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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.92/89

Paschim Railway Karmachari Parishad,
32/A, Chhprala Bldg., 1st Floor,
R.K.Vaidya Marg, Near Plaza Cinema,
Dadar (West)
Bombay - 400 028
through its Divisional
Secretary
Shri Asharam G.Rajput.

Mohmed Rafi Mohmad Hanif,
32/A, Chhprala Bldg.
1st Floor, R.K.Vaidya Marg,
Near Plaza Cinema,
Dadar (West),
Bombay - 400 028.

.. Applicants.

vs.

1. Union of India
through
The General Manager,
Western Railway
Churchgate,
Bombay - 400 020.

2. Union of India
through
Asstt. Labour Commissioner
Central II,
2nd Floor, Wakefield House,
Sprott Road, Ballard Estate,
Bombay - 400 038.

3. Shri K.N.Ramkrishnan,
Sr. Personnel Officer (Workshop),
Western Railway Parel Workshop,
Parel,
Bombay - 400 013.

.. Respondents

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

Appearances:

1. Mr. H.J. Acharya,
Advocate for the
Applicants.

2. Mr. N.K. Srinivasan,
Advocate for
Respondents No. 1 & 3

ORAL JUDGMENT
(Per M.B. Mujumdar, Member (J))

Date: 2.3.1989

This application is filed by Paschim
Railway Karmachari Parishad (PRK Parishad) through its
Divisional Secretary and one Mohmed Rafi Mohmad Hanif
who is a Member of the Parishad and an employee of the
Western Railway.

2. Some 40 disputes are pending before the Conciliation Officer, i.e. Asstt. Labour Commissioner, (Central II) i.e. Respondent No.2 concerning the employees of the Western Railway. Initially in pursuance to the notices from the Conciliation Officer the authorities of the Western Railway had submitted their remarks. They also participated in the conciliation proceedings for sometime till 5.1.1989. But thereafter in view of some confidential instructions received from the Railway Board they refused to sit along with the office bearers of the PRK Parishad on the ground that it is not a recognised Union. Hence the Conciliation Officer has not submitted any reports to the Ministry of Labour under Section 12(3) or (4) of the Industrial Dispute Act, 1947. Hence the applicants have filed the present application on 25.1.1989 under Section 19(3) of the Administrative Tribunals Act, 1985. The following reliefs are claimed in the application: (i) the Tribunal may direct the General Manager of the Western Railway to produce the relevant confidential instructions and to set aside the same if they offend or impede the provisions and purpose of Industrial Dispute Act. (ii) Pending hearing and decision of the application, direct the Conciliation Officer or the officers of the Ministry of Labour to force the Railway Administration to attend the conciliation proceedings and sign all the minutes of the conciliation proceedings as was being done previously. The applicants have also claimed some interim reliefs.

3. On 10.2.1989 after hearing Mr. H. J. Acharya, learned advocate for the applicants and Mr. N. K. Srinivasan, learned advocate for the respondents No.1 & 3 we had issued notices to Respondent No.2 regarding admission and interim relief. But respondent No.2 has not appeared before us.

Respondents No.1 & 3 have ~~also~~ filed their reply opposing admission and interim relief.

4. We have heard Mr.Acharya for the applicants and Mr.N.K.Srinivasan for Respondents No.1 & 3 on the points of admission and interim relief.

5. Respondents No.1 & 3 have admitted that PRK Parishad had given strike notices and conciliation proceedings were started before the conciliation officer. However, as per the instructions and policy, no negotiations are to be held with the unrecognised Unions. These views of the Railways were conveyed to the Conciliation Officer by respondent No.3. Moreover according to the respondents validity of the instructions for not participating jointly with the unrecognised Unions in the conciliation proceedings is not a service matter which can be decided by this Tribunal. Further, as the applicants have opted to seek redressal of their grievance under the Industrial Dispute Act, this Tribunal cannot entertain this application for claiming any reliefs.

6. After hearing advocates and considering the facts we find that what the applicants have challenged is the action of the Conciliation Officer of not proceeding further or making any report to the Labour Ministry under Section 12(3) & (4) of the Industrial Disputes Act. Applicants also want us to quash the instructions which are received by the Railway authorities making a distinction between recognised Unions and unrecognised Unions.

7. Section 11 of the Industrial Disputes Act is regarding procedure, powers and duties of Conciliation Officers, Boards, Courts and Tribunals. Section 12 lays down the duties of conciliation officer. According to sub-rule (3), if a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation

proceedings, the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. On the contrary, sub-section(4) provides that if no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and **circumstances**, and the reason on account of which, in his opinion, a settlement could not be arrived at.

Sub-Section(6) lays down that the report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. The proviso provides that the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute but subject to the approval of the conciliation officer.

8. The first prayer of the applicants is that this Tribunal should direct the General Manager of the Western Railway to produce the relevant confidential instructions and to set aside the same if they offend or impede the provisions and purpose of Industrial Dispute Act. The second prayer of the applicants is for giving certain directions to the conciliation officer. We do not think that these prayers fall within the jurisdiction of this Tribunal.

9. Mr. Acharya submitted that there is no remedy provided in the Industrial Tribunal Act in case the conciliation officer fails to submit a report either way under sub-sections(3) or (4) of Section 12 of the

(X)

Industrial Disputes Act. The only remedy available to the parties before the conciliation officer was, according to Mr. Acharya, ~~was~~ to approach the High Court under Article 226 of the Constitution of India but after coming into force of the Administrative Tribunals Act, that jurisdiction is vested in the Tribunal.

10. We are unable to accept this submission. In our view giving a direction to the conciliation officer will not be a service matter of an employee of the Railways. The other prayer of the applicant is probably more important. The applicants have requested for quashing and setting aside the confidential instructions received by the railway authorities which say that they may not attend the conciliation proceedings with an unrecognised Union, and sign minutes before the conciliation proceedings jointly with the office bearers of such Unions. On our directions Mr. N.K. Srinivasan learned advocate for the respondents No.1 and 3 showed us a copy of the relevant confidential letter dtd. 24.10.1988. The main portion of the letter reads as under:-

"Please refer to your letters No.E/HER/ 523/12(Conciliation) dated 19.10.1987 and 30.11.1987 received with the above DO on the above subject. In this Ministry's letter No.E(LR)II83 ST/1-82 dated 11.10.1984, the Railway Administrations were advised that the Railway officers should not attend meetings arranged by Regional Labour Commissioners where representatives of unrecognised unions are present. With the introduction of Section 11 in the Industrial Disputes (Amendment) Act, 1982, the Regional Labour Commissioners/Assistant Labour Commissioners have been empowered to enforce attendance of any person for the purpose of examination of such person in conciliation proceedings. The Ministry of Labour have clarified that conciliation officers have ~~was~~ not been given any specific powers to compel the management to

sit for negotiation jointly with the unions. As such there would be no change in the existing position and the Railway representatives would not be compelled to sit across the table with the representatives of unrecognised unions. A copy of DO letter No.S-11014/1/84-D.I(A) dated 7.2.1985 received from the Ministry of Labour in this regard is enclosed, the contents of which may be brought to the notice of A.L.C., Ahmedabad and he may be requested not to insist on Railway Officers sitting with representatives of unrecognised Unions in the conciliation proceedings. The reaction of A.L.C Ahmedabad to this may be advised for information of the Board."

11. The above letter no doubt makes a distinction between the representatives of recognised unions and representatives of unrecognised unions and it says inter-alia that the railway officers should not attend the meeting of the unrecognised unions arranged by the Regional Labour Commissioner where representatives of the unrecognised unions are present. It is not disputed that applicant No.1 Paschim Railway Karmachari Parishad is not a recognised union. In our opinion whether some distinction should be made between recognised unions and unrecognised unions and if so whether it is justified or not will not be a service matter which this Tribunal can decide. Moreover it is a policy matter. If the policy is to discourage unrecognised unions, we cannot find any fault in it. Moreover the conciliation officer is bound to submit a report whether the representatives of the Western Railway attend and sign the conciliation proceedings or not. But in our view we will have no jurisdiction to give a direction to the conciliation officer i.e. respondents No.2 to act in a particular way.

12. We, therefore, find that we have no jurisdiction to entertain and decide the application in respect of any of the prayers made by the applicants. Hence we reject this application summarily under Section 19(3) of the Administrative Tribunals Act with no order as to costs.

Y. P. Kar

(M.Y.PRIOLKAR)
Member(A)

M. B. M. J. M. D. A. R.

(M.B.MULJUNDAR)
Member(J)