2014, requested the management to re-consider such transfer, however, to no effect save and except that on 06.01.2017 the OP/Company served another letter on the applicant **terminating his services** and in doing so, the OP/Company neither paid him his due salaries from the month of November, 2016 nor the field expenses incurred by him since August, 2016 till his such termination, and in light of such facts, the applicant contended that the termination of his services were bad in law and would tantamount to illegal retrenchment as the OP/Company had neither given any statutory notice nor any compensation and neither had the OP/Company notified such retrenchment to the appropriate Government. It is the further case of the applicant that he brought the facts of his such illegal retrenchment to the notice of the Labour Commissioner, West Bengal, for conciliation proceedings but since there was no outcome thereof, the applicant filed the instant application after expiry of the statutory period, before this Tribunal.

4. Leading **ex-parte evidence** in support of his aforesaid contentions in the application, the applicant Sourav Chakraborty examined himself as **PW-1, on oath**, and tendered his affidavit-in-chief on 06.02.2018 and also identified copies of his letter of appointment dated 30.07.2014 issued by the OP/Company (**Exhibit-1**), of letter dated 06.12.2016 of the OP/Company transferring the applicant's services to Kudal (**Exhibit-2**), of e-mail dated 14.12.2016 sent by the applicant seeking reconsideration



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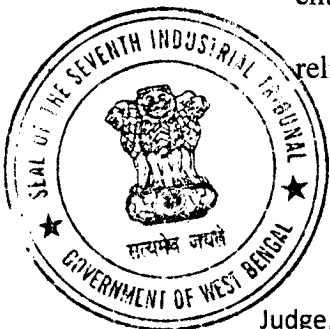
Judge, 7th Industrial Tribunal, W.B.

of the order of transfer (**Exhibit-3**), of his pay slip for June, 2016 (**Exhibit-4**), of letter dated 06.01.2017 issued by the OP/Company terminating his employment (**Exhibit-5**), of letter dated 18.01.2017 of the applicant to the OP/Company protesting against such termination with prayer for reinstatement (**Exhibit-6**), of representation dated 20.02.2017 of the applicant to the office of the Labour Commissioner, Govt. of West Bengal (**Exhibit-7**), of a mail-trail dated 8th March, 2017 to 12th April, 2017 between the applicant and the OP/Company (**Exhibit-8**) and letter dated 07.04.2017 of the OP/Company (**Exhibit-9**), all of which were taken into **ex-parte evidence**.

5. Ld. Advocate appearing for the applicant was heard on several dates being 04.05.2018, 15.05.2018, 28.05.2018, 27.06.2018 and lastly on 31.07.2018 in respect of the arguments on behalf of the applicant, and Ld. Advocate for the applicant also submitted a written note of arguments, on his behalf, and also referred to the following judgments, to buttress his arguments :-

- (i) 2010 (3) SCC 192 (SC); *Harjinder Singh vs. Punjab State Warehousing Corporation*;
- (ii) 2006 (1) SCC 479; *U.P. State Brassware Corpn. Ltd. & Anr. Vs Uday Narain Pandey*;
- (iii) 2009 (9) SCC 601; *Metropolitan Transport Corporation Vs. V.Venkatesan*;
- (iv) 2010 (2) SCC 70; *Reetu Marbles Vs. Prabhakant Shukla*; &
- (v) 2013 (10) SCC 324; *Deepali Gundu Surwase vs K.J.A.Mahavidyalaya (D.Ed.) & Ors.*

6. In the light of the aforesaid contentions as well as the uncontroverted evidence, brought in support thereof by the applicant, the point of consideration before this Tribunal therefore is to examine if the applicant has been able to establish by cogent and consistent evidence that his alleged termination was bad in the eyes of law or that he is entitled to reinstatement with back wages, with the OP/Company and such other relief(s).

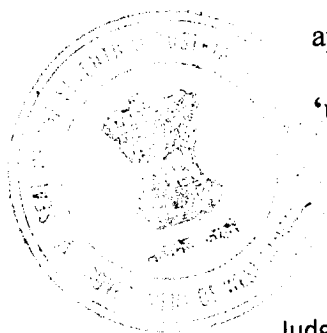


7. At the outset, this Tribunal finds it imperative to mention that by the West Bengal Act 33 of 1986 (*w.e.f. 21.8.1984*), the Section 2 sub-Section (s) of the Industrial Disputes Act, 1947 was amended and, **after** the words 'or supervisory work' the words '**or any work for promotion of sales**' were **inserted**, and hence in so far as such provision of the said Act of 1947 applies to the State of West Bengal, all sales promotion employees fall under the term and are considered to be '**workmen**'. In the present case, PW-1 testified that his job in the OP/Company was of a Medical Representative and that he had no power and function or the role of a supervisor or a manager and that, as a 'Sales Officer' he did not exercise any administrative and/or supervisory power and neither did he participate in any decision-making process on behalf of the OP/Company and that **his entire duties involved promotion of sales of the medicines** by getting prescriptions generated from the doctors, who were detailed about the products of the OP/Company by him. That apart, from his appointment letter (*Exhibit-1*) issued by the OP/Company on 30.07.2014, it appears that the applicant was designated as 'Sales Officer' in the OTC Division of the OP/Company, with **retrospective effect from 20.06.2014** and stationed at Kolkata (N), to cover various parts of the State of West Bengal, on the terms and conditions of employment as prescribed therein. Further, from the order of transfer of the applicant dated 06.12.2016 (*Exhibit-2*), this Tribunal noted that the OP/Company, while referring to the **infield activity** of the applicant mentioned, among other, about "declining **sales and collection** trend in your Hq". Clearly, from such testimony of the applicant as well as the said documentary evidence in support thereof, it is established that the applicant was a '**workman**', as defined under Section 2(s) of the Industrial Disputes Act read with the said West Bengal Amendment, who was employed by the OP/Company and as such, he was stationed and worked in areas within the jurisdiction of this Tribunal, for carrying out sales

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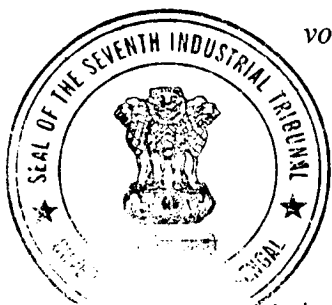
promotional activities (industry) of medicines / products of the OP/Company. In such view of the matter, this Tribunal further holds that under Section 2A of the Industrial Disputes Act, 1947 the instant dispute connected to the termination of the services of the applicant / workman, and matters connected therewith, would be deemed to be an "industrial dispute". Accordingly, this Tribunal further holds that the applicant has established, by cogent and consistent evidence, that the instant case is maintainable before this Tribunal and further, that this Tribunal would have jurisdiction to adjudicate the issues raised by the applicant/workman, in terms of provisions of Section 7A of the Industrial Disputes Act.

8. Having so held, as above, this Tribunal noted that the uncontroverted testimony of PW-1 establishes that he was appointed by the OP/Company w.e.f 20.06.2014 (*Exhibit-1*) and he remained in such employment of the OP/Company till receipt of the letter of termination dated 06.01.2017 (*Exhibit-5*) and hence, in the absence of any contra-evidence, it is clearly established that the applicant rendered **uninterrupted service** of over 30 (thirty) months to the OP/Company. Further, PW-1 testified that he had received his letter of termination suddenly on 06.01.2017 at Kolkata and it was to come into effect immediately and that the OP/Company did not give him one month's notice nor any payment in lieu thereof before issuing such letter of termination and further, that the applicant had written to the OP/Company in protest against such unlawful decision but to no avail. Nowhere from the testimony of PW-1 does it appear that any show-cause notice or any domestic enquiry or any such disciplinary action was issued / initiated by the OP/Company against the applicant/workman. In this context, this Tribunal noted that though the letter of termination (*Exhibit-5*) speaks of refusal by the applicant to accept and/or act as per his transfer order (*Exhibit-2*) as well as of '**unfocussed field activity**' of the applicant resulting in his poor performance, yet the



same cannot be construed to be a letter of show-cause or such disciplinary note for the simple reason that it neither granted any opportunity to the applicant/workman to explain his such conduct nor did it put the applicant/workman to notice that his such act(s)/omission(s), if established, would make him liable to disciplinary action; on the contrary, the said letter (*Exhibit-5*) was a mere **communication of a decision** of termination of services of the applicant/workman, **already taken by the OP/Company**, and hence this Tribunal holds that the such termination of employment of the applicant was clearly a case of '**retrenchment**' as defined under **Section 2(oo)** of the Industrial Disputes Act, 1947 and, in such view of the matter the OP/Company was under **statutory obligation** to observe the formalities prescribed under **Section 25F** and such other connected provisions of the Industrial Disputes Act, 1947 as well as the Rules framed thereunder, as the applicant / workman had already put in 'continuous service' to the OP/Company, in terms of **Section 25B** of the said Act of 1947, for the aforesaid period of over 30 (thirty) months.

9. In the aforesaid context, it is in the evidence before this Tribunal that the OP/Company did not pay any compensation or any salary, either in lieu of the notice period or otherwise, while so terminating the employment of the applicant/workman by issuance of the said letter dated 06.01.2017 (*Exhibit-5*), and hence it is established from the materials on record and this Tribunal holds that the OP/Company had acted in violation of the express provisions of **Section 25F** of the Industrial Disputes Act, 1947 while issuing the order of termination of services of the applicant (*Exhibit-5*) and thus, such termination cannot be held to be lawful and justified in the eyes of law and, for the reason of violation of the statutory mandate, such termination is held to be illegal and *void ab initio* and the applicant is held to be entitled to a declaration to that effect.



10. In light of the aforesaid findings of the Tribunal regarding the illegality of the order of termination issued by the OP/Company, this Tribunal would now proceed to examine the relief to which the applicant / workman may be entitled. Law in this regard has been laid down in various judgments of the Hon'ble Supreme Court, applying to various fact-situations. Discussing the law laid down through various pronouncements, the Hon'ble Supreme Court, while rendering the judgment dated August 12, 2013 in Civil Appeal No. 6767 of 2013 *Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors*, as reported in (2013) 10 Supreme Court Cases 324, and relied upon by the applicant/workman, was pleased to hold, inter alia, at para 38 thereof :

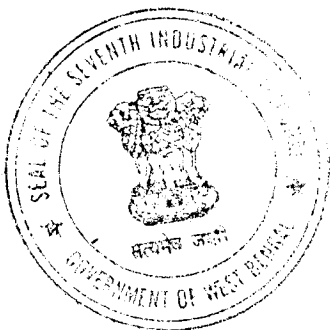
38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice



and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

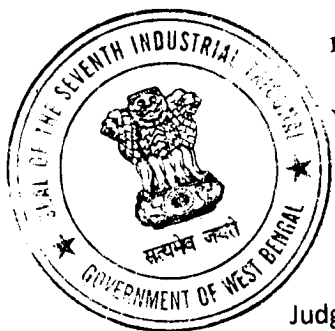
38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees* [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53].

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53], [*Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.



11. Having noted the position of law, as prescribed by the Hon'ble Supreme Court, in respect of the relief(s) to be granted to a workman whose services were wrongfully terminated, and the factors to be considered while granting the same, this Tribunal would now proceed to examine the evidence on record with a view to determine the relief(s) to which the applicant / workman may be entitled to.

12. While contending that his services were wrongly terminated by the OP/Company, in his application, the applicant / workman made the prayer for reinstatement together with an order for payment of back wages, including increments, together with interest as admissible, however, **nowhere in his such application does it appear that the applicant has claimed to have been rendered unemployed or jobless** as a result of such illegal termination of his services by the OP/Company. That apart, this Tribunal also noted that in such application, **the applicant has not claimed 'full' back wages** though he has claimed increments together with the interests thereupon. This Tribunal has also noted that in the affidavit-in-chief of PW-1, there is **no testimony to the effect that the applicant/workman is unemployed or is facing financial stringency as a result of his such termination** from services by the OP/Company, and further this Tribunal also noted that while praying for his reinstatement in service and payment of back wages, PW-1 did not testify that he may be granted 'full back wages', and neither did he testify that he was entitled to interest or consequential benefits. In that regard, this Tribunal has noted that on the date of affirming (06.02.2018) his affidavit-in-chief, the applicant testified that he was **39 years old** and further it could be noted, as aforesaid, that he had been in the service of the OP/Company for around 30 (thirty) months. Though the length of service of the applicant with the OP/Company wasnt very long, it certainly can't be said to be short either, and it is also noted that at his



present age the applicant/workman would not be anyway near to the age of retirement as prescribed in his appointment letter (*Exhibit-1*), and he would have many years of productive life ahead.

13. In view of the aforesaid ex-parte evidence on record and the settled position of law, this Tribunal is of the view that the ends of justice shall be served if it is directed that the applicant be reinstated in service of the OP/Company w.e.f. 06.01.2017 and his such services be deemed to be 'continuous service' till date, with further direction upon the OP/Company to pay 50 per cent of back wages while ensuring that consequential benefits are allowed to the applicant, in view of such reinstatement and continuity in service.

Hence,

It is

ORDERED

- (i) That, the order and letter dated 06-01-2017, terminating the services of the workman Sourav Chakraborty w.e.f. 06-01-2017 issued by his employer M/s. Cratus Life Care (a division of Syncom Formulation (I) Ltd.), the OP/Company herein, is found and held to be unjustified and unlawful, and is hereby set aside for it being illegal, unsustainable and void for being violative of **Section 25F** and such other provisions of the Industrial Disputes Act, 1947, and the Rules framed thereunder;
- (ii) That, the applicant/workman Sourav Chakraborty is hereby directed to be reinstated in his services of the OP/Company w.e.f. 06-01-2017, and the OP/Company shall pay him 50 per cent back-wages, and accord him full



consequential benefits, arising out of his such reinstatement and continuity of service;

(iii) That, in the facts and circumstances of this case, there shall be no order as to interests and / or costs;

The prayers in the application are answered accordingly. The aforesaid shall constitute the Award of this Tribunal passed in the instant **Case No. 04/ 2A(2)/ 2017**, which shall stand disposed of, **ex-parte**.

Dictated & corrected by me

sd/-
Judge

Judge
Seventh Industrial Tribunal

sd/-
Judge,

Seventh Industrial Tribunal
11/09/2018

Judge
Seventh Industrial Tribunal

