

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

O.A.889/89

ABRAHAM KORAH & OTHERS

... APPLICANTS.

V/s.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM : Hon'ble Shri B.S.Hegde, Member(J).

Hon'ble Shri M.R.Kolhatkar, Member(A).

APPEARANCES :

None for the Applicant.

Shri R.K.Shetty for Respondents.

JUDGMENT :

16.1.95
DATED : 16.1.1995.

I Per Shri B.S.Hegde, Member(J). I

Heard the arguments of Shri Shetty in this case, None for the Applicant.

1. The Applicants in this OA have prayed for the following relief:-

"To direct the respondents to implement the award of the Board of Arbitration (JCM) in C.A.No.9 of 1983 in respect of Senior Scientific Assistants on and from 22.9.1982, which is the date stipulated in the said Award and further direct them to fix the salary of the applicants in the pay of Rs.840 - 1040 with effect from 22.9.1982 and pay the arrears of salary and allowances on the basis of revised pay for the period from 1982 to 1985, etc."

2. Though the Board of Arbitrators have indicated in the Award that the findings of the Arbitrators be given effect from 22/9/1982, the respondents, Union of India have chosen to implement the award only w.e.f. *1.1.1988.* The Government in their wisdom took the aforesaid decision keeping in view of the financial implications involved in the acceptance of the award affecting the national economy, and accordingly in terms of paragraph 21 of the scheme of JCM and Compulsory

Arbitration, resolution was moved before the Lok Sabha and Rajya Sabha as passed at sitting on 13.10.89 to modify the date of implementation of the award from 22.9.1982 to 1.1.1988.

3. The Learned Counsel for the respondents submits that the Government has taken a definite policy decision to implement the findings of the award w.e.f. 1/1/88 and necessary payment have been already affected to all the petitioners. In support of his contention Shri Shetty has relied upon the decision of the Bombay Bench in OA No.33 of 1990 in Shri M.D.Soma and others V/s. Union of India wherein it is observed that despite the decision of the Principal Bench in this behalf on 10/8/89, keeping in view of the regulations passed by the two houses of Parliament pursuant to para 21 of the scheme, which was passed/effective subsequent to the decision of the Principal Bench, Bombay Bench complied with the contention of Union of India and dismissed the OA.

4. He also relied upon the recent Supreme Court judgment in Union of India V/s. Scientifica Workers Association(Regd) Kanpur and others vide Civil Appeal No.3954 of 1990 dt. 18/3/94 wherein the Supreme Court held that the Government of India ordinarily is bound by the award given by the Board unless the same is modified or rejected by the Parliament. Immediately after the judgment of the tribunal, the Cabinet took a decision on August, 23, 1989 and the two houses of the Parliament passed a resolution modifying the award. The situation emerged as a result of the resolution passed by two houses of the Parliament was not before the tribunal in OA 952/86, that was brought before the tribunal by filing Review Petition. It is therefore, clear from the fact that the

tribunal in the Review Petition had dealt with the question before the Supreme Court. Even it is assumed that the judgement of the tribunal in OA 952 of 86 ^{and it} has achieved finality is of no consequence because the issue before the court was not before the tribunal at this stage. The question before the court is whether the procedure in clause 21 of the JCM scheme has been followed, if so to what effect. This question could not have been and was not the subject matter of civil appeal No. 3769/90, in any case the appeal was not decided by this court on merit. There is no adjudication by this Court on the merits of the controversy involved in the said appeal. It is also observed that the award given by the Board has not achieved finality in the sense that it was open to the Government of India to have invoked the procedure envisaged under clause 21 of the JCM scheme. It is also held at clause 21 of JCM scheme that the effect of the tribunal directing implementation of the award would only mean that the Government of India was bound to implement the award subject to its power to have it modified in terms of Clause 21 of the JCM scheme, etc., in the result the Court set aside the judgements of the tribunal dt. 10/8/89 and also 10/4/90 respectively.

5. In the light of the above, the Supreme Court while considering the application of Union of India ^{had} also observed the contention of the respondents i.e. petitioners that they should have been given opportunity of hearing to the respondents had been rejected by the Court because the JCM scheme has been formulated in consultation with the representatives of the employees. The parties have be consent left the

residuary power to modify or reject the award with Parliament. Therefore, any opportunity to the respondents does not appear to be the requirement of the clause 21 of the JCM scheme. Therefore the decision of the Supreme Court is binding on all the parties.

6. In the circumstances, as rightly pointed out by ^{the} Supreme Court the only question that arises for consideration is whether the Government of India is empowered to change the date of implementation from 22/9/82 to 1/1/88. Decision of the Supreme Court is binding on all the JCM scheme approved by the two houses of the parliament have been accepted and thus the same is binding on all the parties and it is not open to the applicants to agitate the same matter again and again on that score.

7. In the circumstances, we are of the view, that there is no merit in the OA, ~~and~~ is dismissed. No order as to costs.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde
(B.S.HEGDE)
MEMBER (J)

abp.