

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 392/87

~~XXXXXX~~

198

DATE OF DECISION 8.12.1989

Rly. Laboratory Staff Association Petitioner

Mr. H. J. Acharya

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B. Mujumdar, Member (J)

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

10

Original Application No. 392/87.

Railway Laboratory Staff Association,
A/28, J.R. Hospital Quarters,
Maratha Mandir Marg,
BOMBAY - 400 008.

.. Applicant.

V/s.

Union of India, through
the Secretary to the Govt. of India,
Ministry of Labour, Shram-Shakti Bhavan,
New Delhi -110 001.

.. Respondents.

Coram : Hon'ble Member(J) Shri M.B. Mujumdar
Hon'ble Member(A) Shri M.Y. Priolkar.

Appearances:

Mr. H.J. Acharya, Advocate
for the applicant.

ORAL JUDGMENT

DATED : 8.12.1989.

¶(Per: Shri M.B. Mujumdar, Member(J)).

This application is filed by the Railway Laboratory Staff Association through its General Secretary under the following circumstances.

2. The applicant Association had submitted a memorandum of demands to the Managements of Central Railway and Western Railway. It contained 14 demands. A strike notice dated 22.6.1984 under Section 22 of the Industrial Disputes Act was also given. The Regional Labour Commissioner, Bombay tried to bring about conciliation but the representatives of the Management did not attend the meeting called by him. Hence, the conciliation proceedings ended in failure and the Regional Labour Commissioner, Bombay submitted his report to that effect on 29.11.1986 to the Secretary to the Government of India, Ministry of Labour. That report was acknowledged by the Ministry of Labour, Government of India, by letter dated 29.1.1986. The applicant Association thereafter sent a number of reminders for referring the case to the Industrial Tribunal but the Ministry of Labour have neither sent any reply nor taken any decision.

That is why the applicant has filed this application requesting for directing the respondents to refer the dispute for adjudication to appropriate Industrial Tribunal.

3. After admitting the application, we had issued notices to the respondents, but neither they have filed any reply nor anybody has appeared before us on their behalf.

4. We have just now heard Mr. H. J. Acharya, learned advocate for the applicant Association. He relied on Second proviso to Section 10 (1) of the Industrial Disputes Act 1947. Section 10 (i) of that Act is as under :-

"10. Reference of disputes to Boards, Courts or Tribunals.(a)

1. "Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time", (aa) by order in writing,
 - (a) refer the dispute to a Board for promoting a settlement thereof; or
 - (b) refer any matter appearing to be connected with, or relevant to the dispute to a Court for inquiry; or
 - (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
 - (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) "(b)".

"Provided further that" (c) where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced."

(Provided also that where the dispute in relation to which the Central Government is the appropriate Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constitute by the State Government.) (ca)".

(P2)

(Remaining Sub-Sections 1(a) to 8 are not quoted as they are not relevant).

5. The case law under Section 10 shows that, the power to refer a dispute to Labour Court or Industrial Tribunal under Section 10 is wholly the discretion of the Government, but if the discretion is not properly used by the Government, the court can give suitable directions. In the present case the respondents have not taken any decision at all regarding making reference to a Labour Court or an Industrial Tribunal. Hence, we propose to direct the respondents to take some decision by exercising its discretion according to law.

6. We, therefore, pass the following order:-

The respondent are hereby directed to exercise their discretion according to law and if found proper refer the dispute of the applicant Association, about which the Regional Labour Commissioner (Central Bombay) has submitted his failure report dated 29.11.1985 to the appropriate Labour Court or Industrial Tribunal, within four months from the date of receipt of a copy of this order.


(M.Y. PRIOULKAR)
MEMBER (A).


(M.B. MUJUMDAR)
MEMBER (J).