

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 235/91

~~To be for xxxxxxxxxx~~

DATE OF DECISION 13.10.93

Shri H.J. Acharya Petitioner

In person. Advocate for the Petitioners

Versus

Union of India Respondent

Shri A.L. Kasturey Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri ~~N.K.~~ Verma, Member (A)

1. ~~Whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? *no*
3. ~~Whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

N.K. Verma

(M.S. Deshpande)
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(10)

Original Application No. 235/91

Shri H.J. Acharya
V/s.

... Applicant.

Union of India through
The General Manager
Western Railway
Churchgate,
Bombay.

... Respondent.

CORAM: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.
Hon'ble Shri N.K.Verma, Member (A)

Appearance:

Applicant in person.

Shri A.L. Kasturey, counsel
for the respondent.

ORAL JUDGEMENT.

Dated: 13.10.93

{ Per Shri M.S. Deshpande, Vice Chairman }

By this application the applicant challenges the award passed by the Central Government Industrial Tribunal, Bombay on 26.2.1990. The questions referred to the Tribunal under Section 10(1)(d) of the Industrial Disputes Act were as follows:

"... Whether the action of the management of Western Railway in not paying to Shri H.J. Acharya, Lab. Supdt., J.R. Hospital, Bombay, the full share of the fee received by the Railway Administration on account of medical facilities extended to the non-railway patients from 1.10.1978 and onwards, for the tests conducted by Shri Acharya, is justified? If not, to what relief the concerned workman is entitled, and from what date? ..."

...2...

2. The Tribunal framed issues and issue No.1 to 3 are related to maintainability of the reference. Those three issues were answered in the affirmative. The 4th issue was whether the action of the management of Western Railway in not paying to Shri H.J. Acharya, Lab. Supdt. J.R. Hospital, Bombay, the full share of the fee received by the Railway Administration on account of medical facilities extended to the non-railway patient from 1.10.78 onwards for the tests conducted by Shri Acharya, was justified. On finding it in the negative, ultimately, the Tribunal made a direction to the respondents to make necessary calculation and pay the necessary amounts to the Laboratory Superintendent, Shri H.J. Acharya, from 1.10.78 and to other members of Laboratory staff as per the letter of the Chief Medical Officer dated 22.9.79.

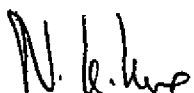
3. The controversy arose in the Railway Hospital because it used to admit paying patients apart from the Railway employees and the contention of the applicant was that from the income which the Railway made by charging the outsiders, a share should have been given to the Hospital employees. This was settled at 60% and 40%. Shri Acharya joined the post of a Biochemist and he has stated that he should be paid the entire amount of share for the tests he did as Biochemist in respect of patients admitted to the hospital. The reference as we have indicated was in respect of the amounts from 1.10.78. The applicant had made a grievance by filing OA 206/87 for amending the order by substituting the year for the date 1.10.78. By the decision of the Tribunal dated 1.7.87 the Tribunal observed that in the fitness of the things if the applicant moves the Government for such amendment, the

Government may take appropriate decision thereon and the applicant was allowed to withdraw the application. It does not appear that the applicant moved the Government and from the judgement of the Industrial Tribunal it is clear that Industrial Tribunal was called upon to adjudicate upon the entitlement of the applicant from 1.10.78 onwards. The applicant argued his case in person and urged that latter part of the reference would show that it was incumbent on the Industrial Tribunal to give a finding with regard to the date from which the entitlement ~~had~~ arose. A reading of the reference however, shows that the earliest point of time from which the entitlement was to be adjudicated was from 1.10.78 and if the entitlement were not from 1.10.78, then from any later date. The Industrial Tribunal considered the entire entitlement of the applicant as from the year 1978.

4. We were taken through the decision of the Industrial Tribunal from issue No.6 onwards. While discussing Issue No.3 to 5 the Industrial Tribunal referred to the relevant correspondence to which our attention was drawn in the course of the arguments. The Industrial Tribunal's view was that Shri Acharya was not entitled to the entire share. The applicant's contention was that all the chemical tests were performed by him and he would have been entitled to the entire amount for the tests that he had performed. There was no reference to this position either in the application or in the evidence before the Industrial Tribunal to the tests which he had performed from 1.10.78. The amount he was claiming in this respect was to the exclusion of the others. In the letter dated 22.9.79 when the question of share was being dealt with, it was

mentioned that 60% was to go to the Railways revenue, 20% to the Pathologist, 15% to the Technician and 5% to the class IV staff. The applicant denied that the Pathologist had done anything and urged that the Biochemist had alone performed the tests and he would therefore be entitled to the entire amount of 20%. There was no evidence before the Industrial Tribunal besides the applicant's own. Copies of his own evidence have not been attached in this application. While exercising his power under article 226 and 227 of the constitution this Tribunal will be entitled to interfere only if the case is made of non-consideration of evidence already on record or non-application of mind. No material evidence has been placed before us to show that the order of the Industrial Tribunal suffered from these short comings. Our attention was drawn to several decisions of the Supreme Court on the point of discrimination under article 14 and 16 of the constitution and the need for equal pay for equal work. None of these decisions have any relevance to the present case. According to the respondents the applicant was paid his share after calculations were made and the award was fully implemented.

5. In the circumstances, referred to above, we find that the applicant is not entitled to any relief. The application is dismissed, with no order as to costs.


(N.K. Verma)
Member (A)


(M.S. Deshpande)
Vice Chairman

(14)

Before the Central Administrative Tribunal
Bombay Bench, Bombay.

Review Petition No.137/93
in
Original Application No.235/91.

Shri H.J. Acharya, Bombay

.. Applicant.

Vs.

Union of India & Others.

.. Respondents.

Coram : Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.
Hon'ble Shri N.K. Verma, Member (A)

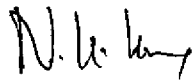
Tribunal's Order by Circulation :


Dated: 31 January 1994

[Per : Hon'ble Shri N.K. Verma, Member (A)]

This is a Review Petition against this Division Bench Judgment in OA No.235/91 delivered on 13.10.1993. The applicant had in that Original Application challenged the award passed by the Central Govt. Industrial Tribunal, Bombay on 26.2.1990. The applicant was not given any relief as he could not substantiate any allegation of non-consideration of evidence already on record or non-application of mind by the Industrial Tribunal.

2. In this Review Petition the applicant states that the judgment is silent on the issues framed by the Central Government under Section 10(1)(d) of the I.D. Act. Besides there is non consideration of the evidence on record and application of mind. The points made by him now were already covered by the pleadings and submissions of the both the parties. There is nothing new brought to our notice at this stage. There is no patent error of fact or law apparent on the face of the order warranting rectification. In view of this, we find no merit in the review petition and the same is dismissed.


(N.K. VERMA)
MEMBER (A).


(M.S. DESHPANDE)
VICE CHAIRMAN.