The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 2402 CUTTACK, SATURDAY, DECEMBER 7, 2013/MARGASIRA 16, 1935

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th November 2013

No. 13376—li/1(J)-9/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th October 2013 in Industrial Dispute Case No. 6/2006 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Indian Metals & Ferro Alloys Ltd., Theruvali, Dist.Rayagada and its Workmen represented through the IMFA Shramika Sangha, Theruvali, Dist. Rayagada was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 6 OF 2006

Dated the 10th October, 2013

Present :

Shri P. K. Ray, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of The Vice-President (Operation), M/s. IMFA Ltd., At/P.O. Theruvali-765 018, Dist. Rayagada.	. .	First Party—Management
And		
Their Workmen represented through The General Secretary, IMFA Shramika Sangha, At/P. O. Theruvali-765 018 Dist. Rayagada.	. .	Second Party—Workmen

Appearances :

Shri N. K. Mishra, Advocate and Associates	. .	For the First Party—Management
Shri S. K. Nayak, Advocate and Associates	. .	For the Second Party—Workmen

AWARD

This case has been instituted under Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the 'Act') on a reference made by the Labour & E. S. I. Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 8489-li/1(J)-9/06-LE., dated the 20th September 2006 with the following schedule:–

"*(i)* Whether the demands of the Union of onward revision of basic wages/salary, Dearness Allowance, increments and allowances like L. T. A., Conveyance Allowance, Attendance, Bonus, Washing Allowance, Night Shift Allowances and HRA are justified and need any upward revision ? If so, what should be the details ?

(ii) Whether the demands of the Union for payment of Additional Dearness Allowance on the basis of All India Price Index, 1960, Base-100 is legal and or justified ? If so, what should be the details ?

(iii) Whether the demands of the Union for time bound promotion and rationalization of existing grades are legal and/or justified ? If so, what should be the details ?"

2. The case of the second party workmen is that the management of IMFA which laid foundation stone at Theruvali in the year 1962 started its production in the year 1967 manufacturing ferro alloys, the capacity of which increased from time to time, besides it has manufactured ferro silicon, charge chrome, low aluminium and is making huge profit. The total number of permanent employees of the company was 442, besides 600 contract labourers and 126 officers but the salary and wages paid to the permanent workers of Theruvali is much less than that of other industires existing in the region. Therefore, the workmen through their Union submitted a 21-point charter of demands on 17th December 2004 relating to enhancement of basic wages, D.A., Increment, L. T. A., Conveyance Allowance, Special Allowance, Education Allowance, Tapping Allowance, Attendance Bonus, Washing Allowance, Night Shift Allowance, House Rent Allowance, additional D. A., Time bound promotion and rationalization of existing grades, etc., on the basis of which ultimately the present reference has been made for adjudication of the disputes.

3. The first party management in its written statement challenging the maintainability of the reference *inter alia* has stated that prior to the charter of demands on the 17th December 2004 there was a settlement between the first party management and the second party Union on the 28th November 2002 which was valid till the 31st December 2004. Pending validity of the said settlement the second party Union submitted the 21-point charter of demands on the 17th December 2004 relating to the period from the 1st January 2005 to the 31st December 2007 in which many of the items were either not industrial disputes or could not be subjected to any discussion within the

provisions of the Industrial Disputes Act. Though the management expressed its views relating to wholesome composition of all the demands and overall enhanced the dues, due to the rigid approach of the Union relating to its additional D. A. linking with All India Consumer Price Index and ultimately walking out from the conciliation proceeding, no settlement could be arrived at in the bipartite or tripartite discussion. The provision of entitlement of A. D. A. to the workmen on the basis of All India Consumer Price Index was abolished in its agreement dated the 20th June 1994 and a new component of special wages was introduced. It has been specifically stated that the basic wages/ salary, D. A., Increment, L. T. A., Conveyance Allowance, Special Allowance, Tapping Allowance, Attendance Bonus, Washing Allowance, Night Shift Allowance, House Rent Allowance, additional D. A. have been adequately provided to the workmen.

The first party management declining the claim of the Union regarding Education Allowance has stated that the company has provided adequate financial assistance as well as infrastructure to different schools presently existing at Theruvali for providing education facility to its employees. Similarly, regarding the time bound promotion and rationalization it has challenged the validity of such reference which requires satisfactory performance. Besides, there is no stagnation of workmen in one grade as the categories of employees range from W-1 to W-8 and S-0 to S-5. Hence, it has stated that the second party Union is not entitled to any of the claims.

4. Both the second party Union and the first party management also filed their rejoinder to the written statement and reply to the rejoinder reiterating their respective stand taken in the claim petition as well as in the written statement.

5. In the aforesaid premises, the issues framed are as follows:—

ISSUES

"(i) Whether the demands of the Union for onward revision of basic wages/salary, Dearness Allowance, Increments and Allowances like L. T. A., Conveyance Allowance, Special Allowance, Education Allowance, Tapping Allowance, Attendance Bonus, Washing Allowance, Night Shift Allowance and HRA are justified and need any upward revision ? If so, what should be the details ?

(ii) Whether the demand of the Union for payment of Additional Dearness Allowance on the basis of All India Price Index, 1960, Base-100 is legal and/or justified ? If so, what should be the details ?

(iii) Whether the demand of the Union for time bound promotion and rationalization of existing grades are legal and /or justified ? If so, what should be the details ?"

6. The second party Union in order to substantiate their claim has examined six witnesses and filed documents marked Exts. 1 to 27. Similarly, the first party management has adduced oral evidence of seven witnesses and filed documents marked Exts. A to BB.

FINDINGS

7. *Issue No.(i)*—The aforesaid issue relates to upward revision of basic wages/salary, D. A., Increment, Allowances like L. T. A., Conveyance Allowance, Special Allowance, Education Allowance, Tapping Allowance, Attendance Bonus, Washing Allowance, Night Shift Allowance and House Rent Allowance.

8. The Hon'ble Supreme Court in the case of Hindustan Antibiotics Ltd. *Vrs.* The workmen, reported in 1967(14)FLR-37 has held in Para. 9 as follows :—

> *"At the outset, it will be convenient to consider the question of principle. The object of the industrial law is two-fold, namely, (i) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life, and (ii) by that process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country, in its turn, helps to improve the conditions of labour. By this process, it is hoped that the standard of life of the labourers can be progressively raised from the stage of minimum wage, passing through need found wage, fair wage, to living wage. Industrial adjudication reflected in the judgements of tribunals and the courts have evolved some principles governing wage fixation though accidentally they related only to industries born in the private sector. The principle of region-*cum-*industry, the doctrine that the minimum wage is to be assured to the labour irrespective of the capacity of the industry to bear the expenditure in that regard, the concept that fair wage is linked with the capacity of the industry, the rule of relevancy of comparable concerns, and the recognition of the totality of the basic wage and dearness allowance that should be borne in mind in the fixation of wage structure, are all so well settled and recognized by industrial adjudication that further elaboration is unnecessary. In this context, a reference to the decisions in Messrs. Crown Aluminium Works* V. *Their Workmen (2), Express Newspapers (private) Ltd,* V. *The Union of India (3), French Motor Car Co. Ltd.* V. *Workmen (4) and The Hindustan Times Ltd., New Delhi* V. *Their Workmen (5), will be useful. There is no, and there cannot be any, dispute on the laudable aims of industrial policy of our country in the matter of wage fixation. Das Gupta, J., in The Hindustan Times Ltd., New Delhi* V. *Their Workmen (Supra) said at page 240—*

"In trying to keep true to the two points of social philosophy and economic necessities which vie for consideration, industrial adjudication has set for itself certain standards in the matter of wage fixation. At the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is 'adequate to cover the normal needs of the average employee regarded as a human being in a civilized society'. Above the fair wage is the 'living wage - a wage' which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well being, enough to enable him to qualify to discharge his duties as a citizen."

This passage briefly and neatly defines the three concepts of minimum wage, fair wage and living wage. In the application of the said principles doubtless evolved in the industrial disputes in the private sector, what is the difference between industries in the two sectors to justify a different treatment of the industries in the public sector ? There is socio-economic justification for the said principles. The social and economic upliftment of the labour is important for securing industrial peace which is essential to increase the national productivity. It is an accident that industrial adjudication in the private sector has thrown out the said principles. All the said considerations equally apply to industries in the public sector. We are excluding, for the present, industries run by the Government departmentally, for, in one sense they are also industries in the public sector. We are referring only to industries run by limited companies wherein the Government owns the entire share capital or a part of it. Now, take a particular region, say Bombay. In that region we are only taking a hypothetical case, there may be four companies owning factories manufacturing antibiotics namely, a limited company in which the Government does not own any shares and all the shares are owned by the members of the public, a company in which all the shares are held by the Central Government, a company whose share capital is owned by the Government as well as by the public and a company which is a proprietary undertaking owned by a single individual or a number of individuals. All the

factories are making appreciable profits and have capacity to pay the employees. What is the justification from the standpoint of the employees that different wage structure shall be adopted having regard to the fact that in one case the shares are held wholly or partly by the Central Government or the State Government and in other cases by the members of the public ? The worker is interested in his pay packet and if he is given reasonable wages, it is expected that a satisfied worker will contribute to the growth of the industry and ultimately the prosperity of the country. From his standpoint, which is a paramount consideration, so long as the capacity of the industries is assured, the character of the employer is irrelevant. Now, let us look at the problem from the standpoint of the employer. It is said that a company born in the private sector works with a profit motive and exploits the workmen for its private ends, whereas a company born in the public sector, though it is expected to make profits, really contributes to the wealth of the whole country. This argument poses the question of the comparative merits of different ideologies such as price economy, mixed economy, socialism, etc. We do not propose to go into these complicated economic problems; but it cannot be posited that necessarily and inevitably companies born in the private sector only care for profits by exploiting workers and those born in public sector always work for public good. Different countries following different ideologies have reached prosperity or are on the way of prosperity. It cannot be said that a particular ideology only will lead to that result: it depends upon many other factors. That apart, whatever may be said about proprietary firms, it cannot be asserted that every company born in the private sector only functions on private motives; it may earn profits, pay reasonable dividends and plough back the balance of the profits into the industry for its further growth. So too, it cannot be asserted that always a State will utilize the profits earned for the good of the country. There are many instances in the world where the national resources were frittered away. In the ultimate analysis, the character of the employer or the destination of profits has no relevance in the fixation of wages. Whoever may be the employer, he has to pay a reasonable wage to the employees. The incongruity of the alleged distinction in the matter of wages is further exemplified if we compare similar industries in the same region owned by the State and by the Union.

Now, if the argument be accepted, the pattern of wage structure between these also must differ, for, the pay scales now obtaining in the State Governments and the Central Government radically differ. On the other hand, if the doctrine of region-cum-*industry is accepted, all the employees of industries of similar nature, irrespective of the character of the employers, will get a fair deal without any discrimination which will certainly be conducive to the industrial development of our country."*

In Para. 10 of the said judgement it has been held as follows :—

"Let us now consider the constitutional, legislative, executive and opinion trends in that regard. Article 39 of the Directive Principles of State Policy say that the State shall direct its policy towards securing equal pay for equal work for both men and women and Article 43 thereof enjoins on the State to endeavour to secure, by suitable legislation or economic organization or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities."

In Para. 27 of the said judgement it has been held as follows :—

"The first argument is based upon a fallacy. The doctrine of dearness allowance was only evolved in India. Instead of increasing wages as it is done in other countries, dearness allowance is paid to neutralize the rise in prices. This process was adopted in expectation that one day or other we would go back to the original price levels. But, when it was found that it was only a vain hope or at any rate, it could not be expected to fall below a particular mark, a part of the dearness allowance was added to the basic wages, that is to say, the wages, to that extent, were increased. While the Tribunal increased the wages, in fixing the dearness allowance, it looked into the overall picture, namely, whether the total wage packet would approximate to the total packet wages in comparable industries. There is no question, therefore, of paying dearness allowance on dearness allowance, but it was only a payment of dearness allowance in addition to the increased wages. Even on the basis of the increased wages, dearness allowance was necessary to neutralize the rise in prices. That is exactly what the Tribunal has done. The Tribunal adverting to this argument stated—

'I am, however, of opinion that in linking the dearness allowance, a portion of which has been merged in the basic wage, the totality of emoluments should not be ignored, otherwise in the case of a marked increase in the cost of living, if the linkage is done without bearing in mind the total emoluments, the total emoluments would not be satisfactory and may even become out of line with those in other large concerns in the region. Again the linkage need not be done so as to provide increase in dearness allowance at a uniform rate. Otherwise increase in dearness allowance on account of rise in the cost of living for employees drawing wages and salaries above certain ranges of basic wage or pay as would vary inadequately neutralize the rise in cost of living.'

It is, therefore, clear that the Tribunal increased the wages of the lower category of employees by adding part of the dearness allowance to their original basic wages, at the same time bearing in mind that the total packet of wages and dearness allowance compared favourably with those in similar concerns. It has introduced the slab system so that in the case of employees falling in the higher slabs, the rise in prices is adequately neutralized. The Tribunal did not commit any error of principle."

In Para. 33 of the said judgement it has been held as follows :—

"It was then contended for the Company that it has provided amenities to the employees which no other comparable concern has provided and therefore they should have been taken into consideration in fixing the wage structure. The Company has shown in Ext.-C-12 the various amenities it has provided for the labour. The relevant principle has been fairly stated by the Fair Wages Committee in Para. 28 of its report which reads:—

'Where a benefit goes directly to reduce the expenses of a worker on items of expenditure which are taken into account for the calculation of the fair wage, it must necessarily be taken into account in fixing the actual fair wage payable. Where however the benefit has no connection with the items of expenditure on which the fair wage is calculated it cannot naturally be taken into account.'

To state it differently, only such of the items which go directly to reduce the expenditure that would otherwise go into the family budget are relevant

in fixing fair wages. The Tribunal has taken all the permissible fringe benefits in fixing the wage scales and dearness allowances. It cannot therefore be said that the Tribunal went wrong in omitting any amenities in fixing the wages."

9. Further, their Lordships of the Hon'ble Supreme Court in the case of Kamani Metals and Alloys Ltd. *Vrs.* The workmen, reported in AIR 1967(SC) 1175 have held in Para. 7 as follows:—

"Fixation of a wage-structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workmen should receive their proper share of the national income which they help to produce with a view to improving their standard of living and the depletion which every increase in wages makes in the profits as this tends to divert capital from industry into other channels thought to be more profitable. The task is not rendered any the easier because conditions vary from region to region, industry to industry and establishment to establishment. To cope with these differences certain principles on which wages are fixed have been stated from time to time by this Court. Broadly speaking the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wages is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workman but not at a rate exceedig his wage earning capacity in the class of establishment to which he belongs. A fair wage is thus related to the earning capacity and the workload. It must, however, be realized that 'fair wage' is not 'living wage' by which is meant a wage which is sufficient to provide not only the essentials above-mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between the minimum wage, which must be paid in any event, and the living wage, which is the goal. As time passes and prices rise, even the fair wage fixed for the time being tends to sag

downwards and then a revision is necessary. To a certain extent the disparity is made up by the additional payment of dearness allowance. This allowance is given to compensate for the rise in the cost of living. But as it is not advisable to have a 100 per cent neutralization lest it lead to inflation, the dearness allowance is often a little less than 100 per cent neutralization. In course of time even the addition of the dearness allowance does not sufficiently make up the gap between wages and cost of living and a revision of wages and/or dearness allowance then becomes necessary. xxx"

In Para.10 of the said judgement it has been held as follows :—

*"The next part of the inquiry involved the application of the principle of industry-*cum-*region . This principle is that fixation or revision of scales of wages, pays or dearness allowance must not be out of tune with the wages, etc., prevalent in the industry or the region. This is always desirable so that unfair competition may not result between an establishment and another and diversity in wages in the region may not lead to industrial unrest. In attempting to compare one unit with another care must be taken that units differently placed or circumstanced are not considered as guides, without making adequate allowance for the differences. The same is true when the regional level of wages are considered and compared. In general words, comparable units may be compared but not units which are dissimilar. While disparity in wages in industrial concerns similarly placed leads to discontent, attempting to level up wages without making sufficient allowances for differences, leads to hardships."*

In Para.14 of the said judgement it has been held as follows :—

"In dealing with the scales of pay in comparison with those existing in Kamani Engineering Corporation the Tribunal observed that higher wages were being fixed in the Kamani Metals and Alloys because the yield from incentive bonus in the Kamani Engineering Corporation was between 20 to 30 per cent of the wages and the dearness allowance whereas in this company it was abnormally low. Mr. Gokhale contended that the yield from incentive bonus is an irrelevant factor to take into account and observed that if persons could get higher wages by not earning incentive bonus, the result might be a disincentive to work at all. Speaking generally,

his objection is right to certain extent. But it is not right in the circumstances of this case. The Company has since 1949 introduced a scheme of wage incentive. There is no straight piece-rate system under which the worker is paid a fixed amount for each unit of output. There is a fixation of average production for a whole group and not for the individual worker. The target in the melting section is fixed at 5000 cwt. and 1.5 per cent on every additional 300 cwt. is fixed as bonus, other sections have different targets and different percentages. A similar scheme also exists in the Kamani Engineering Corporation. What has happened is that the Tribunal in fixing scales of wages in the reference from Kamani Engineering fixed lower rates because it was of the opinion that quite substantial sum was earned in that establishment by way of incentive bonus. When the Tribunal came to decide the present reference it recalled that lower wages were fixed in the Kamani Engineering Corporation case because of the yield from incentive bonus. It, therefore, ascertained the yield in the Kamani Metals and Alloys and finding it low fixed the wages at the proper level unaffected by considerations of incentive bonus. This really means that proper wages were fixed in the Kamani Metals and Alloys without being influenced in any way by the yield from incentive bonus although in the wage of Kamani Engineering Corporation lower wages were fixed because the yield from incentive bonus was very high. In these circumstances, we are of the opinion that the wages in the present case have not really been influenced by considerations of yield from incentive bonus whatever may be said of Kamani Engineering Corporation."

10. In this case there is no dispute that there is rise of price index. The undisputed position is that once upon a time the employees of the first party management were getting higher salary in than similar other industries. The datas furnished by the second party Union reveal that it is at its lowest level than the other similar industries like FACOR at Bhadrak and at Sreeram Nagar (Garibadi).

The first party management during the year 2005-06, 2006-07 and 2007-08 has made profit as follows:—

During the year 2005-06	: Rs. 18.58 crores as reflected in Ext. 13/5
During the year 2006-07	: Rs. 19.98 crores as reflected in Ext. 13/6
During the year 2007-08	: Rs. 104.80 crores as reflected in Ext. 13/7

The first party management has also paid the following amount as remuneration to its Executive Directors in the year 2006-07 and 2007-08 as per Ext. 13/6 at page 14 and Exts. 13/7 at page 16, respectively :—

During the year 2006-07 : Rs. 4,21,49,372

During the year 2007-08 : Rs. 12,69,98,826

It has also paid dividend to its shareholders from 25% up to 80% during the said period as per Exts. 13/6 and 13/7 respectively.

11. On fulfilment of their demand relating to wages and other amenities except A. D. A. during the year 2005 there would be additional burden of Rs. 1,29,17,652 upon the first party management. During the said year the first party management had made profit of Rs. 18.58 crores. Of course in the meantime by way of a bipartite settlement the first party management had enhanced the wages of the employees and provided some of the amenities as submitted by the learned counsel for the first party management . In the aforesaid background the additional burden on fulfilment of the demand of the second party Union would be much less than the said Rs. 1,29,17,652. But the aforesaid enhanced remuneration is less than the remuneration paid by similar industries like FACOR, Bhadrak and FACOR, Sreeram Nagar (Garibadi) of the same region. Therefore, taking into consideration of all the above factors, the aforesaid demand is quite justified and within the means of the first party management to bear with the same.

Issue No. (i) is therefore, answered accordingly.

12. *Issue No. (ii)*—The Union has demanded for payment of additional D. A. @ Rs. 3 per point as per 1960 Price Index having Base-100.

The Hon'ble Supreme Court has held that the purpose of D. A. is to neutralize the adverse effect of rise of price index. Admittedly, there is rise of price index and a sum of additional fixed D. A. of Rs. 800 irrespective of rise of price index is too low. In this regard also the Hon'ble Supreme Court in Kamani Metal's Case (Supra) has held as follows :—

> *"As time passes and prices rise, even the fair wage fixed for the time being tends to sag downwards and then a revision is necessary. To a certain extent the disparity is made up by the additional payment of dearness allowance. This allowance is given to compensate for the rise in the cost of living. But as it is not advisable to have a 100 per cent neutralization lest it lead to inflation, the dearness allowance is often a little less than 100 per cent neutralization. In course of time even the addition*

of the dearness allowance does not sufficiently make up the gap between wages and cost of living and a revision of wages and/or dearness allowance then becomes necessary."

So, considering the aforesaid principle the second party workmen are entitled to variable A. D. A. as per the rise of price index. The second party Union demanded Rs. 3 per point as per 1960 Price Index Base-100. On fulfilment of such demand it would cost an additional burden of Rs. 2,78,01,600 in the year 2005 when the company had made profit of Rs. 18.58 crores. Though the aforesaid claim of A. D. A. made by the second party Union is not too high in comparison to the then market price, considering the regional gross wages paid to the similar industries, A. D. A. of Rs. 1.25 paise per point in the years 1960 Price Index Base-100 which would create an additional burden of Rs. 1,16,00,000 on this score would be just and proper.

13. *Issue No. (iii)*—The second party Union claimed for time bound promotion and rationalization of existing grades. But the Union has not come out with any definite proposal for the same. On the other hand, the stand of the first party management is that there is no stagnation of the workmen in one grade as categories of the employee range from W-1 to W-8 : S-0 to S-5, but it requires satisfactory performances for which no provision can be made for time bound promotion.

The Hon'ble Supreme Court in the case between workman of M/s. Williamson Magor and Co. Ltd. and M/s. Williamson Magor & Co. Ltd. and another reported in AIR 1982 (SC) 78 has held in Para. 8 as follows :—

"8. Mr. Pai, learned counsel appearing for the management, made two submissions before us. Firstly, he submitted that unlike in public sector undertakings, promotion is not a condition of service in a private company. We are unable to accept the submission of Mr. Pai in toto. If there is no scope of any promotion or upgradation or increase in salary in a private undertaking, the submission of the learned counsel may be justified but if there are grades and scopes of upgradation/promotioin and there are different scales of pay for diferent grades in a private undertaking, and in fact, promotion is given or upgradation is made, there should be no arbitrary or unjust and unreasonable upgradation or promotion of persons superseding the claims of persons who may be equally or even more suitable. The second submission of Mr. Pai is that although there were no norms, the promotions of the persons in question were not arbitrary and that the findings of the Tribunal in this regard were incorrect. He led us through the material evidence of the witnesses examined. We are unable

to agree with learned counsel and do not find any reason to differ from the findings of the learned Tribunal that the promotions of the fifteen persons were arbitrary and unjustified. Mr. Pai also submitted that unless victimization was proved by the Union, the managment's actioin should not be disturbed. The word 'victimization' has not been defined in the statute. The term was considered by this Court in the case of Bharat Bank Limited Vrs. *Employees of Bharat Bank Ltd., reported in 1950 SCR 459 : (AIR 1950 SC 188). This Court observed, "It (victimization) is an ordinary English word which means that a certain person has become a victim, in other words, that he has been unjustly dealt with". A submission was made on behalf of the management in that case that 'victimization' had acquired a special meaning in industrial disputes and connoted a person who became the victim of the employer's wrath by reason of his Trade Union activities and that the word could not relate to a person who was merely unjustly dismissed. This submission, however, was not considered by the Court. When however, the word 'victimazation' can be interpreted in two different ways, the interpretation which is in favour of the labourer should be accepted as they are the poorer section of the people compared to the management. xxx."*

14. In the aforesaid background I am not inclined to accept the claim of the second party Union for time bound promotion. But the first party management is to be guided as per the principle decided by the Hon'ble Supreme Court in the case of M/s. Williamson Magor & Co. Ltd. (Supra).

The reference is disposed of accordingly.

Dictated and corrected by me.

P. K. RAY
10-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
10-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

———

By order of the Governor
J. DALANAYAK
Under-Secretary to Government

Printed and published by the Director, Directorate of Printing, Stationery and Publication, Odisha, Cuttack-10
Ex. Gaz. 1809–193+11