

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL.**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 31 OF 2023

PARTIES: Ferro Scrap Nigam Limited Employees' Union (CITU), Durgapur Unit.
Vs.
Management of Ferro Scrap Nigam Limited, Durgapur Unit.

REPRESENTATIVES:

For the Union/Employees: Mr. Susanta Kumar Ganguly, Advocate.
Mr. Asit Kumar Kolay, Advocate.

For the Management of FSNL: Mr. Anupam Ghosh, Advocate.

INDUSTRY: Steel.

STATE: West Bengal.

DATED: 18.11.2024.

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A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Ministry of Labour, Government of India through the Office of the Deputy Chief Labour Commissioner (Central), Asansol, vide its Order **No. 1(17)/2023/E** dated 01.06.2023 has been pleased to refer the scheduled dispute between the employer, that is the Management of Ferro Scrap Nigam Limited, Durgapur Unit and their non-executive employees represented by the said union for adjudication by this Tribunal.

S C H E D U L E

“ Whether the action of the management of Ferro Scrap Nigam Limited, Durgapur Unit in not settling the demand of the revision of wages of the non executive employees of Ferro Scrap Nigam Limited, Durgapur Unit w.e.f. 01.01.2017, which is pending since long, is justified or not? If not, what relief the non-executive employees are entitled to? ”

1. On receiving Order **No. 1(17)/2023/E** dated 01.06.2023 from the Office of the Deputy Chief Labour Commissioner (Central), Asansol, Ministry of Labour, Government of India, for adjudication of the dispute, **Reference case No. 31 of 2023** was registered on 07.06.2023 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claim and a list of witnesses.

2. Ferro Scrap Nigam Limited Employees Union, Durgapur filed their written statement on 13.03.2024 and the management of Ferro Scrap Nigam Limited (hereinafter referred to as FSNL), Durgapur, represented by Mr. Saurabh Radhesham Tharewal, the Constituted Attorney filed their written statement on 17.05.2024. Brief fact of the case of the union as disclosed in their written statement is that the wage structure of employees of FSNL, Durgapur Unit is fixed and implemented according to the wage structure applicable to the employees of Steel Authority of India Limited (hereinafter referred to as SAIL) as per order no. ASP-6(6)/86 dated 24.07.1986 of the Government of India, Ministry of Steel and Mines (Department of Steel), where the government has directed that the wage structure in FSNL would be according to the wage structure of SAIL. The Assistant General Manager I/C of FSNL in his letter dated 11.06.2019 informed the Assistant Labour Commissioner (Central), Raniganj at Durgapur that "*Ferro Scrap Nigam Limited was a subsidiary company of SAIL and as per the practice, the employees of FSNL are getting revised wage structure of SAIL on the guidelines issued by the Government of India, Department of Public enterprises vide his memorandum No. 2(7)/2006 DPE(WC) GL-IVX dated 09.11.2006*". It is the case of the union that the usual practice of FSNL is that they revise the pay structure of its employees according to the revision of the pay structure of SAIL. It is inter-alia pleaded that during the period from 01.01.2007 to 31.12.2011 SAIL allowed twenty-one percent (21%) of the Minimum Guaranteed Benefit to their non-executive employees. The non-executive employees of FSNL are therefore entitled to the same benefit but the management of FSNL paid only twelve percent (12%) of the Minimum Guaranteed Benefit to its non-executive employees as per the tripartite agreement on 11.02.2011 for the period from 01.01.2007 to 31.12.2011 and the management of FSNL agreed to pay the balance nine percent (9%) of the Minimum Guaranteed Benefit to the non-executive employees w.e.f. 01.01.2007 but they started to pay the same w.e.f. 01.10.2014. Therefore, nine percent (9%)

of the Minimum Guaranteed Benefit is due to the non-executive employees of FSNL for the period from 01.01.2007 to 30.09.2014. Furthermore, the management of FSNL paid only eleven percent (11%) of the Minimum Guaranteed Benefit for the period from 01.01.2012 till date whereas SAIL has allowed seventeen percent (17%) of the Minimum Guaranteed Benefit to its employees which is six percent (6%) more than what the employees of FSNL has been received. It is contended that this act of FSNL, Durgapur Unit is in violation of Government Order No. ASP-6(6)/86 dated 24.07.1986. It is asserted that during the period from 01.01.2012 to 30.11.2016 SAIL paid six percent (6%) of Special Allowance at their revised Basic Pay to their non-executive employees but the management of FSNL started to pay the Special Allowance at the rate of five percent (5%) w.e.f. 01.12.2016 instead of paying six percent (6%) from 01.01.2012. Therefore, the non-executive employees are entitled to get six percent (6%) of Special Allowance for the period from 01.01.2012 to 30.11.2016 and one percent (1%) of the said allowance from 01.12.2016 till date. The petitioner union of FSNL has claimed implementation of revised wage structure for the non-executive employees of FSNL according to the wage structure of SAIL w.e.f. 01.01.2017 in terms of the Government Order No. ASP-6(6)/86 dated 24.07.1986. The union has further contended that the employees of SAIL are already getting the benefit of pension for their non-executive employees who are on roll from 01.01.2012 but the management of FSNL has not implemented any such pension scheme to its non-executive employees which is in violation of Government Order. The union therefore has prayed for issuing direction to the management of FSNL to make payment of the aforesaid dues in respect of the non-executive employees and for implementation of wage structure according to the pay structure of the non-executive employees of SAIL along with compound interest and compensation of an equal amount towards mental distress and monetary loss caused by the management.

3. The management contested the case by filing written statement through the constituted attorney, wherein it is stated that the union has no locus standi because they are not a recognized union. The management of FSNL after discussion with the recognized unions in a Joint Forum Committee meeting held on 13.04.2022 arrived at a decision for wage revision of its employees from 01.01.2017 in line with the guidelines of the Department of Public Enterprises. Proposal for revision of wage of workmen and Ministerial Staff of FSNL was adopted on the basis of agreement and the Board of Directors of FSNL, in their 193rd Board Meeting held on 20.05.2022 approved the proposal for revision of wage. Subsequently the proposal for revision of wage was approved by the Ministry of Steel vide its letter dated 15.06.2023 and an Office Order bearing Reference. No. FC/3362/2023 dated 19.10.2023 was issued by the management. It is asserted that by virtue of the Office Order wage structure of workmen and Ministerial Staff of FSNL have been revised w.e.f. 01.01.2017, which is produced as Annexure-A. It is stated that the arrears accruing due to wage revision has been paid to the workmen and Ministerial Staff and the Industrial Dispute raised by the union is liable to be dismissed.

4. The short point for consideration before this Tribunal is whether the management of FSNL has implemented wage revision to its non-executive employees of Durgapur Unit w.e.f. 01.01.2017. If not what relief the employees are entitled to.

5. In order to substantiate their claim union has examined Mr. Haradhan Sain, General Secretary, Ferro Scrap Nigam Limited Employees Union, Durgapur as Workman Witness – 1. The witness in his affidavit-in-chief has reiterated the case disclosed in the written statement and further stated that the management of FSNL did not implement the pension scheme for non-executive employees who

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are on rolls from 01.01.2012. though the employees of SAIL are getting the pension benefit and this tantamount to violation of the Government order of 1986. Witness further claimed that the non-executive employees are entitled to admissible wages along with compound interest thereon till the payment is made. The witness has produced some documents which have been admitted in evidence as exhibits as follows :

- (i) Copy of the Government Order dated 24.07.1986 has been produced as Exhibit W-1.
- (ii) Copy of the letter dated 11.06.2019 issued by the Assistant General Manager I/C to Assistant Labour Commissioner (Central), Durgapur, as Exhibit W-2.
- (iii) Copy of the Memorandum of Agreement dated 29.04.2010, as Exhibit W-3.
- (iv) Copy of the Memorandum of Settlement dated 11.02.2011, as Exhibit W-4.
- (v) Copy of the Memorandum of Agreement dated 30.12.2014, as Exhibit W-5.
- (vi) Copy of the Minutes of discussions held in the Joint Forum Committee meeting on 29.12.2014 and 30.12.2014, as Exhibit W-6.
- (vii) Copy of the Memorandum of Agreement dated 01.07.2014, as Exhibit W-7.
- (viii) Copy of the Memorandum of Agreement dated 20.09.2017, as Exhibit W-8.
- (ix) Copy of the Memorandum of Understanding dated 21.10.2021, as Exhibit W-9.
- (x) Copy of the letter dated 12.08.2019 issued by Mr. Haradhan Sain addressed to the Managing Director, FSNL, Bhilai, as Exhibit W-10.
- (xi) Copy of Certificate of Registration of Trade Union, as Exhibit W-11.

- (xii) Copy of the Acknowledgement Receipt for annual return of trade unions dated 15.03.2024, as Exhibit W-12.

6. In his cross-examination the workman witness deposed that their Trade Union is registered under the Trade Unions Act, 1926 and admitted that no letter of recognition has been issued in their favour. The witness further deposed that there are thirty-two non-executive employees in FSNL, Durgapur as on June, 2024 and apart from having Durgapur Unit, FSNL has other units at Burnpur, Bhilai, Vizag, Bokaro and few other places. In reply to a suggestion on behalf of the management that revision of pay for non-executive employees in the Durgapur Unit of FSNL has been made from 01.01.2017, the witness deposed that he is unaware about such revision of pay. It may be derived from his cross-examination that as General Secretary of the union he participated in the settlement between the management and workmen held on 11.02.2011. It also transpires from his testimony that he is aware about pay of arrear of wages to the non-executive employees w.e.f. 01.01.2017 upon revision of wages. The management of FSNL posed a question to the workman witness that a Joint Forum Committee was formed at FSNL, Durgapur and revision of wages was made on the basis of an agreement between the members of union and employees at the Joint Forum Committee meeting. The witness expressed his unawareness about such development.

7. Management of Ferro Scrap Nigam Limited, Durgapur Unit defending their claim examined Mr. Saurabh Radhesham Tharewal, the Constituted Attorney, as Management Witness – 1. It is categorically stated in the affidavit-in-chief that the Reference case is not maintainable because the union is not recognized and they have no authority to raise the issue. It is further stated that FSNL has already made wage revision of its employees from 01.01.2017 to 31.12.2026, based on

the agreement reached between the representatives of recognized unions and the management of FSNL, which has been approved by the Competent Authority and arrears payment has already been made to the concerned workmen. In support of such claim management has produced a Memorandum of Understanding arrived between the management of FSNL and its recognized union at Durgapur dated 13.04.2022, the same has been admitted in evidence as Exhibit M-1 and a corresponding Office Order bearing No. AFC/3362/2023 dated 19.10.2023 issued by the management of FSNL, implementing revised pay is produced as Exhibit M-3. A copy of letter of recognition of the representative union dated 13.05.2015 issued to the President, Ferro Scrap Nigam Limited Permanent Employees' Union (INTTUC), Durgapur, by the AGM (P&A) has been produced as Exhibit M-2.

8. In course of cross-examination of MW-1 on being confronted with Exhibit W-1, a Government Order dated 24.07.1986, the witness deposed that he is aware about the Order of the Government of India, Ministry of Steel and Mines (Department of Steel), whereby the Government in principle has approved the revised wage structure of staff/officers in Metal Scrap Trade Corporation / Ferro Scrap Nigam Limited followed in Steel Authority of India Limited. The witness deposed that he is not aware if any such government order was passed by the Ministry of Steel and Mines, Government of India after July, 1986 revoking or altering the order dated 24.07.1986. The witness further deposed that FSNL is following the same order dated 24.07.1986 and after issuance of letter dated 11.06.2019 (Exhibit W-2) there has been revision of pay at FSNL w.e.f. 21.11.2017 as per terms of agreement between the management of FSNL and the recognized unions. Witness admitted that a charter of demand dated 12.08.2019 was received from the union and on the basis of Office Order dated 19.10.2023 (Exhibit M-3) issued by the General Manager (P&A)/Law for revision of wages w.e.f. 01.01.2017 for all employees of FSNL in India at Bhilai, Burnpur,

Durgapur, Nagarnar, Rourkela and Vishakahpatnam units, the Joint Forum Committee at Durgapur had taken a decision but representatives of Ferro Scrap Nigam Limited Employees' Union, Durgapur were not intimated to attend the meeting, since they are not the representative union. It is further stated that other union representatives of other units were requested to participate in the meeting and the management of FSNL has following the government's direction regarding pay revision of its staff and officers. As per Memorandum of Agreement management has revised the pay of the employees of FSNL, Durgapur from April 2010, which was given effect on 01.01.2007.

9. Mr. Asit Kumar Kolay, learned advocate, appearing on behalf of the aggrieved union argued that FSNL, Durgapur is a public sector undertaking under the Ministry of Steel and Mines (Department of Steel). Referring to Exhibit W-1, a copy of order dated 24.07.1986 issued by the Deputy Secretary to the Government of India, submitted that the workmen of Metal Scrap Trade Corporation and FSNL are entitled to revision of wages at par with employees of SAIL. It is submitted that the management witness admitted that the decision of the government, communicated in letter No. ASP-6(6)/86 dated 24.07.1986 is applicable to the employees of FSNL but the non-executive employees of FSNL have not been granted the benefit of wage revision at par with employees of SAIL. Referring, to the Memorandum of Agreement reached at National Joint Committee for the Steel Industry dated 29.04.2010 (Exhibit W-3), it is submitted that as per Clause 3.1.4 *"the employees covered by the Agreement and on the rolls as on 31.12.2006 would be entitled to a guaranteed benefit @ 21% Basic plus DA (78.2 %)"* but the employees of FSNL were not admitted to the guaranteed benefit and were paid only twelve percent (12%) to their non-executive employees as per tripartite agreement as on 11.02.2011 (Exhibit W-4). Learned advocate for the union submitted that on 12.08.2019 the General Secretary of the union had

issued a letter to the Managing Director of FSNL (Exhibit W-10) wherein it had placed the Charter of Demands of the employees for the period from 01.01.2017 to 31.12.2021 and urged the management to invite the representatives of CITU to which their union is affiliated, to take part in the meeting for wage revision of employees of FSNL, Durgapur. Learned advocate contended that though Ferro Scrap Nigam Limited Employees' Union, Durgapur is a registered Trade Union and produced its Registration Certificate as Exhibit W-11, the management has illegally debarred the union from participating in the meeting for the wage revision. It is urged that the management of FSNL should make necessary pay revision for its non-executive employees from 01.01.2017 at par with employees of SAIL.

10. In reply, Mr. Anupam Ghosh, learned advocate for the management submitted that his argument mainly rests on two points. Firstly, whether the demand raised in the Industrial Dispute has been satisfied w.e.f. 01.01.2017 and the second limb of the argument would be on the issue whether the present union which raised the Industrial Dispute was a recognized union at the relevant time, having bargaining capacity to participate in the tripartite agreement. Learned advocate submitted that the management of FSNL has already revised the pay of non-executive employees w.e.f. 01.01.2017 and has also made arrear payments in respect of all the employees of Durgapur Unit. Referring to Exhibit M-1, a Memorandum of Understanding arrived at between the management of FSNL and its recognized unions on 13.04.2022 at Durgapur, in the matter of revision of wage structure of workmen, it is submitted that the recognized union and the management of FSNL had signed a Memorandum of Agreement in Joint Forum Committee meeting held on 19.12.2016 for revision of wage structure to FSNL w.e.f. 01.01.2012. The agreement was approved by the Board of Directors in the 165th meeting on 18.01.2017 (Exhibit M-1). The Ministry of Steel also approved

the same and the wage agreement arrived on 19.12.2016 was implemented. Learned advocate referring to Exhibit M-3, an Office Order of FSNL dated 19.10.2023 submitted that the wage structure was revised and implemented w.e.f. 01.01.2017. Learned advocate refuted the contention of the union that no wage revision had taken place for the non-executive employees of FSNL.

11. The second leg of argument of the management is that the Memorandum of Understanding for revision of wages agreed between the management of FSNL and its recognized unions in Joint Forum Committee meeting held on 13.04.2022 at Durgapur was subsequently approved by the Board of Directors of FSNL and the Competent Authority of the Ministry of Steel, the Government of India. Mr. Prabhat Chatterjee, President, Durgapur Ferro Scrap Nigam Limited Permanent Employees' Union, Durgapur and Mr. D. R. Patra, of the same union from Durgapur participated in that Joint Forum Committee meeting as recognized union along with other union representatives from Rourkella, Burnpur, Vizag units of the company. It is contended that Ferro Scrap Nigam Limited Employees' Union (CITU), Durgapur Unit was not a recognized union under Section 28-B of the Trade Unions Act, 1926 and certificate of recognition was not issued to them. Thus, the said Trade Union did not have any bargaining capacity in respect of the wage revision of employees of FSNL. The Industrial Dispute therefore has no merit and the same is liable to be dismissed.

12. Having considered the pleadings, evidence adduced by both sides and the argument advanced by the contending parties, it appears to me that the bone of the contention is embedded in the issue of revision of wage of non-executive employees of FSNL, Durgapur Unit. Initially, Ferro Scrap Nigam Limited Employees' Union (CITU), Durgapur Unit which has raised this Industrial Dispute harped upon a case that no wage revision of non-executive employees has taken

place from 01.01.2017. It has relied upon a copy of letter issued from the Ministry of Steel and Mines (Department of Steel) on 24.07.1986, wherein the Ministry conveyed the approval of the government to follow the revision of wage structure of staff and officers in Metal Scrap Trade Corporation and FSNL at par with employees of SAIL. It is the case of the union that at the time of revision of wage the employees of FSNL did not get the benefit of revision of wage at par with SAIL. In support of such contention reliance has been placed upon Exhibit W-3, a Memorandum of Agreement dated 29.04.2010 executed at the National Joint Committee for the Steel Industry, which assured the employees of SAIL to a guaranteed benefit @ 21% Basic plus Dearness Allowance (78.2 %). On the other hand, it is argued that in the Memorandum of Settlement arrived at between the management of FSNL and Ferro Scrap Nigam Limited Employees Union, Durgapur held on 11.02.2011 (Exhibit W-4). The employees of FSNL were entitled to a guaranteed benefit @ 12% Basic plus Dearness Allowance (78.2 %) which is less by 9%. It is clear from Exhibit M-1, which is a Memorandum of Understanding arrived at between the management of FSNL and recognized unions dated 13.04.2022 that there has been revision of wages of the employees of various units of FSNL, including its Durgapur Unit. It was agreed between the stakeholders that the agreement for revision of wages would cover all categories of workmen and non-executive employees of FSNL who were on the rolls of the company on 31.12.2016 and employed thereafter. The employees would be entitled to guaranteed benefit @ 12% Basic plus Dearness Allowance as on 01.01.2017 and the revised wage structure on 01.01.2017 for different category of employee as per Annexure-I. It was also laid down that payment of wage arrears would be effective from 01.01.2017 after signing the tripartite agreement in the respective units.

13. An agreement was reached on 13.04.2022 (Exhibit M-1) in presence representative of workmen union of various units including its Durgapur unit. In consonance with the agreement reached in Joint Forum Committee meeting between the management and the recognized unions an Office Order dated 19.10.2023 (Exhibit M-3) was issued wherein it is stated that the Board of Directors of FSNL as well as Ministry of Steel, Government of India, New Delhi has accorded approval to the revised wage structure of workmen and ministerial staff of FSNL w.e.f. 01.01.2017. Mr. Haradhan Sain (WW-1) in his cross-examination has admitted that the non-executive employees have received arrears of wages w.e.f. 01.01.2017 upon revision of wages. The witness thereby contradicting his earlier statement that he was not aware of pay revision of non-executive employees of FSNL, Durgapur made effective from 01.01.2017. The contention of the union that no wage revision was made for the non-executive employees of FSNL, Durgapur from 01.01.2017 therefore, is a conscious misrepresentation and contrary to truth. The union which raised the Industrial Dispute has failed to satisfy the requirement under Section 28-B of the Trade Unions Act, 1926. The union has produced their copy of the Registration Certificate as Exhibit W-11. Only after grant of certificate of recognition under Section 28-B of the Trade Unions Act, 1926 in the prescribed manner, a trade union gets a bargaining right in respect of the industrial establishment in a class of industry or in the local area as the case may be. In the instant case the union has failed to produce any certificate of recognized trade union. It is crystal clear from Exhibit M-1 that Mr. Prabhat Chatterjee and Mr. D. R. Patra, Durgapur Ferro Scrap Nigam Limited Permanent Employees' Union, Durgapur were the representatives of the Durgapur Unit and participated in the Joint Forum Committee meeting held on 13.04.2022 at Durgapur, along with other recognized union from other units of the company. The decision reached in the agreement cannot be challenged by other unions which were not recognized trade unions at

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the relevant time. Furthermore, the subject matter of the Memorandum of Understanding dated 13.04.2022 and the corresponding Office Order dated 19.10.2023 (Exhibit M-3) have not been challenged in this case nor has the aggrieved union impleaded the recognized unions which had participated in the meeting to arrive at an agreement. I therefore hold that the Industrial Dispute raised by the aggrieved union agitating over the issue of non-revision of wage of the non-executive employees of FSNL, Durgapur w.e.f. 01.01.2017 is not sustainable under the established facts and provision of law involved. The Industrial Dispute is accordingly dismissed on contest.

Hence,

ORDERED

the Industrial Dispute is dismissed on contest. There is no merit in the claim of Ferro Scrap Nigam Limited Employees' Union (CITU), Durgapur Unit. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.