
(2005) 02 MP CK 0060

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 197 of 2003

H.M. Awasthy and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 2

Citation : (2005) ILR (MP) 575 : (2005) 3 MPHT 264 : (2005) 2 MPJR 311 :
(2005) 3 MPLJ 329

Hon'ble Judges : R.V. Raveendran, C.J.;Shantanu Kemkar, J

Bench : Division Bench

Advocate : Atul Upadhyay, for the Appellant; Indira Nair and Channa, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, C.J.

The petitioners are employees of Ordnance Factory, Katni. They were posted as Examiners in the Electric Maintenance Section. They were paid incentive bonus as were paid to the maintenance workers. Subsequently, the respondents stopped payment of incentive bonus on the ground that they are not entitled for the same. The respondents also ordered recovery of the amount wrongly paid. Feeling aggrieved, the petitioners approached the Central Administrative Tribunal, Jabalpur Bench in O.A. No. 635/2002 for quashing the order of recovery and for a direction to respondents to continue to pay the incentive bonus. The Tribunal by order dated 3-4-2003 dismissed the application on the ground that a claim relating to incentive bonus can not be said to be a dispute relating to "service matter" and, therefore, it can not be the subject matter of a dispute before the Tribunal. The said order is challenged in this petition.

Section 14 of the Administrative Tribunals Act, 1985 ("Act" for short) provides that Central Administrative Tribunal constituted under the Act will have the

jurisdiction over matters relating to recruitment and all service matters (save as otherwise expressly provided in the Act) of the classes of persons mentioned therein. "Service matters" is defined u/s 2(q) of the Act in relation to a person as meaning all matters relating to condition of service in respect of remuneration (including allowances), Pension and other retiral benefits, leave, disciplinary matters or any other matter whatsoever. The expression "service matter" is thus of very wide amplitude.

It was contended by the respondents that any Bonus, being in the nature of a gift or gratuity, is an "Ex gratia payment" and therefore, will not fall under "remuneration", referred to in Section 2(q) of the Act. "Remuneration" is the consideration paid or payable to an employee for the services rendered by him. It will not only include the monthly emoluments (pay and allowances), but all monetary benefits given in recognition and in consideration of the services rendered by him. In that sense, an "Incentive Bonus" which is nothing but an extra emolument for the extra effort put in by the employees, will be a "remuneration". This is evident from a series of decision of the Supreme Court.

1. In *Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur*, , the Supreme Court defined "Bonus" as a cash payment made in addition to wages as a stimulus to extra work and efficiency by the labour.

2. In *Titaghur Paper Mills Co. Ltd. Vs. Its Workmen*, and in *National Iron & Steel Co. Ltd. v. Their Workmen* (AIR 1962 SC 325), the Supreme Court held that incentive and production bonus are nothing but further emoluments to the employees, depending upon production, as an incentive or encouragement to the employees to put in more than the standard performance. It was further held that once a scheme of incentive bonus was introduced, the right to claim such bonus became a condition of service of the employees. In fact the Supreme Court in *Burn & Co. (Howrah Iron Works) v. Their Employees* 1960 (2) LLJ 261 and *Hindustan Steel Ltd. v. State of Orissa* (CA No. 1969 of 1969, decided on 4-4-1975) held that the employees in non-production departments like clerical and sub-ordinate staff in an industry are deemed to contribute towards the production and therefore any scheme for incentive and production bonus would cover them also.

The Tribunal has placed reliance on the decision of the Supreme Court in *The Secretary, Central Board of Direct Taxes and Others Vs. B. Shyam Sunder*, . In that case, the question related to entitlement of an Assessing Officer to claim a share in the reward, for additional income brought to tax as a result of a search and seizure operation. The claim was under the Reward Scheme, 1985, introduced by the Central Board of Direct Taxes, providing for reward amount payable to Officers and Staff of Income Tax Department who contributed to the collection of intelligence, surveillance, effecting seizure etc. The Supreme Court held on merits that the employee claiming the benefit, had not contribute to the search and seizure and, therefore, not entitled to part of the reward. Thereafter, the Supreme Court also observed that such a question can not be agitated before

the Administrative Tribunal on the following reasoning :-

"9. Even on the question of jurisdiction it seems that the matter was outside the purview of the Tribunal. u/s 14 of the Administrative Tribunal Act, 1985, the Tribunal has jurisdiction power and authority in relation "service matters". "Service matters" include remuneration (including allowances), pension and other retirement benefits. The reward amount was purely ex gratia payment. It is difficult to treat it as a condition of service. Further it is difficult to comprehend how such ex gratia payment can be treated as remuneration of the kind postulated by the Act. But in view of our decision on merits, we do not consider it necessary to examine this aspect in depth." (Emphasis supplied)

The petitioners contend that the said observation is only tentative, and not an expression of a final opinion after reference to the relevant provisions and, therefore, is an obiter which is not binding. But even obiter dicta of the Supreme Court is to be given the greatest weight and should be accepted as binding. But the question is whether the decision is applicable to an Incentive Bonus. The decision does not relate to payment of a remuneration or allowance. It related to a ex-gratia reward paid to the officers and staff who participated in search and seizure action, under a Scheme of CBDT. Such reward was linked to "additional income brought to tax"; and if, no additional income was brought to tax, there was no reward, in spite of the effort. On the other hand an "Incentive Bonus" is linked to "extra production" and not "extra profit". To put it differently, an incentive bonus is in recognition of the "effort" by the employee and not the extra "profit" earned by the employer, whereas the reward under Income Tax Department Scheme depended not on the "effort of the employee", but the extra "profit" that is tax generated to the employer. Thus the concept of "Incentive Bonus" is completely different from the concept relating to reward under the CBDT Scheme considered in Shyamsunder's case. Therefore, the observations in Shyamsunder will not apply.

We are therefore, of the view that Incentive Bonus is a matter that will fall under the wide definition of "service matters" relating to remuneration in respect of which the Central Administrative Tribunal has jurisdiction. Similarly the question of wrong recovery from salary, on whatsoever ground, is also a "service matter" which falls within the jurisdiction of the Administrative Tribunal.

We therefore, allow this petition, set aside the order of the Tribunal and remit the matter to the Tribunal. The Original Application shall stand restored on the file of the Tribunal for disposal on merits. Nothing stated above shall however be construed as expression of any opinion on the merits of the matter.