

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 99 of 96

Date of order : 18.6.2002

Present : Hon'ble Mr. L.R.K. Prasad, Administrative Member
Hon'ble Ms. Meera Chibber, Judicial Member

MARINE ENGINEERING RESEARCH
INSTITUTE EMPLOYEES' ASSN. & ORS.

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UNION OF INDIA & ORS.

For the applicants : Mr. Sanir Ghosh, counsel

For the respondents : Ms. K. Banerjee, counsel

O R D E R

Meera Chibber, J.M.

This OA has been filed by Marine Engineering Research Institute Employees' Association and one affected person claiming the following reliefs :

- a) leave be given to the applicants to file this joint application in terms of Rule 4(5)(b) of the Central Administrative Tribunals (Procedure) Rules, 1987;
- b) to direct the respondents to extend the benefit of 5 days' week in the case of the applicants No. 3 to 47 hereof and specifically the Watchman/Safaiwala/Gardener and other Group 'D' employees of Marine Engineering & Research Institute, Calcutta as has been extended to the similar employees of Marine Engineering & Research Institute at Bombay;
- c) to direct the respondents to declare that the duty hours of the members of the applicant No. 1 association and others including Watchman/Safaiwala/Gardener (Mali) of Marine Engineering Research Institute, Calcutta is 5 days' week;
- d) to direct the respondents to extend the same benefits of service including introduction of 5 days' week at par with Bombay counterparts of the applicants No. 3 to 47 hereof and others including Watchman/Safaiwala/Gardener under the respondents both at Bombay and at Calcutta;
- e) to direct the respondents to give all consequential benefits to the applicants No. 3 to 47 hereof and other similarly circumstanced employees from the date when similarly circumstanced employees have been given the benefit of 5 days' week as their working hours instead of 6 days' week.
- f) to direct the respondents to deal with and/or dispose of the representations of the applicant No. 1 Association dated 12.9.94, 26.7.94 & 10.1.96 as contained in Annexures 'F' & 'H' therof;
- g) to direct the respondents to produce the entire record of the case before the Hon'ble Tribunal for adjudication of the points at issue.



2. The relief to file joint application in terms of Rule 4(5)(b) of CAT Procedure Rules is allowed.

3. Today when the matter came up for hearing it was brought to our notice by the ld. counsel for the respondents that the same grievance was raised by the JCM before the arbitrator and the terms of reference (on behalf of staff side was "the demand of the staff side is that working hours of excluded categories of Group 'D' employees including Chowkidars be fixed at 8 hours per day/48 hours per week." While the terms of reference on behalf of official side was "whether or not the working hours of excluded categories of Group 'D' employees including Chowkidars be fixed at 8 hours per day/48 hours per week." The matter was thus placed before the arbitrator who has given his award on 28.1.99 which for ready reference reads as under :

"Having heard the submissions of the representatives of both the parties with great and unremitting attention, examined and scanned the entire materials on record presented by the Parties, and given our most anxious and careful consideration to all relevant facts and circumstances having bearing on the matter in issue between the parties, in the background of the materials on record, such as they are, we hereby give our Award as follows :

The claim of the First Party be rejected. The demand of the Staff Side is, however, left for consideration of the local authorities concerned at their discretion, in appropriate cases.

Given under our hand this 28th day of January, 1999."

3. Thus the respondents' counsel has submitted that once the same relief or grievance had been raised before the arbitration by the staff side in its JCM and the arbitrator had already given the award rejecting the claim of the staff side leaving it open to the local authorities to consider the case at their own discretion in appropriate cases, this OA cannot be further agitated as the respondents have already taken a detailed decision mentioning reasons thereof to decide the claim of staff side but the same could not be communicated to the applicants in view of the pendency of the present OA. Therefore she has submitted that this OA may be disposed of by



giving directions to the respondents to pass appropriate orders in terms of the award given by the arbitrator on 28.1.99 leaving it open to the applicants to challenge the same in case they are still aggrieved by the same order.

4. The counsel for the applicants on the other hand has stated that no such document could have been taken on record at the time of argument and if the respondents wanted they could have brought it on record by filing an affidavit. The counsel for the applicants has further submitted that the applicants in this OA are not members of the JCM and the said decision of the award is not binding on them as the Association who has filed this OA is not recognised association. The applicants' counsel has further stated that since the relief as claimed by the applicants in this OA has already been granted to the similar category in Bombay as well as the same of the employees in Calcutta, the same cannot be denied to the applicants herein.

5. We have heard both the counsel and perused the pleadings as well. From the relief clause we find that one of the relief claimed by the applicants is to direct the respondents to deal with and/or dispose of the representations of the applicant No.1 Association dated 12.9.94, 26.7.94 and 10.1.96 as contained in Annexures 'F' & 'H' of the application. Dealing with the objection taken by the 1st. counsel for the applicant that the respondents' counsel cannot rely on any document at the time of hearing, We would only like to refer to para 18 in the written statement filed by the respondents wherein the respondents have categorically stated that the present applicants are not entitled to get the benefit of work hours as 5 days in a week as per clarification of Dept. of Personnel & Training dated 7.3.96 along with their O.M. No.49019/2/86-Estt(C), dated 24/25.7.86, all collectively marked as R/10. The subject of contention was also raised by the staff side in the JCM and it has not been referred to the Board of Arbitration at the instance of the staff side. In view of this and as the nature of



work for the excluded category is exceptionally light duty type, they are not entitled to 5 days/week and have altogether different leave/weekly off entitlement. They have further submitted that the present applicants are not entitled to get the benefits of working 5 days in a week because they are similarly placed with their Bombay counterparts. A perusal of this para clearly shows that even at the time of filing the written statement the respondents have specifically taken this plea that the matter has already been referred to the Board of Arbitration at the instance of the staff side but the applicants did not bothered to rebut the same nor did they file a rejoinder to state that they are not members of the JGM or would not be covered by the said arbitration which is raised by the staff side and since the matter had been referred to the Board of Arbitration naturally the same was still pending at the time when the written statement was filed. Therefore they could not have filed the award at that particular point. The copy of award shows it was given only on 28.1.99 i.e. during the pendency of the OA and since it had already been referred to in the written statement, we do not find any illegality if the said award is placed before us for our perusal after handing over the copy of the same to the applicants' counsel.

6. In view of the above discussion the objection taken by the applicants' counsel with regard to the bringing of award on record is rejected.

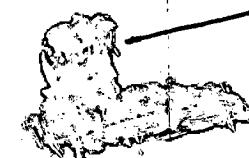
7. In view of the fact that the same grievance has already been raised by the JGM before the Board of Arbitration and the Board of Arbitration has already given (its award) rejecting the case of the staff side leaving it open to the authorities to pass appropriate orders after considering the case properly, we think the ends of justice will be met if the present OA is disposed of by remitting back the matter to the authorities to pass final orders on the representations made by the applicants as referred to by them in their clause(iv) of para 8 also in terms of the liberty granted by the



Board of Arbitration and communicate the same to the applicants within a period of 3 months from the date of receipt of the copy of this order after dealing with all the points as raised by the applicants and giving the detailed reasons therefor. It shall be open to the applicants to challenge the said order in accordance with the law if they are still aggrieved and they are permitted to do so in law.

8. With the above directions the OA is disposed of. No order as to costs.


MEMBER (J)


18.6.02
MEMBER (A)

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