

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New
Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 135/2012

Date of Passing Award- 15th May, 2023

Between:

Bharat Electronics Employees Union,
Bharat Nagar,
Ghaziabad, (U.P), -201008.

Workman

Versus

1.The General Manager,
Bharat Electronics Ltd.,
Bharat Nagar,
Ghaziabad, (U.P), -201008.
2. Bharat Electronics Workers Union,
C/o Bharat Electronics Ltd.,
Bharat Nagar,
Ghaziabad, (U.P), -201008.

Managements

Appearances:-

None for the claimant.

Shri K. K Tyagi, Ld.A/R for the management.

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-14011/04/2012 (IR(DU)) dated 13.08.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether the action of the management of BEL, Ghaziabad for not allowing accumulations of earned leave upto 300 day and non encashment of sick leave as is being done in other units of BEL is justified? If not to what relief they are entitled to?”

As per the narratives of the claim statement the BEL is an Industrial Establishment and an unit of Bharat Electronics Ltd. which is a multi unit organization having 9 production units across India. Each unit of the company has it's own standing order and one corporate office. The unit of BEL at Ghaziabad Started in 1974 and implemented its own standing order certified by the regional commissioner Central. The workman of BEL raised objection on the draft of the standing order and one of the major objection was with regard to the entitlement of earned leave of the employees. The mgt had proposed for credit of one day earned leave annually on 20 days attendance which means 18 days are to be credited in a year. As against this, the workmen demanded one day earned leave for 11 days of attendance, and their objection was duly submitted before the certifying officer. But the certifying officer by ignoring the objection certified the standing order submitted by the mgt. The Bharat Electronics Workers Union and other unions made an appeal challenging the order of the certifying officer. The chief labour Commissioner, who is the appellate authority, after hearing both the parties amended the order of the certifying officer by order dated 25.05.1976 and the demand of the workmen for credit of one day earned leave for each 11 days attendance was allowed. That order was again challenged before the Hon'ble Supreme Court by the management BEL and

the Hon'ble Supreme Court by order dated 9th April 1986 directed that the workmen will be allowed credit of earned leave @ of one day for 11 days of attendance and the same shall not exceed an aggregate of 30 days in a year. As per the Leave Rules formulated by the mgt in the year 1974, the employees were granted 18 days earned leave @ of one day earned leave for 20 days of attendance and further allowed accumulation of total annual leave of 5 years i.e 90 days. As per the said Leave Rules, if the workmen will not avail the total earned leave in a particular year, the left over no. of leave will be carried forward to the next year subject to a maximum limit of accumulation of 90 days. Though , this leave rule framed by the mgt was prior to the judgment of the Hon'ble Supreme Court passed on 09th April 1986 the mgt did not amend the rule pursuant to the said order. After the order of BEL by the Hon'ble Supreme Court, when all other units of BEL across India applied for amendment of the certified order the unit of BEL Ghazibad never took steps in this regard. The amendments incorporated pursuant to the order of Hon'ble Supreme Court were again challenged by the BEL mgt before the appellate authority i.e Chief Labour Commissioner Central and the same was rejected. The matter came up before the Hon'ble High court of Karnataka for adjudication. When the matters were pending adjudication, the mgts of different units of BEL across India, and the corporate office of BEL entered into a tripartite agreement with the workmen of BEL Bangalore and with the workmen of BEL Punchkula on 10.04.1992 and 12.07.1994 respectively. According to these settlements the workmen of those units were allowed to accumulate earned leave upto 240 days instead of 90 days .

In the year 1998, when the Govt. of India raised the age of superannuation from 58 to 60 years, the certified standing order of all the units of BEL including the corporate office were amended. In the said process the certified standing order of the union of BEL at Ghaziabad was amended too. For the said amendment all other units and the corporate office, by amending the leave rules, enhanced the accumulation limit of earned leave from 240 days to 300 days. This amendment was effected for Ghaziabad unit too, the Leave Rules was not amended. The judgment of Hon'ble Supreme Court was passed in the year 1986 and as per the said

verdict the accumulation should be @1 day for every 11 days of attendance and the standing order was to be amended allowing enhancement of accumulation of 240 days pursuant to the tripartite settlement to 300 days. After enhancement of the superannuation age by 2 years, all other units of BEL allowed accumulation of 60 more days of annual leave making the same to 300 days instead of 240 days. But this facility was not allowed to the employees of BEL unit at Ghaziabad. Being aggrieved for the discrimination, they raised dispute before the conciliation officer. But the Mgt did not budge from its arbitrary decision and discriminating attitude. The appropriate Govt. then referred the matter for adjudication in terms of the reference.

The mgt of BEL appeared and filed written statement asserting that there was a settlement arrived between the Mgt and the negotiating union of the workmen and as per the settlement dated 24.05.2010, the agreement incorporated in the memorandum of settlement was for the full and final settlement of the all the demands raised by the negotiating union of the workers. It was agreed that none of the demands mentioned in the charter of demand shall form point of industrial dispute during the currency of the settlement and the union agreed that they will not raise any other demand having monetary value, financial implication other than the charter of demand considered during the currency of the settlement. These facts were clearly mentioned in clause 23 of the settlement. The said settlement dated 24.05.2010 is still in operation and as such the claim is not maintainable.

The workmen filed rejoinder refuting the stand taken by the Mgt in the w.s. In the written replication it has been stated that the tripartite settlement dated 24.05.2010 was specifically with regard to the revision of pay scale. It was agreed during the settlement that the cases relating to covered items in the settlement shall not be raised in any court of law. Hence, the claimant union is not produced from raising the present dispute.

It is further stated that the issue relating to accumulation of earned leave was raised during discussion at the time of settlement in the corporate office level. The workmen union was told that this is an issue basically of the unit level and the same shall be raised there. Hence it is evidently clear

that the issue relating to accumulation of earned leave in respect of the employees of Ghazibad unit of BEL was not discussed during the tripartite settlement. The objection raised by the mgt is false and not tenable.

On the basis of these rivals pleading the following issues have been framed:

1. Whether the action of the mgt BEL Ghaziabad for not allowing accumulation of earned leave upto 300 days and non encashment of sick leave as is being done in other units of BEL is justified? If so its effect?

2. to what relief the workmen are entitled to?

On behalf of the claimant union, one Mr. G.C Tiwari the Ex-General secretary of the union testified as WW1. He produced some documents which have been marked as WW1/1 to WW/6. WW1/1 is the certified standing order of BEL Ghaziabad. Exh. WW1/2 is the final certified order after the order of the appellate authority passed on 25.05.1976. Exht. WW1/3 is the order of the Hon'ble Supreme Court dated 9.04.1986 wherein the Hon'ble apex court directed accumulation of one day earned leave for every 11 days of duty subject to annual accumulation to the maximum of the 30 days. Exh. WW1/4 and Exh. WW1/5 are the copies of the tripartite agreement dated 10.04.1992 and 12.07.1994 passed between the mgt of BEL and the unions of Bangalore and Punchkula respectively. Exh. WW1/6 is the office order passed pursuant to the tripartite settlement and Exh. WW1/7 is the office order by which the BEL mgt of those units enhanced the accumulation limit of earned leave from 240 days to 300 days when the age of superannuation was enhanced by 2 years i.e from 58 years to 60 years . The witness has stated that the mgt of BEL Ghazibad discriminated in allowing the limit of accumulation of earned leave in comparison to the employees of other units and the same amounts to unfair labour practice. Witness was cross examined at length by the Mgt wherein his authority to depose in this dispute was challenged.

On behalf of the mgt one Mr. Karan Goel the deputy manager, HR and Administration testified as MW1. He produced the copy of the

settlement dated 24.05.2010 as WW1/M1. A comparative chart of leave rules applicable to the none executive employees of BEL Ghaziabad and other units of the company was filed as MW1/1. The copy of the discussion held on 15.07.2000 between the mgt and 2 negotiating unions have been filed as MW1/2. On the basis of these documents, the witness stated that negotiating unions have accepted the proposal of the management. Exh. MW1/3 are the circulars issued by the management from time to time for election of the unions to represent the workmen of the unit for the purpose of bargaining . This witness of the mgt was not cross examined by the claimant.

When the matter was called for arguments none appeared on behalf of the claimants. The Ld. AR for the managment opened the argument saying that in Ghaziabad unit of BEL, there are 4 unions representing the workmen and recognized by the mgt. As a matter of practice at an interval of 2 years, an election is conducted to choose the negotiating union. For the year 2010 and 2012 two union namely BEL Workers Union and BEL Trade Union were elected as the negotiating trade union.

On 24.05.2010 a settlement under the Industrial Dispute Act was effected between the two negotiating unions and the Mgt and as per the said settlement, the unions are precluded from raising any demand in any court of law relating to general financial entitlements. Hence, this proceeding is not maintainable and liable to be dismissed.

He drew the attention of the tribunal to the settlement dated 24.05.2010 and marked as Exh. WW1/M1 which was confronted to the witness examined on behalf of the claimants. He also drew the attention to the order of the Hon'ble Supreme Court dated 9th April 1986 passed in civil appeal no. 679 of 1976. On the basis of this judgment, he argued that the claim of the claimant is not tenable. The admitted facts are that as per the leave policy of the Mgt in vogue, prior to the order of the Hon'ble Supreme Court dated 9th April 1986, the employees of the mgt were entitled to earned leave of 18 days per year. The accumulation ceiling was upto a maximum of 90 days. The Hon'ble Supreme Court directed that the earned leave of the employees shall be calculated @one day leave for 11 working days and the

credit should be upto the max. of 30 days in a year. After that, the mgt entered into a tripartite settlement with some of the union allowing accumulation of 240 days instead of 90 days as was earlier with the calculation that 18 days in a year. Now, the mgt has stated that the Hon'ble Supreme Court never directed in the order that the accumulation upper limit shall be 240 days and the mgt of some units though enhanced the limit to 300 days the same shall not be applicable to the unit at Ghaziabad. The copy of the memorandum of settlement dated 10.04.1992 at Bangalore and 12.07.1994 at Punchkula by two different unit have been filed by the claimant. These documents clearly show that on account of enhancement of the age of superannuation the accumulation of the limit for earned leave was enhanced to 240 days instead of 90 days by some units

On behalf of the mgt the comparative chart of Leave Rule applicable to non executive employee of Ghaziabad has been filed alongwith the memorandum of settlement dated 24.05.2010. This document was confronted to the workmen and marked as WW1/M1 . The Ld. A/R for the mgt while pointing out to clause 23 of the same submitted that this is with regard to full and final settlement of all demands raised by the unions in their charter of demand and it was agreed that none of those shall form a point of industrial dispute. It is to be noted that though the claimant have stated that the settlement was with regard to pay scale only and not in respect of earned leave, the charter of demand has not been filed by either party to this proceeding.

It was obligatory on the part of the workmen to produce the said charter of demand in respect of which mgt has raised objection. However, on a careful reading of the settlement, it is found that the settlement was in respect of fixation of pay, special pay, annual increment, DA etc. It has also dealt with the HRA and allowances. But the settlement nowhere speaks about the accumulation of earned leave and encashment of sick leave. Hence, the objection of the mgt that this dispute is not maintainable in view of the settlement is not accepted.

The claimants have adduced evidence both oral and documentary which prove that the other units of BEL having their own standing order

have allowed accumulation of earned leave upto 300 days and encashment of the sick leave. The order passed by other units to that effect has been filed by the claimants. G.C Tiwari, the witness examine by the claimants was cross examined by the mgt at length. Nothing substantial has been elicited, except bringing out some evidence from his mouth to argue that he not being the general secretary of the union, is not competent to depose. This witness has stated expressly that in the settlement dated 24.05.2010 no decision was taken at the corporate office level with regard to the accumulation of earned leave and encashment of sick leave. From the documents showing decision of other unit allowing the same to the employees, this Tribunal is led to a conclusion that the Mgt of BEL Ghaziabad Unit acted in an unfair and discriminatory manner and thereby meted out unfair labour practice to the claimants by not allowing them accumulation of 300 days earned leave and encashment of sick leave which is discriminatory in nature. The claimants thus held are entitled to the relief sought for. Hence ordered.

ORDER

The reference be and the same is allowed in favour of the claimant workmen. It is held that the action of the mgt BEL Ghaziabad in not allowing accumulation of earned leave upto 300 days and not encashment of sick leave is unjustified. The claimants workmen represented through union are entitled to the said relief.

Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
15th May, 2023

Presiding Officer.
CGIT-cum-Labour Court.
15th May, 2023.