

Management Of The Indian Overseas Bank ... vs Their Workmen on 16 August, 1967

Equivalent citations: [1968]38COMPCAS395(SC), [1969(18)FLR108], AIRONLINE 1967 SC 4

Bench: M. Hidayatullah, C.A. Vaidialingam

JUDGMENT

Hidayatullah, J.

1. The management of the Indian Overseas Bank Ltd., Chandni Chowk, Delhi, appeals by special leave against the award, dated October 6, 1964, of the Industrial Tribunal (Central), Lucknow. The respondents are the Delhi State Bank Employees Association representing the the case of one Om Prakash Gupta, head cashier at the Chandni Chowk branch of the bank. Om Prakash Gupta was in receipt of Rs. 15-00 per month which went under the name of " Key Allowance ". "This allowance was paid to other cashiers of the bank also. The allowance was started in this bank on September 15, 1958, after the Award by Mr. Sastry but not as a consequence of that Award. Om Prakash Gupta received the allowance till November 30, 1962 but it was stopped from December 1, 1962, on the ground that it had lapsed as it was not included in the Bank Award given by Mr. K.T. Desai. The decision of the bank was communicated to all its branches on December 21, 1962, by exhibit K-2. The circular mentioned the special allowances admissible under the Award to the cashiers of different categories at A class banks stating at the same time that the head cashiers, being officers, were not eligible for the special allowances prescribed therein. The circular stated that no recovery of the back " Key Allowance " paid between January and November, 1962, need be made but its payment in future should be discontinued from December 1, 1962. The " Key Allowance " paid till this date was ordered to be deducted from special allowances.

2. Before we pursue the matter further it is necessary to explain what this " Key Allowance " was and how it came into existence in the Indian Overseas Bank. The Sastry Award prescribed separate scales of pay for different members of the staff. For certain special cases which involved extra responsibilities of work three methods of giving additional emoluments were devised. One such method was a lump sum allowance payable to an incumbent in a particular category. Special allowances were ordered for cashiers in banks. The " Key Allowance " was, however, not one of the special allowances. When the National Tribunal presided over by Mr. K.T. Desai met, a claim for increase in special allowances was made and also conceded in suitable cases. Mr. Desai also considered certain other allowances which the Sastry Tribunal had ordered. Some of these were continued and some others were discontinued and the remaining were left to the discretion of the management of the bank concerned.

3. The "Key Allowance" seemed to have existed only in the Indian Overseas Bank and Andhra Bank. These banks made a special representation about the " Key Allowance " and the Indian Overseas Bank stated that the bank had allowed a " Key Allowance " of Rs. 15-00 per month as a gesture of goodwill to the cash department staff who were in joint custody of cash at various centers. The bank pleaded that when the scales of salary and special allowances granted by the Desai Tribunal came into force the " Key Allowance " should be withdrawn even from those who were then drawing such allowances and that the bank should be at liberty to continue the allowance or not. The bank also represented that the employees should either opt in toto for the privileges and benefits that were then being enjoyed or the new emoluments as determined by the Tribunal. Mr. Desai observed, in his Award, as follows:

" The continuation of these allowances rests entirely with the management and I give no direction in connection therewith " : (paragraph 6.63, page 187).

4. In respect of the " Key Allowance " in the Andhra Bank also Mr. Desai observed :

" I give no directions regarding the grant or stoppage of this allowance. The matter is left entirely to the discretion of the management to take such decision in connection therewith as it deems fit": (paragraph 6.64, page 187).

5. After completing his Award Mr. Desai considered whether an option should be given to the existing employees to retain their present terms and conditions of service.

6. The Indian Overseas Bank represented that the " Key Allowance" was being paid to certain employees and it pleaded that when the scales of pay and special allowances granted by the Tribunal came into force the bank should be at liberty to withdraw the allowance even from those employees who were then drawing it. Mr. Desai noted this request but said nothing more than what he had said earlier : (paragraph 19.5, page 267). When deciding the question of option, Mr. Desai decided as follows:

"19.17...The option given can only be an individual option to be exercised once and for all. The option should extend only to the totality of the service conditions under the heads under which the option is given...": (page 271).

" 19.18...For the exercise of option, the matters in respect whereof such option should be exercised are grouped as under :--

(i) Scales of pay, dearness allowance, special allowance, house rent allowance, officiating allowance, hill allowance, fuel allowance and provident fund..." : (page 272).

" 19.20...As regards matters set out in group 1, the option will have to be exercised in respect of the totality of the provisions in connection with the said matters existing immediately prior to 1st January, 1962, and the totality of the provisions contained in

this Award in connection with those matters": (page 272).

7. The bank interpreted this to mean that the " Key Allowance " could be abolished by it from the commencement of the Award, i.e., January 1, 1962, at its will and took action accordingly. The Association., on the other hand, considered this allowance as a term and condition of the service of Om Prakash Gupta and was of the opinion that it could not be discontinued except in accordance with the provisions of the Industrial Disputes Act.

8. A dispute having arisen the Central Government on May 29, 1964, referred to the Industrial Tribunal (Central), Lucknow, the following matter of dispute : " Whether the management of the Indian Overseas Bank Limited was justified in discontinuing the payment of the key allowance to Shri Om Prakash Gupta, head cashier, with effect from the 1st December, 1962. If not, to what relief is the workman entitled ?"

9. Before the Tribunal the management contended that as Gupta did not opt for the existing pays and allowances within the period of four months allowed under the Award, the Desai Award applied to him in toto. The "Key Allowance " being a special allowance merged in the emoluments granted by Mr. Desai and all that Om Prakash Gupta could claim was to be found in the benefit awarded by Mr. Desai. In the alternative, the management contended that the " Key Allowance " must be taken to have merged in the special allowances approved by Mr. Desai. The management also contended that Section 9A of the Industrial Disputes Act was not applicable to the case because the terms and conditions of the service of Om Prakash Gupta were regulated by the Desai Award and there were no benefits to him outside it. The bank further submitted that even if Section 9A was applicable it had been complied with. The Association, on the other hand, submitted that the Desai Award had left the matter of the " Key Allowance " at large and it being a term and condition of Om Prakash Gupta's service, could not be discontinued except after following the procedure laid down in Section 9A of the Industrial Disputes Act which was not followed.

10. The Tribunal held that the "Key Allowance" was not a part of the benefits under the award given by Mr. Sastry and was introduced as a result of a separate agreement between the bank and Mr. Om Prakash Gupta. The Tribunal further held that the option under Mr. Desai's Award was not applicable to it holding that the award given by Mr. Desai did not include the "Key Allowance " in the special allowances. The Tribunal further held that the " Key Allowance " was a term and condition of employment of Mr. Om Prakash Gupta and that the bank could not discontinue the allowance except after following the procedure laid down in the Industrial Disputes Act. Since, in its opinion, the procedure was not followed, the Tribunal was of the opinion that the "Key Allowance" was payable from December 1, 1962, till such time when it could be said to be legally discontinued.

11. The same arguments have been advanced before us by the rival parties. We may say at once that Mr. Desai did not include the " Key Allowance " in the special allowances admissible to the cashiers. His opinion is quite categorical that he did not wish to give any direction in regard to this allowance. The special allowance was, therefore, quite distinct and apart from the " Key allowance " as indeed it was even under the Sastry Award, It was, therefore, quite clear that the option did not cover the " Key Allowance ". In fact, paragraphs 19.18 and 19.20, which we have quoted above, quite clearly

limit the option to the scales of pay and the allowances specifically mentioned there. Since none of those allowances can be said to cover the " Key Allowance " it is quite obvious that the matter of " Key Allowance " was at large. It rested therefore with the bank to continue or to discontinue it. But since this allowance came into existence in the Indian Overseas Bank after the matter was raised by the Indian Overseas Bank Employees Union before the Regional Labour Commissioner at Madras and was accepted by the bank as a gesture of goodwill it must be treated as a term and condition of the service of Om Prakash Gupta to whom it was admissible. Once we reach this position it is clear that under Section 9A of the Industrial Disputes Act, read with Rule 34 of the Industrial Disputes (Central) Rules, 1957, a notice of change in the conditions of service applicable to Om Prakash Gupta had to be given in Form E appended to the Rules. Section 9A says that no employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall effect such change without giving to the workman a notice in the prescribed manner of the nature of the change proposed to be effected. Schedule IV includes item 3, which is "compensatory and other allowances". It would therefore appear that Section 9A applied to the case. Rule 34 then lays down that the notice must be in Form E and should be displayed conspicuously by the employer on a notice board and where a registered trade union of workmen exist, a copy of the notice must be served by registered post on the secretary of the union. The bank has not proved that this was done. It has relied upon a notice which was issued to the employees of the bank conveying to them the option which the Desai Award had given in the matter of selecting the existing pays and emoluments or the benefits under the Award. That cannot take the place of the notice required under Section 9A because the "Key Allowance " was never a part of the Desai Award but was left completely out of it and to the discretion of the management.

12. In our judgment, therefore, the Tribunal was right in deciding that the " Key Allowance " was payable even after the Desai Award and that Om Prakash Gupta was entitled to receive it till it was stopped in accordance with law. As the correct procedure was not followed the Tribunal was right in holding that the " Key Allowance " was payable to Om Prakash Gupta. The appeal has no force. It will therefore be dismissed with costs.