Burn & Co., Calcutta vs Their Employees(And Connected Appeal) on 11 October, 1956

Equivalent citations: 1957 AIR 38, 1956 SCR 781, AIR 1957 SUPREME COURT 38, 1957 (1) LABLJ 226, 1957 SCJ 28, 1956-57 11 FJR 217

Bench: Natwarlal H. Bhagwati, S.K. Das, P. Govinda Menon

PETITIONER:
BURN & CO., CALCUTTA

Vs.

RESPONDENT:
THEIR EMPLOYEES(and connected appeal)

DATE OF JUDGMENT:
11/10/1956

BENCH:
AIYYAR, T.L. VENKATARAMA
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AIYYAR, T.L. VENKATARAMA
BHAGWATI, NATWARLAL H.
DAS, S.K.
MENON, P. GOVINDA

CITATION:
1957 AIR 38 1956 SCR 781

ACT:
Industrial Dispute-Tribunal's award-Term of operation-If and when can be reopened in a subsequent dispute-Principle of res judicata, if applicable-Bonus-Claim when maintainable-Order passed by the Appellate Tribunal-Appealability-Power of Supreme Court in appeal-Industrial Disputes Act (XIV of 1947), s. 19(6)Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950), s. 7(1)(a)-Constitution of India, Art. 136.

HEADNOTE:
An award of an Industrial Tribunal is intended to have a long term of operation, and can be reopened under s. 19(6) of the Industrial Disputes Act-XIV of 1947 only when there has been a material change in the circumstances on which it was based.
To hold otherwise would be to defeat the two basic objects

which all industrial legislations have in view, namely, to ensure to the workmen, a fair return for their labour and to prevent disputes between the employers and employees, so that production might not be affected and the interests of the society might not suffer.

That although the rule of res judicata as enacted by s. 11 of the Code of Civil Procedure does not in terms apply to such an award, its underlying principle which is founded on sound public policy and is of universal application must apply.

The Army & Navy Stores Ltd., Bombay v. Their Workmen, ([1951] 2 L.L.J. 31) and Ford Motor Co. of India Ltd. v. Their Workmen, ([1951] 2 L.L.J. 231), approved and applied.

Sheoparson Singh v. Bamnandan Prasad Singh, ([1916] L.R. 43 I.A. 91), referred to.

Consequently, where, as in the instant case, the Union of the employees of a certain section of the appellant Company served a notice on the Company under s. 19(6) of the Act terminating a previous award which had applied to its members the scales of pay and dearness allowance fixed by the Bengal Chamber of Commerce with slight modifications, and demanded that the more favourable Scale of pay adopted by the Mercantile Tribunal in its award might be applied to them, and the Tribunal appointed to adjudicate the dispute, held that, there having been no change in the circumstances in which the previous award had been made, the same was binding between the parties and could not be modified, but the Appel-

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late Tribunal in appeal held otherwise and brushed aside the previous award, held that the order of the Appellate Tribunal was erroneous in law and as such liable to be set aside.

Hold further, that the reason for the grant of a bonus being that the workers should be allowed to share in the prosperity to which they have contributed, unless the profits for a particular year were adequate for a payment of bonus to all the workers of the Company in all its sections, no claim for it could at all arise either in law or equity.

Karam Chand Thappar & Bros.' Workmen v. The Company ([1953] L.A.C. 152), referred to.

That an order passed by the Tribunal refusing reinstatement would be appealable under s. 7(1)(a) of the Industrial Disputes (Appellate Tribunal) Act of 1960 if it involved a substantial question of law and it was not necessary to decide in the present case whether the decision of the Appellate Tribunal that an appeal lay to it under that section was final and not open to question in a civil court, as the correctness of that decision was challenged not collaterally or in an independent proceeding but in an appeal under Art. 136 of the Constitution and it was open to the Supreme Court in such an appeal to consider the legality

or otherwise of the orders passed either by the Tribunal or by the Appellate Tribunal in appeal.
Pankaj Kumar Ganguli v. The Bank of India, ([1966] 60 C.W.N. 602) and Upper Ganges Valley Electric Employees Union v. Upper Ganges Valley Electricity Supply Co. Ltd. and another, (A.I.R. 1956 All. 491), distinguished.
That the omission to draw up a formal charge-sheet against a workman could not vitiate an order of dismissal if he was aware of the charge framed against him and had an opportunity of offering his explanation.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 325 of 1955 and 174 of 1956.

Appeal by special leave from the decision and order dated the 29th April 1955 of the Labour Appellate Tribunal of India at Calcutta in Appeal No. Calcutta-110 of 1953 arising out of the award dated 24th June, 1953, of the Industrial Tribunal, Calcutta.

M. C. Setalvad, Attorney-General for India, B. Sen, S. N. Mukherji and B. N. Ghosh for M/s. Burn & Co.

N. C. Chatterji, A. K. Dutt and B. P. Maheshwari for the workmen.

1956. October 11. The Judgment of the Court was delivered by VENKATARAMA AYYAR J.--.Disputes having arisen between Messrs Burn and Company, Calcutta, hereinafter called the Company, and a section of their employees in Howrah Iron Works, hereinafter referred to as the Union, the Government of West Bengal issued a notification on 16-12-1952 referring the same to the First Industrial Tribunal for adjudication. Though there were as many as 13 items comprised in the reference, we are concerned in these appeals only with four of them, viz., (1) revision of pay of clerical and sub- staff, (2) grades of sarkars and checkers, (3) bonus and (4) reinstatement of four employees, S. N. Chatterjee, Ashimananda Banerjee, Panchanan Rana and Joydeb Banerjee and/or payment of compensation-to them. By his award dated 24-6-1953, Shri Banerji, the Industrial Tribunal, held (1) that there were no grounds for revising the scale of pay of the clerical and sub-staff; (2) that the pay of checkers should be increased and that they should be paid according to the scale as set out in his award; (3) that the profits of the Company did not warrant the grant of any bonus in addition to what had been paid by the Company; and (4) that of the four employees, Shambunath Chatterjee should be re- employed as a checker on his old pay, that Ashimananda Banerjee and Panchanan Rana should be "re-employed in posts equivalent to their own posts as new incumbents" and that Joydeb Banerjee was not entitled either to reinstatement or compensation.

Against this award, the Union preferred an appeal to the Labour Appellate Tribunal. By its decision dated 29-4-1955 the Appellate Tribunal substantially modified the award of Shri Banerji in favour of the Union it held (1) that the minimum pay of the clerical and sub-staff should be raised, and that corresponding changes should be made in the ceiling level, in the increments and in the scales of pay

of other grades of the staff; (2) that the scale of pay of the sarkars and checkers should be increased and incre-

ments given as laid down in the award; (3) that the employees should be paid a month's bonus in addition to what had been given to them; and (4) that of the employees, Shambunath Chatterjee, Ashimananda Banerjee and Panchanan Rana should not merely be re-employed but reinstated with continuity of service, and that further Shambunath Chatterjee was entitled to compensation at the rate of six months' basic wages with dearness allowance. As for Joydeb Banerjee, the Appellate Tribunal held that though his reinstatement was not desirable, he was entitled to one year's basic wages with dearness allowance as compensation. Against this decision, the Company has preferred Civil Appeal No. 325 of 1955 by special leave, and the Union has likewise preferred Civil Appeal No. 174 of 1956, the leave being limited in the latter to the four points raised by the Company in its appeal.

(1) The first question relates to the increase in the minimum wages of the clerical and sub-staff. For a correct understanding of the true position, it is necessary to refer to the facts which form the background of the present dispute. In 1946, the Bengal chamber of Commerce took up the question of fixing, suitably to the changed conditions brought about by World War II, wages and other terms of service of the employees in industrial concerns, and framed a scheme classifying them under different categories, and fixing scales of pay and dearness allowance for the several categories, and that was brought into force in the Company on 1-10-1946. Under this scheme, the scale of pay for the lower categories of employees, with whom we are concerned in these appeals, was as follows:

> Class- of employees Basic monthly pay range Junior clerks Rs. 60-2-90 Tracers 60-2-80 Clerks 60-4-124 (E. B. at 105) Typists 60-4-90 Steno-typists Comptometer 80-4-124 (E. B. at 105) Operators Juniors (Drg. and Estg.)60-4-88-2-100 Junior Draftsmen 92-4-124-2-134 Junior Estimatorsr Disputes then arose between Engineering Firms in the State of West Bengal and their employees as regards fixation of grades, wages and dearness allowance, and by a notification dated 31-10-1947 the Government referred them to the adjudication of the First Engineering Tribunal. The appellant Company and its workmen were parties to the proceedings but not the present Union, which was composed of the clerical and sub-staff. On 30-6-1948 the Tribunal passed an award, the terms whereof were, in general, less favourable to the employees than those fixed by the Bengal Chamber of Commerce and adopted by the Company on 1-10-1946. While the proceedings were, pending before the Engineering Tribunal, disputes arose between-various Mercantile Firms in Calcutta and their employees as regards wages, dearness allowance and other terms of service, and by notification dated 17-1-1948 the Government of West Bengal referred them to the adjudication of another Tribunal, called the Mercantile Tribunal. This Tribunal pronounced its award on 26-8-1949, and the scale of pay provided therein for the lower categories of employees was as follows:
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> Grade D Rs. 70-3-130 Grade C Rs. 70-4-134 The Union was party No. 192 in those proceedings, but for technical reasons, the Tribunal declined to adjudicate on their

disputes. The result was that this award was no more binding on the parties than the one passed by the Engineering Tribunal. But the scale fixed in the award of the Mercantile Tribunal was decidedly more favourable to the employees than either the scale recommended by the Bengal Chamber of Commerce and adopted by the Company on 1-10-1946 or that fixed in the award of the Engineering Tribunal, and it -is therefore not surprising that it should have inspired the Union to present a demand for wages and dearness allowance on the scales provided therein. The Company having declined to accept it, there arose an industrial dispute, and by a notification dated 18- 1-1950, the Government of West Bengal referred the same for adjudication to one Shri Palit, District Judge. Before him, the Company contended that as the members of the Union were employees in an Engineering concern, the scale of pay applicable to' them was that laid down in the award of the Engineering Tribunal, and that as the scale actually in force was more favourable to them than that scale, there was no ground for revision. The Union, on the other hand, contended that not having been a party to the proceedings before the Engineering Tribunal, it was not bound by the award therein, and that as its members were clerical staff and not workers, the scales fixed in the award of the Mercantile Tribunal were more appropriate to them. By his award dated 12-6-1950 shri Palit held that the nature of the work and the qualifications of the clerical staff were not the same in all business establishments, that the clerks in mercantile concerns were better qualified and had to do more onerous work than the members of the Union, that the latter could not be put in the same position as the former, and that the scale of pay fixed in the scheme of the Bengal Chamber of Commerce which was adopted by the Company was fair and required no revision. He, however, made some slight changes in the incremental scales and the maximum limits of the grades. The scheme as settled in his award with reference to the categories involved in this appeal was as follows:

Grade Class of employees Pay according to the award of Shri Palit "D" Junior Clerks 60-3-96 Tracers 60-3-90 Clerks 60-4-140 (E.B. at 100) Typists 60-4-100 Stenotypists and Comptometer Operators 80-4-124 (E.B. at 120) "C" Junior (Drawing and Estimating) 60-4-120 Junior Draftsmen _ Junior Estimators 92-4-140.

The Union preferred an appeal against this award, but that was dismissed as barred by limitation.

Under section 19(3) of the Industrial Disputes Act XIV of 1947, an award is to be in operation for a period of one year, and under section 19(6), it is to continue to be binding on the parties even thereafter, until terminated by either party by giving two months' notice. Acting on this provision, the Union issued a notice to the Company on 12-7- 1951 being exactly one year from the date of publication of Shri Palit's award dated 12-6-1950, declaring its intention not to be bound by it. This was followed in November by presentation of demands including' one for raising the scale of pay to the level adopted in the -award of the Mercantile Tribunal, and the result was an industrial dispute, which is the subject-matter of the present reference. Shri Banerji,

who heard the ,reference, held that the question as to the scale of pay had been directly adjudicated upon by Shri Palit, that, on principle, the decision of a Tribunal on a matter referred to it should not be disturbed, unless there had been a change of circumstances since the date of the award, and as none such existed,, the wage structure as fixed by him should stand. The Appellate Tribunal disagreed with this conclusion. It held that the award of Shri Palit, which Shri Banerji accepted, was bad for the reason that it had failed to examine "the question as to whether the minimum salary fixed by the Managing Agents was adequate to cover the cost of a balanced diet and provide frugal comforts which a workman of the clerical staff must have to maintain the efficiency of his work". It then referred to the opinion of Dr. Akroyd that an intake of 2,600 calories of food was necessary for efficiency of work, quoted some decisions of the Labour Tribunal in which the minimum pay of the clerical staff had been fixed at Rs. 70 and even more, and decided that the minimum pay should be fixed at Rs. 65 per mensem for the clerical and sub-staff of the Company. Having raised the floor level of the wage structure as aforesaid, it correspondingly raised the ceiling level and the scales of increment, and further with a view to maintain the differential scales as between the different categories, it raised the minimum pay in scales where it stood at Rs. 65 and more, with "consequential change in their incremental scales and the maximum grades".

It is argued for the appellant Company that the Appellate Tribunal was in error in brushing aside the award of Shri Palit and in deciding the matter afresh, as if it arose for the first time for determination, that when once a dispute is referred to a Tribunal and that results in an adjudication, that must be taken as binding on the parties thereto, unless there was a change of circumstances, and as none such had been alleged or proved, the award of shri Palit should, have been accepted, as indeed it was by Shri Banerji, and the decisions in The Army & Navy Stores Ltd., Bombay v. Their Workmen(1) and Ford Motor Co. of India, Ltd. v. Their Workmen(1) were cited in support of this contention. In the instant case, the Labour Appellate Tribunal dismissed this argument with the observation that was "a rule of prudence and not of law". If the Tribunal meant by this observation that the statute does not enact that an award 'should not be re-opened except on the ground of change of circumstances, that would be quite correct. But that is not decisive of the question', because there is no provision in the statute prescribing when and under what circumstances an award could be re-opened. Section 19(4) authorises the Government to move the Tribunal for shortening the period during which the award would operate, if "there has been a material change in the circumstances on which it was based". But this has reference to the period- of one year fixed under section 19(3) and if that indicates anything, it is that would be the proper ground on which the award could be reopened under section 19(6), and that is what the learned Attorney-General (1) [1951] 2 L.L.J. 31.

(2) [1951] 2 L.L.J. 231 contends. But we propose to consider the question on the footing that there is nothing in the statute to indicate the grounds on which an award could be reopened. What then is the position? Are we to hold that an award given on

a matter in controversy between the parties after full hearing ceases to have any force if either of them repudiates it under section 19(6), and that the Tribunal has no option, when the matter is again referred to it for adjudication, but to proceed to try it de novo, traverse the entire ground once again, and come to a fresh decision. That would be contrary to the well recognised principle that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. It is on this principle that the rule of res judicata enacted in section II of the Civil Procedure Code is based. That section is, no doubt, in terms inapplicable to the present matter, but the principle underlying it, expressed in the maxim "interest rei publicae ut sit finis litium", is founded on sound public policy and is of universal application. (Vide Broom's Legal Maxims, Tenth Edition, page. 218). "The rule of res judicata is dictated" observed Sir Lawrence Jenkins, C.J. in Sheoparsan Singh v. Ramnandan Prasad Singh(1)."by a wisdom which is for all time". And there are good reasons why this principle should be applicable to decisions of Industrial Tribunals also. Legislation regulating the relation between Capital and Labour has two objects in view. It seeks to ensure to the workmen who have not the capacity to treat with capital on equal terms, fair returns for their labour. It also seeks to prevent disputes between employer and employees, so that production might not be adversely affected and the larger interests of the society might not suffer. Now, if we are to hold that an adjudication loses its force when it is repudiated under section 19(6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work it, either party will treat it as a (1) [1916] L.R. 43 I.A. 91; [1916] I.L.R. 43 Cal. 694. 103 mere stage in the prosecution of a prolonged struggle, and far from bringing industrial peace, the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour. On the other hand, if we are to regard them as intended to have long term operation and at the same time hold that they are liable to be modified by change in the circumstances on which they were based, both the purposes of the legislature would be served. That is the view taken by the Tribunals themselves in The Army & Navy Stores Ltd., Bombay v. Their Workmen(1) and Ford Motor Co. of India Ltd. v. Their Workmen(2), and we are of opinion that they lay down the correct principle, and that there were no grounds for the Appellate Tribunal for not following them.

We should add that the Appellate Tribunal was also in error in thinking that Shri Palit had failed to advert to the principle on which basic wages should be fixed, and that he had not referred to the doctrine of Dr. Akroyd about the need for a balanced diet of 2,600 calories. It is true that Shri Palit does not in terms refer to these matters in his award. But they were all discussed in the awards of both the Engineering Tribunal and the Mercantile Tribunal. The dispute between the parties was whether the one award or the other should be taken as the basis for fixation of the scale of pay, and Shri Palit decided that it was the Engineering Tribunal's award and not the other that was more appropriate to the class of employees, of which the Union was composed. In basing his award on the award of the Engineering Tribunal, Shri Palit must be taken to have considered all the factors relied on by the Tribunal for fixing the scales and the criticism that the award does not refer to them once

again is one of form rather than of substance. We must, therefore, hold that the decision of the Appellate Tribunal cannot be maintained even on its own ground. The position then is this: The question of scales of pay was decided by Shri Palit in his award dated (1) [1951] 2 L.L.J. 31.

(2) [1951] 2 L.L.J. 231.

12-6-1950, and the Union was a party to it. It is not alleged that there has been any change in circumstances between that date and 16-12-1952 when the present reference was made to Shri Banerji. On the principles stated above, therefore, the award of Shri Palit should not be disturbed. This conclusion would have entailed the reversal of the order of the Appellate Tribunal and the restoration of the award of Shri Banerji. We are of opinion, however, that the scale fixed by the Appellate Tribunal In its order dated 29- 4-1955 should not be interfered with, in so far as it fixes the minimum pay of the clerical and sub-staff at Rs. 65 per mensem. It is common ground that dearness allowance is payable under the rules of the Company, only when the cost of living index exceeds point 180. The basic wages should therefore be fixed with 180 point as cost of living index. When we turn to the award of the Engineering Tribunal, we find that it fixed the basic wages after taking the cost of living index as 160 points. Before Shri Palit, the Company contended that the scale fixed in the award of the Engineering Tribunal should form the basis of fixation of the pay scale of the Union, and though the Tribunal held that the award was not as such binding on the Union, it agreed with the Company that it was the scale fixed therein and not that fixed in the award of the Mercantile Tribunal that was more appropriate to the clerical staff of an Engineering concern, and adopted the scale fixed by the Company on 31-10-1946 as being "slightly in advance of the terms contained in the Engineering Tribunal's award". It is clear from a reading of the award of Shri Palit that he was not conscious that the basic wages had been fixed by the Engineering Tribunal with point 160 as the cost of living index, and his observation that the scale adopted by the Company was an advance on that fixed by the Engineering Tribunal is consistent only with an assumption by him that the basic wages bad been fixed both by the Company and the Engineering Tribunal with point 180 as the cost of living index. Now, if we are to accept the scale fixed in the award of Shri Palit as did Shri Banerji, the position would. be that while for purposes of basic wages the cost of living index point would be 160, for purposes of dearness allowance it would be 180, and that would work great injustice on the workers. It is the realisation of this fact that must have led Mr. Bose, counsel for the Company' to raise at a late stage of the hearing of the appeal the contention that the 'cost of living index of the Bengal Chamber of Commerce which was adopted by the Company was different from that of the Government. But this contention went against the admission made by Mr. Sen on behalf of the Company at an earlier stage, and was rightly rejected by the Appellate Tribunal and that was abandoned before us. There is thus, on the face of the record, an error of a fundamental character.

It is argued for the appellant that this point is not open to consideration at this stage, as it had not been raised by the Union at any time before, and that, in any event, the matter should be remanded for further enquiry. But the question is whether in view of what appears on the face of the record this is a fit case for our interference in special appeal. The minimum pay fixed by the Appellate Tribunal would be quite proper if the cost of living index is taken, for the purpose of fixing the basic wages, at point 180 instead of 160, and there is no reason why we should not accept it. Nor do we

think that a remand is called for in the interests of justice, as, in the face of the undisputed facts, it can only result in the proceedings dragging on and the relationship between the parties deteriorating. Under the circumstances, we do not propose to disturb the minimum pay of Rs. 65 per mensem fixed by the Appellate Tribunal. But we see no justification for raising either the ceiling levels or the starting pay of other categories of employees whose initial pay was Rs. 65 per mensem or more. We accordingly set aside the scale of pay as fixed by the Appellate Tribunal and restore that of Shri Banerji subject to the following modifications:

Grade D Junior clerks	Rs. 65-3-98
Tracers	65-3-92
Grade C Clerks	65-4-141 (E.B.'at 105)
Typists	65-4-101
Junior (Drawing and Estimating)	65-4-121

(2) The second question relates to the grading of sarkars and checkers. The claim put forward on their behalf is that they should be raised to the category of clerks. This was rejected by Shri Palit in his award dated 12-6-1950 and again by Shri Banerji in those proceedings. The Appellate Tribunal before whom this claim was repeated, while observing that the work of sarkars and checkers was "not of the same nature as that of the members of the clerical staff", held, nevertheless, that the scales of pay fixed in the award of the Engineering Tribunal for clerks should be applied to them, and that therefore non-matriculate sarkars and checkers should be put on Rs. 55-2 1/2-80 scale and matriculate sarkars and checkers on Rs. 60-2 1/2-90 scale. We are unable to uphold this order. When once the Appellate Tribunal reached the conclusion that the sarkars and checkers could not be put in the same category as clerks, the question then is simply whether any grounds had been made out for interfering with the fixation of pay scales by Shri Banerji. So far as the sarkars are concerned, the scale had been fixed by Shri Palit, and Shri Banerji adopted it. As no change' in the circumstances was alleged in support of a revision thereof, there was no ground for interfering with it. As for checkers, they are hourly rated workers, and Shri Banerji had revised their pay scale. Apart from stating that "the ends of justice"

> required it, the Appellate Tribunal gave no reason for modifying his award. We are of opinion that the order of the Appellate Tribunal should be set aside both in respect of sarkars and checkers and the award of Shri Banerji restored.
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> (3) On the question of bonus, the facts are that the Company had an elaborate scheme for granting bonus and the employees had been paid in accordance therewith. But the Union claimed that having regard to the profits made by the Company, the employees should be paid three months' basic wages as bonus for the years 1950 and 1951. It is not in dispute that the profits of the Company available for distribution for the year 1950 were Rs. 3.81 lakhs and for the year 1951, even less. The monthly salary of the clerks, sub-staff, sarkars and checkers was Rs. 89,500 and the monthly wages of the workers were Rs. 1,75,000, making a total of Rs. 2,64,500. This is only for one factory, the Howrah Iron Works. The Company owns nine other units

at different places, and there is no evidence as to the monthly salary payable to the employees and workmen in those units. Now, the surplus of Rs. 3.81 lakhs in the hands of the Company represents the total profits made by it in all its units, and there cannot be much of a doubt that this amount would be wholly insufficient to pay one month's basic wages as bonus to the employees of the Company in ,all its, ten units. Shri Banerji accordingly held to at the profits of the, Company did not justify the grant of any bonus beyond what the Company had granted, and simplifying the complicated scheme of bonus which the Company had evolved, he directed that bonus should be paid, including what had been paid by it, at one month's basic pay. The Appellate Tribunal when dealing with this question agreed that "if all categories of workmen be paid bonus, there is no scope for the payment of any additional bonus". But it held that as the other categories of workmen had not made any claim for bonus and as the amount payable to the members of the Union was only Rs.

89,000, the surplus was sufficient to justify the award to them only of another month's basic wages as bonus. Whether we consider the question on principles of law or of equity, this conclusion is clearly unsound. In law, a claim for bonus will be admissible only if the business had resulted during the year in sufficient profits. And as the reasons for the grant of bonus is that workers should share in the prosperity to which they have contributed, all of them would have the right to participate in it. Therefore, profits can be said to be sufficient to declare a bonus only if they are sufficient to make a payment to all of them. If the profits are not sufficient for that purpose, then the very, condition on which bonus could be declared would be absent, and no question of granting any bonus could arise. As it is common ground that the profits of the Company are not sufficient to justify the award of bonus if it is to be paid to all the workers of the Company in all its units, it follows that there is in law no ground for the grant of bonus. Nor can such a claim be sustained in equity. The entire profits of the Company are the result of the labour of all the workmen and employees in all its units. To grant a bonus to a section of them on the basis of the total profits of the Company will be to give them a share in profits to which they have not contributed. We are wholly unable to appreciate the observation of the Appellate Tribunal that to refuse additional bonus to the Union employees would be to penalise them " not for their own fault but for the laches of the coworkers, who abandoned their claim". The Tribunal forgets that, on its own finding, if all the workmen made a claim, no bonus could have been declared. It is not a question of their abandoning their claim but of their realising that they have none. If the order of the Appellate Tribunal is to be given effect to, some of the employees of the Company would get a bonus, while others not, and as observed in Karam Chand Thappar & Bros.' Workmen v. The Company(1), that must lead to disaffection among the workers and to further industrial disputes. The order of the Appellate Tribunal awarding an additional one months basic wages as bonus is neither legal nor just and must be set aside and the award of Shri Banerji as regards bonus restored.

(4) It remains to deal with the question of the re- instatement and/or compensation of four employees, S. N. Chatterjee, Ashimananda Banerjee, Panchanan Rana and Joydeb Banerjee. It has been already stated that the order of Shri Banerji with reference to them was modified by the Appellate Tribunal by awarding compensation at the rate of six months' basic wages (1) [1953] L.A.C. 152,160.

to S. N. Chatterjee and one year's basic wages with dearness allowance to Joydeb Banerjee and by providing that S. N. Chatterjee, Ashimananda Banerjee and Panchanan Rana should not merely be re-employed but reinstated with continuity of service.

It is argued for the appellant that under section 7 of the Industrial Disputes (Appellate Tribunal) Act XLVIII of 1950, the order of the Tribunal refusing reinstatement was not open to appeal, as it is not one of the matters set out in section 7(1)(b), and that, in consequence, the order of the Appellate Tribunal in so far as it modified the order of the Tribunal as regards the four employees aforesaid, was without jurisdiction, and the decision in Ranganathan v. Madras Electric Tramways(1) and Sudershan Steel Rolling Mills v. Their Workmen(2) were relied on in support of this contention. It must be mentioned that retrenchment is one of the matters enumerated in section 7 (1) (b), in respect of which an appeal would lie. But if the order is one of dismissal, it cannot be said to be one of retrenchment as that word is ordinarily understood, and will not be appealable under section7(1)(b). In 1953 the legislature enacted the Industrial Disputes (Amendment) Act XLIII of 1953 wherein "retrenchment" was for the first time defined so as to include, subject to certain exceptions, the termination by the employer of the service of workmen for any reason whatsoever. (Vide section 2(oo)). Under this definition, an appeal would be competent under section 7 (1)

(b) (vii) in the case of termination of service, subject to the exceptions specified therein. But this Act came into force on the 24th December 1953, and as there is nothing in it giving retrospective operation to this definition, the rights of the parties to the present appeal would remain unaffected by it. Act XLIII of 1953 replaced Ordinance No. V of 1953, wherein also retrenchment was defined as including, subject to exceptions all termination of service; but that also came into force only on the 24th October 1953, whereas the present appeal was filed on 19-8-1953. On that date, the order of the Tribunal refusing (1) A.I.R. 1952 Mad. 669.

(2) [1956] 2 L.L.J. 64.

reinstatement was not open to appeal, and the order of the Appellate Tribunal modifying it would therefore be without jurisdiction and void.

But it is argued for the respondent that an award of the Tribunal refusing reinstatement would be appealable under section 7 (1) (a') if it involved a substantial question of law, and that as the contention of the employees was that the orders dismissing them were bad as having been passed in contravention of ,the rules of natural justice, that was a question of law on which an appeal was competent. It was further contended that when a question arises whether a Tribunal has jurisdiction over the subject-matter, it must be competent to decide whether the preliminary conditions exist, on which its jurisdiction depends, and its decision on that question is not liable to be attacked in civil courts, and that accordingly the assumption of jurisdiction by the Appellate Tribunal on the footing that there was a substantial question of law was not liable to be questioned by the civil court, and the decisions in Pankaj Kumar Ganguli v. Bank of India(3) and Upper Ganges Electric Employees Union v. Upper Ganges Valley Electricity Supply Co. Ltd. and another(4) were relied on in support of this contention.

We agree that an order refusing reinstatement would be open to appeal under section 7(1)(a) if it involved a substantial question of law. Whether a decision of the Appellate Tribunal that an appeal to it from an award was competent under section 7 (1) (a) on the ground that it involved a substantial question of law is final and not open to question in a civil court is a point on which we do not desire to express an opinion, as in the present case, the correctness of that ,decision is challenged not collaterally or in independent proceedings, such as an application under article 226 of the Constitution as in the two cases relied on for the respondent, but by way of appeal under article 136, and it is open to us to consider as a Court of Appeal whether, in fact, the order of the Tribunal was vitiated by an error of law, and whether the (1) [1956] 60 C.W.N. 602. 104 (2) A.I.R. 1956 All. 491, order of the Appellate Tribunal modifying it is sound. We must now consider the case of the four employees from this standpoint:

> (1) S. N. Chatterjee had an eye defect, and acting on the advice of its medical officer, the Company discharged him on that ground. The Tribunal has found him to be fit, and directed his re-employment. He now claims compensation on the ground that he had produced a certificate of fitness from a competent medical officer but that the Company discharged him without making any enquiry thereon. The Appellate Tribunal found that the company bad acted bonafide, but that as the order of dismissal was made without due enquiry it was bad, and accordingly awarded compensation at the rate of six months' basic wages. We are unable to hold that on the facts found the Appellate Tribunal had acted without jurisdiction in interfering with the award or that its order is unjust. No case has been made out for our interference with it under article 136 (2) Ashimananda Banerjee was arrested by the Government under the West Bengal Security Act and detained in jail from 25-1-1949 to 5-4-1951. The Company terminated his services on 22-4-1949. The Tribunal made an order that he should be re-employed, and that is not now in question. But he fur-

ther claims that he is entitled to be reinstated. The Appellate Tribunal has accepted that claim on the ground that he had been discharged without the Company framing a charge or holding an enquiry, and that the rules of natural justice had been violated. We are unable to agree with this decision. The ground of discharge is the continued absence of the employee, and his inability to do work, and it is difficult to see what purpose would be served by a formal charge being delivered to him and what conceivable answer he could give thereto. The order of the Appellate Tribunal is manifestly erroneous and must be set aside. (3) The facts relating to Panchanan Rana are similar to those of Ashimananda Banerjee, and for the reasons already given, the order of the Appellate Tribunal in his favour should be set aside.

(4) The question as regards Joydeb Banerjee is whether he is entitled to compensation on the ground that he had been wrongly discharged. The facts are that on 16-11-1950 a number of employees participated in an assault on the Works Manager, Mr. Davison, and the Company dismissed fourteen of them on that ground, and Joydeb Banerjee was one of them. The Appellate Tribunal has held that as no charge was, framed against him or an enquiry held, his dismissal was in contravention of the rules of natural justice. It has accordingly ordered that he should be given one year's basic wages with dearness allowance as compensation. It is true that no charge-sheet was

formally drawn up against him, but that would not vitiate the order of dismissal if he knew what the charge against him was and had an opportunity of giving his explanation. It appears from the order of the Tribunal that subsequent to the order of dismissal by the Company, there were conciliation proceedings and an enquiry by the Labour Minister, as a result of which he recommended the reinstatement of seven out of the fourteen who had been dismissed, leaving the order in operation as regards the other seven, of whom Joydeb Banerjee was one. In the face of these facts, it is idle for him to contend that he had been dismissed without hearing or enquiry. The order of the Appellate Tribunal awarding compensation to him should be set aside.

In the result, Civil Appeal No. 325 of 1955 is allowed, the order of the Appellate Tribunal set aside and that of Shri Banerji restored, except that (1) the minimum pay of the clerical staff will be Rs. 65 per mensem with modifications as to the ceiling level and increments as set out supra and (2) that S. N. Chatterjee will be reinstated with compensation as provided in the order of the Appellate Tribunal. The Union will pay half the costs of the appellant throughout. Civil Appeal No. 174 of 1956 is dis- missed, but there will be no order as to costs.