

Indian Fisheries Journal.

V. 12. P. 3. 187 April 1957.



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NS 1.12.3
196426

THE INDIAN FACTORIES JOURNAL

VOL. XII]

1ST APRIL, 1957.

[PART III]

IMPORTANT NOTICE

1. The INDIAN FACTORIES JOURNAL will be published from Madras as from 16-4-57. All correspondence regarding the Journal must therefore be addressed after that date to: LAWS OF INDIA PRIVATE LTD., 17, Dr. NAIR ROAD, THYAGARAYANAGAR, MADRAS 17.

2. There will be no issue of the Journal dated 1-5-57.

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Industrial Disputes (Central) Rules, 1957.

*Notification No. S.R.O. 770, dated New Delhi, the 10th March 1957.**

In exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby makes the following Rules, the same having been previously published as required by sub-section (1) of the said section, namely:—

PRELIMINARY

1. Title and application.—(1) These rules may be called the Industrial Disputes (Central) Rules, 1957.

(2) They extend to Union territories in relation to all industrial disputes, and to the States in relation only to an industrial dispute concerning—

(a) any industry carried on by or under the authority of the Central Government or by a railway company; or

(b) a banking or an insurance company, a mine, an oilfield, or a major port, or

(c) any such controlled industry as may be specified under section 2(a) (i) of the Act by the Central Government:

Provided that they shall not apply to the State of Jammu and Kashmir except to the extent to which they relate to industrial disputes concerning workmen employed under the Government of India.

2. Interpretation.—In these rules, unless there is anything repugnant in the subject or context:—

(a) "Act" means the Industrial Disputes Act, 1947 (14 of 1947);

(b) "Chairman" means the chairman of a Board or Court or, if the Court consists of one person only, such person;

(c) "Committee" means a Works Committee constituted under sub-section (1) of section 3 of the Act;

(d) "form" means a form in the Schedule to these rules;

(e) "section" means a section of the Act;

(f) in relation to an industrial dispute in a Union territory, for which the appropriate Government is the Central Government, reference to the Central Government or the Government of India shall be construed as a reference to the Administrator of the territory, and reference to the Chief Labour Commissioner (Central), Regional Labour Commissioner (Central) and the Conciliation Officer (Central) shall be construed as reference to the appropriate authority, appointed in that behalf by the Administrator of the territory;

(g) With reference to clause (g) of section 2 it is hereby prescribed that in relation to an industry carried on by or under the authority of a Department of the Central Government, the officer in charge of the industrial establishment shall be the 'employer' in respect of that establishment.

*Gaz. of India, Extra, 10-3-1957, Pt. II-Sec. 3, p. 1137.

PART I

PROCEDURE FOR REFERENCE OF INDUSTRIAL DISPUTES TO BOARDS OF CONCILIATION, COURTS OF ENQUIRY, LABOUR COURTS, INDUSTRIAL TRIBUNALS OR NATIONAL TRIBUNALS.

3. *Application.*—An application under sub-section (2) of section 10 for the reference of an industrial dispute to a Board, Court, Labour Court, Tribunal or National Tribunal shall be made in form A and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of India in the Ministry of Labour. The application shall be accompanied by a statement setting forth:—

- (a) the parties to the dispute;
- (b) the specific matters in dispute;
- (c) the total number of workmen employed in the undertaking affected;
- (d) an estimate of the number of workmen affected or likely to be affected by the dispute; and
- (e) the efforts made by the parties themselves to adjust the dispute.

4. *Attestation of application.*—The application and the statement accompanying it shall be signed:—

(a) in the case of an employer by the employer himself, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the Corporation;

(b) in the case of workmen, either by the President and Secretary of trade union of the workmen, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

5. *Notification of appointment of Board, Court, Labour Court, Tribunal or National Tribunal.*—The appointment of a Board, Court, Labour Court, Tribunal or National Tribunal together with the names of persons constituting the Board, Court, Labour Court, Tribunal or National Tribunal shall be notified in the Official Gazette.

6. *Notice to parties to nominate representatives.*—(1) If the Central Government proposes to appoint a Board, it shall send a notice in form B to the parties requiring them to nominate within a reasonable time persons to represent them on the Board.

(2) The notice to the employer shall be sent to the employer personally, or if the employer is an incorporated company or a body corporate, to the agent, manager or other principal officer of such company or body.

(3) The notice to the workmen shall be sent:—

(a) in the case of workmen who are members of a trade union, to the President or Secretary of the trade union; and

(b) in the case of workmen who are not members of a trade union, to any one of the five representatives of the workmen who have attested the application made under rule 3; and in this case a copy of the notice shall also be

sent to the employer who shall display copies thereof on notice boards in a conspicuous manner at the main entrance to the premises of the establishment.

PART II

ARBITRATION AGREEMENT.

7. *Arbitration Agreement.*—An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in form C and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of India in the Ministry of Labour, the Chief Labour Commissioner (Central), New Delhi, and the Regional Labour Commissioner (Central) and the Conciliation Officer (Central) concerned. The agreement shall be accompanied by the consent, in writing, of the arbitrator or arbitrators.

8. *Attestation of the Arbitration Agreement.*—The arbitration agreement shall be signed:—

(a) in the case of an employer, by the employer himself, or when the employer is an incorporated Company or other body corporate, by the agent, manager, or other principal officer of the Corporation;

(b) in the case of workmen, either by the President and Secretary of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

PART III

POWERS, PROCEDURE AND DUTIES OF CONCILIATION OFFICERS, BOARDS, COURTS, LABOUR COURTS, TRIBUNALS, NATIONAL TRIBUNALS AND ARBITRATORS.

9. *Conciliation proceedings in public utility service.*—The Conciliation Officer, on receipt of a notice of a strike or lockout given under rule 71 or rule 72, shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

10. *Conciliation proceedings in non-public utility service.*—Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

11. The Conciliation Officer may hold a meeting of the representatives of both parties jointly or of each party separately.

12. The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

13. Place and time of hearing.—The sittings of a Board, Court, Labour Court, Tribunal or National Tribunal or of an Arbitrator shall be held at such times and places as the Chairman or the Presiding Officer or the Arbitrator, as the case may be, may fix and the Chairman, Presiding Officer or Arbitrator, as the case may be, shall inform the parties of the same in such manner as he thinks fit.

14. Quorum for Boards and Courts.—The quorum necessary to constitute a sitting of a Board or Court shall be as follows:

(i) in the case of a Board—	Quorum
where the number of members is 3	...
where the number of members is 5	2
(ii) in the case of a Court—	...
where the number of members is not more than 2	3
where the numbers of members is more than 2 but less than 5	1
where the number of members is 5 or more	2
	3

15. Evidence.—A Board, Court, Labour Court, Tribunal or National Tribunal or an arbitrator may accept, admit or call for evidence at any stage of the proceedings before it/him and in such manner as it/he may think fit.

16. Administration of oath.—Any member of a Board or Court or presiding officer of a Labour Court, Tribunal or National Tribunal or an arbitrator may administer an oath.

17. Summons.—A summons issued by a Board, Court, Labour Court, Tribunal or National Tribunal shall be in form D and may require any person to produce before it any books, papers or other documents and things in the possession of or under the control of such person in any way relating to the matter under investigation or adjudication by the Board, Court, Labour Court, Tribunal or National Tribunal which the Board, Court, Labour Court, Tribunal or National Tribunal thinks necessary for the purposes of such investigation or adjudication.

18. Service of summons or notice.—Subject to the provisions contained in rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, National Tribunal or an arbitrator, empowered to issue such notice, summons, process or order, may be served either personally or by registered post.

19. Description of parties in certain cases.—Where in any proceeding before a Board, Court, Labour Court, Tribunal or National Tribunal or an arbitrator, there are numerous persons arrayed on any side, such persons shall be described as follows:—

- (1) all such persons as are members of any trade union or association shall be described by the name of such trade union or association; and
- (2) all such persons as are not members of any trade union or association

tion shall be described in such manner as the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator, as the case may be, may determine.

20. Manner of service in the case of numerous persons as parties to a dispute.—(1) Where there are numerous persons as parties to any proceeding before a Board, Court, Labour Court, Tribunal or National Tribunal or an arbitrator and such persons are members of any trade union or association, the service of notice on the Secretary, or where there is no Secretary, on the principal officer, of the trade union or association shall be deemed to be service on such persons.

(2) Where there are numerous persons as parties to any proceeding before a Board, Court, Labour Court, Tribunal or National Tribunal or an arbitrator and such persons are not members of any trade union or association, the Board, Court, Labour Court, Tribunal, National Tribunal or arbitrator, as the case may be, shall, where personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned.

(3) A notice served in the manner specified in sub-rule (2) shall also be considered as sufficient in the case of such workmen as cannot be ascertained and found.

21. Procedure at the first sitting.—At the first sitting of a Board, Court, Labour Court, Tribunal or National Tribunal, the Chairman or the Presiding Officer, as the case may be, shall call upon the parties in such order as he may think fit to state their case.

22. Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to proceedings before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed as if the party had duly attended or had been represented.

23. Power of entry and inspection.—A Board, or Court, or any member thereof, or a conciliation officer, a Labour Court, Tribunal or National Tribunal or any person authorised in writing by the Board, Court, Labour Court, Tribunal or National Tribunal in this behalf may, for the purposes of any conciliation, investigation, enquiry or adjudication entrusted to the conciliation officer, Board, Court, Labour Court, Tribunal or National Tribunal under the Act, at anytime between the hours of sunrise and sunset and in the case of a person authorised in writing by a Board, Court, Labour Court, Tribunal or National Tribunal after he has given reasonable notice, enter any building, factory, workshop, or other place or premises whatsoever, and inspect the same or any work machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to the subject-matter of the conciliation, investigation, enquiry or adjudication.

24. Power of Boards, Courts, Labour Courts, Tribunals and National Tribunals.—In addition to the powers conferred by the Act, Boards, Courts, Labour Courts, Tribunals and National Tribunals shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) granting adjournment;
- (c) reception of evidence taken on affidavit;

and the Board, Court, Labour Court, Tribunal, or National Tribunal may summon and examine any person whose evidence appears to it to be material and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

25. Assessors.—Where assessors are appointed to advise a Tribunal or National Tribunal under sub-section (4) of section 7-A or sub-section (4) of section 7-B or by the Court, Labour Court, Tribunal or National Tribunal under sub-section (5) of section 11, the Court, Labour Court, Tribunal or National Tribunal, as the case may be, shall, in relation to proceeding before it, obtain the advice of such assessors, but such advice shall not be binding on it.

26. Fees for copies of awards or other documents of Labour Court, Tribunal or National Tribunal.—(1) Fees for making a copy of an award or an order of a Labour Court, Tribunal or National Tribunal or any document filed in any proceedings before a Labour Court, Tribunal or National Tribunal be charged as follows:

(a) for the first 200 words or less, 12 annas;

(b) for every additional 100 words or fraction thereof, 6 annas:

Provided that where an award or order or document exceeds five pages the approximate number of words per page shall be taken as the basis for calculating the total number of words, to the nearest hundred, for the purpose of assessing the copying fee.

(2) For certifying a copy of any such award or order or document, a fee of Re. 1 shall be payable.

(3) Copying and certifying fees shall be payable in cash in advance.

(4) Where a party applies for immediate delivery of a copy of any such award or order or document, an additional fee equal to one-half of the fee leviable under this rule shall be payable.

27. Decision by majority.—All questions arising for decision at any meeting of a Board or Court, save where the Court consists of one person, shall be decided by a majority of the votes of the members thereof (including the Chairman) present at the meeting. In the event of an equality of votes the Chairman shall also have a casting vote.

28. Correction of errors.—The Labour Court, Tribunal, National Tribunal or arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues.

29. Right of representatives.—The representatives of the parties appearing before a Board, Court, Labour Court, Tribunal or National Tribunal or an arbitrator shall have the right of examination, cross-examination and of addressing the Board, Court, Labour Court, Tribunal or National Tribunal or arbitrator when all evidence has been called.

30. Proceedings before a Board, Court, Labour Court, Tribunal or National Tribunal.—The proceedings before a Board, Court, Labour Court, Tribunal or National Tribunal shall be held in public.

Provided that the Board, Court, Labour Court, Tribunal or National Tribunal may at any stage direct that any witness shall be examined or its proceedings shall be held *in camera*.

PART IV

REMUNERATION OF CHAIRMEN AND MEMBERS OF COURTS, PRESIDING OFFICERS OF LABOUR COURTS, TRIBUNALS AND NATIONAL TRIBUNALS, ASSESSORS AND WITNESSES.

31. Travelling allowance.—The Chairman or a member of a Board or Court, or the Presiding Officer or an Assessor of a Labour Court, Tribunal or National Tribunal, if a non-official, shall be entitled to draw travelling allowance and halting allowance, for any journey performed by him in connection with the performance of his duties, at the rates admissible and subject to the conditions applicable to a Government servant of the first grade under the Supplementary Rules issued by the Central Government from time to time.

32. Fees.—The Chairman and a member of a Board or Court, the Presiding Officer and an Assessor of a Labour Court, Tribunal or National Tribunal wherever he is not a salaried officer of Government may be granted such fees as may be sanctioned by the Central Government in each case.

33. Expenses of witnesses.—Every person who is summoned and duly attends or otherwise appears as a witness before a Board, Court, Labour Court, Tribunal or National Tribunal or an Arbitrator shall be entitled to an allowance for expenses according to the scale for the time being in force with respect to witnesses in civil courts in the State where the investigation, enquiry, adjudication or arbitration is being conducted.

PART V

NOTICE OF CHANGE.

34. Notice of Change.—Any employer intending to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth Schedule shall give notice of such intention in form E.

35. Manner of service of notice of change.—(1) Where there are numerous workmen affected by a notice of change and the majority of such workmen are members of any trade union, the service of notice, by registered

post, on the secretary, or where there is no secretary, on the principal officer of the trade union shall be deemed to be service on all such workmen. The employer shall, at the same time, arrange to exhibit the notice by affixing it to a notice board in the manner specified in sub-rule (2).

Provided that if the secretary or the principal officer refuses to receive the notice or that for any other reason the notice cannot be served on the secretary or the principal officer in the ordinary way, the exhibition of the notice in the manner specified in sub-rule (2) shall be deemed to be service on all such workmen.

(2) Where there are numerous workmen affected by a notice of change and the majority of such workmen are not members of any trade union or association the employer shall, where personal service is not practicable, cause the service of any such notice to be made by affixing the same to a notice board at or near the entrance or entrances of the establishment concerned and the notice shall remain so affixed for period of twenty-one days. The notice shall be in English, the regional language and the language understood by the majority of the workmen in the establishment concerned.

(3) A copy of the notice shall simultaneously be forwarded by the employer to the Conciliation Officer (Central) and the Regional Labour Commissioner (Central), concerned.

PART VI

REPRESENTATION OF PARTIES

36. Form of authority under section 36.—The authority in favour of a person or persons to represent a workman or group of workmen or an employer in any proceeding under the Act shall be in Form F.

37. Parties bound by acts of representative.—A party appearing by a representative shall be bound by the acts of that representative.

PART VII

WORKS COMMITTEE

38. Constitution.—Any employer to whom an order made under sub-section (1) of section 3 relates shall forthwith proceed to constitute a Works Committee in the manner prescribed in this part.

39. Number of members.—The number of members constituting the Committee shall be fixed so as to afford representation to the various categories, groups and classes of workmen engaged in, and to the sections, shops or departments of the establishment:

Provided that the total number of members shall not exceed twenty:

Provided further that the number of representatives of the workmen shall not be less than the number of representatives of the employer.

40. Representatives of employer.—Subject to the provisions of these rules, the representatives of the employer shall be nominated by the employer and shall, as far as possible, be officials in direct touch with or associated with the working of the establishment.

41. Consultation with trade unions.—(1) Where any workmen of an establishment are members of a registered trade union, the employer shall ask the union to inform him in writing—

(a) how many of the workmen are members of the union; and

(b) how their membership is distributed among the sections, shops or departments of the establishment.

(2) Where an employer has reason to believe that the information furnished to him under sub-rule (1) by any trade union is false, he may, after informing the union, refer the matter to the Conciliation Officer (Central) concerned for his decision; and the Conciliation Officer, after hearing the parties shall decide the matter and his decision shall be final.

42. Groups of workmen's representatives.—On receipt of the information called for under rule 41, the employer shall provide for the election of workmen's representatives on the Committee in two groups—

1. those to be elected by the workmen of the establishment who are members of the registered trade union or unions, and

2. those to be elected by the workmen of the establishment who are not members of the registered trade union or unions, bearing the same proportion to each other as the union members in the establishment bear to the non-members:

Provided that where more than half the workmen are members of the union or any one of the unions, no such division shall be made:

Provided further that where a registered trade union neglects or fails to furnish the information called for under sub-rule (1) of rule 41 within one month of the date of the notice requiring it to furnish such information such union shall for the purpose of this rule be treated as if it did not exist.

Provided further that where any reference has been made by the employer under sub-rule (2) of rule 41, the election shall be held on receipt of the decision of the Conciliation Officer.

43. Electoral constituencies.—Where under rule 42 the workmen's representatives are to be elected in two groups, the workmen entitled to vote shall be divided into two electoral constituencies, the one consisting of those who are members of a registered trade union and the other of those who are not:

Provided that the employer may, if he thinks fit subdivide the two electoral constituencies and direct that workmen shall vote in either by groups, sections, shops or departments.

44. Qualification of candidates for election.—Any workman of not less than 19 years of age and with a service of not less than one year in the establishment may if nominated as provided in these rules, be a candidate for election as a representative of the workmen on the Committee:

Provided that the service qualification shall not apply to the first election in an establishment which has been in existence for less than a year.

45. Qualifications for voters.—All workmen, other than casual employees, who are not less than 18 years of age and who have put in not less than 6 months' service in the establishment shall be entitled to vote in the election of the representative of workmen.

46. Procedure for election.—(1) The employer shall fix a date as the closing date for receiving nominations from candidates for election as workmen's representatives on the Committee.

(2) For holding the election, the employer shall also fix a date which shall not be earlier than three days and later than ten days after the closing date for receiving nominations.

(3) The dates so fixed shall be notified at least seven days in advance to the workmen and the registered trade union or unions concerned. Such notice shall be affixed on the notice board or given adequate publicity amongst the workmen. The notice shall specify the number of seats to be elected by the groups, sections, shops or departments and the number to be elected by the members of the registered trade union or unions and by the non-members.

(4) A copy of such notice shall be sent to the registered trade union or unions concerned.

47. Nomination of candidates for election.—(1) Every nomination shall be made on a nomination paper in form 'G' copies of which shall be supplied by the employer to the workmen requiring them.

(2) Each nomination paper shall be signed by the candidate to whom it relates and attested by at least two other voters belonging to the group, section, shop or department the candidate seeking election will represent, and shall be delivered to the employer.

48. Scrutiny of nomination papers.—(1) On the day following the last day fixed for filing nomination papers, the nomination papers shall be scrutinised by the employer in the presence of the candidates and the attesting persons and those which are not valid shall be rejected.

(2) For the purpose of sub-rule (1), a nomination paper shall be held to be not valid if (a) the candidate nominated is ineligible for membership under rule 44 or (b) the requirements of rule 47 have not been complied with.

Provided that where a candidate or an attesting person is unable to be present at the time of scrutiny, he may send a duly authorised nominee for the purpose.

49. Voting in election.—(1) If the number of candidates who have been validly nominated is equal to the number of seats, the candidates shall be forthwith declared duly elected.

(2) If in any constituency the number of candidates is more than the number of seats allotted to it, voting shall take place on the day fixed for election.

(3) The election shall be held in such manner as may be convenient for each electoral constituency.

(4) The voting shall be conducted by the employer, and if any of the candidates belong to a union such of them as the union may nominate shall be associated with the election.

(5) Every workman entitled to vote at an electoral constituency shall have as many votes as there are seats to be filled in the constituency:

Provided that each voter shall be entitled to cast only one vote in favour of any one candidate.

50. Arrangements for election.—The employer shall be responsible for all arrangements in connection with the election.

51. Officers of the Committee.—(1) The Committee shall have among its office bearers a Chairman, a Vice-Chairman, a Secretary and a Joint Secretary. The Secretary and the Joint Secretary shall be elected every year.

(2) The Committee shall elect the Chairman and the Vice-Chairman provided that where the Chairman is elected from amongst the representatives of the employers, the Vice-Chairman shall be elected from amongst the representatives of workmen and *vice versa*.

Provided further that the post of the Chairman or the Vice-Chairman, as the case may be, shall not be held by a representative of the employer or the workmen, for two consecutive terms.

(3) The Committee shall elect the Secretary and the Joint Secretary provided that where the Secretary is elected from amongst the representatives of the employers, the Joint Secretary shall be elected from amongst the representatives of the workmen and *vice versa*:

Provided further that the post of the Secretary or the Joint Secretary, as the case may be, shall not be held by a representative of the employer or the workmen, for two consecutive years.

52. Term of office.—(1) The term of office of a workmen's representative on the Committee other than a member chosen to fill a casual vacancy shall be two years.

(2) A member chosen to fill a casual vacancy shall hold office for the unexpired term of his predecessor.

(3) A member who, without obtaining leave from the Committee, fails to attend three consecutive meetings of the Committee shall forfeit his membership.

53. Vacancies.—In the event of workmen's representative ceasing to be a member under sub-rule (3) of rule 52 or ceasing to be employed in the establishment or in the event of his resignation, death or otherwise, his successor shall be elected in accordance with the provisions of this Part from the same

group, section, shop or department to which the member vacating the seat belonged.

54. Power to co-opt.—The Committee shall have the right to co-opt in a consultative capacity persons employed in the establishment having particular or special knowledge of a matter under discussion. Such co-opted member shall not be entitled to vote and shall be present at meetings only for the period during which the particular question is before the Committee.

55. Meetings.—(1) The Committee may meet as often as necessary but not less often than once in three months (a quarter).
(2) The Committee shall, at its first meeting regulate its own procedure.

56. Facilities for meeting, etc.—The employer shall provide accommodation for holding meetings of the Committee. He shall also provide all necessary facilities to the Committee and to the members thereof for carrying out the work of the Committee. The Committee shall ordinarily meet during working hours of the establishment concerned on any working day and the representative of the workmen shall be deemed to be on duty while attending the meeting.

57. Dissolution of Works Committee.—The Central Government, or where the power under section 3 has been delegated to any officer or authority under section 39, such officer or authority may, after making such inquiry as it or he may deem fit, dissolve any Works Committee at any time, by an order in writing, if he or it is satisfied that the Committee has not been constituted in accordance with these rules or that not less than two-thirds of the number of representatives of the workmen have, without any reasonable justification failed to attend three consecutive meetings of the Committee or that the Committee has, for any other reason, ceased to function:
Provided that where a Works Committee is dissolved under this rule, the employer may, and if so required by the Central Government or, as the case may be, by such officer or authority shall, take steps to re-constitute the Committee in accordance with these rules.

PART VIII

MISCELLANEOUS.

58. Memorandum of settlement.—(1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in form 'H'.
(2) The settlement shall be signed by—

(a) in the case of an employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated Company or other body corporate, by the agent, manager or other principal officer of the corporation;

(b) in the case of workmen, either by the President and Secretary of a trade union of workmen, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

(3) Where a settlement is arrived at in the course of conciliation proceeding, the conciliation officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central), New Delhi, and the Regional Labour Commissioner (Central) and to the Conciliation Officer (Central) concerned.

59. Complaints regarding change of conditions of service, etc.—(1) Every complaint under section 33-A of the Act shall be presented in triplicate in Form 'I' and shall be accompanied by as many copies of the complaint as there are opposite parties to the complaint.

(2) Every complaint under sub-rule (1) shall be verified at the foot by the workmen making it or by some other person proved to the satisfaction of the Labour Court, Tribunal or National Tribunal to be acquainted with the facts of the case.

(3) The person verifying shall specify, by references to the numbered paragraphs of the complaint, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(4) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

60. Application under section 33.—(1) An employer intending to obtain the express permission in writing of the conciliation officer, Board, Labour Court, Tribunal or National Tribunal as the case may be, under sub-section (1) or sub-section (3) of section 33 shall present an application in Form J in triplicate to such conciliation officer, Board, Labour Court, Tribunal or National Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(2) An employer seeking the approval of the conciliation officer, Board, Labour Court, Tribunal or National Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form K in triplicate to such conciliation officer, Board, Labour Court, Tribunal or National Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(3) Every application under sub-rule (1) or sub-rule (2) shall be verified at the foot by the employer making it or by some other person proved to the satisfaction of the conciliation officer, Board, Labour Court, Tribunal or National Tribunal to be acquainted with the facts of the case.

(4) The person verifying shall specify by reference to the numbered paragraphs of the application, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(5) The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified.

61. Protected workmen.—(1) Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer before the 30th September every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union, should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall, subject to section 33, sub-section (4), recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen.

(3) Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen, admissible for the establishment, under section 33, sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen:

Provided that, where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen allotted to it.

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of 'protected workmen' under this rule, the dispute shall be referred to the conciliation officer (Central) concerned, whose decision thereon shall be final.

62. Application for recovery of dues.—An application under section 33-C shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of India in the Ministry of Labour.

63. Appointment of Commissioner.—Where it is necessary to appoint a Commissioner under sub-section (3) of section 33-C of the Act, the Labour Court may appoint a person with experience in the particular industry, trade or business involved in the industrial dispute or a person with experience as a judge of a civil court, or as a stipendiary magistrate or as a Registrar or Secre-

tary of a Labour Court, or Tribunal constituted under any Provincial Act or State Act or of a Labour Court, Tribunal or National Tribunal constituted under the Act or of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950.

64. Fees for the Commissioner, etc.—(1) The Labour Court shall, after consultation with the parties, estimate the probable duration of the enquiry and fix the amount of the Commissioner's fees and other incidental expenses and direct the payment thereof, into the nearest treasury, within a specified time, by such party or parties and in such proportion as it may consider fit. The Commission shall not issue until satisfactory evidence of the deposit into the treasury of the sum fixed is filed before the Labour Court:

Provided that the Labour Court may from time to time direct that any further sum or sums be deposited into the treasury within such time and by such parties as it may consider fit:

Provided further that the Labour Court may in its discretion, extend the time for depositing the sum into the treasury.

(2) The Labour Court may, at any time, for reasons to be recorded in writing, vary the amount of the Commissioner's fees in consultation with the parties.

(3) The Labour Court may direct that the fees shall be disbursed to the Commissioner in such instalments and on such dates as it may consider fit.

(4) The undisbursed balance, if any, of the sum deposited shall be refunded to the party or parties who deposited the sum in the same proportion as that in which it was deposited.

65. Time for submission of report.—(1) Every order for the issue of a Commission shall appoint a date, allowing sufficient time, for the Commissioner to submit his report.

(2) If for any reason the Commissioner anticipates that the date fixed for the submission of his report is likely to be exceeded, he shall apply, before the expiry of the said date, for extension of time setting forth grounds thereof and the Labour Court shall take such grounds into consideration in passing orders on the application:

Provided that the Labour Court may grant extension of time notwithstanding that no application for such extension has been received from the Commissioner within the prescribed time limit.

66. Local Investigation.—In any industrial dispute in which the Labour Court deems a local investigation to be requisite or proper for the purpose of computing the money value of a benefit, the Labour Court may issue a Commission to a person referred to in rule 63 directing him to make such investigation and to report thereon to it.

67. Commissioner's report.—(1) The Commissioner after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence together with his report in writing signed by him to the Labour Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the industrial dispute and shall form part of the record of the proceedings in the industrial dispute; but the Labour Court or, with the permission of the Labour Court, any of the parties to the industrial dispute may examine the Commissioner personally before the Labour Court regarding any of the matters referred to him or mentioned in his report or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Labour Court is for any reason dissatisfied with the proceedings of the Commissioner it may direct such further enquiry to be made as it shall think fit.

68. Powers of Commissioner.—Any Commissioner appointed under these rules may, unless otherwise directed by the order of appointment—

(a) examine the parties themselves and any witnesses whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of enquiry;

(c) at any reasonable time enter upon or into any premises mentioned in the order.

69. Summoning of witnesses, etc.—(1) The provisions of the Code of Civil Procedure, 1908 (Act V of 1908) relating to the summoning, attendance, examination of witnesses and penalties to be imposed upon witnesses, shall apply to persons required to give evidence or to produce documents before the Commissioner under these Rules.

(2) Every person who is summoned and appears as a witness before the Commissioner shall be entitled to payment by the Labour Court out of the sum deposited under rule 64, of an allowance for expenses incurred by him in accordance with the scale for the time being in force for payment of such allowance to witnesses appearing in the civil courts.

70. Representation of parties before the Commissioner.—The parties to the industrial dispute shall appear before the Commissioner, either in person or by any other person who is competent to represent them in the proceedings before the Labour Court.

71. Notice of strike.—(1) The notice of strike to be given by workmen in a public utility service shall be in Form L.

(2) On receipt of a notice of a strike under sub-rule (1), the employer shall forthwith intimate the fact to the Conciliation Officer having jurisdiction in the matter.

72. Notice of lock-out.—The notice of lock-out to be given by an employer carrying on a public utility service shall be in Form M.

73. Report of Lock-out or strike.—The notice of lock-out or strike in a public utility service to be submitted by the employer under sub-section (3) of section 22, shall be in Form N.

74. Report of notice of strike or lock-out.—The report of notice of a strike or lock-out to be submitted by the employer under sub-section (6) of section 22 shall be sent by registered post or given personally to the Conciliation Officer (Central) appointed for the local area concerned, with copy by registered post to:—

(1) The Administrative Department of the Government of India concerned.

(2) The Regional Labour Commissioner (Central) for the Zone.

(3) Chief Labour Commissioner (Central).

(4) Ministry of Labour of the Government of India.

(5) Labour Department of the State Government concerned, and

(6) The District Magistrate concerned.

75. Register of settlements.—The conciliation officer (Central) shall file all settlements effected under this Act in respect of disputes in the area within his jurisdiction in a register maintained for the purpose as in Form O.

76. Notice of retrenchment.—If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in form P to the Central Government and such notice shall be served on that Government by registered post in the following manner:—

(a) Where notice is given to the workman notice of retrenchment shall be sent within three days from the date on which notice is given to the workman;

(b) Where no notice is given to the workman and he is paid one month's wages in lieu thereof, notice of retrenchment shall be sent within three days from the date on which such wages are paid; and

(c) Where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the Central Government at least one month before such date:

Provided that if the date of termination of service agreed upon is within 30 days of the agreement, the notice of retrenchment shall be sent to Government within 3 days of the agreement.

77. Maintenance of seniority list of workmen.—The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be posted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

78. Re-employment of retrenched workmen.—(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the indus-

trial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the seniormost retrenched workmen in the list referred to in rule 77 the number of such seniormost workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen.

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under rule 77.

79. Penalties.—Any breach of these rules shall be punishable with fine not exceeding fifty rupees.

80. Repeal.—The Industrial Disputes (Central) Rules, 1947, are hereby repealed:

Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

SCHEDULE.

FORM A.

(See Rule 3)

Form of application for the reference of an industrial dispute to a
Board of Conciliation
Court of Enquiry
Labour Court
Tribunal
National Tribunal
under section 10(2) of the Industrial Disputes Act, 1947.

Whereas an industrial dispute is apprehended between
exists
and
the matters specified in the enclosed statement which are connected with or
the dispute
and it is expedient that
relevant to the dispute should be referred for investigation and settlement
enquiry
adjudication by

a Board of Conciliation

a Court of Enquiry

a Labour Court

a Tribunal

a National Tribunal

an application is hereby made under sub-section (2) of section 10 of the Industrial Dispute Act, 1947, that the said matters should be referred to said dispute

a Board of Conciliation

a Court of Enquiry

a Labour Court

a Tribunal

a National Tribunal.

This application is made by the undersigned who have been duly authorised by the undersigned who has

rised to do so by virtue of a resolution (copy enclosed) adopted by a majority of the members present at a meeting of the.....held on the.....19.....

A statement giving the particulars required under rule 3 of the Industrial Disputes (Central) Rules, 1957, is attached. Dated the.....Signature of the Applicant(s).

To

The Secretary to the Government of India,
Ministry of Labour.

Statement required under rule 3 of the Industrial Disputes (Central) Rules, 1957, to accompany the form of application prescribed under sub-section (2) of Section 10 of the Industrial Disputes Act, 1947:—

- (a) Parties to the dispute including the name and address of the establishment or undertaking involved.
- (b) Specific matters in dispute.
- (c) Total number of workmen employed in the undertaking affected.
- (d) Estimated number of workmen affected or likely to be affected by the dispute.
- (e) Efforts made by the parties themselves to adjust the dispute.

FORM B.

(See Rule 6).

Whereas an industrial dispute has arisen between.....and.....is apprehended

and it is expedient to refer the said dispute under section 10 of the Industrial Disputes Act, 1947 to a Board of Conciliation for the purpose of investigating the same and for promoting a settlement thereof, you are hereby required to intimate to the undersigned not later than the.....the name(s) and address(es) of one (two) person(s) whom you wish to recommend for appointment as your representative(s) on the said Board.

If you fail to make the recommendation by the date specified above, the Central Government will select and appoint such person(s) as it thinks fit to represent you.

Secretary to the Government of India,
Ministry of Labour.

FORM C.
(See Rule 7).
AGREEMENT.

[Under section 10-A of the Industrial Disputes Act, 1947]
Between

Names of Parties

Representing employers:

Representing workmen:

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of.....

[here specify the name(s) and address(es) of the arbitrator(s)]:

- (i) Specific matters in dispute.
- (ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved.
- (iii) Name of the Union, if any, representing the workmen in question.
- (iv) Total number of workmen employed in the undertaking affected.
- (v) Estimated number of workmen affected or likely to be affected by the dispute.

*We further agree that the majority decision of the arbitrators shall be binding on us.

Witnesses

- (1)
- (2)

Signature of the Parties.

Representing employers.
Representing workmen.

Copy to:

- (i) The Conciliation Officer (Central), (here enter office address of the Conciliation Officer in local area concerned).
- (ii) The Regional Labour Commissioner (Central),.....
- (iii) The Chief Labour Commissioner (Central), New Delhi.
- (iv) The Secretary to the Government of India, Ministry of Labour, New Delhi.

*Where applicable.

FORM D.

(See Rule 17).

Whereas an industrial dispute between.....and.....has been referred to this

Board of Conciliation for investigation and settlement

Court of Enquiry for investigation

Labour Court/Tribunal/National Tribunal for adjudication

under section 10 of the Industrial Dispute Act, 1947, you are hereby summoned to appear before the Board/Court/Labour Court/Tribunal/National Tribunal in person on the..... day of..... at..... o'clock in the..... noon to answer all material questions relating to the said dispute and you are directed to produce on that day all the books, papers and other documents and things in your possession or under your control in any way relating to the matter under investigation by this Board/Court/Labour Court/Tribunal/National Tribunal.

Dated.....

Chairman/Secretary, Board of Conciliation

Court of Enquiry

Presiding Officer/Secretary, Labour Court

Tribunal

National Tribunal

FORM E.

(See Rule 34).

Notice of Change to be given by an Employer.

Name of employer Address

Dated the day of 19 ..

To

The Secretary/Principal Officer of the Union/Association.

The workman/workmen affected.

Dear Sir/Madam,

In accordance with section 9-A of the Industrial Disputes Act, 1947, I/we beg to inform you that it is my/our intention to effect the change/changes specified in the annexure to this letter, with effect from.....

Yours faithfully,

Signature.....

Name.....

Designation.....

Annexure

(Here specify the change/changes intended to be effected).

Tribunal
National Tribunal

The number of copies of the complaint and its annexures required under Rule 53 of the Industrial Disputes (Central) Rules, 1957, are submitted herewith.

Signature of the Complainant(s).
Dated this day of 195 ..

Verification

I do solemnly declare that what is stated in paragraphs above is true to my knowledge and that what is stated in paragraphs above is stated upon information received and believed by me to be true. This verification is signed by me at on day of 19 ..

Signature/or Thumb
impression of the person verifying.

FORM J.

[See Rule 60(1)]

Before (here mention the Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal).

Application for permission under sub-section (1) of section 33 of the Industrial Disputes Act, 1947 (14 of 1947), in the matter of Reference No.
A. Applicant.

Address:—

versus

B. Opposite Party (ies).

Address (es):—

The above mentioned applicant begs to state as follows:

[Here mention the action specified in clause (a) or clause (b) of sub-section (1) grounds on which the permission is sought for].

The applicant therefore prays that express permission may kindly be granted to him to take the following action, namely:—

[Here mention the action specified in clause (a) or clause (b) of sub-section (1) sub-section (3) of section 33.]

Signature of the applicant.
Dated this day of 195 ..

Space for verification.
(Signature of the person verifying).
Date (on which the verification was signed)
Place (at which the verification was signed)

FORM K

[See Rule 60(2)]

Before (here mention the Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal).

Application under sub-section (2) of section 33 of the Industrial Disputes Act, 1947 (14 of 1947) in the matter of Reference No.

A. Applicant.

Address:—

versus

B. Opposite Party (ies).

Address (es):—

The above mentioned applicant begs to state as follows:—

(Here set out the relevant facts and circumstances of the case.)

*The workman/workmen discharged/dismissed under clause (b) of sub-section (2) of section 33 has/have been paid wages for one month.

The applicant prays that the Conciliation Officer/Board/Labour Court/Tribunal/National Tribunal may be pleased to approve of the action taken, namely:—

[Here mention the action taken under clause (a) or clause (b) of sub-section (2) of section 33].

Signature of the Applicant.

Dated this day of 195 ..

Space for verification.

(Signature of the person verifying).

Date (on which the verification was signed)

Place (at which the verification was signed)

*Delete, if not applicable.

FORM L

(See Rule 71)

Form of notices of strike to be given by employee(s) in a public utility service.

Name of Union

Names of elected representatives of employees where no trade union exists.

Address

Dated the day of 19 ..

To

(The name of the employer).

Dear Sir/Sirs,

In accordance with the provisions contained in sub-section (1) of section 22 of the Industrial Disputes Act, 1947, $\frac{I}{We}$ hereby give you notice that I propose to call a strike we propose to go on strike on 19 , for the reasons explained in the annexe.

Yours faithfully,

Secretary of the Union

Representative of the employees elected at a meeting held on

ANNEXE

Statement of the Case.

Copy to: (1) Conciliation Officer (Central)

(Here enter office address of the Conciliation Officer in the local area concerned)

(2) Regional Labour Commissioner (Central).....Zone.

(3) Chief Labour Commissioner (Central), New Delhi.

FORM M

(See Rule 72)

Form of notice of lock-out to be given by an employer carrying on a public utility service.

Name of employer..... Address.....

Dated the..... day of..... 19 ..

To

(The Secretary of the Union, if any).

Dear Sir,

In accordance with the provisions of sub-section (2) of section 22 of the Industrial Disputes Act, 1947, I/we hereby inform you that it is my/our intention to effect a lock-out with effect from.....for the reasons explained in the annexe.

Yours faithfully,

*Here insert the position which the person who signs the letter holds with the employer issuing this letter.

ANNEXE

Statement of the case.

Copy to: (1) Conciliation Officer (Central).

(Here enter office address of the conciliation officer in the local area concerned).

(2) Regional Labour Commissioner (Central).....Zone.

(3) Chief Labour Commissioner (Central), New Delhi.

FORM N.
(See Rule 73)

Form of Report of Strike or Lock-out in a public utility service

Information to be supplied in this form immediately on the occurrence of a strike or lock-out in a public utility service to the Conciliation Office (Central) for the local area concerned.

Name of under-taking	Station and District	Normal working strength	Number of Workers involved		Strike or lock-out	Date of commencement of strike or lock-out	Cause	Was notice of strike or lock-out given: if so, on what date and for what period	Is there any permanent agency or agreement in the undertaking for the settlement of disputes between the employer and workmen? If any exist, particulars thereof	Any other information
			Directly	Indirectly						
1	2	3	4	5	6	7	8	9	10	11

NOTE:—Column (3). Give the average number of workmen employed during the month previous to the day on which the strike or lock-out occurred. While reckoning the average, omit the days on which the attendance was not normal for reasons other than individual reasons of particular workmen. Thus days on which strike or lock-out occurs or communal holiday is enjoyed by a large section of workers should be omitted.

Column (4). If say, 200 workers in a factory strike work and in consequence the whole factory employing 1,000 workers has to be closed then, 200 should be shown under "directly" and the remaining under "indirectly". If the strike of 200 workers does not affect the working of the other departments of the factory, the number of workers involved would only be 200, which figure should appear under "directly" and column "indirectly" would be blank.

Column (8). Give the main causes of the dispute as well as the immediate cause that led to the strike or lock-out.

FORM O.

(See Rule 75)

Register—Part I

Serial No.	Industry	Parties to the settlement	Date of settlement	Remarks*
------------	----------	---------------------------	--------------------	----------

*Whether the settlement was effected at the intervention of the conciliation machinery, or by mutual negotiations between the parties, may be indicated here.

Part II

(Should contain one copy each of the settlements in the serial order indicated in Part I).

FORM P

(See Rule 76)

Form of notice of retrenchment to be given by an employer under clause (c) of section 25-F of the Industrial Disputes Act, 1947.

Name of employer..... Address.....
Dated the.....day of.....195 .

To

The Secretary to the Government of India,
Ministry of Labour, New Delhi.

Sir,

Under clause (c) of section 25-F of the Industrial Disputes Act, 1947 (14 of 1947), I/we hereby inform you that I/we have decided to retrench *— workmen with effect from **— for the reasons explained in the annexe.

2.† The workmen concerned were given on the **—195 one month's notice in writing as required under clause (a) of section 25-F of that Act./Retrenchment is being effected in pursuance of an agreement, a copy of which is enclosed./The workmen were given on the **—195 one month's pay in lieu of notice, as required under clause (a) of section 25-F of that Act.

3. The total number of workmen employed in the industrial establishment is ***—and the total number of those who will be affected by the retrenchment is given below:—

Category of designation of workmen to be retrenched	Number of workmen	
	Employed	To be retrenched
(1)	(2)	(3)

4. I/We hereby declare that the workman/workmen concerned has/have been/will be paid compensation due to them under section 25-F of the Act on
 ** the expiry of the notice period.

Yours faithfully,

*Here insert the number of workmen.

**Here insert the date.

†Delete the portion which is not applicable.

***Here insert the total number of workmen employed in the industrial establishment.

††Here insert the position which the person who signs this letter holds with the employer issuing the letter.

ANNEXE

Statement of reasons

Copy to (1) Conciliation Officer (Central) (Here enter office address of the Conciliation Officer in local area concerned).

(2) Regional Labour Commissioner (Central),
Zone.

Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956—remaining provisions brought into force.

Notification No. S.R.O. 741, dated New Delhi, the 1st March 1957.*

In exercise of the powers conferred by sub-section (2) of section 1 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956), the Central Government hereby appoints the 10th day of March, 1957, as the date on which the following provisions of the said Act shall come into force:—

Clauses (a), (c), (d) and (f) of section 3;

Sections 4, 5, 6, 7 and 8;

Clauses (a), (b), (c), (e), (f) and (g) of section 9;

Clause (a) of section 10;

Sections 11 and 12;

Clause (b) of section 13;

Clause (d) of section 14;

Sections 15, 16, 17, 18, 19, 21, 22, 23, 24, 25; 26; 28; 29 and 30; and

Clause (d) of section 32.

*Gaz. of India, 9-3-57, Pt. II—Sec. 3, p. 441.

Minimum Wages Act, 1948—Appointment of Inspectors.

Notification No. S.R.O. 734, dated New Delhi, the 9th March, 1957.*

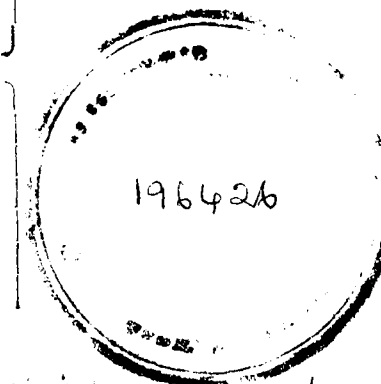
In exercise of the powers conferred by sub-section (1) of section 19 of the Minimum Wages Act, 1948 (11 of 1948), the Central Government hereby appoints the officers specified in column (1) of the Schedule hereto annexed to be Inspectors for the purposes of the said Act within the local limits specified in the corresponding entries in column (2) thereof:—

SCHEDULE

Designation of officers (1)	Territorial Jurisdictions (2)
(I) Chief Labour Commissioner (Central)	Whole of India except the State of Jammu & Kashmir.
(II) Deputy Chief Labour Commissioner (Central).	
(III) Regional Labour Commissioner (Central), Bombay.	The State of Bombay.
1. Conciliation Officer (Central), Bombay-I	
2. Conciliation Officer (Central), Bombay-II	
3. Labour Inspector (Central), Bombay-I	
4. Labour Inspector (Central), Bombay-II	
5. Labour Inspector (Central), Bombay-III	
6. Labour Inspector (Central), Bombay-IV.	
7. Labour Inspector (Central), Poona	
8. Labour Inspector (Central), Ahmedabad	
9. Labour Inspector (Central), Bhusawal	
10. Labour Inspector (Central), Rajkot.	
11. Labour Inspector (Central), Nagpur-I	
12. Labour Inspector (Central), Nagpur-II	
13. Labour Inspector (Central), Tumsar	
(IV) Regional Labour Commissioner (Central), Calcutta.	The State of West Bengal and Assam and the Union Territories of Manipur and Tripura.
1. Conciliation Officer (Central), Calcutta-I	
2. Conciliation Officer (Central), Calcutta-II	
3. Conciliation Officer (Central), Shillong	
4. Labour Inspector (Central), Calcutta-I	
5. Labour Inspector (Central), Calcutta-II	
6. Labour Inspector (Central), Gauhati.	
7. Labour Inspector (Central), Kharagpur.	
8. Labour Inspector (Central), Dibrugarh.	
(V) Regional Labour Commissioner (Central), Madras.	The States of Madras, Mysore, Kerala and Andhra Pradesh,
1. Conciliation Officer (Central), Madras.	
2. Conciliation Officer (Central), Cochin.	
3. Conciliation Officer (Central), Secunderabad.	
4. Labour Inspector (Central), Madras-I	
5. Labour Inspector (Central), Madras-II	
6. Labour Inspector (Central), Villupuram	
7. Labour Inspector (Central), Bezwada	
8. Labour Inspector (Central), Vizagapatam	

*Ibid, 9-3-57, p. 442.

Designation of Officers. (1)	Territorial Jurisdictions (2)
9. Labour Inspector (Central), Coimbatore	The States of Madhya Pradesh and Rajasthan.
10. Labour Inspector (Central), Madurai	
11. Labour Inspector (Central), Bangalore.	
12. Labour Inspector (Central), Trivandrum	
13. Labour Inspector (Central), Kolar (Gold Fields)	
14. Labour Inspector (Central), Gudur	
15. Labour Inspector (Central), Hubli	
16. Labour Inspector (Central), Secunderabad	
17. Labour Inspector (Central), Kothagudium	
(VI) Regional Labour Commissioner (Central), Nagpur	The States of Uttar Pradesh and Punjab and the Union Territories of Himachal Pradesh and Delhi.
1. Conciliation Officer (Central), Jabalpur	
2. Conciliation Officer (Central), Ajmer.	
3. Labour Inspector (Central), Jabalpur,	
4. Labour Inspector (Central), Parasia	
5. Labour Inspector (Central), Ajmer	
6. Labour Inspector (Central), Jodhpur	
7. Labour Inspector (Central), Bhilwara	
8. Labour Inspector (Central), Ratlam	
9. Labour Inspector (Central), Raipur	
10. Labour Inspector (Central), Balaghat	
11. Labour Inspector (Central), Rewa	
12. Labour Inspector (Central), Nagpur (at Headquarters)	
13. Labour Inspector (Central), Chirimiri	
(VII) Regional Labour Commissioner (Central), Kanpur	The States of Uttar Pradesh and Punjab and the Union Territories of Himachal Pradesh and Delhi.
1. Conciliation Officer (Central), Kanpur	
2. Conciliation Officer (Central), Delhi	
3. Labour Inspector (Central), Delhi-I	
4. Labour Inspector (Central), Delhi-II	
5. Labour Inspector (Central), Kanpur (at Headquarters)	
6. Labour Inspector (Central), Gorakhpur	
7. Labour Inspector (Central), Bareilly	
8. Labour Inspector (Central), Allahabad	
9. Labour Inspector (Central), Lucknow	
10. Labour Inspector (Central), Ferozepore.	
11. Labour Inspector (Central), Ambala	
(VIII) Regional Labour Commissioner (Central), Dhanbad	
1. Conciliation Officer (Central), Dhanbad-I	
2. Conciliation Officer (Central), Dhanbad-II	
3. Conciliation Officer (Central), Asansol	
4. Conciliation Officer (Central), Jarsuguda	
5. Conciliation Officer (Central), Hazaribagh	
6. Labour Inspector (Central), Asansol	



Designation of Officers

(1)

7. Labour Inspector (Central), Ranchi
8. Labour Inspector (Central), Patna
9. Labour Inspector (Central), Jharia
10. Labour Inspector (Central), Katrasgarh
11. Labour Inspector (Central), Kodarma
12. Labour Inspector (Central), Muzaffarpur
13. Labour Inspector (Central), Cuttack
14. Labour Inspector (Central), Giridih
15. Labour Inspector (Central), Pakur
16. Labour Inspector (Central), Jharia East
17. Labour Inspector (Central), Jharia West
18. Labour Inspector (Central), Mahuda
19. Labour Inspector (Central), Hazaribagh
20. Labour Inspector (Central), Chikanda
21. Labour Inspector (Central), Ramgarh
22. Labour Inspector (Central), Sitarampur
23. Labour Inspector (Central), Raniganj
24. Labour Inspector (Central), Ukhra
25. Labour Inspector (Central), Kirkend
26. Labour Inspector (Central), Pathardih
27. Labour Inspector (Central), Dhanbad (at Headquarters).
28. Labour Inspector (Central), Dhanbad (for mica mines)

Territorial Jurisdictions

(2)

The States of Bihar, Orissa,
and West Bengal.

Employees' Provident Funds Scheme, 1952—Amendment

Notification No. S.R.O. 815, dated New Delhi the March 9, 1957.*

In exercise of the powers conferred by sub-section (1) of section 7 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby makes the following amendment in the Employees' Provident Funds Scheme, 1952, namely:—

In the said Scheme, in clause (b) of sub-paragraph (3) of paragraph 1, sub-clause (iii) shall be renumbered as (iv) thereof and the following sub-clause shall be inserted as sub-clause (iii), namely:—

“(iii) as respects factories relating to the mineral oil refining industry added to Schedule I of the Act by notification of the Government of India in the Ministry of Labour No. S.R.O. 218, dated the 19th January, 1957, come into force on the 31st day of January, 1957”.

*[ibid, 16-3-1957, Pt. II—Sec. 3, p. 374.

[IN THE FIFTH INDUSTRIAL TRIBUNAL, WEST BENGAL.]

LEVER BROTHERS (INDIA) LTD., CALCUTTA

v.

THEIR WORKMEN.

Shri G. Palit.

January 28, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(k)—‘INDUSTRIAL DISPUTE’, DEFINITION OF—‘INDIVIDUAL DISPUTE’ TAKEN UP BY TRADE UNION, WHETHER ‘INDUSTRIAL DISPUTE’—DISMISSED EMPLOYEE, WHETHER CAN RAISE INDUSTRIAL DISPUTE REGARDING REINSTATEMENT.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 19(6)—TERMINATION OF AWARD—ESSENTIALS—FRESH DISPUTE ON SAME MATTER AS SUBJECT OF EXISTING AWARD—WHETHER CAN BE RAISED—*Res judicata*, HOW FAR APPLICABLE TO PROCEEDINGS BEFORE INDUSTRIAL TRIBUNALS.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(o)—‘WORKMAN’—DEFINITION OF—SALESMAN, WHETHER WORKMAN.

Even if an ‘individual dispute’ does not fall within the definition of ‘industrial dispute’ in the Industrial Disputes Act, 1947, still, if a trade union of the workmen or a number of workmen take up the dispute, the ‘individual dispute’ will come within the definition of ‘industrial dispute’: C. P. TRANSPORT SERVICES LTD. v. RAGHUNATH GOPAL PATWARDHAN [1956] 11 F.J.R. 298, followed.

An employee who has been dismissed can maintain a claim for reinstatement and such a claim will fall within the definition of ‘industrial dispute’ in the Act.

Where a dispute has been adjudicated upon and an award on the dispute exists and is binding, it is not open to any party to raise the same dispute again for adjudication unless the award has been terminated in accordance with section 19(6) by express or implied notice. The principle of res judicata will apply when a fresh dispute is raised on the same subject-matter and between the same parties unless it is established that there has been material change in the circumstances.

A salesman of a concern whose duties require initiative and display of intelligence will not fall within the definition of ‘workman’ in section 2(s) of the Industrial Disputes Act, 1947, even though his work involves some amount of clerical work.

C. J. Mahimker for the management.

Narayan Das Gupta for the workmen.

AWARD.

1. By Government order No. 703Dis./D/11L-54, dated the 21st February, 1956, the aforesaid dispute has been referred to the Fifth Industrial Tribunal presided over by me for adjudication under section 10 of the

Industrial Disputes Act, 1947 (XIV of 1947). The said Fifth Industrial Tribunal was constituted under section 7 of the Act by the notification No. 3581 Lab., dated the 9th June, 1951.

2. The reference was received here on 29th February, 1956. The Mazdoor Sabha filed its written statement on 19th March, 1956. The Company filed its written objection on 3rd April, 1956. After several adjournments the case was taken up for hearing on 4th January, 1957. On that day several legal objections about the jurisdiction of the Tribunal were pressed. That matter was heard on 7th January, 1957. The award was reserved.

3. The issues contained in the schedule to the order of reference stand as follows:—

(1) Whether the salesmen of Messrs Lever Brothers (India) Ltd. are workmen.

(2) Whether the termination of services of Shri S. R. Sanyal and Shri R. K. Bose was justified. What relief are they entitled to?

4. As the objections pressed relate to the question of jurisdiction of this Tribunal to decide this dispute, the Tribunal finds itself bound to record its finding on the said objections. If, as matter of fact, it is found that the Tribunal has no jurisdiction, then it cannot proceed to the adjudication of the issues directly framed in this case. I take up the objections one by one, and record my findings with reasons thereon.

The first objection which the Company pressed was that in the order of reference the fact of representation which has been mentioned does not go any more beyond what is representation by a lawyer or a representative. In other words, it is an individual dispute between the employer on the one hand and these two employees in question on the other, and the Union merely represents those employees before the Tribunal just to conduct the case on their behalf. It does not show, as a matter of fact, that the Union has espoused the cause of these employees as its own, and has identified itself totally with these two employees. So the representation by the Union cannot have the effect of converting this dispute which was fundamentally an "individual dispute" into what is called a "collective dispute". Further, the Company contends that "individual disputes" are not "industrial disputes" as defined in the Industrial Disputes Act, 1947. So individual dispute will necessarily fall outside the jurisdiction of the Tribunal. The jurisdiction of the Tribunal is limited to adjudication of industrial disputes only. That being the position, the present Tribunal is not competent to decide this reference. The Mazdoor Sabha, on the other hand, contends that the Union in the present case had espoused the cause of these two employees long before the date of the reference. So, even if the dispute was an individual dispute originally, it became later on by the intervention of the Union converted into a collective dispute. In that case there can be no challenge to the jurisdiction of the Tribunal to adjudicate the reference. Now, while considering this contention in all its bearing, I am disposed to find that the Union's stand is correct. I, of course, agree with

the argument of the learned lawyer of the Company that the order of reference as such cannot go far enough to show that the Union, as a matter of fact, had accepted the cause of these two employees, and converted the dispute thereby into a collective dispute. But we have to go into the question of evidence just to see whether, as a matter of fact, the Union had espoused the cause of these two employees. For this I refer to the undisputed Annexures to the written statement of the Union. Annexure H, dated as far back as the 19th July, 1954, shows that Shri Narayan Das Gupta, the Organising Secretary of the Union, addressed a letter to the Company regarding the termination of service of Shri S.R. Sanyal. He concluded the letter saying: "We hope you will kindly reply to this letter by the end of this week because we feel that in cases of difference of this nature the sooner the third party intervention is sought the better". Annexure I, dated the 13th December, 1954, is a letter written by the said Shri Narayan Das Gupta of the Union to the Labour Officer, Government of West Bengal, regarding the termination of services of Shri S.R. Sanyal and Shri R.K. Bose. The concluding sentence of the letter stands thus: "We naturally demand that these salesmen should be reinstated with retrospective effect and that they should not only be compensated for the loss and mental agony that they have been suffering but unqualified apologies should also be tendered to them". The Company by its letter, dated 24th January, 1955, addressed to the same Labour Officer says that this decision to terminate the services of the two salesmen was within its authority and that it acted *bona fide*. There was no case even in equity, let alone in law, for the Company to revise its decision. Annexure J, dated 22nd February, 1955, is another letter bearing on this subject, addressed by Shri Narayan Das Gupta to the Labour Officer, Government of West Bengal. Thus it is clear that long before the order of reference to this Tribunal by Government, the Union had taken up the cause of these two salesmen and fought against the Company, and also sought the intervention of Government in the matter. So it is not a mere representation by the Union, but it is a case of the Union making the cause of these two employees as its own against the Company. Now, the point is whether in such circumstances it should still be a case of "individual dispute" as distinguished from an "industrial dispute". My answer would be in the negative. It is contended by the Company that unless it can be shown that all the workmen or at least the bulk of workmen of this concern had identified themselves with the cause of these two workmen, it cannot be an industrial dispute. I do not accept that proposition of law. The Union is a collective body to represent the workmen in general. So it would suffice if either the Union or the bulk of workmen had espoused the cause of the individual workman. I refer to the decision of the Hon'ble Supreme Court of India in the case of *Central Provinces Transport Service Ltd., Nagpur v. Raghunath Gopal Patwardhan*, ([1956] 11 F.J.R. 298). Their Lordships observed: "Notwithstanding that the definition of 'industrial dispute' in section 2(k) of the Industrial Disputes Act, 1947, is wide enough to cover a dispute between an employer and a single employee, the scheme of the Act appears to contemplate that the

machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman is not intended to be the subject of adjudication under the Act when the same has not been taken up by the Union or a number of workmen". From this it is clear that even though "individual disputes" may not come under the definition of "industrial dispute" still, if the Union or a number of workmen take up the dispute, the individual dispute cannot be ousted from the scope of the definition of "industrial dispute". In this connection a very old case decided by the Chief Justice of the Madras High Court in *Kandan Textiles Ltd. v. Industrial Tribunal* [1949] 1 F.J.R. 217, is relevant. His Lordship observed: "I must confess that the language of the definition of industrial dispute is so wide that giving the words very ordinary meaning even a single dispute between an employer and one of the workmen or between one workman and another workman which is connected with one or other of the matters mentioned therein would fall within the definition". I need not refer accordingly to the case of the Calcutta High Court in *J. Choudhury v. M. C. Banerji*, [1951] 2 F.J.R. 218. It was systematically held by the Labour Appellate Tribunal in the cases of *Snow White Products v. Nagaswami* and *Khages Chakravorty v. Bhagya Lakshmi Insurance Ltd.*, and also by His Lordship Bindbasini Prasad in the case of *Ganesh Das Ramgopal v. Government of the State of Uttar Pradesh* [1952] 4 F.J.R. 479, that individual disputes cannot be ruled out from the definition of "industrial dispute". Be that as it may, in the case before me, as I have found that the Union had espoused the cause of these two employees, the dispute becomes an industrial dispute on the basis of the Supreme Court decision referred to above.

The next objection which the Company has pressed before me is that these two employees having been already dismissed cannot maintain this case before the Tribunal. As their dismissal has given rise to the dispute, they cannot be said to have been dismissed in course of the dispute, defined in section 2(s) of the Act. They have ceased to be "workmen", and so the dispute raised by them cannot be an industrial dispute as defined in section 2(k) of the Act. But a discharged employee is competent to raise a dispute. This was found in the decision of the Allahabad High Court in the case of *Messrs Ganesh Das Ramgopal v. Government of U.P.* [1952] 4 F.J.R. 479 and also in the Federal Court decision in the case of *Western India Automobile Association v. Industrial Tribunal* [1949] 1 F.J.R. 97, and also in the case of *India Paper Pulp Co., Ltd. v. Workers Union*, [1949] 1 F.J.R. 119. This position has been further elucidated in the Supreme Court decision in the case of *Central Province Transport Service Ltd.*, already referred, to at page 300. I refer to the said decision:

"The question whether a dismissed employee is an employee as defined in section 2(10) of the Act must be held to be practically concluded by the decision of the Federal Court in *Western India Automobile Association v. Industrial Tribunal, Bombay* [1949] 1 F.J.R. 97. There the point for determi-

nation was whether a claim for reinstatement by a dismissed workman was an industrial dispute..... It was held that the definition in section 2(k) including as it did all disputes or differences in connection with employment or non-employment of a person was sufficiently wide to include a claim for reinstatement by a dismissed workman". So, this objection is also not maintainable in law.

The third objection which the Company has pressed is that Shri S. N. Modak adjudicated in a case of this very Company, as far back as 1950, that salesmen were not "workmen" as defined in the Act. The Company contends that as the said award has not been terminated by a notice, it still binds the parties. So, that decision will operate as *res judicata* in the present case. The Union meets this argument by saying (1) that the award of Shri Modak related to bonus. Bonus having been paid, there is no continued obligation on the parties. So the award must have lapsed under section 19(5) of the Act. (2) Notice in a case under section 19(6) of the Act does not mean any written notice. Had it been the intention then it would have been mentioned as "notice in writing", as in section 19(2) of the Act. So the mere fact that the Union had agitated this matter is a sufficient compliance of the requirement of a notice as provided under section 19(6) of the Act. That being so, the previous award has lapsed. So the doctrine of *res judicata*, it is contended, cannot be invoked in the present case. If I read between the lines in clauses (5) and (6), section 19 of the Act, I am of opinion that the clause (6) is not controlled by the above clause (5). Clause (5), if at all, controls clause (3) much in the same way as clause (6) also controls clause (3) of section 19 of the Act. The legal position stands like this: An award shall ordinarily remain operative for one year subject to other provisions of the section. Government may reduce the said period if it finds expedient, or it may also extend it subject to the only limitation that the total period of the award should not be more than 3 years. But clause (5) prescribes that though the normal period of the award be like that, it will cease to be binding on the parties when there is no obligation left to be complied with after it has been given effect to, in other words, when the award dies its natural death. But clause (6) is different. It stands by itself. If the parties do not choose to terminate the award by a notice, then it continues to be binding until a period of two months from the date of notice. So it is incumbent on the parties or party to give a notice for the termination of an award. In the present case, certainly no written notice was given. Of course, the Hon'ble Labour Appellate Tribunal also noticed the distinction of a "notice in writing" and mere "notice" occurring respectively in clauses (1) and (6) of section 19 of the Act. But all that can be said is that clause (6) as it stands, cannot make a written notice imperative because it is not specifically mentioned therein. But that merely has the effect of prescribing that verbal notice might suffice. A notice may be "express" or implied. When a notice is required to be given, it must necessarily be "express". So the mere fact that the question of salesmen being "workmen" was now being

agitated upon, cannot be tantamount to giving a notice, as per clause (6) aforesaid. The Company has drawn my attention to certain agreements entered into by the Union with this Company in other States where salesmen have been distinguished from "workmen" in general. They have been put into a category separate from the category of "workmen". As they relate to other States, though of this Company, I do not admit them into evidence. But it is clear that the Union did submit to the position that salesmen were not workmen, as decided by Shri S. N. Modak. The question of *res judicata* has been needlessly invoked in the present case. The award is binding. It cannot be got over in this categorical fashion by bringing another case. But as the question of *res judicata* has been raised, I consider it as below:—

The Labour Appellate Tribunal gave some conflicting decisions whether *res judicata* should or should not apply to industrial disputes. Some decisions held it to be inapplicable to industrial disputes because Industrial Tribunals must aim at achieving industrial peace. They should resolve industrial disputes, and not suppress them. Suppression will mean defeatism and stagnation. But those Tribunals who applied *res judicata* to industrial disputes, did so on the ground that *res judicata* laid down the salutary principle of law resulting in finality in decision. As in civil matters, so also in the industrial field, repeated disputes of the same kind would embitter industrial peace and estrange the parties more and more. But if *res judicata* was accepted, then the parties would submit to it, and thereby industrial peace would be achieved. This view of applying *res judicata* to industrial disputes has found favour with Their Lordships of the Supreme Court in the case of *Burn & Co., Ltd.* [1956] 11 F.J.R. 217. So the Industrial Tribunals as much as other courts, are bound now to accept that *res judicata* should not be ruled out from industrial adjudication. So, if Shri Modak had adjudicated that salesmen were not "workmen" in the case of this very Company, then that decision should be taken as binding on the parties before me also. Against this the Union contends that *res judicata* is not attracted here because (1) the point which is directly and substantially in issue before this Tribunal was not the point directly and substantially in issue in the previous case before Shri Modak, and (2) there was no Appellate Tribunal at that time to correct the said decision, and (3) there has been a change of circumstances since the above decision. I am afraid, I am unable to concur with this contention of the Union. In the case before Shri Modak, though that was primarily a case of bonus, the question whether the salesmen were workmen was specifically mooted there. That was substantially a matter of dispute because if they were not "workmen", they would not participate in the bonus granted by the Tribunal. Shri Modak's award is reported in the Labour Law Journal, Vol. I, 1951, at page 274. At page 276 Shri Modak observes "As regards salesmen, I find that no substantial part of their work is of a clerical or of a manual nature, though they do some writing work sometimes or have to make some physical effort occasionally, and I hold that they also are not 'workmen'." So this is a clear finding by Shri Modak on the status of salesmen *vis-a-vis* workmen

as defined in the Act. So here the doctrine of *res judicata* operates. Then regarding the objection that there was no Appellate Tribunal in being at the time to scrutinise the award of Shri Modak, the objection is neither here nor there. Even then there was the High Court of Calcutta, and the Supreme Court of India to correct the errors about wrong exercise of jurisdiction or wrong decision on merits. Even at the present time there is no Appellate Tribunal operating. That cannot take away the merit of the present award.

Regarding the change of circumstances since the award of Shri S. N. Modak, it is a question of fact to be proved by evidence. Before I discuss this matter, I refer to several decisions of the Labour Appellate Tribunal relied on by the Mazdoor Sabha. I have no quarrel with the proposition of law held in those decisions, viz., there is no charm or weight in the designation of salesman as of other employees. The actual work that they did should be investigated, I mean, its nature, just to see whether it is clerical or manual. That is well accepted. Some of these decisions held that unless the employee in question exercised directional control and could punish or reward, he could not be given the status of an officer. The question before the Tribunal is whether the employee concerned is an officer or a clerk. But this position in law has been controverted. An employee may not be an officer, but that does not mean that he is a clerk. He may not be also a clerk. So the test centres round the nature of duties that the man concerned is required to perform. For that it is necessary to scrutinise the duties which the man concerned is required to perform in the factory in question, and not what men of similar status do in any parallel factory. This distinction should not be overlooked. A salesman in a very big concern may be performing duties altogether different or varying considerably from the duties performed by a salesman in a smaller concern. So these cases relied on by the Union are not specifically considered besides what I have deduced from them as above. I have already referred to the observation of Shri S. N. Modak regarding this very Company.

Next, if I refer to the case of this Company in Bombay, as reported in the L.L.J., 1950, at page 469, Vol. II, I find that Shri P. S. Bakhle, sitting over the said Tribunal held that salesmen in this concern would not be covered by the expression "workman". Next, if I refer to the case of this Company in Madras, as reported in the same L.L.J. at page 1314, I find this "When they recruit salesmen they look to the personality of the candidates, their ability to get on with constituents and get their way with them, their initiative, power of observation and a high degree of integrity. They have to work on their own for most of the time, though they have to prepare and submit reports to their officers. The work of a salesman does involve some amount of clerical work, though it does not involve any manual work. The salesman has to advise the constituents in the matter of the display of the goods of the organisation, but he does not do manual work".

Here the Union has placed before me the duties of a salesman in the Calcutta branch, supported by an affidavit. It has stressed the advertising aspect of the duties of a salesman by pasting stickers, pictures, tin plates, etc., and by the display of the Company's products in shops. He has also to draw up many reports about the work done from day to day. He has also to push sales of his commodities and also dispose of them as much as possible. Sometimes he is given a van carrying stocks for him. But it also emerges out of these that he must have some sort of initiative and power of observation. He must persuade the dealers to push sales of his commodities, and his personality in this respect cannot be discounted. He must have wisdom as to how by the display of his goods the notice of the customers may be attracted to them. As a matter of fact, not only the actual sale, but also the place of the Company's commodities in the market will greatly depend upon the cleverness and intelligence of a salesman appointed for the purpose. Of course, the discharge of his normal duties involve some amount of clerical work, viz., to keep proper account of his stocks and filling up of several reports. But that does not comprise the major part of his work. The major part of his work, as I have pointed out, requires initiative and display of intelligence. Regarding the stereotyped and routine duty of a clerk, though he follows the lines chalked out for him by the supervisors, still within his sphere he has ample scope of doing clever and intelligent work. So, in this view of the matter, I must find that the salesmen in this Company are not "workmen".

Before I conclude, I must refer to the contention of the Union that the Tribunal in its preliminary enquiry is practically judging the issue No. 1 and that it is not fair because the Tribunal does not have elaborate and full evidence before it which it could have if the matter was gone into on merits. That is true. But the point raised in the issue No. 1 is also a point which is necessary for the determination of this jurisdictional issue. In deciding this jurisdictional issue I have to arrive at a *prima facie* finding on the matter mooted. But I do not think that this contention can go far enough. Even the issue No. 1 apart, I find that the award of Shri Modak is binding on the parties. That disposes of the matter that the Tribunal has no jurisdiction to adjudicate this matter. Secondly, I have also considered that the salesmen in this Company are not workmen. I have not been shown how their position has changed considerably just to warrant the conclusion that they have become workmen since the award of Shri S. N. Modak. Even the evidence on affidavit does not show it. So, considering the matter in all its merits, so far as jurisdiction is concerned, I find that this Tribunal is wanting in jurisdiction to adjudicate this matter. So the order of reference is rejected without further adjudication on merits.

[IN THE SECOND INDUSTRIAL TRIBUNAL, WEST BENGAL.]
KALICHARAN KUNDU AND JANAKI NATH KUNDU
v.
THEIR WORKERS.

Shri G. P. Mukherjee,

January 10, 1957.

INDUSTRIAL TRIBUNAL—JURISDICTION—REFERENCE OF DISPUTE BY GOVERNMENT—DUTY OF TRIBUNAL TO ENSURE THAT MATTER REFERRED IS 'INDUSTRIAL DISPUTE'—REFERENCE OF DISPUTE AS 'INDUSTRIAL DISPUTE', WHETHER CONCLUSIVE.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(s)—'WORKMAN', DEFINITION OF—'WORKMAN' AND 'INDEPENDENT CONTRACTOR' DISTINGUISHED—TISIS—EFFECTIVE CONTROL OVER WORK.

An Industrial Tribunal is not only competent, but is required to see that it has jurisdiction to entertain the dispute referred to it for its adjudication. It is open to a party to the dispute to show that what was referred by the Government was not an 'industrial dispute' within the meaning of section 2(k) of the Industrial Disputes Act, 1947, and therefore the Tribunal had no jurisdiction to proceed in the matter. The fact that the Government has made a reference to the Tribunal is not conclusive on the question whether the matter referred is an 'industrial dispute'.

In deciding whether persons working in a concern fall within the definition of 'workman' in section 2(s) of the Act, it has to be seen, on an examination of the actual relationship between the employer and the employee, whether the employer has effective control over the work of the employee. Where there was no control over the work of such employee he must be held to be an independent contractor and not a 'workman' and such employee cannot raise an industrial dispute with the employer.

P. Dey and S. C. Kundu for the management.

Parimal Das Gupta for the workers.

AWARD.

The issues contained in the schedule to the order of reference are as follows:—

(1) Whether the lock-out from 7th October, 1952 is justified? To what relief the workers are entitled?

(2) What should be the rate of wages (Kasur)?

The case made out in the written statement on behalf of the workers is that they were engaged in Messrs Kalicharan Kundu and Janakinath Kundu, a firm producing brass and copper utensils. The workers used to get two kinds of wages one named as 'Bani', that is general rate and another named as 'Kasur' that is special rate for special variety of articles produced, which required special labour and skill. Things were going on smoothly, but sometime in 1952, attempts were made to curtail the existing rate of

"Kasur", for which a dispute arose, and a good deal of negotiations took place between the Union and the Brass and Copper Utensils Industries' Association. The Union demanded that the existing rate of "Kasur" should be maintained. But this firm, that is, Messrs Kalicharan Kundu and Janaki Nath Kundu was not agreeable to this. This firm in order to force their workmen to accept lesser rate of "Kasur" declared illegal lockout on 7th October, 1952. As a result of this, the workmen were thrown out of employment, and were put to extreme distress. Conciliation proceedings followed, but without any effect. Ultimately, the dispute was referred to the Tribunal for adjudication.

The case of Messrs Kalicharan Kundu and Janaki Nath Kundu is that it is a firm dealing in and producing brass and copper utensils. The business of such dealers is carried on not by any regular workers, but by independent contractors. The dealers supply brass, copper sheets and circles to certain independent contractors, who entered into contracts with them for converting the said brass, copper sheets and circles into finished utensils, that such independent contractors are paid for such finished goods at diverse rates on the basis of weight, that the dealers have no control over the work of such independent contractors, that there is no fixity as to the amount of work that has to be done by such contractors and also as to the time within which such work is to be executed, and that the said contractors are their own masters in respect of the work to be done by them, and they employ workmen for completing the contracts entered into by them with the dealers. The sum Kundu is that there was no relationship of master and servant between them and these independent contractors, who were so employed in their business. Accordingly, it is contended on behalf of the Company that the dispute referred to is not an industrial dispute, as the persons who worked in this concern were not "workmen" within the meaning of section 2(s) of the Industrial Disputes Act, 1947, and hence the reference as made by the Government to this Tribunal is bad in law and *ultra vires*, and the Tribunal has no jurisdiction to proceed with the reference or to adjudicate upon the issues in this dispute.

The principal point for decision before me is, whether the persons who were employed by this concern are really "workmen" within the meaning of the Industrial Disputes Act, 1947. When a question arises whether the persons employed by a concern are "workmen" or independent contractors, it must be decided on a number of facts, the entire picture of their engagement, method of work, conduct during work, mode of production, in short, the whole relationship between the employer and the employees will have to be examined carefully. The fact that the order of reference as made by the Government to the Tribunal is not conclusive on the point that the reference arises out of an industrial dispute under the Act. It is now well settled by a series of decisions that the Tribunal is not only competent, but is required to see that it has jurisdiction to

entertain the dispute referred to for its adjudication. It would be certainly open to a party to show that what was referred to by Government, was not an industrial dispute within the meaning of section 2(k) of the Act, and therefore the Tribunal had no jurisdiction to make the award. Once the reference is made, it is for the Tribunal to consider the matter on merits. There is nothing in the Act, which empowers the Government to make a decision affecting the merits of an industrial dispute. The Government is only concerned with deciding, whether in the circumstances of the particular case, the dispute should be referred to an Industrial Tribunal.

Now let me turn to the objection as raised on behalf of Messrs Kalicharan Kundu and Janaki Nath Kundu. As this objection touches the jurisdiction of the Tribunal, it is incumbent upon it to see for itself whether such objection is valid in law, or has any force. From the evidence of Shri Subal Chandra Kundu (O.P.W. 1), who was one of the partners of this firm, it has transpired that the persons who worked in this firm were not their employees, but they were independent contractors. The firm supplied them with raw materials, such as brass sheets and copper circles, and they gave the finished products. He has deposed on oath that they had no control over their attendance or over their work, and that they were paid scheduled rates according to the weight of the finished products. There was also no fixity of time for their work. The helpers who used to help these persons in preparing and polishing the finished products, were not paid by this firm. O.P.W. 2—Shri Pravapada Dey is a partner of Messrs Shashi Bhusan Dey and Pravapada Dey. This firm like Messrs Kalicharan Kundu and Janaki Nath Kundu manufactures also brass and copper utensils. He has deposed that their work is done by independent contractors, who are supplied with raw materials, and that these contractors after they give finished products are paid according to the scheduled rates. He has clearly stated that they have no control either over their attendance or over their work. As against this, the Union has also examined 3 witnesses—two of them worked in this particular firm, and another, Shri Bholanath Das, Secretary of Brass and Copper Workers' Union, who works in Messrs Ram Krishna Das, a firm which also manufactures brass and copper utensils. These three witnesses have stated no doubt that the workers employed in such industries have fixed working hours, that is, from 6 a.m. to 6 p.m. in the place of business with an interval of 2 hours as recess and enjoy festival holidays, and that they are to apply for leave if they are to remain absent, and are also punished when they remain absent without any previous permission. But P. W. 1—Shri Bholanath Das—was constrained to admit in his cross examination that the workers were paid wages according to the volume of work done by them, and that the *Karikars* gave wages to the boy helpers. He has further admitted that such wages were not paid by the Maliks. It has also transpired from his cross-examination although the *Karikars* get leave on Sundays and also on festival occasions, they do not get any wages or pay for those days. He has furthermore admitted that no attendance register is kept in the place of business of

[IN THE SIXTH INDUSTRIAL TRIBUNAL, WEST BENGAL.]

SPENCE LIMITED, CALCUTTA

v.
THEIR WORKMEN.*Shri Sailesh Sengupta.*

February 20, 1957.

RETRENCHMENT—COMPENSATION—CLAIM FOR BENEFIT UNDER CHAPTER V-A, INDUSTRIAL DISPUTES ACT AND ALSO UNDER AWARD—VALIDITY—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 25-F AND 25-J—EFFECT OF.

Held that the workmen cannot claim double retiral benefit, one under Chapter V-A of the Industrial Disputes Act, 1947, and another under the terms of an award, when both the benefits have the same object in view, namely, relief on retrenchment. The effect of section 25-J of the Act is only that where the workmen are entitled to any higher rights by contract or award, the higher rights cannot be curtailed.

S. C. Sen for the management.

Hiralal Roy for the workmen.

AWARD.

This reference was made by Government order No. 3572Dis./D/10L-10/56, dated Calcutta, the 14th August, 1956, for adjudication of a dispute arising between Messrs Spence Ltd. and their employees regarding reliefs due to retrenched staff. The issue is in the following terms:—

What compensation and/or other reliefs are the following retrenched employees entitled to?—

(1) Shri Haripada Jana, (2) Shri Siba Gopal Brahmachary, (3) Shri Abdul Aziz, (4) Shri Banamali Bag, (5) Shri Ratan Chandra Das, (6) Shri Sailendra Bose, (7) Shri Sara Chakhy Das, (8) Shri Nirmal Dey, (9) Shri Manaranjan Chakraborty, (10) Shri Sk. Yakub, (11) Shri Purna Ch. Hazra, (12) Shri Narendra Nath Ghose, (13) Shri Kanai Lal Manna, (14) Shri Chuni Lal Das, (15) Shri Fakir Ch. Bag.

The Company has paid retrenchment compensation as provided in section 25-F of the Industrial Disputes Act. The employees claim that they are entitled also to a like amount under the gratuity scheme framed by Shri M. C. Banerjee, in his award in 1948. The Company's contention is that the claim for double relief is misconceived.

The award given by Shri M. C. Banerjee is published in the *Calcutta Gazette*, dated the 21st October, 1948, at page 1392. Retiral benefits formed one of the subjects for determination. The learned Tribunal framed a gratuity scheme which appears at page 1395. We are not concerned with clauses (a) and (c). Clause (d) is material. It runs thus—

"On termination of service by the employer, either as the result of reduction of his establishment or in any other circumstance not justifying

dismissal—Half a month's basic pay for each completed year of service, irrespective of the length of service".

By Act 43 of 1953, Chapter V-A was introduced making legislative provisions for lay off and retrenchment. Section 25-F provides that no workman shall be retrenched until he has been paid compensation equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months. Since the proviso to section 25-J saves rights accrued to workmen under any award for the time being in operation, the plea on behalf of the employees in this case is that they are entitled to gratuity by virtue of the award as also to retrenchment compensation under section 25-F.

Opinion is divergent whether double reliefs are admissible. Drawing inspiration from the decision in the Banks' appeal the learned Lawyer for the employees argued that the two kinds of relief have different objects. Provision is made for gratuity in recognition of past services and retrenchment compensation takes account of the loss sustained by sudden termination of service before superannuation. To my mind the test is whether the two rights are one and the same having identical objects. If the reliefs have the same object in view one of them would be available. If however the rights are of different nature both of them must be given effect to. Turning to the award passed by Shri M.C. Banerjee, we notice that clause (d) was incorporated to meet the circumstances which had actually arisen in the present instance. The services of these employees were terminated on reduction of the strength of the establishment and not on account of any laches or misdeemeanour of the persons concerned. The relief provided is half a month's basic pay. Though the relief is described as gratuity, it is in its true essence compensation for premature termination of service. That is exactly what section 25-F was enacted to cover. In my view therefore these are not distinct rights provided for distinct purposes. The Special Bench in the Banks' appeal had to consider the framing of a gratuity scheme. In that context their Lordships stated that provision for payment of compensation under the Industrial Disputes Act does not in any way fetter the Tribunal's power to award gratuity on termination of service as it has done in the past. This is no authority for the extreme proposition that invariably both forms of relief must be granted. Reference was made by the learned Pleader for the employees to the case of *Ford Motor Company of India Ltd. v. Krishna Iyer*, [1954] 6 F.J.R. 304. This was a decision by a Bombay State Tribunal. The learned Adjudicator pointed out that the proviso to section 25-J means that if under an award or contract it is provided that a workman shall be paid retrenchment compensation at a rate higher than that provided in section 25-F, the same shall not be reduced, and does not mean that both the compensation that is provided in the section and the compensation provided in the award or contract should be paid. This view militates against the contention put forward by the learned Lawyer.

Sub-section (2) of section 25-J lays down in unambiguous terms that

rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall be determined in accordance with the provisions in this chapter. The right to receive retrenchment compensation must hence be regulated by the provisions of this chapter. The proviso to sub-section (i) only safeguards rights and favourable conditions available to workmen under any contract or award when they are superior to the relief granted in Chapter V-A. If any higher rights are due they will not be affected or curtailed. But if they are on the same plane as the rights under the chapter, the new provision will be enforced. This is in accord with the view taken by Shri G. P. Mukherjee in his award published in the Calcutta Gazette, dated 16th August, 1956, at page 3161. I may also mention that the award made by Shri M. C. Banerjee was operative for one year under sub-section (3) of section 19 of the Industrial Disputes Act, 1947, as it stood at that time. The award had spent its force on the expiry of the term of one year. If the award is supposed to be extinct, then there is only section 25-F on which employees can fall back. In these circumstances I am led to the conclusion that the employees cannot claim both gratuity and compensation under section 25-F.

The relief under section 25F is more favourable inasmuch as compensation is admissible for every completed year of service or any part thereof in excess of 6 months. Under the award, on the other hand, half a month's basic pay could be claimed only for each completed year of service. The Company has paid to some and has offered to pay to the others compensation as provided in section 25-F. In my view the offer is in accord with the law. The Company has also offered to pay leave wages due. It is hence awarded that the employees would be entitled to recover only compensation under section 25-F and leave wages that may be due. Payment must be made within a month from the date of publication of the award in the Calcutta Gazette.

[IN THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL.]
BENGAL FINE SPINNING & WEAVING MILLS LTD.
v.
SUNIL CHATTERJEE.

Shri J. N. Maitra.
February 14, 1957.

MISCONDUCT—PUNISHMENT—COMPLIANCE WITH PRINCIPLES OF NATURAL JUSTICE—ESSENTIALS—WRITTEN CHARGE—SHEET WHETHER NECESSARY—OPPORTUNITY GIVEN TO WORKMAN TO EXPLAIN HIS CONDUCT—WORKMAN MEMBER OF COMMITTEE OF TRADE UNION—WHETHER ACTION TAKEN AGAINST HIM AMOUNTS TO VICTIMISATION.

It is sufficient compliance with principles of natural justice if a workman is given reasonable notice of the case he has to meet by being called by the Manager and called upon to explain his conduct. It is not necessary that a written charge.

sheet should be given to the workman when the evidence clearly shows that the workman was told of the charge against him and was given an opportunity to explain the same.

Where the union activities of a workman had nothing to do with the action taken by the management against him for his misconduct, it cannot be contended that the action was taken against him for his trade union activities. The fact that a workman is a member of the executive of a trade union is no passport for his indulging in misconduct.

S. C. Mukherji for the management.

Nikhil Roy for the workman.

AWARD.

1. By order No. 3099 Dis./D/8L-27/56, dated the 17th July, 1956, the Government of West Bengal, in the Labour Department, referred under section 10 of the Industrial Disputes Act, 1947, the industrial dispute between Messrs Bengal Fine Spinning & Weaving Mills Ltd., Konnagar, Hooghly, and one of their workmen, Shri Sunil Chatterjee, represented by Bengal Fine Spinning & Weaving Mills Employees' Union, Haran Chandra Banerjee Road, Konnagar, Hooghly, regarding the matters specified in the schedule, to the Third Industrial Tribunal constituted under section 7 of the Industrial Disputes Act, 1947, by notification No. 592Dis./D/12L-5/52, dated the 23rd February, 1953, for adjudication.

2. After usual summons the parties entered appearance and filed their written statements. The Pleadings were completed on 27th September, 1956. The parties were thereafter directed to file lists of documents. Then after adjournments the hearing of the dispute was concluded on 2nd February, 1957 and award was reserved.

3. The matter of dispute as stated in the schedule to the order of reference is as follows:—

(1) Is the dismissal of Shri Sunil Chatterjee justified? To what relief is he entitled?

Messrs Bengal Fine Spinning and Weaving Mills Ltd. (hereafter called the Company) started operation in November 1951. Workman Shri Sunil Chatterji joined as a machine cleaner on 19th September, 1953. He was made a Piecer on 9th June, 1955. He was dismissed from service on 8th December, 1955. According to the Company the workman refused to receive the notice of dismissal (Ex. C) and so it was hung up on the notice board and simultaneously the Company wrote about his dismissal to Bengal Fine Spinning and Weaving Mills Employees' Union (Ex. B). Both in the notice of dismissal (Ex. C) and in the letter to the Union (Ex. B) it was mentioned that the workman refused to accept his dismissal notice. The grounds of dismissal as stated in Exs. B and C were that the workman Shri Sunil Chatterji incited the ring frame workers of "A" and "B" shifts not to attend double sides and threatened them with assault if they worked double sides and that he further threatened that he would stop the work of the mill by a strike.

Prior to the dismissal the Company had received on that very date (8th December, 1955) a complaint from some of the piecers who were voluntarily working double sides on that day. It was complained that Shri Sunil Chatterji had asked them not to work double sides and threatened them with assault if they did so (Ex. A). Shri Sunil Chatterji (P. W. 1) admitted in his deposition that the Union had earlier adopted a resolution that no Piecer should work double sides as this would mean retrenchment and accordingly he protested to such work. He also admitted that double sides work was first introduced on 7th February, 1955 on voluntary basis and that some of the workers did double sides work on 7th December, 1955 as also on 8th December, 1955. According to his own admission he worked on one side on those days as before. According to the then Works Manager of the Mill D. W. 1, A. V. Datar, he came down to the department where the Piecers were working on receipt of the complaint (Ex. A) and found Shri Sunil Chatterji preventing the workers who were working double sides from so working double sides. Although "A" shift was over at 10 a.m. when Shri Sunil Chatterji had worked, he continued in the department while "B" shift work was going on. According to the Manager D. W. 1, he on receipt of the complaint and on seeing things for himself, called in Shri Sunil Chatterji to his chamber and there showed him the complaint (Ex. A) in presence of the Spinning Master Shri L. Banerji and Assistant Spinning Master Shri S. N. Deb and asked Shri Sunil Chatterji what was his explanation regarding the complaint of the workers. D. W. 1 further deposed that upon this Shri Sunil Chatterji flared up and said that he had done these and would continue to do so. Shri Sunil Chatterji in his deposition also admitted that the Manager came to the department on 8th December, 1955 and soon after called him to his chamber and there asked him why he was making *halla* with the labourers. He also said that when he sought detailed information about his fault, the Managing Director said that he was no longer required and should get out of the place. The Manager said that upon workman's admission and having regard to his past conduct on different occasions he had no other option left but to apply standing order 20 of the Mill which provided "any workman who is adjudged by the Manager on examination of the man if present and on the facts to be guilty of misconduct is liable to be dismissed without notice". The Manager said that he found Shri Sunil Chatterji guilty of misconduct and in consideration of his past and present conduct and his insolent attitude he dismissed him forthwith and duly tendered the order of dismissal in writing to him as in Ex. C. The workman, however, refused to accept the dismissal notice and so the Manager immediately informed the Union of all facts leading to his dismissal. Exhibits B and C supported the Manager (D. W. 1). The subsequent letter to the Labour Officer (Ex. D) also supports his version. I have had nothing to disbelieve him. The Manager had left service of the Company and has, therefore, no axe to grind. The complaint of P. W. 1 that there was no compliance with the principles of natural justice cannot be sustained. It, on the contrary,

appears that the requirements of natural justice were sufficiently complied with. According to his own admission the workman was taken to the chamber and was asked why he was making *halla*. This would corroborate the Manager. No fetish can be made about giving a written charge-sheet prior to taking action. Natural justice would be complied if the person was given a reasonable notice of the case he had to meet. In the present case the contemporaneous documents (Exs. A, B and C) all point that he was definitely told, as the Manager said, what the charge was against him. The workman also in a way admitted that he was told of the charge against him and was given opportunity of explaining the same. As he himself admitted having done the acts he was charged with as the evidence shows, and as the Manager had also seen him so to do on coming to the department, there was no question of further enquiry. In the circumstances, it is obvious that principles of natural justice were sufficiently complied with. There is also nothing to show that the authority acted *mala fide*. The allegation of the workman that the action was taken against him for his alleged Union activities cannot be sustained in view of facts and circumstances. According to the workman he started to take part in the Union from the beginning of 1955. The evidence on the contrary, points that he was receiving warning and was being fined for various acts of misconduct from very soon after he joined in 1953. Exhibit F series would show this. It would so appear that Union activities had nothing to do with the action taken by the Company. He might have been a member of the Executive Committee of the Union, but it was no passport to him to intimidate the workmen and to threaten them with assault as also to incite strike. I am, therefore, of opinion that dismissal of Shri Sunil Chatterji was justified. He is, therefore, entitled to no relief.

It is awarded accordingly.

[IN THE SECOND INDUSTRIAL TRIBUNAL, WEST BENGAL.]

HOWRAH MOTOR ACCESSORIES AGENCY (PRIVATE) LTD.

v.

RAM KRISHNA BOSE.

Shri G. P. Mukherjee.

February 15, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 33 AND 33-A—SCOPE OF—BRANCH MANAGER OF CONCERN DEMOTED AS LEDGER-KEEPER—WHETHER CONTRAVENTION OF SECTION 33—POSITION OF EMPLOYEE ON DATE OF ALLEGED CONTRAVENTION OF SECTION 33 THAT OF AN OFFICER—WHETHER COMPLAINT UNDER SECTION 33-A LIES—WORKMAN WILFULLY AVOIDING JOINING DUTY AS LEDGER-KEEPER—WHETHER GUILTY OF MISCONDUCT—APPLICATION UNDER SECTION 33 FOR PERMISSION TO DISMISS WORKMAN, WHETHER LIES.

In dealing with an application under section 33-A, the Industrial Tribunal has to take into consideration the position held by the employee on the date of

the alleged contravention of section 33 of the Industrial Disputes Act, 1947. Where the allegation is that the employee has been demoted and it is found that on the date of the alleged contravention of section 33 the employee was not a 'workman' as defined in the Act, an application under section 33-A will not lie.

A branch manager of a concern whose duties are of a supervisory nature and who has directional and controlling powers over the administration and day to day working of the branch and the employees working under him, is not a 'workman' as defined in section 2(s) of the Industrial Disputes Act, 1947, and cannot make an application under section 33-A.

Where the branch manager of a concern was transferred to the Head Office as a ledger-keeper but he continued to avoid joining duty as a ledger-keeper on various grounds, Held, that the employee cannot go on flouting the orders of the management and that permission under section 33 should be granted to the management to dismiss the workman.

P. R. Mukherjee for the management.

Biswanath Ash and Adinath Banerjee for the workman.

AWARD.

The original reference, out of which the case under section 33-A of the Industrial Disputes Act, 1947, has arisen, was made to this Tribunal by the Government of West Bengal, Labour Department, under order No. 1944 Dis./D/11L-125/56, dated 11th May, 1956.

The case of the petitioner, Shri Ram Krishna Bose is that he was holding the post of branch manager in the branch office of the company at Bhowanipore, but during the pendency of the abovementioned reference the company without taking permission from the Tribunal, transferred him as a ledger-keeper to the head office on a reduced salary. The transfer was illegal and *mala fide*. Not only it altered the service condition of the petitioner, but also it amounted to punishment, inasmuch as he was demoted from the post of branch manager to that of the ordinary ledger-keeper carrying lesser pay and dearness allowance. As all this was done during the pendency of the original reference before this Tribunal and without the express permission of the Tribunal, section 33 of the Act was infringed. Accordingly, the petitioner prayed for being restored to his original post of branch manager.

It is the contention of the company that the application under section 33-A as made by the petitioner is not maintainable, inasmuch as the petitioner, who at the relevant time was acting as branch manager with power of supervision and control over the staff there, is not a "workman" within the meaning of section 2(s) of the Industrial Disputes Act, 1947. So the company asserts that the petitioner is not competent to make any application under section 33-A. Regarding merits, the company's version is that the act of demotion as alleged was fully justified in view of the facts and circumstances. The management in exercise of its administrative functions has full authority to control its employees by meting out suitable punishment in cases of dereliction of duties and misdemeanour.

It may be stated here that the petitioner has not yet joined the head office as ledger-keeper as directed. The company has accordingly filed an application under section 33 for permission of the Tribunal to dismiss the petitioner from service. The company's case in this respect is that this employee is guilty of gross misconduct by wilfully remaining absent on false plea and by refusing finally to join the post of ledger-keeper in the head office as directed. There was no justification for such refusal on his part, because he was given to understand clearly that he should join that post without prejudice to his right if any. Inasmuch as he showed wilful disobedience in carrying out the lawful orders of the company passed in the interest of administration and discipline, his service requires to be terminated.

Both the applications, that is the application under section 33-A as well as the application under section 33 were taken up together and they were also heard together at the desire of the parties and also for the sake of convenience.

I shall first take up the application filed under section 33-A by the employee concern, Shri Ram Krishna Bose. As stated already, the company's contention is that the Tribunal has no jurisdiction to entertain the application under section 33-A, because the petitioner, who at the relevant time was working as branch manager at the branch office of the company with power of supervision and control over the staff there, is not a "workman" within the meaning of the Act. So, the question whether Shri Ram Krishna Bose was a workman at the relevant time within the meaning of the definition contained in section 2(s) of the Act as it stood then, is of vital importance. If he be found to be a "workman", then only it is to be considered whether there was contravention of section 33. If, on the other hand, it be held that he was not a "workman", the matter ends there. Neither the question whether section 33 was infringed would call for decision, nor can the merits of the case be gone into, for where an action or proceeding fails on the finding that the Tribunal has no jurisdiction, that Tribunal cannot assume an inconsistent position by entering into the merits. In the case of a complaint or application under section 33-A, there is the additional ground why an opinion on the merits should not be expressed, where it is thrown out on the ground that it is not maintainable; for a rejection of a complaint under section 33-A would not in law be a bar to a reference by the appropriate Government under section 10 of the Act to a Tribunal for adjudication of the selfsame dispute. I accordingly proceed to consider first the question whether Shri Ram Krishna Bose was at the relevant time a "workman" within the meaning of the definition contained in the Industrial Disputes Act, 1947.

Admittedly, Shri Ram Krishna Bose held at the relevant time the post of branch manager in the branch office of the company at Bhowanipore, which is far away from the head office of the company. The fact that he was demoted to the post of ledger-keeper and transferred to the head office is wholly irrelevant. The question to be considered is what post he was holding when section 33 is said to have been contravened. If it be found that

he was holding a post of a supervisory nature and he possessed directional and controlling power, and essentially the duties performed by him were not, in the main, clerical, he cannot be held to be a "workman", and as such he is not entitled to present an application under section 33-A complaining of contravention of section 33. Section 33 speaks of alteration of the conditions of service of a workman and discharge or punishment of a workman during the pendency of any proceedings before a Tribunal in respect of any industrial dispute. It was not and could not be denied by the petitioner that he was working at the relevant time as branch manager in the branch office of the company. What was contended by him is that though he was designated as branch manager, he had no absolute authority or power of management, and that he was discharging mainly duties of clerical nature. That being so, it is contended on his behalf that he should be deemed to be a "workman" within the meaning of the Act.

In a series of authorities, it has been laid down that the question whether or not an employee is a "workman" depends upon the nature of the work done by him and the degree of his responsibility. His designation does not matter. The question whether a person is a "workman" or not should be decided on the finding, as to whether he is mainly employed for clerical or manual work for hire or reward. Whether he is a supervisor, or exercises directional or controlling powers only supplies a negative test. That an employee, who is not an officer is necessarily a workman, is what is called in logic a fallacy in classification. There may be a third category. The proper classification of employees in an industry should be (1) workmen, (2) non-workmen, (3) officers and (4) non-officers.

Now let me consider the evidence that has been adduced in this case. Shri Ram Krishna Bose came to the witness box and has deposed. He has said—"Although I was appointed manager of the Bhowanipore branch, I had to do clerical works there, such as writing of cash book, sales book register, daily sales report and sale-tax declaration. I had also to handle cash in that branch. I had no absolute authority there. I had no power of management. There I acted under the Director Shri N.K. Bose, and had to act according to his instructions". On the side of the company, Shri Amulya Dhan Mukherjee, who is one of the Directors (O.P.W. 1), has deposed. He has stated on oath—"Shri Ram Krishna Bose was the Manager of our Bhowanipore branch. While employed as Manager, he had full supervisory capacity and control over the branch office and the subordinate staff employed there. He had also authority to issue cheques on behalf of the company".

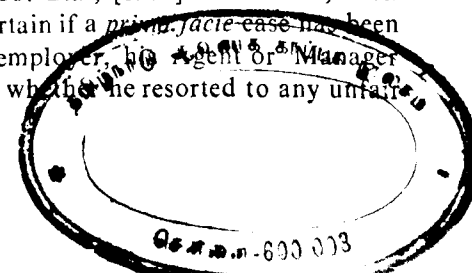
The letter issued by the company appointing Shri Ram Krishna Bose as Manager of the Bhowanipore branch is Ex. 2. This letter shows that Shri Bose as Manager of the Bhowanipore branch was authorised to sign papers and do all other functions of the Manager. The letter (Ext. A) written by Shri Bose to the Chairman, Howrah Motor Accessories Agency (Private) Ltd., points to the direction that he was fully responsible for running the

administration of the branch at Bhowanipore as Manager, and that is why he made complaint against the salesman and other staff of this branch. The said letter also indicates that he had the power of supervision and control over the branch office and the subordinate staff employed there. It has further transpired from the evidence of the petitioner himself that in this office besides the salesman, there were three other employees, and they were (1) Shri Dwipendra Nath Bose, (2) Shri Susanta Kumar Ghosh and (3) Shri Dayaram Kahar. So, it is evident that those employees worked under the branch manager, Shri Ram Krishna Bose, who had full control over them and exercised directional powers. I have no reason to disbelieve the evidence of the Director, Shri Amulya Dhan Mukherjee. The evidence of the petitioner that he was a notional Manager having no absolute authority or power of management, cannot be believed or accepted. Nor am I prepared to believe in the face of the positive testimony of Shri Amulya Dhan Mukherjee, who is one of the Directors, that Shri Bose, while employed as manager of the Bhowanipore branch, had to act under the Director, Shri N. K. Bose or according to his instructions, as deposed to by the petitioner. On full examination of the evidence and facts in the present case, and bearing in mind the tests which have been laid down by various decisions, I have reached the conclusion that in view of the nature of the duties performed by Shri Ram Krishna Bose, essentially and primarily his duty as branch manager was one of supervisory nature, and he possessed directional and controlling power not only over the administration and the day-to-day working of the branch office, but also over the employees working under him there. The clerical work, if any, that he had to do in connection with the writing of cash book, sales book register, sales report and sales-tax declaration, must be held to be only ancillary to his main duties as Manager. It was contended that as branch manager, he had no power to appoint, suspend, dismiss, fine or punish any employee working under him. But in my view, the non-conferment of such powers could not take him out of the category of an officer invested with the powers of supervision and control in the day-to-day working of the branch office. In the result, it is held that Shri Ram Krishna Bose was not a "workman" within the meaning of the Industrial Disputes Act, 1947, at the relevant time, that is when he was demoted from the post of branch manager to that of ledger-keeper in the head office. In this view of the matter, the application as presented by him under section 33-A is not maintainable, and as such it should be rejected. It is awarded accordingly. Having come to the conclusion that Shri Ram Krishna Bose was not a "workman" within the meaning of the Act, it is not necessary for this Tribunal to go into the merits of the case.

Next I will deal with the application filed by the company under section 33 of the Act. This application, in my view, is maintainable. The employee concerned, Shri Ram Krishna Bose became a workman within the meaning of the Act, when he was posted as an ordinary ledger-keeper in the head office, because the duties of a ledger-keeper are mainly clerical. Admit-

tedly, this employee was directed to join his duties as ledger-keeper in the head office on 20th July, 1956 after making over charge of the Bhowanipore branch, but the petitioner has not joined his duties in that capacity in the head office as yet. It appears from the evidence that immediately after making over charge of the Bhowanipore branch office, he asked for leave for one month on the ground of his wife's illness. This leave was granted by the company. But this petitioner again asked for leave up to 30th September, 1956 on the selfsame ground. The company further granted leave without pay up to 15th September, 1956, and intimated to Shri Ram Krishna Bose that no further leave would be granted on this account. But in spite of this, the petitioner again asked for a long leave up to 31st October, 1956. The management was unwilling to give this leave, and directed him to join office immediately by its letter, dated 13th September, 1956. At this, Shri Ram Krishna Bose sent a medical certificate, and again prayed for 2 months' leave on medical ground. On receipt of this medical certificate, the management allowed him three weeks' leave without pay and made it perfectly clear that if any extension on medical ground was required by him, the company would get him examined by a qualified doctor, and would grant further extension only on his recommendation. Shri Bose wanted extension of leave and agreed to be examined by the doctor to be engaged by the company. Accordingly, on 27th October, 1956 such medical examination of Shri Bose was held by the company's doctor in presence of Shri Bose's attending physician. Exhibit F is the true copy of the medical report. The doctors found the general condition of Shri Bose better, and he was encouraged to resume his ordinary work at an early date. Shri Bose instead of joining his duties even after the medical examination, wrote a letter to the management on 5th November, 1956 stating that it would not be possible for him to join his duties and work in the post of ordinary clerk. He asked the management to reconsider his case and reinstate him to the post, in which he was working. In reply to this letter, the management on 9th November, 1956 sent a letter stating why and under what circumstances the management had to demote him. In that letter, the management made it perfectly clear that whatever might be the cause of his demotion, he was bound to carry out the orders of the management in joining his duties as ledger-keeper, subject to any remedy that he might have in Industrial Tribunal or Court of Law. Finally, the management in the said letter directed him to join as ledger-keeper in the head office within three days of the receipt of that letter, failing which his services would be terminated. Shri Ram Krishna Bose on 20th November, 1956 in reply to this management's letter sent a letter stating that he was going for a change, and prayed for leave up to 15th January, 1957. It is abundantly clear from what has been stated above that Shri Ram Krishna Bose was not willing to join in the post of ledger-keeper in the head office, in which capacity he was transferred there, in spite of repeated directions from the company to this effect. Even before this Tribunal, he had the temerity of saying that he was not willing to join in the post of ledger-

keeper. This attitude of Shri Bose cannot be lightly viewed. He was an employee of the company, and as such his first and foremost duty was to obey the orders of the management. If an employee in this way can go on flouting and challenging the orders passed by the management in the interest of administration, no company can afford to run its business and maintain discipline. There can be no manner of doubt that Shri Bose wilfully disobeyed in carrying out the orders of the management. It cannot be said that the orders of the management directing him to join in the post of ledger-keeper in the head office were unreasonable or *mala fide*. The company made it clear that he should join the post of ledger-keeper without prejudice to his right, if any. So, if Shri Bose had any genuine or legitimate grievance against his demotion from the post of branch manager to the post of ledger-keeper, he could have very well taken the matter before the Law Court or before the Industrial Tribunal, after joining as ledger-keeper in the head office. But he did not do this. On the contrary, it appears that he kept silent over the matter of demotion for a long time. He made over charge as Manager of the Bhowanipore branch on 18th July, 1956, and remained content by sending application after application for leave on this and that ground. After the doctors had found that his plea for not joining the post of ledger-keeper on the ground of illness was false, then and then only for the first time on 5th November, 1956, he took the plea that as he had been degraded on reversion, he must be reinstated to his former post, and gave ultimatum to the management that he would not resume his duties, until and unless he was allowed to act as branch manager. He wanted to revive a matter, which had a decent burial by the lapse of time and also by his own conduct. Not a whisper about this demotion was made by him, when he was directed to make over charge of the Bhowanipore branch. Nor did he lodge any protest even after getting the orders of transfer to the head office as ledger-keeper. On the contrary, he indulged himself in staying on leave on this and that ground. The management degraded him on the ground that he, as branch manager, did not allow a representative of Messrs Kilburn and Co. Ltd., one of the biggest customers of this company, to use the office telephone of Bhowanipore branch, and that at this Messrs Kilburn and Co. Ltd., threatened this company to stop business with them. The management after holding an enquiry and after giving Shri Ram Krishna Bose an opportunity to have his say in the matter, took this action against him. It is not the business or function of the Industrial Tribunal to sit on judgment over the decision of the management, in a matter like this. The management might have got materials for taking such an action. Furthermore, the scope of enquiry under section 33 is very limited. The Tribunal may allow or reject the application, but it cannot substitute its own punishment. As held by the Hon'ble Supreme Court in the case of *Atherton West and Co. Ltd.*, [1953] 5 F.J.R. 83, such enquiry should be confined mainly to ascertain if a *prima facie* case has been made out for punishment, and also if the employer, his Agent or Manager was actuated by any improper motive, or whether he resorted to any unfair



labour practice. The Tribunal will only consider if the view taken by the management, is a possible view on the materials. The company's opinion as to the degree of seriousness of the misconduct was not one of the considerations laid down by their Lordships of the Hon'ble Supreme Court, that can weigh with an authority under section 33 of the Industrial Disputes Act, 1947, in granting or refusing the permission sought for. The Tribunal is only called upon to decide whether there is a *prima facie* case, so as to justify the lifting of the ban imposed by section 33 on the normal power of the employer under ordinary law. In the present case, on a careful and anxious consideration of the materials available from the record, I am of the view that the action of the management from the time when Shri Ram Krishna Bose was ordered to be transferred to the head office and onwards, was not *mala fide*, nor was it prompted by any improper motive or extraneous consideration. On the contrary, it is clear from the materials, which have been discussed above, that Shri Bose was guilty of misconduct by not joining his duties as ledger-keeper and by refusing to carry out the lawful orders of the management passed in this respect. So a *prima facie* case has been made on it. In the result, permission is accorded to the company to dismiss Shri Ram Krishna Bose from service. So, the application under section 33 is accordingly allowed.

[IN THE SECOND INDUSTRIAL TRIBUNAL, WEST BENGAL.]
SHREE LUXMI TANNIN EXTRACT FACTORY
v.

THEIR WORKMEN.

Shri G. P. Mukherjee.

February 16, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(a)—'APPROPRIATE GOVERNMENT'—CONTROLLED INDUSTRY—WHEN CENTRAL GOVERNMENT IS APPROPRIATE GOVERNMENT FOR CONTROLLED INDUSTRY.

The 'appropriate Government' under the Industrial Disputes Act, 1947, for any industry is not the Central Government simply because that industry is a 'controlled industry' as defined in the Act. In the case of controlled industries, section 2(a) of the Act by the Central Government that the Central Government will be the appropriate Government; otherwise, even for controlled industries, the State Government will be the appropriate Government.

N. D. Manna for the management.

R. N. Pyne and Ram Sen for the workmen.

AWARD.

The Government of West Bengal, Labour Department, by its order No. 4106Dis./D/11L-409/55, dated 12th September, 1956, referred the above dis-

pute to this Tribunal for adjudication regarding the matters described in the schedule to the order of reference.

Notices were served on all the parties, who filed written statements setting forth their respective cases.

On 12th February, 1957, that is just two days before the date of hearing of the case, the Company filed an application raising a preliminary objection regarding the jurisdiction of this Tribunal to entertain the present industrial dispute. It is stated in the said application that the industry in question, in respect of which the alleged industrial dispute has arisen, is an industry for manufacture and production of heavy chemicals, and is a controlled industry within the meaning of the Industrial Disputes Act, 1947, as amended by the Industries (Development and Regulation) Act, 1951, and as such the appropriate Government to refer the said industrial dispute is the Central Government, and not the State Government. It is further stated that as the industry in question is carried on by or under the authority of the Central Government, the Central Government was the appropriate Government to refer the above industrial dispute. Accordingly, it is contended on behalf of the Company that the order of reference as made by the Government of West Bengal is *ultra vires* and bad in law.

As the preliminary objection raised on behalf of the Company touches the very foundation of the reference, the said objection has been heard first with due notice to the other parties before proceeding further into the adjudication of the case. This Tribunal had the advantage of hearing the learned Counsel on both sides at length in this matter and also Shri Ram Sen, who appeared for the Workers' Union.

Learned Counsel for the Company has invited my attention to the fact that this Company carries on an industry engaged in the manufacture and production of heavy chemicals, and that such an industry is covered by item No. (15) of the first schedule of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951). It appears that clause (ee) of section 2 of the Industrial Disputes Act, 1947, was inserted by section 32 of the Industries (Development and Regulation) Act, 1951. Under that clause, "controlled industry" means an industry, the control of which by the Union has been declared by any Central Act to be expedient in the public interest. Section 2 of the Industries (Development and Regulation) Act, 1951, declares that it is expedient in the public interest that the Union should take under its control the industries specified in the first schedule of the Act. So, there cannot be any room for doubt that the industry of the present Company is a controlled industry within the meaning of clause (ee) of section 2 of the Industrial Disputes Act, 1947. The next question for consideration is, which is the appropriate Government "in relation to an industrial dispute concerning this industry". This is a question of vital importance in the present case. In other words, it is to be decided whether the Central Government or the State Government is the appropriate Government to make a reference in relation to an industrial dispute concerning this industry. In section 2(a)

of the Industrial Disputes Act, 1947, "appropriate Government" has been defined. It appears that "appropriate Government" means in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government.....the Central Government and in relation to any other industrial dispute, the State Government. Learned Counsel for the Company has accordingly voiced an argument that the appropriate Government in relation to an industrial dispute concerning this industry is the Central Government, and not the State Government, and as such the Government of West Bengal has no jurisdiction to make a reference concerning such industry. I have given my most careful and anxious consideration to the argument of the learned Counsel for the Company, but I am unable to accept the same. Section 32 of the Industries (Development and Regulation) Act, 1951, has amended section 2(a) of the Industrial Disputes Act, 1947, in the definition of the appropriate Government in relation to the reference of an industrial dispute to the Tribunal, and also has inserted clause (ee) in section 2 of the Industrial Disputes Act, 1947, defining what is meant by "controlled industry". Section 2(a) of the Industrial Disputes Act, 1947, has been so amended, as to show that "appropriate Government" means the Central Government in relation to an industrial dispute "concerning any such controlled industry as may be specified in this behalf by the Central Government". In the present case, the industry carried on by the present Company is no doubt a controlled industry. But in my view, the Central Government cannot be the appropriate Government in relation to the industrial dispute concerning this industry, until and unless this controlled industry was specified in this behalf by the Central Government. It is clear that in the absence of such specification, the State Government will be the "appropriate Government" in relation to such an industrial dispute. Nothing could be shown on behalf of the Company that the Central Government has ever specified itself to be the "appropriate Government" in relation to the present industry, though it is a controlled industry. According to the definition as given in section 2(a) of the Industrial Disputes Act, 1947, one of the conditions necessary for a reference by the Central Government is the existence of a dispute in an industry carried on under its authority, or concerning any controlled industry as may be specified in this behalf by the Central Government. The words "specified in this behalf" as mentioned in section 2 (a) of the Industrial Disputes Act, 1947, to emphasise the fact that it was not the intention of the Central Government to determine the means of settling all the disputes in the Central Government industries mentioned in the first schedule to the Industries (Development and Regulation) Act, 1951. It is reasonable to hold from the words "specified in this behalf" as mentioned in section 2(a) of the Industrial Disputes Act, 1947, that the said words denote a further condition of a specification by which the Central Government reserves authority for itself to make a

reference. In the present case, the Central Government has not specified the industry, to which the reference relates, as one reserved by it. In the circumstances, the Central Government cannot be held to be the appropriate Government to make a reference relating to the present industry. I may also say in this connection that although this industry is a controlled industry the Central Government only exercises the power of control as mentioned in the Industries (Development and Regulation) Act, 1951, and not otherwise.

In the result, the Tribunal holds that the Central Government is not the appropriate Government in relation to the industrial dispute in the present case, and the State Government is the appropriate Government in accordance with section 2(a) of the Industrial Disputes Act, 1947. That being so, the reference by the Government of West Bengal of the industrial disputes in question is found to be legal and valid. It is, therefore, decided that this Tribunal has jurisdiction to entertain the reference, and is quite competent to adjudicate on it.

The preliminary objection as raised by the Company is accordingly overruled.

[IN THE PUNJAB HIGH COURT.]

HINDUSTAN TIMES LTD., NEW DELHI

v.

CHIEF COMMISSIONER, DELHI AND OTHERS.

Falshaw, J.-

December 18, 1956.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(K) AND (S)—'INDUSTRIAL DISPUTE'—DEFINITION OF—DISPUTE AS TO REINSTATEMENT OF DISMISSED WORKMAN, WHETHER 'INDUSTRIAL DISPUTE'—DISMISSED EMPLOYEE, WHETHER 'WORKMAN'—INDIVIDUAL DISPUTE TAKEN UP BY TRADE UNION OF WORKMEN—PRESUMPTION—ABSENCE OF THREAT OF ACTION BY WORKMEN, WHETHER RELEVANT.

The definition of 'workman' in section 2(s) of the Industrial Disputes Act, 1947, would include a person who has been dismissed and the fact that the person was dismissed before the dispute arose or that it was the dismissal which gave rise to the dispute, will not by itself remove a dispute as to his reinstatement from the scope of the definition of 'industrial dispute' in the Act.

There must be a presumption when a trade union of workmen takes action that it is as a representative of, and with the support of, its members and it will be for the management to prove that the facts are otherwise. Where a dispute as to the reinstatement of a dismissed workman is taken up by the trade union of the workmen it will be an 'industrial dispute' as defined in the Act and the absence of any threat of going on strike or of any other action on the part of the workmen will not prevent the dispute being an 'industrial dispute'.

Civil Writ No. 191 of 1956.

M. L. Sethi, Anand Prakash and Vidya Dhar Mahajan for the Petitioner.
Hardyal Hardy, Bishambar Dayal and P. C. Khanna for the respondents.

JUDGMENT.

This is a petition under Article 226 of the Constitution by a Company, The Hindustan Times Limited of New Delhi, challenging the reference by the Delhi State Government under sections 10(1)(c) and 12(5) of the Industrial Disputes Act of 1947 of an alleged industrial dispute between the management of the Company and its editorial workmen to an Industrial Tribunal.

Briefly stated the facts are as follows. M. L. Madan, respondent No. 3, entered the employment of the Company as a Sub-Editor in January, 1950. The terms of his employment are contained in annexure 'B' to the petition providing *inter alia* that he should be paid Rs. 300 per mensem in the grade of Rs. 200—20—400 and that his appointment should be for three years, terminable thereafter on two months' notice by either side. Apparently in December, 1955 he was found guilty of some error in his work as regards one of the front page headlines which resulted in the press having to be stopped after 300 copies of the following day's issue had been printed, and the correction resulted in a delay in the issuing of the paper, and on the 10th of December he was informed by the News Editor that he need not report for duty again until he received further instructions. The respondent apparently objected and tried to get this order set aside but finally he was dismissed from the Company's service by the Managing Editor on the 23rd of December.

M.L. Madan was apparently a founder member and a member of the executive committee of the Delhi Union of Journalists, and although it was the case of the Company that he had been dismissed on account of inefficiency, it being alleged that the mistake which resulted in his dismissal was not by any means the first of such mistakes which he had made, it is the case of M.L. Madan and also the Union that the real cause of his dismissal was that he had incurred the displeasure of the management of the Company by his activities in connection with the Union, or in other words that his dismissal was an act of victimisation. In these circumstances the Union immediately took up his case and proceedings were instituted without delay by the Union on his behalf before the Conciliation Officer appointed under the Industrial Disputes Act. Both parties presented their cases before this officer on various dates in December, 1955 and January, 1956, but the Conciliation Officer was unable to bring about any kind of reconciliation between the parties. The net result was that Dr. B. R. Seth, Director of Industries and Labour under the Delhi State Government, drew up his report on the 24th of January, 1956 in which, after summarising the cases advanced on behalf of both parties to the dispute, he expressed the opinion that an industrial dispute existed which required reference to an Industrial Tribunal and pro-

posed that the terms of reference should be "whether the termination of service of Shri M.L. Madan Sub-Editor is wrongful and to what relief he is entitled". In pursuance of his recommendation the reference was made by an order dated the 14th of February, 1956. The present petition challenging the validity of the reference was apparently filed in this Court on the 21st of May, 1956.

One point on which the validity of the reference is challenged may conveniently be dealt with first. This is the argument advanced on behalf of the Company that only a dispute between workmen and their employers could be referred to an Industrial Tribunal and M. L. Madan was not a "workman" within the meaning of the definition contained in section 2(s) of the Industrial Disputes Act, even though that definition had been extended by the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 45 of 1955, which made Act, XIV of 1947 applicable to working journalists. The definition in section 2(s) reads—

" 'Workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government."

On the strength of this definition it was argued that the term 'workman' means only either somebody still in employment or somebody who has been discharged during the pendency of the industrial dispute and does not include a person who was discharged before the dispute arose, and whose discharge has in fact occasioned the dispute. No doubt some support for this view is to be found in the judgment of Chagla, C. J., and Shah, J. in the case of *Narendra Kumar Sen v. Labour Appellate Tribunal of India*, [1952] 5 F.J.R. 330, and in some decision of Labour Tribunals reported in the Labour Law Journal, but it seems to me that this view is completely at variance with the view expressed by the Federal Court in *Western India Automobile Association v. The Industrial Tribunal, Bombay* [1949] 1 F.J.R. 97, and reaffirmed in a recent decision of the Supreme Court in *Central Provinces Transport Services Ltd., Nagpur v. Raghunath Gopal Patwardhan*, [1956] 11 F.J.R. 298. In the first of these cases the judgment was delivered by Mahajan, J. on behalf of himself and Kania, C. J., Fazl Ali, Patanjali Sastri and B. K. Mukherjea, JJ., and he has discussed the matter as follows:—

"The question for determination is whether the definition of the expression 'industrial dispute' given in the Act includes within its ambit, a dispute in regard to reinstatement of dismissed employees. The definition is, as pointed out by Lord Porter in *National Association of Local Government Officers v. Bolton Corporation*, [1943] A. C. 166, worded in very wide terms which unless they are narrowed down by the meaning given to the term 'workman' would seem to include all employees, all employment and all workmen, whatever the nature or scope of the employment may be. Rein-

statement is the employment of a person non-employed and is thus within the words of Lord Porter 'all employment'. Thus it would include cases of re-employment of persons victimised by the employer. The words of the definition may be paraphrased thus: 'any dispute which has connection with the workmen, being in or out of service or employment'. 'Non-employment' is the negative of 'employment' and would mean that disputes of workmen out of service with their employers are within the ambit of the definition. It is the positive or the negative act of an employer that leads to employment or to non-employment.

Reinstatement is connected with non-employment and is therefore within the words of the definition. It will be a curious result if the view is taken that though a person discharged during a dispute is within the definition of the word 'workman' yet if he raises a dispute about dismissal and reinstatement, it would be outside the words of the definition 'in connection with employment or non-employment'. It was contended that the words 'employment or non-employment' were employed in the same sense, just to remove any ambiguity that might arise if the word 'employment' alone was used. In other words, the word 'non-employment' has limited the meaning of the word 'employment'. To our mind, the result is otherwise. The words are of the widest amplitude and have been put in juxtaposition to make the definition thoroughly comprehensive. Mr. Setalvad contended that the expression 'in connection with employment or non-employment' excludes the question of non-employment itself which must exist as a fact to supply the nexus with the dispute. The argument is, in our opinion, unsound. The words 'in connection with' widen the scope of the dispute and do not restrict it by any means".

In the later decision of the Supreme Court an employee of a transport company was suspected of being responsible for the loss of some goods by theft in June 1950 and after an enquiry he was dismissed the same month on grounds of gross misconduct and negligence. After that he was prosecuted on a charge of theft but was acquitted in March, 1952 after which he applied to the Company for reinstatement in his employment. On failing to get satisfaction he applied to the Labour Commissioner under the provisions of the C. P. and Berar Industrial Disputes Act 23 of 1947. The Company raised the plea that as he had been dismissed in 1950 he was not an employee. The decision of the Federal Court was cited in the Supreme Court and an attempt was made to distinguish it on the grounds that a different statute was now involved and that in any case in the *Western India Automobile Association's case* the reference to the Industrial Tribunal was valid because there were other points referred as well as the question of the reinstatement of a particular employee. Both these contentions were repelled and agreement was expressed by Venkatarama Ayyar, J., who delivered the judgment of the Court with the view that the definition of 'employee' in the Act would include one who has been dismissed. I therefore hold that the fact that M. L. Madan was dismissed before the dispute arose in this case, and in

fact the dispute arose about the question of his dismissal and reinstatement, does not in itself make the dispute not an industrial dispute for purposes of the Act and that the reference is not invalid on this account.

The next argument was that the order of reference is wrong in stating that there exists a dispute between the Company and its editorial workmen, and in fact the dispute is between the Company and a single employee, M. L. Madan, and that although in some circumstances a dispute between an employer and a single workman can become an industrial dispute, the necessary conditions for this do not exist in the present case. In particular it is argued that the mere fact that a Union, which is not a Union confined to the workmen of this particular employer, has taken up M. L. Madan's case does not make the dispute an industrial dispute within the meaning of the Act. It is further contended that although a number of employees of the Hindustan Times Company are members of this Union, there is nothing whatever to show that any of them are taking the side of M. L. Madan in this dispute and therefore there is no dispute between the Company and its editorial workmen.

I find, however, that even in one of the cases relied on on behalf of the Company there is some support for the view that circumstances may exist in the present case which make a dispute between an employer and an individual employee an industrial dispute. This is the case *Sri Rama Vilas Service Ltd. v. State of Madras*, [1955] 9 F.J.R. 160, in which Rajagopalan, J. has cited with approval the dictum of Viswanatha Sastri, J. in an earlier case as follows:—

"If, however, the dismissal of an employee is the result of victimisation, if the employees in service or a substantial section of such employees threaten to strike work, or having struck work refuse to resume work, unless the person dismissed is reinstated, in other words if the remaining workmen or a substantial body of them or a union of workmen takes up the cause of the victimised employee and demands his reinstatement, there is an industrial dispute".

It does not detract from the strength of this observation that Rajagopalan, J. found on the facts of that particular case that there was not an industrial dispute, since apparently the Union which had taken up the cause of the dismissed workman among the employees is numbered only 40 out of several hundreds employees of the Company concerned. In the present case it may be mentioned that according to the allegations of the Union in this case the Hindustan Times was employing 78 working Journalists of whom 73 are members of the Delhi Union of Journalists, and out of a staff of 50 working Journalists on the Hindustan Times (English Edition) 48 are members of the Union.

It is clear that when the case of the workman who is a party to the dispute, and the Union to which he belongs, is that the ostensible cause of his dismissal is only a pretext and that the real cause of his dismissal arises from his activities as an office-bearer or a prominent member of the Union, the

dispute vitally affects every member of the Union, and since more than ninety per cent. of the journalists employed by the Company in this case are members of the Union, there appear to be substantial grounds for holding that there exists a dispute between the Company and its editorial workmen. The learned counsel for the Company has argued that there is nothing to show that the members of the Union who are employed by the Company are in any way supporting M. L. Madan in this dispute, or that there has been any threat of any action by them if he is not reinstated, such as is referred to in the judgment cited above. It seems clear, however, from the circumstances of this case that the occasion has not yet arisen for any threat of striking by the editorial staff of The Hindustan Times, simply on account of the fact that the Union lost no time at all in placing the dispute in the hands of the Conciliation Officer appointed under the Industrial Disputes Act. It seems to be quite obvious that as long as the matter was before the Conciliation Officer and later, as it is now, the subject of a reference to an Industrial Tribunal, any threat of action on the part of the fellow members of the Union employed by The Hindustan Times Company would have been premature and altogether unjustified. I therefore do not consider that the absence of any threat of striking or taking other action by the fellow employees of M. L. Madan does not prevent the dispute from being an industrial dispute between the Company and its workmen. I cannot for a moment accept the contention of the learned counsel for the Company that the Union has to prove that those of its members who are employed by the Company are supporting M. L. Madan, by proving that they have passed a resolution in his favour or some such means. In my opinion there must be a presumption that when the Union takes action it is as a representative of, and with the support of its members, and that it is for the Company to prove that the facts are otherwise and that the members of the Union are not behind it in its action.

It was contended that the terms of reference themselves show that there is only a dispute between the Company and M. L. Madan since the issue referred to the Industrial Tribunal is simply whether the termination of service of Shri Madan, Sub-Editor, is wrongful and to what relief he is entitled. It seems obvious to me, however, that this issue is to be read in the light of the report of the officer on whose recommendation the dispute was referred to the Tribunal, from which it is quite clear that the real issue, however, it may have been phrased in the order of reference, is whether M. L. Madan was dismissed by the Company on the merits of the case or whether he was being victimised for his trade Union activities. In the circumstances I am of the opinion that the present dispute does amount to a dispute between the Company and its editorial workmen and that therefore the reference to the Tribunal is quite valid and proper. I accordingly dismiss the petition with costs. Counsel's fee Rs. 50 for each respondent.

[IN THE INDUSTRIAL TRIBUNAL, TRIVANDRUM.]

KUMARA PILLAI AND OTHERS

v.

HARRISONS & CROSFIELD LTD., QUILON.

K. Purushothaman Nair.

December 27, 1956.

LAY-OFF—COMPENSATION—LAY-OFF FOR MORE THAN 45 DAYS—APPLICABILITY OF SECTION 25-C PROVISIO (b), INDUSTRIAL DISPUTES ACT, 1947—QUANTUM OF COMPENSATION.

When there is a single lay-off for one continuous period of more than 45 days, the provisions of proviso (b) to section 25-C of the Industrial Disputes Act, 1947, do not come into play and the workmen will be entitled to lay-off compensation for only 45 days.

Industrial Dispute No. 205 of 1955.

T. K. Divakaran for the workmen.

K. V. R. Shenoy for the management.

AWARD.

This is a complaint under section 33-A of the Industrial Disputes Act, 1947, filed by one Shri N. Kumara Pillai and 14 others, all workmen in the Engineering Department of Messrs Harrisons and Crosfield, Ltd., Quilon. The complaint is dated 24th November, 1955. But previous to this, on 28th October, 1955, the opposite party, the Management of Messrs Harrisons and Crosfield, Ltd. has applied under section 33 of the Act to retrench 20 workmen including the complainants. It is alleged in this petition that for want of raw materials there is not enough work in the Engineering Department for all the workmen and so the Management was constrained to lay off the workmen from 10th June, 1955. And permission under section 33 was sought in Industrial Dispute No. 36 of 1953 pending on the file of this Tribunal in which both the parties are concerned.

The complainants do not in the complaint question the propriety of the lay off, but their grievance seems to be that the workmen were continuously laid off and hence they are entitled to compensation for further period of lay off of more than 45 days under sub-section (b) of section 25-C of the Act, and the action of the management in denying lay off compensation for more than 45 days is an alteration to their prejudice of the conditions of service applicable to them immediately before the commencement of the dispute in I.D. No. 36 of 1953. In the reply statement the Management contend that the workmen are entitled to claim lay off compensation only in case they have actually worked for 240 days during a period of twelve calendar months and that they are not entitled to lay off compensation for more than 45 days.

It is admitted that the complainants were paid lay off compensation for 45 days and the only question that has to be decided is whether the lay off in this case would come under proviso (b) to section 25-C of the Act. The management has put up a notice, dated 16th September, 1955 to this effect:

Notice I, Dated 16th September, 1955.

This is to inform all workmen who were laid off on the 10th June of 1955 and who have been receiving lay off compensation from the Company that, as per the rules, lay off compensation is only payable for forty-five days in any period of twelve months. Therefore, all these workmen will cease to receive any further compensation as and when they have already received the lay off compensation for 45 days.

Facilities will be given to these workmen who wish to come and punch their cards at the usual time, but it should be clearly understood that this will not entitle them to any further lay off compensation.

Quilon.
16th September, 1955.

(Sd.)
Chief Engineer,
Engineering Department.

It can be seen from the notification that the lay off in this case is one continuous lay off for the entire period and the workmen also have no case that during the same period of 12 months there was a second lay off for further continuous period of more than one week to enable them to claim the benefits under section 25-C, proviso (b).

And the matter is now concluded by the Supreme Court decision in *Modi Food Products & Co. Ltd. v. Faqir Chand Sharma* [1956] 10 F.J.R. 391. It is laid down by their Lordships that proviso (b) to section 25-C of the Act would apply only if the workmen had been paid compensation for 45 days and were again laid off for further period of more than one week at a time. Thus, to bring the case within proviso (b) to section 25-C, the lay off must be distinct from that for which compensation has been paid in accordance with proviso (a) to section 25-C. As is evident from the notification quoted above, the workmen were laid off under a single notice and in so far as there has not been any lay off for further continuous periods, the compensation payable to them must be held to be covered by proviso (a) to section 25-C. Since the compensation under proviso (a) is paid by the management, no valid claim for further compensation could be raised by the workmen during the period of twelve months. Hence it follows that the Management have not violated any provisions under section 33 of the Act. No other point was stressed before me. The complaint is unsustainable and is hereby dismissed. Awarded accordingly.

