BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL

MUMBAI

Present

JUSTICE RAVINDRA NATH KAKKAR
Presiding Officer

REFERENCE NO.NTB-1 OF 2005

Parties: Food Corporation of India

And

Their workmen

Appearances:

For the first party no.1 Management : Mr.Abhay Kumar, Adv.

For the FCI Workers Union : Mr. Anil Tiwari, Adv.

For Handling Workers' Union : Ms. Kunda Samant, Adv.

Mumbai, dated the 31st day of December, 2021

AWARD

1.. In compliance of the judgement dated 14.9.2005 of Hon'ble High Court of Delhi in Writ Petition No. 3792/2004 the Central Government in exercise of powers conferred by Sub-Section (1A) of Section 10 of the Industrial Disputes Act (hereinafter referred to as the I.D.Act) has referred the following dispute to this Tribunal.

"Whether the action of the Food Corporation of India in reducing the rates of overtime wages of its food handling workers from 1.25 times to 1.1 times of the normal rates of wages for overtime work between 6 ½ and 8 hours and further from as per the Shops &

Establishment Act of the respective States to 1.1 times for work beyond 8 hours, both by Circular Notice dated 1.7.2000 and circulars No. 1 & 2 both dated 19.1.2004 is legal and justified? If not, to what relief the workmen are entitled?

2. According to the Statement of Claim filed on behalf of the Food Corporation of India Workers Union (hereinafter referred to as the Union) and Food Corporation of India (Handling)Workers' Union a Memorandum of Understanding was arrived at between the Food Corporation of India (hereinafter referred to as the F.C.I.) and the Union on 13.6.1994. According to the said Memorandum of understanding it was decided that:

(1)Working hours of departmental labourers, piece rate system ('B' category workers) direct payment system workers, mate system workers, Management Committee system workers would be at par with the working hours of depot staff working in the respective depots.

(2)The overtime allowance for work beyond normal duty hours upto the statutory hours of work (i.e. 6 ½ to 8 hours) was fixed at 1.25 times that of normal duty hours.

(3)Beyond statutory hours (8 hours) the rate of overtime allowance would be fixed on the basis of respective Shops and Establishments Act of the relevant States.

The F.C.I. then issued a circular dated 16.6.1994 fixing 6 ½ hours as working hours with 30 minutes lunch break and fixed the overtime allowance payable to the departmental labourers @ 1.25 times of the hourly rate for the extra duty hours put in beyond the normal duty hours upto statutory hours of work

(i.e. from 6 ½ to 8 hours) and rate for overtime allowance beyond statutory hours of work as prescribed in the respective Shops and Establishments Acts of the respective States. The circular was made applicable to the labourers engaged in the depots located in North, East and North-East Zones as also in the depots of M.P. and in the depot at Akola in Maharashtra in West Zone. However, in W.B., Bihar, Orissa and Assam regions the overtime for such period was to be regulated as per the existing practice. It is the case of both the Unions that the Memorandum of Understanding is like Settlement as envisaged under the provisions of the I.D.Act and it is binding on the parties till a notice is issued by either party expressing its intention to terminate it or unless the terms of the Memorandum of Understanding are replaced by any other award or Settlement. However, the F.C.I. issued a notice dated 22.7.2002 under Section 9A of the I.D.Act altering overtime allowance to 1.1 times of the normal hourly rate of wages in the States where the F.C.I. was granted exemption from the provisions of the Shops and Establishments Acts or where the provisions of the Shops and Establishments Act of the State was not made applicable to the F.C.I. The Union opposed the notice by raising industrial dispute and the notice dt. 1.7.2002 was stayed by circular dated 29.8.2002 in view of the conciliation proceedings between the parties. The conciliation proceedings failed and failure report was submitted on 22.10.2003. However, the Central Government failed to refer the dispute for adjudication and taking advantage of this situation the F.C.I. issued two circulars dated 19.1.2004 giving effect to the notice dated 1.7.2002. The Union then filed writ petition (civil) No. 3792 of 2004 in the Delhi High Court. By judgment dated 14.9.2005 passed by the Hon'ble Delhi High Court in the aforesaid Writ Petition the Central Government was directed to refer the dispute to the National Industrial Tribunal. Hence this Reference. The two unions have stated that the

reduction in overtime wages is illegal and unjustified being in violation of the terms of the Memorandum of Understanding dt.13.6.1994 which has neither been terminated nor replaced by any other Award or Settlement.

3. According to the statement filed by the F.C.I. the reduction of rates of overtime wages is perfectly legal since the Memorandum of Understanding signed on 13.6.1994 is not a Settlement. According to the statement majority of establishments of the F.C.I are exempted from the provisions of the Shops and Establishments Acts of respective States and, therefore, they are not under obligation to pay overtime wages in accordance with the provisions of the said Acts and wherever the Shops and Establishments Act is applicable the F.C.I. is paying overtime wages as prescribed by the said Act. The F.C.I. has, therefore, prayed that the reference be answered in favour of the F.C.I.

4. The two Unions have filed rejoinders stating that the F.C.I. signed the Memorandum of Understanding dated 13.6.1994 after majority of their establishments had received exemption from the provisions of the Shops and Establishments Act. The Memorandum of Understanding dt.13.6.1994 envisages the rate of overtime wages under the Shops and Establishments Acts as model rates and the same have no connection with the applicability of the said Acts to the establishment of the F.C.I. It has also been stated that after the Memorandum of Understanding dt.13.6.1994 the F.C.I. has issued circular dated 16.6.1994 and thereby the F.C.I. has given the Memorandum of Understanding dt.13.6.1994 the status of Settlement.

5. This Tribunal answered the reference in favour of the workmen vide its Award dt.07.09.2012 thereby quashed the Circular Notice dt.01.07.2002 and Circulars No. 1&2 both dated 19.1.2004 issued by the FCI.

6. Aggrieved FCI raised issue before Hon'ble Bombay High Court vide WP No. 10823 of 2013 against the aforesaid Award. The said Award was set aside by the Hon'ble Bombay High Court vide its Order dt.22.04.2014 and remanded the matter back to the Tribunal to consider the legal status of the Memorandum of Understanding dt.13.06.1994 between the FCI and FCI Workers' Union to pass a fresh Award.

7. Pursuant thereto, this Tribunal framed following seven issues vide its Order dt.21.04.2016 for adjudication.

(1) Whether the document dated 13.06.94 followed by the Circular dated 16.06.1994 acquired status of Settlement as contemplated under the Industrial Disputes Act, 1947 and was binding between the parties?

(2) Whether on the facts and in the circumstances of the case, Notice dated 01.07.2002 issued by Food Corporation of India under Section 9-A of the Industrial Disputes Act, 1947 and legal and valid?

(3) Whether on the facts and in the circumstances of the case, Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and valid?

(4) Whether the document dated 13.06.94 followed by Circular dated 16.06.94 could be superseded by Food Corporation of India by issuing Circulars Nos. 1 and 2 both dated 19.01.2004?

(5) Whether action of Food Corporation of India in reducing the overtime wages of its food Handling workers from 1.25 times to 1.1 times of the normal rate of wages for overtime work between 61/2 and 8 hours, both by Circular Notice dt.01.07.2002 and Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and justified?

(6) Whether action of Food Corporation of India in reducing the overtime wages of its food handling workers from those as per Shops & Establishment Act of the respective States to 1.1 times for work beyond 8 hours, both by Circular Notice dt.01.07.2002 and Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and justified?

(7) To what relief, if any, the second party/Union is entitled?

8. Factual Matrix which transpires from record that the FCI vide Memorandum of Understanding dt.13.06.94 ("1994 MOU, for short") with the Union, agreed to pay OTA to its workers,

(a) (i) for overtime work between 6 ½ and 8 hours)i.e. intervening period) at the rate of 1.25 times of the normal duty hourly wages,

(ii) for overtime work beyond statutory 8 hours as per rate fixed under respective Shops & Establishment Act of the States.

(b) The 1994 MOU with respect to OTA was implemented by FCI within three days of its signing by its Circular dt.16.06.1994. Indisputably, at the time of signing of 1994 MOU, FCI was exempted under Shops & Establishment Act of various States. The applicability/non-applicability of the Shops & Establishment Act to FCI was not an issue because only rate is fixed there under and apparently were to be used as guideline for paying OTA for works after statutory hours. FCI has continuously paid OTA as agreed above, till the year 2004 for both the intervening period as well as for works beyond statutory hours.

(c) On 01.07.2002, FCI issued a Notice u/s 9A of the ID Act to the workers/Union, seeking to vary the rate for overtime work between 6 ½ and 8 hours (i.e. intervening period) at the rate of 1.25 times of the normal duty

hourly wages to 1.1, and for overtime work beyond statutory 8 hours as per rate fixed under respective Shops & Establishment Act of the States to 1.1.

(d) The Union, immediately raised an industrial dispute in the aforesaid matter vide its Letter dt.15.07.2002. Ld. RLC (Central) took cognizance of the industrial dispute vide its Order/Letter dt.19.07.2002 and directed the parties to be present for conciliation proceedings on 06.08.2002. In the meantime, directed the parties not to violate Section 33 of the ID Act. Accordingly, FCI suspended its Notice dt.01.07.2002 u/s 9A of ID Act, and directed its officers/offices to pay OTA to the workers as per the 1994 MOU/Circular dt.16.06.1994.

(e) The conciliation process failed. Ld. RLC (Central) recorded the failure order and filed the Failure of Conciliation ("FOC" for short) reports with the Central Government for further consideration and/or reference. Thereafter FCI issued the Circulars Nos. 1 and 2 both dated 19.01.2004 on the basis of its Notice dt.01.07.2002 and varied the rate for overtime work between 6 ½ and 8 hours (i.e. intervening period) from 1.25 times of the normal duty hourly wages to 1.1, and for overtime work beyond statutory 8 hours as per rate fixed under respective Shops & Establishment Act of the States to 1.1, to the disadvantage of the workers.

9. It is apparent that the 1994 MOU was never been terminated. Further, FCI has not issued any notice to the workers/Union for terminating the said 1994 MOU as required under Section 19(2) of the ID Act.

10. Each of the Union has filed by way of evidence of two witnesses namely; 1 Dulal Chandra Nath 2 Maheshwar Mahto who have been cross-examined by learned counsel for the management. Management has filed

affidavit of one witness namely. Mr.Tej Singh who has been cross-examined by the learned counsel for the Union.

11. Heard Mr. Abhay Kumar, learned counsel for the first party management and Mr.Anil Tiwari, learned counsel for the F.C.I. workers Union and Ms.Kunda Samant, Adv for the FCI Handling Workers' Union.

12. **SUBMISSIONS:**

(1) Learned counsel for the FCI Workers Union submitted that the 1994 MOU is a Settlement between the party within the meaning of Section 2(p) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Dispute (Central) Rules, 1957 (1957 Rules for short) which is binding upon the party under Section 18(1) read with 19(1) and (6) of the Industrial Disputes Act. Unless the same is expressly terminated by a notice under section 19(2) of the Industrial Disputes Act.

(2) It submitted that OTA rates were agreed between the parties vide 1994 MOU which was acted upon by the management vide circular dated 16.6.1994 and OTA was paid to the workers accordingly for decade till 2004. On the basis of which it was argued that the FCI's notice dated 1.7.2002 pertaining to modification of rates of OTA without terminating the 1994 MOU and the FCI Circulars No. 1 and 2 both dated 19.1.2004 issued on the basis of FCI notice dated 1.7.2002 thereby altering the rates of OTA during pendency of conciliation proceedings are arbitrary, illegal and violative of section 2(p), 18(1), 19(1) and (6) read with section 12(1) and (5) and 33 (1) of the Industrial Disputes Act, 1947. Thus the notices and circulars are void abnitio and liable to be set aside.

3. Further submitted that the FCI Management has produced the 1994 MOU as a compromise before the Hon'ble Calcutta High Court in W.P No. 452 of 1992 and settled another industrial dispute pertaining to "absorption of 323 retrenched workers of CWC Depot in West Bengal by the FCI management in FCI Depot". On this basis argument was placed that 1994 MOU taken in entirety, in the present circumstances has acquired a legal status of settlement under the Industrial Disputes Act.

4. Lastly argued that OTA benefits derived by the workers of the FCI have crystallised as "benefits derived under a Settlement under the Industrial Disputes Act.

SUBMISSION OF MANAGEMENT:

5. Learned counsel representing the FCI management has submitted that the Memorandum of Understanding dated 13.6.1994 cannot be termed as Settlement as it does not satisfy the requirements of Settlement as laid down under Section 2(p) of the Industrial Disputes Act 1947 read with Rule 58 and 75 of the Industrial Disputes (Central) Rules 1957 framed under the Act. Further, argued that for any written agreement to be treated as a Settlement, a copy thereof has to be sent by the parties to Officers authorised by the Appropriate Government and the Conciliation Officer. Further argued that mandatory requirement has not been fulfilled in this case. Hence the MOU dated 13.6.1994 cannot be termed as Settlement. It further argued that there is no mention of Memorandum of Settlement (MOU) in the I.D. Act 1947 or Rules framed there under. The entire case of the Union nests on the concept of deemed Settlement, which has no recognition under the law. Further argued that the concept of MOU mainly applies in the commercial contract where

MOU means an agreement to enter into agreement with regard to the circulars dated 16.6.1994 issued by the management, he argued that it does not refer to the memorandum of understanding dated 13.06.1994.

6. Learned counsel for the FCI management next argued that the nature of the matter covered under the MOU dated 13.6.1994 (relating to OTA) that it was not feasible to execute it. Further submitted that the Memorandum of Understanding was signed between the parties due to pressure of strike, agitation etc. of the workers. Hence it is to be appreciated that the Memorandum of Understanding was signed under peculiar and specific circumstances. Therefore, it cannot be treated to have acquired the status of Settlement at a later stage. It was the next submission of the learned counsel of the management that if the OTA rates are to be paid as per the rates prescribed under Shops and Establishment Act, irrespective of exemption, then the very purpose of obtaining exemption gets defeated. It was also argued that for application of section 2(p), section 18(1) and section (19(1) and 19(6) of the Act, the basic premise is the very existence of settlement which is completely non-existent in the present case. Lastly, argued that in view of the failure report dated 22.10.2003, and its report dated 11.11.2003, there were no pending conciliation, therefore, there was no violation of any provision of the Act, so far the two circulars dated 19.1.2004 is concerned. In Last learned counsel submitted that Unions are not justified in raising such irrational demands purely on hyper technical grounds as the same have huge financial implications on the management.

13. In the light of the above submissions raised by both the parties, before this Tribunal, the relevant provisions of the Industrial Disputes Act 1947 as stated are reproduced as below:

Section 2(p). "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorised in this behalf by] the appropriate Government and the conciliation officer;]

Section 18(1). A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Section 19(1). A settlement shall come into operation on such date as agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

Section 19(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months [from the date on which the memorandum of settlement is signed by the parties to the dispute], and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

Section 19(6). Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the party or parties intimating its intention to terminate the award.

Section 12(1). Duties of conciliation officers.—(1)Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

Section 12(5). If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board [Labour Court, Tribunal or National Tribunal] it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor.

Section 33(1). Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) In regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

Save with the express permission in writing of the authority before which the proceeding is pending.

INDUSTRIAL DISPUTES (CENTRAL) RULES, 1957.

Rule 58(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 Assistant Labour Commissioner (Central) concerned.

Rule 75 Register of settlements.—The Conciliation Officer 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.

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

14. Hon'ble Bombay High Court vide its judgment dated 22.4.2014, while setting aside the Award passed by this Tribunal, Mumbai dated 07.9.2012, remanded back with a direction to consider the legal status of the Memorandum of Understanding (MOU).

15. In this regard I have considered the oral and written submissions of both parties and the material available on record and following judicial authorities on the subject which are stated below.

Kollipara Sriramulu vs. T.Aswathanarayana & Ors ,1968 AIR 1028 and Jai Beverages Pvt Ltd. vs. State of Jammu & Kashmir and others, 2006 (4) SCJ, the Hon'ble Apex Court has held that the fact that the parties referr to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract. In another case, Hon'ble Supreme Court also held that if the conditions of the MOU are otherwise acted upon, the parties to the MOU will get the benefits arising out of the MOU. In the present context, FCI Management's sole witness in the present proceedings Mr. Tej Singh in his cross-examination dated 03.11.2011 had specifically and clearly admitted that " This is correct to say that MOU dt. 13.6.1994 continues to be operative till today." Further, it is

important to note that 1994 MOU pertaining to OTA was immediately implemented by FCI vide its circular dated 16.6.1994 and followed till 2004 meaning thereby both the parties have acted upon with the 1994 MOU with all its intent and purpose.

In Jyoti Brother vs. Shree Durga Mining Co. AIR 1956, Calcutta page 280, on the subject validity and enforceability of MOU, held that the Court will rely upon the degree of importance of such understanding to the parties and to the fact that whether any of them has acted in reliance on such understanding.

In Nanak Builders & Investors Pvt. Ltd vs. Vinod Kumar Alag AIR 1991 Del 315, held that the nature of the document is not decided on the heading but on the content that is written. Mere heading or title of a document cannot deprive the document of its real nature.

16. In the light of the above cited judgments, it can be concluded that the enforceability and binding nature of a MOU depends upon the content, nature of agreement, language and intention of the parties to it. In cases wherein the MOU is in the nature of a contract and fulfils its essentials, it is held to be enforceable. The major factor to decide whether a MOU would be binding is the intention of the parties while executing the MOU and their conduct post execution. Further in Brikram Kishore Parida vs. Penudhar Jena ,AIR 1976 Orissa (4) held that the test of an intention to create legal relation is an objective one. If a reasonable man would consider that the parties intended to enter into a contract, then he will be bound to make good on his promise. Use of the word "shall" will give a binding effect to the MOU and the use of the word "should" a non-binding effect. Another way in which intention may be displaced is to include a clause in the agreement itself saying that this agreement did not intended to be a contract.

17. Now the next question for consideration iswhether Memorandum of Understanding is like a deemed Settlement or not?

18. Following are the reasons for answering the issues framed by my learned predecessor on 21.4.2016. and my finding on giving a definite conclusion.

(1) Memorandum of Understanding (MOU) is a bilateral document which has been signed by the FCI and the Union on 13.6.1994.

(2) In pursuant of MOU and with a view to give effect to the provisions contained in the said MOU a circular has been issued by the FCI on 16.6.1994 (within 3 days) fixing 6 1/2 hours as a working hour with 30 minutes lunch break and fixing overtime allowance (OTA) payable to the Departmental Labourer @1.25 times of the hourly rate for the extra duty hour put in beyond the normal duty hour up to statutory hour of work i.e. from 6 ½ to 8 hours for intervening period and the rate for the overtime beyond statutory hour of work as prescribed in the respective Shops and Establishments Act.

(3) 1994 MOU relating to OTA was immediately implemented (within 3 days) by the FCI vide its circular dated 16.6.1994. It was followed till 2004 meaning thereby both the parties have acted upon with the 1994 MOU.

(4) 1994 MOU has never been terminated by the FCI. No written Notice of the intention to terminate the said 1994 MOU has been given by the FCI.

(5) Mr. Tej Singh the sole witness in the present proceedings examined by the FCI has stated that MOU dt.13.6.1994 continues to be operative till today.

(6) A bare perusal of the 1994 MOU with its format and content shows that it is signed by authorised Officers of the parties as provided under Rule 58 of 1957 Rules.

(7) Both the parties have acted upon and benefitted from the MOU and the workers have earned the OTA @ agreed under 1994 MOU.

(8) MOU was implemented vide circular dated 16.6.1994.

(9) In addition to above, it is important to mention that MOU was produced as a compromise before the Hon'ble Calcutta High Court in Appeal No. 452 of 1992 and FCI and Union had got settled another industrial dispute pertaining to "absorption of 323 retrenched workers of CWC Depot in West Bengal by the FCI Management in FCI Depot". This itself is indicative of fact that there is a consistent practice of entering into MOU between FCI and Workers Union for improving service conditions of its members and culminated into enjoying benefits.

(10) This shows that the MOU 1994 has acquired the legal status.

(11) Both the parties have derived the benefit for a decade between 1994 to 2004 without any protest. It is noticeable that when the MOU was signed on 13.6.1994 and in pursuance of it, notification dt.16.6.1994 was issued by the FCI, majority of the establishment of the FCI had exemption from the provisions of Shopes and Establishment Act. Inspite of the exemption, the overtime rate prescribed in various Shops and Establishment Act was made applicable. Meaning thereby the applicability of the Shops & Establishment Act was not in question when the MOU was signed further had the applicability of the Shops & Establishment Act been the basis then the MOU dt.13.6.1994 would not have been signed and pursuance to that the circular dated 16.6.1994 would not have been issued.

(12) Admittedly all Shops and Establishment Act provide that the wages for overtime work will be twice the ordinary rate of wages so it can be that how it is justified for the FCI to say that the rate of overtime

allowance will be 1.1 time of the normal hourly rate of wages. To reduce the OTA from twice the ordinary rate of wages to 1.1 times is definitely can be said to be unjust and improper. Hence, it is apparent that neither MOU 1994 was terminated nor replaced by any other Award or Settlement. In these fact situation, it is to be safely concluded that MOU is like a deemed settlement and binding on the parties and I also of the view that the Notice dt.1.7.2002 and the two circulars dt.19.1.2004 altering OTA to 1.1 times of the normal hourly rate of the wages could not sustain in the eyes of law, being unjust and improper.

(13) With regard to the notice dated 1.7.2002 under Section 9-A of the Industrial Disputes Act and the two circulars dt.19.1.2004 which alters the overtime allowances to 1.1 times of the normal hourly rate of wages, it is relevant to mention that either of the parties had not expressed its intention to terminate the MOU dt. 13.6.1994 and further the term of the said Memorandum of Understanding has not been replaced by any other Award or Settlement. In these fact situation, it is to be concluded that Memorandum of Understanding is like a Settlement and binding on the parties.

(14). The 1994 MOU is signed by Authorised Officers of the parties as provided under Rule 58 of 1957 (Central) Rules. It is admitted that both the parties failed to jointly file a copy thereof to the concerned Authorities as provided under Rule 58(4) of 1957 Rules. Further, it is admitted that its copy has not been sent to the concerned authority as provided under Section 2(p) of the Industrial Disputes Act, 1947. In this regard, I would like to mention that the said defect does not go to the root of the matter and the legal status of 1994 MOU could not said to be changed. Further, following Judicial Authorities have held that Rule 58 of 1957 Rules and part of Section 2(p) of the Industrial Dispute Act, 1947 which require copy of the MOU to be submitted to

the prescribed/appropriate authority is directory in nature and not mandatory.

(1) FCI Handling Workers' Union and others v/s UOI and others MANU/DE/2840/2013.

(2) Rajendra Singh and others vs. Union of India (UOI) and others MANU/MH/0477/2088

(3) Hindustan Zinc Workers' Union and others vs. Management of Agnigundala Lead Project , Hindustan Zinc Limited and others MANU/AP/0171/1987.

19. It is also pertinent to mention that procedural provisions are meant to facilitate justice. Technicality and Formalities should not come in the way of dispensation of justice between the parties. As I have already stated that compliance of Rule 58 and part of Section 2(p) of the Industrial Disputes Act, 1947 has already been held to be directory in nature. As stated earlier, failure of both the parties to send the copy of the MOU to the authority concerned does not go to the root of the matter and also it is directory in nature. Therefore, I am of the view that non-compliance of it, would not touch or change the status of the MOU. It may be mentioned here that OTA rates were agreed between the parties vide 1994 MOU and It was acted upon by the management vide circular dated 16.6.1994 and OTA was paid to the workers accordingly for a decade till 2004. This fact was specifically and in clear words admitted by the sole witness Shri Tej Singh examined by the management. Further, it is trite law that what cannot be done directly cannot be permitted to be done indirectly.

20. FCI has issued circular notice dated 1.7.2002 under Section 9-A of the Industrial Disputes Act, 1947. The workers' Union raised an industrial

dispute in the aforesaid matter. Conciliation proceedings started. Directions were issued to the parties not to violate provisions of Section 33 of the Industrial Disputes Act. Accordingly, FCI has suspended its Notice under Section 9-A of the Industrial Disputes Act and directed to pay OTA to the workers as per 1994 MOU/Circular dated 16.6.1994. Thereafter, Conciliation proceedings failed. Failure report was sent to the Central Government but no Reference was made to the Tribunal. Thereafter FCI management issued two circulars both dated 19.1.2004 and modified the rate of OTA work between 61/2 to 8 hours i.e. intervening period from 1.25 times of the normal hourly wages to 1.1 and for overtime for beyond statutory 8 hours to 1.1 which is to the disadvantage of the workers and it is pertinent to note that at that point of time 1994 MOU was in existence and the OTA rate was implemented till 2004. It is noticeable that the matter was referred for adjudication on 10th of November 2005. It is also important to mention that the rate of OTA as agreed in 1994 MOU was acted upon till 2004 as admitted by the FCI sole witness. Under these facts and circumstances, how the FCI issued notice dated 1..7.2002 under Section 9-A of the Industrial Disputes Act and further two circulars dated 19.1.2004 changing the overtime allowances to 1.1 time of the normal hourly rate of wages without either party expressing its intention to terminate MOU dated 13.6.1994 or without replacing the terms of the said MOU of 1994 by way of any other Award or Settlement is not understandable because I am of the view that the said MOU is binding on both the parties and as per the provisions mentioned in the Industrial Disputes Act as stated above, MOU is like a deemed Settlement.

21. It is also pertinent to note that the Shops and Establishments Act provide wages for overtime work beyond statutory duty hours will be twice the ordinary rate of wages then how it is justified for the management to say that

the rate of overtime allowances will be 1.1 times of the normal hourly rate of wages and further to reduce overtime allowance from twice the ordinary rate of wages to 1.1 times. To my point of view it could definitely be stated to be unfair, unjust and improper.

22. In view of the above discussion and for the reasons stated above, my conclusion is as follows:

(1) MOU dated 13.06.1994 is binding on both the parties.

(2) MOU is like. Deemed Settlement.

(3) Notice dated 1.7.2002 and thereafter the two circulars dated 19.1.2004 which has altered the overtime allowance from 1.25 times to 1.1 times of the normal hourly rate of wages are to be quashed, accordingly hereby quashed and the rate of overtime allowance as prescribed in the circular dated 16.6.1994 by the FCI in pursuance of the MOU dated 13.6.1994 are to be restored and is accordingly hereby restored

23. In view of the aforesaid reasons and discussion, following are the answers to the Issues framed on 21.4.2016.

(1) Whether the document dated 13.06.94 followed by the Circular dated 16.06.1994 acquired status of Settlement as contemplated under the Industrial Disputes Act, 1947 and was binding between the parties?

Ans. YES

(2) Whether on the facts and in the circumstances of the case, Notice dated 01.07.2002 issued by Food Corporation of India under Section 9-A of the Industrial Disputes Act, 1947 and legal and valid?

NO

(3) Whether on the facts and in the circumstances of the case, Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and valid?

Ans. NO.

(4) Whether the document dated 13.06.94 followed by Circular dated 16.06.94 could be superseded by Food Corporation of India by issuing Circulars Nos. 1 and 2 both dated 19.01.2004?

Ans. NO

(5) Whether action of Food Corporation of India in reducing the overtime wages of its food handling workers from 1.25 times to 1.1 times of the normal rate of wages for overtime work between 61/2 and 8 hours, both by Circular Notice dt.01.07.2002 and Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and justified?

Ans. NO.

(6) Whether action of Food Corporation of India in reducing the overtime wages of its food handling workers from those as per Shops & Establishment Act of the respective States to 1.1 times for work beyond 8 hours, both by Circular Notice dt.01.07.2002 and Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and justified?

Ans. NO.

To what relief, if any, the second party/Union is entitled?

Ans. Notice dated 1.7.2002 and two circulars dated 19.1.2004 are quashed and the rate of overtime allowance as prescribed in the Circular dated 16.6.1994 issued in pursuance to the MOU dated 13.6.1994 are restored and payment of arrears to be made accordingly.

Award is passed accordingly.

Sd/-

(JUSTICE RAVINDRANATH KAKKAR)

PRESIDING OFFICER 19.1.2004

राष्ट्रीय औद्योगिक अधिकरण NATIONAL INDUSTRIAL TRIBUNAL सत्यमेव जयते MUMBAI मुंबई

सही प्रतिलिपि
TRUE COPY

Secretary to the Court
National Industrial Tribunal
Mumbai.