All India Reserve Bank Employees ... vs Reserve Bank Of India on 23 April, 1965

Equivalent citations: 1966 AIR 305, 1966 SCR (1) 25, AIR 1966 SUPREME COURT 305, 1966 36 COM CAS 165, 1965-66 23 FJR 394, 1967 (1) SCJ 338, 1965 2 LABLJ 175, 1965 (11) FACLR 137, 1966 (1) SCR 25

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Bench: M. Hidayatullah, P.B. Gajendragadkar, K.N. Wanchoo, V. Ramaswami

PETITIONER:
ALL INDIA RESERVE BANK EMPLOYEES ASSOCIATION

Vs.

RESPONDENT:
RESERVE BANK OF INDIA

DATE OF JUDGMENT:
23/04/1965

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
RAMASWAMI, V.

CITATION:
1966 AIR 305 1966 SCR (1) 25
CITATOR INFO :
E 1970 SC1421 (14)
R 1971 SC 922 (10)
R 1972 SC 319 (13)
RF 1976 SC2345 (4)
RF 1986 SC1830 (2,19,30)
RF 1988 SC 329 (5)

ACT:
Industrial Disputes Act, 1947 , s. 2(s)--Definition of 'workman'--'Supervisory capacity' whether different from 'supervisory work'--Disputes about' non-workmen when can be raised by workmen--Central Government whether can refer such disputes to Tribunal--Need-based minimum wage-Formula to be adopted for consumption units per family--Proper coefficient for white-collar workers, what is--Enforcement of award: discretion

of Tribunal in the matter of.

HEADNOTE:

The Class II and Class 1I1 staff of the Reserve Bank of India through their Association, and Class IV staff through their Union raised an industrial dispute with the Bank which works referred by the Central Government on March 21, 1960, to the National Tribunal. The items referred bore upon scales of pay, allowances, and sundry matters connected with the conditions of service of the three classes, the most important ones being the demand of Class II staff for a scale commencing with Rs. 500 and the demand of other workmen for a need-based minimum wage as recommended by the Tripartite Conference. of 1957. In its award the Tribunal pointed out that Class I1 staff worked in a supervisory capacity and its demand for a minimum salary of Rs. 500, if conceded, would take the said staff out of the category of 'workman' as defined in s. 2(s) of the Industrial Disputes Act, 1947. Such an award, and any award carrying wages beyond Rs. 500 at any stage, the Tribunal said, was beyond its' jurisdiction to make. It went on to hold that other workmen could not raise a dispute which would involve consideration of matters in relation 'to non-workmen and that it would be even beyond the jurisdiction of the Central Government to refer such a dispute under the Industrial Disputes Act. The Tribunal therefore made no award in regard to the supervisory staff in Class II. As for the demand for a need-based minimum wage, the Tribunal held that the Tripartite resolution had not been accepted by the Government and was not binding; that a need-based minimum wage was an ideal incapable of present achievement; that as against the demand of a formula of 3 consumption units per family it was possible to allow only 2.25 units; and that the coefficient for white-collar workers would not be changed from 80 to 120 as demanded. The Tribunal's award was given on September 8, 1962 but made operative from January 1, 1962. Dissatisfied with the award, the workmen appealed by special leave, to this Court. Subsequently by resolution dated April 24, 1963 the Reserve Bank raised the minimum total emoluments, as envisaged by the definition of wages, of each and every member of the Class II staff, above Rs. 500 with effect from the dale of operation of the award.

In their appeal before this Court it was urged on behalf of the appellants that there was a difference between 'supervisory capacity' mentioned in el. (iv) of s. 2(s) and 'supervisory work' mentioned in the main part of the section, and as Class II officers did not work in a 'supervisory capacity' they were 'workmen' under the definition. 'Supervisory Capacity it was urged, arose only when the employee was an agent of the employer.

26

it was also urged that Class 11 workmen only had clerical and checking duties which were not supervisory in character. Alternatively it was contended that as Class II was filled by promotion from Class III the question as to the emoluments of the former could and should have been gone into by the Tribunal in view of the principle enunciated in the Dimakuchi Tea Estate case.

HELD : (i) (a) The amendment to s. 2(s) of the Industrial Disputes .Act in 1956 introduced among the categories of persons already mentioned as 'workmen' persons employed to do supervisory and technical work. So far the language of the earlier enactment was used. When, however, exceptions were engrafted, that language was departed from in cl. (iv) partly because the draftsmen followed the language of cl. (iii) and partly because from persons employed on supervision work some are to be excluded because they draw wages exceeding Rs. 500 per month and some because they function mainly in a managerial capacity or have duties of the same character. But the unity between the opening part of the definition and ci. (iv) was expressly preserved by using the word 'such' twice in the opening part. The words, which bind the two parts, are not-"but does not include any person. They am-"but does not include any such person" showing clearly that is being excluded is a person who answers the description "employed to do supervisory work" and he is to be excluded because being employed in a 'supervisory capacity' he draws wages exceeding Rs. 500 per month or exercises functions of a particular character. [42 B-E]

Like the Taft-Hartley Act in the United states the Amending Act ,of 1956 in our country was passed to equalise bargaining power and also to give the power of bargaining and invoking the Industrial Disputes Act to supervisory workmen, but it gave it only to some of the workmen employed on supervisory work. Workman' here includes an employee employed as supervisor. There are only two circumstances in which such a person ceases to be a workman. Such a person is not a workmen if he draws wages in excess of Rs. 500 per month or if he performs managerial functions by reason of a power vested in him or by the nature of duties attached to his office. The person who ceases to be a workman is not a person who doe,-, not answer the description "employed to do supervisory work" but one who does answer that description. He goes out of the category of "workmen" on proof of the circumstances excluding him from the category. [42 F-H]

Packard Motor Co. v. The National Labour Relations Board, 91 L.ed. 1040, referred to.

(b)The National Tribunal was not justified in holding that if it I future time an incumbent would draw wage in the time scale in excess of Rs. 500, the matter must be taken to be withdrawn from the jurisdiction of the Central Government to make a reference in respect of him and the National Tribunal to be ousted of the jurisdiction to decide the dispute if

referred. Supervisory staff drawing legs than Rs. 500 per month cannot be debarred from claiming that they should dram, more than Rs. 500 presently or it some future stage in their service. can only be deprived of the benefits if they are non-workmen at the time they seek the protection of Industrial Disputes Act. [43 C-D]

(c) The word 'supervise' and its derivatives are not words of import and must often he construed in the light of the context, for unless controlled the- cover simple oversight and direction of manual work of others. It is, therefore necessary to sea the full context in which the words occur and the words of our own Act are, the surest guide. Viewed in this manner one should not overlook the import of-. the word "such"

27

which expressly links the exception to the main part. Unless this was done it would have been possible to argue that cl. (iv) indicated something, which, though no included in the main part, ought not by construction to be so included. By keeping the link it is clear that what is excluded is something which is already a part of the main provision. [43 F-G]

(d)In s. 2(k) the word 'person' has not been limited to 'workmen' as such and must, therefore, receive a more general meaning. But it does not mean any person unconnected with the disputants in relation to -whom the dispute is not of the kind described. It could not have been intended that although the dispute does not concern them in the least, workmen are entitled to fight it out on behalf of non-workmen. [44 D-E]

Dimakuchi Tea Estate's case, [1958]2 L.L.J. 500 referred to.

If the dispute is regarding employment, non-employment, terms of employment or conditions of labour of non-workmen in which workmen are themselves vitally interested, the workmen may be able to raise an industrial dispute. Workmen can, for example, raise a dispute that a class of employees not within the definition of 'workmen' should be recruited by promotion from workmen. When they do so the workmen raise a dispute about the terms of their own employment though incidentally the terms of employment of those who, are not workmen is involved. But workmen cannot take up a dispute in respect of a class of employees who are not workmen and in whose terms of employment those workmen have no direct interest of their own. What direct interest suffices is a question of fact but it must be a real and positive interest and not fanciful or remote. [441-1]

In the present case the National Tribunal was in error in not considering the claims of Class 11 emmployee whether at the instance of member. drawing less than Rs. 500 as wages or at the instance of those lower down in the scale of employment. The National Tribunal was also in error in thinking that scales of wages in excess of Rs. 500 per month at any stage were not within the jurisdiction of the

Tribunal or that Government could not make a reference- in such a contingency. [45 C-D]

(e)Duties such as distribution of work, detection of faults reporting for penalty, making arrangements for filling vacancies are supervisory. Class 11 staff performing such duties could not be said to perform only clerical or checking duties. [46 D-E]

Ford Motor Company of India v. Ford Motors Staff Union, [1953] 2 L.L.J. 444 and Lloyd Bank Ltd. v. Pannalal Gupta, [1961]1 L.L.J. 18, referred to.

(ii)(a) Minimum wages is the lowest wage in the scale below which the efficiency of the worker is likely to be impaired. It allows for living at a standard considered socially, medically, and ethically to be the acceptable minimum. [47 C-D]

Fair wage by comparison is more generous and involves a rate sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workers station in life but not at a rate exceeding the wage earning capacity of the class of establishment concerned. [47F]

The living wage concept is one or more steps higher then air wage. It has now been generally accepted that living wage means that every male earner should be able to provide for his family not only the essentials but a fair measure of frugal comfort and an ability to provide for old age or evil days. [48A]

CI/65-3

28

It may be taken that our politicd aim is 'living wage' though in actual practice living wage has been an ideal which has eluded our efforts like an ever-receding horizon and will so remain for sometime to come. Our general wage structure has at best reached the lower levels of fair wage. [48D]

Standard Vaccum Refining Co. v. Its Workmen[1961]1 L.L.J. 227,referredto.

(b)There can be no doubt that in our march towards a truly fair wage inthe first instance and ultimately the living wage we must first achieve the need-based minimum. In determining family budgets so as to discover the worker's normal needs which the minimum wage regulations ought to satisfy the size of the standard family is very necessary to fix. One method is to take simple statistical average of the family size and another is to take into account some other factors such as the frequency of variations in family sizes in certain region and employments, the number of wage earners -available at different stages, and the increase or decrease in consumption at different stages in employment, that is, the age structure and its bearing on consumption. The plain averages laid down in the Resolution may have to be weighted in different regions and in different industries and reduced in others. [52 F-H]

Crown Aluminium Works v. Workmen,[1958]t L.L.J. 1, referred to.

(c)Although the 3 consumption units formula is if anything on the low side the National Tribunal could not be said to be wrong, in the present circumstances, in accepting 2.25 consumption units. But by graduates increase the consumption units must be raised to 3 within five years of service. [52F; 53C]

(d)The Tripartite Conference of 1957 was a very representative body. There must be attached proper value to its Resolution on wage policy. The Resolution was passed on to indicate a first step towards achieving I" living wage. Unfortunately, we ire constantly finding that basic wage, instead ofmoving to subsistence plus level, tends to sag to poverty level when thereis a rise in prices. To overcome this tendency our wage structure has for a long time been composed of two items (a) the basic wage, and (b) a dearness allowance which is altered to neutralise, if not entirely, at least the greater part of the increased cog,, of living. This does not solve the problem of real wage. At the same time, we have to beware that too sharp an upward movement of basic wage is likely to affect the cost of production and lead to fall in our exports and to the raising of prices all-round. There is a vicious circle which can be broken by increased production and not by increasing wages. What we need is the introduction of production bonus increased fringe benefits, free medical, educational and insurance facilities. As a counterpart to this capital must also be prepared to forego a part of its return. There is much to be said for considering the need-base formula in all its implications for it is bound to be our first step towards living wage. As in many other matters relating to industrial disputes the problem may, perhaps. be best tackled by agreement between, Capital and Labour in in establishment where a beginning can be safely made in this direction. [54 E-H]

East Asiatic Co. v. Workmen [1962]2 L.L.J. 610 referred to.

(e)Without further data it is difficult to determine what coefficient shouldbe applied to the working class wage for the purpose of determiningthe need-based minimum wage of clerical staff. When fresh and comprehensive enquiries are conducted, the results would show whether the coefficient should go up or down. With the rise of wages to higher
29
levels among the working class the differential is bound to be lower and this is a matter for inquiry. Till then there is no alternative but to adhere to the coefficient already established. [56 F-G]

(iii)Seniority and merit should ordinarily both have a part in promotion to higher ranks and should temper each other. 'The National Tribunal was right in thinking that there was little scope for giving directions to the Bank in this regard. [57 F-G]

(iv)Gratuity is not a gift but is earned and for feiture except to recoup a loss occasioned to the establishment is not justified. [58F]
Express Newspaper (P) Ltd. & Anr. v. Union of India, [1961] 1 L.L.J. 339, Garment Cleaning Works v. Its Workmen, [1962]1 S.C.R. 711, Greaves Cotton Co. Ltd. & Anr. v. Their Workmen, [1964]1 L.L.J. 342 and Burhanpur Tapti Mills Ltd. v. Burhanpur Tapti Mills Mazdoor Sangh, A.I.R. 1965 S.C. 839, referred to.
(v)The Tribunal rightly declined to accept the demand that the Association and the Union should be allowed to participate and represent workem in disputes between individual workmen and the Reserve Bank. This would make internal administration impossible. [60B]
(vi)In making its award operate from January 1, 1962 and rejecting the appellants' demand that it should come into force from November 1, 1957 or at least from March 21, 1960, the National Tribunal did not act unreasonably. Ordinarily an award comes into operation from the time ,stated in sub-9. (1) of s. 17A of the Industrial Disputes Act. I.e. on the expiry of thirty days from the date of its publication. The Tribunal however is given power to make, it applicable from another date, and it could not be said that in the present case the discretion had not been exercised on judicial principles. [63 A-B]
Liptons's case, [1959]1 L.L.J 431, Remington Rand's [1962]1 L.L.J. 287, Rajkamal Kalamandir (P) Ltd. v. Indian Motion Picture Emnloyees' Union & Ors., [1963]1 L.L.J. 318, Western India Match Co. Ltd. v. Their Workmen, [1962]2 L.L.J. 459, Wenger & Co. and Ors. v. Their Workmen, [1963]2 I.L.J. 403 and Hindustan Times Ltd. v. Their Workmen, [1964]1 S.C.R. 234, referred to.
Appeal by special leave from the award dated September 8, 1962 of the National Industrial Tribunal (Bank Disputes) at Bombay in Reference No. 2 of 1960.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4 of 1965. A. S. R. Chari, D. S. Nargolkar, K. Rajendra Chaudhury and K. R. Chaudhuri, for the appellants.

N. A. Palkhivala, N. V. Phadke and R. H. Dhebar, for res- pondent No. 1.

Atiqur Rehman and K. L. Hathi, for respondent No. 2. The Judgment of the Court was delivered by Hidayatullah, J. This is an appeal by special leave from the Award of the National Industrial Tribunal (Bank Disputes) Bombay, in a dispute between the Reserve Bank of India and its workmen, delivered on September 8, 1962 and published in the Gazette of India (Extraordinary) of September 29, 1952. The appellants are the All India Reserve Bank Employees Associa- tion, Bombay (shortly the Association) representing Class 11 and Class III staff and the All India Reserve Bank "D" Class

Employees' Union, Kanpur (shortly the Union) representing Class IV staff, of the Reserve Bank.

By notification No. S.O. 704 dated the 21st March 1960, the Central Government, in exercise of its powers under s. 7/B of the Industrial Disputes Act, 1947, constituted a National Industrial Tribunal with Mr. Justice K. T. Desai (later Chief Justice of the Gujarat High Court) as the Presiding Officer. By an order notified under No. S.O. 707 of the same date, Central Government, in the exercise of the powers conferred by sub-s. (IA) of s. 10 of the Industrial Disputes Act, referred an industrial dispute, which, in its opinion, existed between the Reserve Bank- and its workmen of the three classes above-mentioned. The Order of Reference specified the heads of dispute in two schedules, the first in respect of Class II and Class III staff and the second in respect of Class IV staff. The first Schedule consisted of 22 items and the second of 23 ;Items. These items (a considerable number of which are common to the two schedules) beer upon the scales of pay and dearness and other allowances and sundry matters connected with the conditions of service of the three classes. The reference was registered as Reference No. 2 of 1960. During the trial of the Reference the Association and the Union severally made applications for interim relief asking for 25% of the total emoluments to Class TV employees with a minimum of Rs. 25 and for 25% of the basic pay to the employees of the two higher --lasses, with effect from July 1959, but this was refused by an interim Award dated December 29, 1960. The final Award was delivered on September 8, 1962 because in the meantime the Tribunal dealt with another reference registered as Reference No. 1 of 1960 in a dispute involving 84 banking companies and Corporations and their workmen in respect of creation of categories of banks and areas for purposes of and indication and of scales of pay, diverse allowances and other conditions of service. The Award in that Reference was delivered on June 7, 1962. The Tribunal was next occupied with the resolution of yet another dispute over bonus between 73 banking companies and their workmen which was registered as Reference No. 3 of 1960 and which was concluded by an award on July 21, 1962. We shall have occasion to refer to these awards later. We may now give the facts of the dispute in the Reference from which this appeal arises.

The Reserve Bank was established on April 1, 1935 as a shareholders' Bank with a capital of Rs. 5 chores which was mainly subscribed by the public. It was taken over in 1948 by the Government of India, when, under the Reserve Bank (Transfer to Public Ownership) Act, 1948, the shares were compulsorily acquired by Government at a premium of Rs. 18.62 over and above the face value of the share of Rs. 100. Thereafter the Reserve Bank is administered by a Central Board of Directors nominated by the Central Government from the civil services and public men. There are four local Boards to advise the Central Board and to function as its delegates. The Head Office of the Reserve Bank is situated at Bombay with branches at Calcutta, New Delhi, Kanpur, Madras, Bangalore, Nagpur, Lucknow, Hyderabad, Gauhati, Trivandrum, Patna, Ahmedabad, Ludhiana, Jaipur and Indore. The Reserve Bank acts as Bank to the Central and St-ate Governments and Commercial Banks and controls the issue and circulation of currency. It has special duties to perform under the Banking Companies Act 1949 and supervises and controls the banking industry in India. It regulates and controls foreign exchangeand exchange of currency and remittances to and from India. It is hardly necessary to refer to its multifarious duties and functions as the Central Bank and as the bankers' bank.

The Reserve Bank employs four classes of employees of which The three lower classes are before this Court, the first class being of officers. At the material time the total number of employees of all description ",as about 9,500 of which 3,300 were in the Head Office, 1,800, 1,100 and 1,100 respectively at Calcutta, New Delhi and Madras and the rest were distributed in varying numbers among the remaining twelve branches. The present dispute has a long history into the details of which it is hardly necessary to go but as both sides have made reference to it, some of the leading events connected with bank disputes in general, and the present dispute respecting the Reserve Bank, in particular, may be mentioned.

As is well-known there has been a rise in the price of commodities since 1939 and workmen earning wages and persons in the fixed income groups are specially affected. Between the years 1946 and 1949 there were set up numerous Commissions and Tribunals to deal with disputes between the commercial banks and their employees. In 1946 strike notices were served on many banks in Bombay, Bengal and the United Provinces. In Bombay Mr. H. V. Divatia dealt with a dispute between the Bank of India and its employees, happily settled by consent (August 15. 1946) and again with a dispute between 30 named Banks in Bombay and their -employees. The Award was given on April 9, 1947. That award was extended to Ahmedabad Bank employees by another award published on April 22, 1948. Conciliation proceedings were, conducted by Mr. R. Gupta between the Imperial Bank of India and its employees in Bengal which concluded on August 4, 1947. Other awards and adjudications were made by Mr. S. C. Chakravarti and Mr. S. K. Sen. In the United Provinces first Mr. B. B. Singh, Labour Commissioner, began arbitration in disputes between as many as 40 bankes and their employees, which later went before Conciliation Boards headed first by Mr. Nimbkar. and on his death, by Mr. Bind Basni Prasad and the recommendations were made effective by a Government order. On the representation of the Banks an Ordinance was promulgated (followed by an Act) and the Central Government took over the resolution of disputes between banks and their employees in all cases where the banks had offices in more than one province. On June 13, 1949 the Central Government appointed an All India Industrial Tribunal (Bank Disputes) with Mr. K. C. Sen and 2 members to codify the terms and conditions of service of bank employees. The Sen Award (as it is known) was published on August 12, 1950 but on appeal this Court on April 9, 1951 declared it to be void as there was a flaw in the composition of the Tribunal. As a result of this contingency a standstill Act was passed and another Tribunal with Mr. H. V. Divatia and 2 members was erected. This Tribunal did not conclude the work and resigned and in 1952 another Tribunal presided over by Mr. S. Panchapagesa Sastry was appointed which published its award in April 1953. That Award was subjected to an appeal before the Labour Appellate Tribunal and it was much modified. Some banks represented to Government ,heir inability to implement the modified award and the Central Government intervened and modified the award of the Labour Appellate Tribunal by an order dated August 24, 1954. We may leave this general narration at this stage to view the disputes between the Reserve Bank of India and its employees during the same period. In 1946 the Association delivered a charter of demands for revision of pay scales and allowances of the employees of the Reserve Bank from April 1, 1946 and after negotiations some revision in wages and dearness allowances was effected. During the interval between this revision and the appointment of the Sastry Tribunal other revisions took place. When the Sastry Tribunal gave its award in March 1953, the Association in May of the same year delivered a revised charter of demands to the Reserve Bank but owing to the pendency of tile Appeal before the Labour Appellate Tribunal, the demand could not be considered.

The Reserve Bank, however, assured its employees that after the decision of the Labour Appellate Tribunal was known, the entire question would be reviewed. When the Labour Appellate Tribunal gave its decision in April 1954, the Association served a fresh charter of demands on May 18, 1954 but the decision of the Appellate Tribunal was modified by Government and on September 1, 1954 a commission presided over by Mr. Justice Rajadhykshya and later by Mr. Justice Gajendragadkar (as he then. was constituted to consider whether the Appellate Tribunal's decision should be restored or continued with modifications and to suggest further modifications having due regard to the overall condition of banks in gencral and individual banks in particular. In October 1954 the Association, realising that delay was inevitable, agreed to accept the scale,, of pay on the basis of the modified Labour Appellate Tribunal's decision though the employees obtained by the agreement something more than their counterparts in the higher class commercial banks under the order of Government which modified the decision of the Labour Appellate Tribunal. The advantage to the Reserve Bank employees was neutralized when the Bank Award Commission restored the decision of the Labour Appellate Tribunal in respect of the Commercial Banks. The agreement lasted till October 31, 1957 and the Reserve Bank employees honoured it.

On July 11, 1959, the Association submitted a fresh charter of demands asking for a complete revision of the pay structure and invoked the norms settled at the Fifteenth Indian Labour Conference and asked for improvement generally in the conditions of service. As the Reserve Bank was not agreeable to negotiate, the Association called upon the Reserve Bank to ratify the Code of Conduct evolved at the Sixteenth Indian Labour Conference and to proceed to arbitration but the Reserve Bank declined. The Association called upon the Reserve Bank to ratify the Code of work from March 25, 1960. Before this happened the All India State Bank of India Staff Federation had given a notice and there was a strike from March 4, 1960 and on March 19 all bank employees struck work in support and the several references to which we have referred followed.

The Reserve Bank during the years between 1.946 and 1960 undertook from time to time revision of salaries and allowances. In 1947 and 1948 dearness allowances were revised and in 1948 there was a general revision of scales of pay as from April 1, 1948. These revisions were made at the demand of the Association. In 1.951 ad hoc increases in dearness allowances were made and compensatory allowances were introduced and from 1951 local dances were, paid to certain classes of employees serving at some of the important offices of the Reserve Bank and subsequently the scheme of local allowances was extended to a few other branches. In 1954 local allowances were converted into local pay and 25% of the dearness allowances was treated as pay for calculation of retiring benefits etc. In 1957 family allowances to class IV employees were raised and in 1958 and 1959 dearness allowances were again slightly raised. These increases, though welcome to them, hardly satisfied the demands of the employees. There were many conciliation conferences but none was successful. The cost of living index with base year 1949=1.00 had increased by 26 points in February 1960 and the principles of minimum and fair wages were deliberated upon and adverted to in the Report of the 15th Indian Labour Conference. These principles, to which detailed reference will be made presently were desired by the employees of the Reserve Bank to be put into operation. As a result the gap between the demands of the employees and (lie offers of the Reserve Bank, which was wide already. became wider still and conciliation which bad always succeeded in the past, was not possible. The Association suggested arbitration but the Reserve Bank by its letter dated February 11, 1960, (lid not

agree. The Reserve Bank stated that it did not wish to get "seriously out of step" with Government or the Commercial Banks. The Reserve Bank referred to the Pay Commission Report and pointed out that the demands of the employees took no notice of the state of Indian company. The Association, through its Secretary, in reply (Feb. 22. 1960) observed "Your criticism, that the Association's Charter of Demand has been pitched so high as to exclude all scope for satisfactory solution through negotiations we may point out, is baseless and incorrect, as the Charter has been based on the norms set up by the 15th Tripartite Labour Conference at Nairobi where the need-based wage formula for Indian worker was evolved, and the coefficient for conversion to arrive at the minimum wage for a middle class salaried employee has been accepted from the Raj adhyaksha Report. . . . . ".

The Association also pointed out that it had been conceded by the Governors of the Reserve Bank in the past that the emoluments of the Reserve Bank employees ought to be higher than those of other Bank employees and, therefore, the recommendations of the Pay Commission were irrelevant. In this appeal one of the fundamental points argued is whether the National Tribunal was right in rejecting the demand for the inauguration of the need-

base formula. It was, however, in this back-round that the National Industrial Tribunal was constituted and the whole of the dispute was referred to it.

This Reference embraced as many as 22 items in respect of Class 11 and Class III employees and 23 items in respect of Class IV employees. Some of these were decided in favour and some against the employees. Not much purpose would be served if we mentioned the may points of controversy or the decision on that, for in this appeal, the employees have stated their case with commendable restraint and Mr. Chari, though he argued it with his customary esmestness and ability, did so appreciating the realities of our national economy. He paid (it may be noted) sincere tributes to the Reserve Bank for its helpful attitude at all times, and expressed regret that there was no conciliation as on previous occasions. Mr. Palkhivala too, on behalf of the Reserve Bank, showed an awareness of the point of view of the employees and on some of the less important points, as we shall show later, agreed to consider tile matter favorably, The dispute now centres round two fundamental or major points ind a few others not so fundamental. We shall deal with the main points first and then deal with the others. The first major point concerns employees of Class II. This class of employees was in the scales of pay which were settled by the agreement of November 2, 1954. These were

1. Research Superintendents Rs.301-25-400-E.B.-25-650.

2. Superintendents and Sub- Rs. 275-25 -375-E.B.-25--500-

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            Accountants         25- 650.
3.   Deputy Treasurers (Bombay
            and Calcutta)           Rs. 450 -25-650.
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4. Deputy Treasurer (Gauhati) Rs. 375-25-550.

5. Assistant Treasurers Rs. 300-25-450.

6. Personal Assistant to the Governor Rs. 320-30-650.

7. Personal Assistant Rs. 325-25- 550.

8. Caretakers, Grade I (Bom- Rs.275-10-325-E.B.-12 1/2-

bay and Calcutta) 400.

9. Staff Assistants Rs. 250-25-A50-E.B.-25-

650.

10. Supervisor, Premises Section Rs.250-15-310- E.B.-20-

650.

11. Deputy Treasurer (Hyderabad) Rs. 350--25-500.

There was in addition local pay for these employees equal to 10% of pay, at Bombay, Calcutta, Ahmedabad, New Delhi, Madras and Kanpur. There was also a family allowance of Rs. 10 per child subject to a maximum of Rs. 30 for employees drawing less than Rs. 550 per month with a completed service of 5 ,,cars.

The National Tribunal in considering, the demands of Class 11 staff of the Reserve Bank came to the conclusion that it could not give any award regarding these employees who were employed in a supervisory capacity. In this connection the Reserve Bank had pleaded that the Reference concerned only those employees who came within the definition of "workman" in the Industrial Disputes Act, 1947, as amended by the amending Act of 1956, and the Reserve Bank had contended that it was futile to fix a time scale for Class 11 staff because every incumbent in it was employed in a supervisory capacity and under the existing scales, of pay every incumbent at a local pay centre would draw wages in excess of Rs. 500 after three years' service and every other incumbent at the end of 5 years' service and that most of the employees in that class had entered it by promotion and even at their entry were drawing wages in excess of Rs. 500. The Reserve Bank had further contended that a dispute could only be raised before the National Tribunal provided a workman continued to be a workman as defined. If the National Tribunal was asked to provide a scale of payment which would make the workman cease to be workman by reason of the award, the Reserve Bank contended, the National Tribunal had no jurisdiction to make such an award and the Reference itself would become incompetent. The relationship of employer and workman, so it was contended, must exist (a) at the time of dispute, (b) at the time of the award, and

(c) during the currency of the award, otherwise the Reference and the consequent award would be without jurisdiction.

The Association had contended in reply (as it does in this appeal) that the duties performed by these employees were not of a supervisory nature and further that they were doing supervisory work and were not employed in a supervisory capacity. In Reference No. 1 of 1960, Mr. Sule, on behalf of the employees, had contended (a) that workmen could raise an industrial dispute for themselves and for a section of them at any level, (b) that persons who were workmen could raise an industrial dispute regarding their conditions of service not only at stages when they would be workmen but also at stages when they would cease to be workmen under the same employer, and (c) that workmen could raise a -dispute on behalf of non-workmen in the same establishment pro-

vided they had a direct and substantial interest in the dispute and had a community of interest with such non- workmen.

The National Tribunal in the present award adopted its discussion of the question in paragraphs 5.206 to 5.219 of the award in Reference No. 1 of 1960. It pointed out that the demand by Class It Supervisory Staff envisaged a scale commencing, at Rs. 500 and that if the demand were considered favorably everyone in that class would cease to be a workman and such an award was beyond its jurisdiction to make. The National Tribunal held that even though by reason of community of interest other workmen might be entitled, having regard to the definition of "industrial dispute', to raise a dispute on behalf of others, they could not raise a dispute either for themselves or on behalf of others, when the dispute would involve consideration of matters in relation to non-workmen. The National Tribunal also held that it would even be beyond the jurisdiction of Central Government to refer such a dispute under the Industrial Disputes Act. The, National Tribunal, therefore, held that the expression "scales of pay and methods of adjustment in the scales of pay" in Schedule I of the present Reference could not cover non-workmen such as supervisory staff in Class 11. Those employed in supervisory capacity and drawing more than Rs. 500 p.m. were treated as not present before the National Tribunal and as they could not be heard the National Tribunal found it inexpedient to fix scales of salary affecting them. As regards those employed in the same capacity but drawing less than Rs. 500 per month but on scales carrying them beyond that mark, the National Tribunal thought that if all that it could do was to fix a scale up to Rs. 500, it would be unfair to lower the scale already fixed. The National Tribunal thus made no award in regard to supervisory staff in Class 11.

Before we consider the case of the appellants an event which happened later may be mentioned. The Reserve Bank by a Resolution (No. 8) passed at their 1456th weekly meeting held on April 24, 1963, increased the scale of pay, dearness allowances, house rent allowances etc. for Class 11 staff with effect from January 1, 1962, that is to say, the date from which the impugned award came into force. Under the Resolution scales of pay, which were acknowledged by Mr. Chari, to be as generous as the present circumstances of our country permit, have been awarded. But more than this the minimum total emoluments as envisaged by the definition of wages, even at the commencement of service of each and every member of Class II staff on January 1, 1962 now exceed Rs.500 per month. This,of course, was done with a view to with-

drawing the whole class from the ambit of the Reference, because, it is supposed, no member of the class can now come within the definition of "workman". We shall, of course, decide the question

whether the Resolution has that effect. If it does, it certainly relieves us of the task of considering scales of pay for these employee,& for no remit is now possible as no National Tribunal is sitting. The scales having been accepted as generous, there dispute regarding scales of pay for Class II employees under the Reference, really ceases to be a live issue. However, in view of the importance of the subject and the possibility of a recurrence of such question in other spheres, and the remarks of the National Tribunal as to jurisdiction of the Central Government and itself we have considered it necessary to go into some of the points mooted before us. Before we deal with them we shall read some of the pertinent definitions from the Industrial Disputes Act, 1947 :

"2. In this Act, unless there is anything repugnant in the subject or context,--

(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment or the terms of employment or with the condition of labour, of any person;

(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work clone in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any confessional supply of woodgrains or other articles;

(iii) any traveling concession;

but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service.

(s) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute,

include,,% any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934, or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per menses or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Mr. Chari contends that the exclusion of Class II staff is based on a wrong construction of the above definitions particularly the definition of 'workman' and a misunderstanding of the duties of Class 11 employees who have been wrongly classed as supervisors. He contends alternatively that as Class II is filled by promotion from Class III, the question could and should have been gone into in view of the principle enunciated in the Dimakuchi Tea Estate(,) case. Mr. Chari in support of his first argument points to the opening part of s. 2 (s) where it speaks of "any skilled or unskilled manual, supervisory, technical or clerical work" and contrasts it with the words of clause

(iv) "being employed in a supervisory capacity" and submits that the difference in language is deliberate and is intended to distinguish supervisory work from plain super- vision. According to him 'supervisory work' denotes that the person works and supervises at the same time, whereas 'supervisory capacity' denotes supervision but not work Mr. Chari divides supervision into two kinds : (a) supervision which is a part of labour and (b) supervision which is akin to managerial functions though it is not actually so. He submits that this division is clearly brought out in the definition of 'workman' by the use of different expressions such as "work" and "capacity" for that a supervisor doing work enjoys the status of labour and a supervisor acting only in supervisory capacity enjoys the status of employer's agent at the lowest level.

In support of his contention Mr. Chari has referred to the amendment of the National Labour Relations Act of the United States of America [commonly known as the Wagner Act(1)] by the Labour Management Relations Act 1947 commonly known as the Taft-Hartley Act(2) I and the case of the Packard Motor Co. v. The National Labour Relations Board(3) which preceded the amendment. The Packard Motor Co. case arose under the Wagner Act and the question was whether foremen were entitled as a class to the rights of self-organisation and collective bargaining under it. The benefits of the Wagner Act were conferred on employees which by s. 2(3) included 'any employee'. The Company, however, sought to limit this wide definition which made former employees both at common law and in common acceptance, with the aid of the definition of

'employer' in s. 2(2) which said that the word included "any person acting, in the interest of an employer directly or indirectly. . . .". The Supreme Court of the United States in holding that foremen were entitled to the protection of the Wagner Act held by majority that even those who acted for the employer in some matters including standing between the management and manual labour could have interests of their own when it name to fixation of wages, hours, seniority rights or working conditions. Mr. Chari suggests that the definition in the Industrial (1) [1958] 1 L.L.3. 500.

(3) (1947) 61 Stitt 136.

(2) (1935) 49 Stat 449.

(4) 91 L. ed. 1040.

Disputes Act serves the same purpose when it makes a distinction between 'work,' and 'capacity'. This ruling, of course, cannot be used in this context though as we shall presently see it probably furnishes the historical background for the amendment in the United States and leads to the next limb of Mr. Chari's argument. The minority speaking. through Mr. Justice Douglas, made the following observation which puts the Packard Motor Co. case(1) out of consideration-

> "Indeed, the problems of those in the supervisory categories of management did not seem to have been in the consciousness of the Congress..... There is no phrase in the entire Act which is description of those doing supervisory work".

In this state of affairs it is futile to refer to this ruling any further for to derive assistance from any of the two opinions savors of a priori deduction. The Packard Motor Co. case was decided in March 1947 and in the same year the Taft-Hartley Act was passed. Section 2 of the latter Act defined employer to include "any person acting as agent of an employer, directly or indirectly..... and the term ,employee' was defined to exclude any individual employed as a supervisor. The term I supervisor' was defined to mean an individual "having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsible to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment". Mr. Chari suggests that the Industrial Disputes Act recognising the same difficulty, may be said to have adopted the same test,; by making a distinction between 'work' and capacity. According to him, these tests provide for that twilight are where the operatives (to use a neutral term) seem to enjoy a dual capacity.

The argument is extremely ingenious and the simile interesting but it misses the realities of the amendment of the Industrial Disputes Act in 1956. The definition of 'workman' as it originally stood before the amendment in 1956 was as follows :-

> "2.(s) 'workman' means any person employed (including in apprentice) in any industry to do any skilled (11) 91 L. ed. 104 or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in

> relation to an industrial dispute a workman discharged during that dispute, but does not include any person employed in naval, military or air service of the Government."

The amending Act of 1956 introduced among the categories of persons already mentioned persons employed to do supervisory and technical work. So far the language of the earlier enactment was used. When, however, exceptions were engrafted, that language was departed from in cl. (iv) partly because the draftsman followed the language of cl.

(iii) and partly because from persons employed on supervision work some are to be excluded because they draw wages exceeding Rs. 500 per month and some because they function mainly in a managerial capacity or have duties of the same character. But the unity between the opening part of the definition and cl. (iv) was expressly preserved by using the word 'such' twice in the opening part. The words, which bind the two parts, are not-"but does not include any person". They are --"but does not include any such person"

> showing clearly that what is being excluded is a person who answers the description " employed to do supervisory work"

and he is to be excluded because being employed in a 'supervisory capacity' he draws wages exceeding Rs. 500 per month or exercises functions of a particular character. The scheme of our Act is much simpler then that of the American statutes. No doubt like the Taft-Hartley Act the amending Act of 1956 in our country was passed to equalise bargaining power and also to give the power of bargaining and invoking the Industrial Disputes Act to supervisory workmen, but it gave it only to some of the workmen employed on supervisory work. 'Workman' here includes an employee employed as supervisor. There are only two circumstances in which such a person ceases to be a workman. Such a person is not a workman if he draws wages in excess of Rs. 500 per month or if he performs managerial functions by reason of a power vested in him or by the nature of duties attached to his office. The person who ceases to be a workman is not a person who does not answer the description "employed to do supervisory work" but one who does answer that description. He goes out of the category of "workmen" on proof of the circumstances excluding him from the category. By the revision of salaries in such a way that the minimum emoluments equal to wages (as defined in the Act) of Class II staff now exceed Rs. 500 per month, the Reserve Bank intends to exclude them from the category of workmen and to render the Industrial Disputes Act inapplicable to them. Mr. Palkhivala frankly admitted that this step was taken so that this group might be taken away from the vortex of industrial disputes. But this position obviously did not exist when the scale was such that some at least of Class 11 employees would have drawn wages below the mark. The Reference in those circumstances was a valid reference and the National Tribunal was not right in ignoring that class altogether. Further, the National Tribunal was not justified in holding that if at a future time an incumbent would draw wage in the time scale in excess of Rs. 500, the matter must be taken to be withdrawn from the jurisdiction of the Central Government to make a reference in respect of him and the National Tribunal to be ousted of the jurisdiction to decide the dispute if referred. Supervisory staff drawing less than Rs. 500 per month cannot be debarred from claiming that they should draw more than Rs. 500 presently or at some future stage in their service. They can only be deprived of the benefits if they are non-workmen at the time they seek the protection of the

Industrial Disputes Act. Mr. Chari next contends that considering the duties of Class II employees, it cannot be said that they are employed in a supervisory capacity at all and in elucidation of the meaning to be given,. to the words 'supervisory' and 'capacity' he has cited numerous. dictionaries, Corpus Juris etc. as to the meaning of the words. "supervise", "supervisor", "supervising", "supervision" etc. etc. The word "supervise" and its derivatives are not words of precise import and must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a power of inspection and superintendence of the manual work of others. It is, therefore, necessary to see the full context in which the words occur and the words of our own Act are the surest guide. Viewed in this manner we cannot overlook the import of the word "such" which expressly links the exception to the main part. Unless this was done it would have been possible to argue that cl. (iv) indicated something, which, though not included in the main part, ought not by construction to be so included. By keeping the link it is clear to see that what it excluded is something which is already a part of the main provision. In view of what we have held above it is hardly necessary to advert to the next argument that under the principle of the Sup. Cl/65 -4 Dimakuchi Tea Estate Case(1) workmen proper belonging to Class II and III in this Reference are entitled to raise a dispute in respect of employees in Class 11 who by reason of cl. (iv) test have ceased to be workmen. The ruling of this Court in the above case lays down that when the workmen raise an industrial dispute against an employer, the person regarding whom the dispute is raised need not strictly be a 'workman' but may, be one in whose terms of employment or conditions of labour the workmen raising the dispute have a direct and substantial interest. The definition of 'industrial dispute' in s. 2(k), which we have set out before, contemplates a dispute between

(a) employers and employers; or

(b) employers and workmen; or

(c) workmen and workmen;

but it must be a dispute which is connected with the employment -or non-employment or the terms of employment or with the conditions of labour of any person. The word 'person' has not been limited to 'workman' as such and must, therefore, receive a more general meaning. But it does not mean any person unconnected with the disputants in relation to whom the dispute is not of the kind described. It could not have been intended that though the dispute does not concern them in the least, workmen are entitled to fight it out on behalf of non-workmen. The National Tribunal extended this principle to the supervisors as a class rely- ing on the following observations from the case of this Court :

> "Can it be said that workmen as a class are directly or substantially interested in the employment, non-employment, terms of employment or conditions of labour of persons who belong to the supervisory staff and are, under provisions of the Act, non-workmen on whom the Act has conferred no benefit, who cannot by themselves be parties to an industrial dispute and for whose representation the Act makes no particular provision? We venture to think that the answer must be in the negative."

It may, however, be said that if the dispute is regarding employment, non-employment, terms of employment or conditions of labour of non-workmen in which workmen are themselves vitally interested, the workmen may be able to raise an industrial dispute. Workmen can, for example, raise a dispute that a class of em-

(1) [1958] I L.L.J. 500.

ployees not within the definition of workman should be recruited by promotion from workmen. When they do so the workmen raise a dispute about the terms of their own employment though incidentally the terms of employment of those who are not workmen is involved. But workmen cannot take up a dispute in respect of a class of employees who are not workmen and in whose terms of employment those workmen have no direct interest of their own. What direct interest suffices is a question of fact but it must be a real and positive interest and not fanciful or remote. It follows, therefore, that the National Tribunal was in error in not considering the claims of Class II employees whether at the instance of members drawing less than Rs. 500 as wages or at the instance of those lower down in the scale of employment. The National Tribunal was also in error in thinking that scales of wages in excess of Rs. 500 per month at any stage were not within the jurisdiction of -the Tribunal or that Government could not make a reference in such a contingency. We would have been required to consider the scales applicable to those in Class II but for the fact that the Reserve Bank has fixed scales which are admitted to be quite generous.

It may be mentioned here that Mr. Chari attempted to save the employees in Class 11 from the operation of the exceptions in cl. (iv) by referring to their duties which he said were in no sense 'supervisory' but only clerical or of checkers. He also cited a number of cases, illustrative of this point of view. Those are cases dealing with foremen, technologists, engineers, chemists, shift engineers, Asstt. Superintendents, Depot Superintendents, godown-keepers etc. We have looked into all of them but do not find it necessary to refer to any except one. In Ford Motor Company of India v. Ford Motors Staff Union, (1) the Labour Appellate Tribunal correctly pointed out that the question whether a particular workman is a supervisor within or without the definition of 'workman' is "ultimately a question of fact, at best one of mixed fact and law. . . . " and "will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set-up of the particular unit of industry and like factoe". The Labour Appellate Tribunal pertinently gave the example that "the nature of the work in the banking industry is in many respects obviously different from the nature and type of work in a workshop department of an engineering or automobile concern." We agree that we cannot use analogies to find out whether Class 11 workers here were supervisors or doing mere (1) [1953] 2 L.L.J. 444.

clerical work-. No doubt, as Mr. Chari stated, the work in a Bank involves layer upon layer of checkers and checking is hardly supervision but where there is a power of assigning duties and distribution of work there is supervision. In Llyods Bank Ltd. v. Pannalal Gupta (1), the finding of the Labour Appellate Tribunal was reversed because the legal inference from proved facts was wrongly drawn. It is pointed out there that before a clerk can claim a special allowance under para 164(b) of the Sastry Award open to Supervisors, he must prove that he supervises the work of some others; who are in a sense below him. It is pointed out that mere checking of the work of others is

not enough because this checking is a part of accounting and not of supervision and the work done in the audit department of a bank is not supervision.

The Reserve Bank has placed on record extracts from the manuals, orders, etc. relative to all Class 11 employees and on looking closely into these duties we cannot say that they are not of a supervisory character and are merely clerical or checking. These employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties which are supervisory and not merely clerical. Without discussing the matter too elaborately we may say that we are satisfied that employees in Class II except the Personal Assistants, were rightly classed by the National Tribunal as employed on supervisory and not on clerical or checking duties. In view of the fact that all of them now receive even at the start "wakes" in excess of Rs. 500 per month, there is really no issue left conceding them, once we have held that they are working in a supervisory capacity.

The next fundamental point requires narration of a little history before it can be stated. In December 1947 there was an Industries Conference with representatives of the Government of India and the Governments of the States, businessmen, industrialists and labour leaders. An Industrial Truce Resolution was passed unanimously which stated inter alia that increase in production was not possible unless there was just remuneration to capital (fair return), just remuneration to labour (fair wages) and fair prices for the consumer. The Resolution was accepted by the Central Government. In 1947 a Central Advisory Council was appointed which in its turn set up a Committee to deliberate and report on fair wages for workmen. 'The Report of that Committee has been cited over and over again. In the Standard Vacuum (1) [1961] 1 L.L.J. 18.

Refg. Co. v. Its Workmen(1), this Court elaborately analysed the concept of wages as stated by the Committee. The Committee divided wages into three kinds: Living wage, fair wage and minimum wage. Minimum wage, as the name itself implies represents the level below which wage cannot be allowed to drop. it was universally recognised that a minimum wage, must be prescribed to prevent the evil of sweating and for the benefit of workmen who were not in a position to bargain with their employers. The received immediate attention in India, though there was an international Convention as far back as 1928 and the demand for fixation of minimum wages extended even to non-sweated industries. The result was the Minimum Wages Act of 1948. The Fair Wages Committee understood the term minimum wage is the lowest wage in the scale below which the efficiency of the worker was likely to be impaired. It was described as the "wage door" allowing living at a standard considered socially, medically and ethically to be the acceptable minimum. Fair wages by comparison were more generous and represented a wage which lay between the minimum wage and the living wage. The United provinces Labour Enquiry Committee classified the levels of living as :

(i) Poverty level;,

(ii) minimum subsistence level;

(iii) subsistence plus level, and

(iv) comfort level.

The concept of fair wages involves a rate sufficiently high to enable the worker to provide "a standard family with food, shelter, clothing, medical care and family education of children appropriate to his status in life but not at a rate exceeding the wage earning capacity of the class of establishment concerned." A fair wage thus is related to a fair workload and the earning capacity. The living wage concept is one or more steps higher than air wage. It is customary to quote Mr. Justice Higgins of Australia who defined it as one appropriate for "the normal needs of average employee, regarded as a human being living in a civilized community." He explained himself by saying that the living wage must provide not merely for absolute essentials such as wood, shelter and clothing but for "a condition of frugal comfort estimated by current human standards" including "provision for civil days etc. with due regard for the special skill of the. Work"Man".It has now been generally accepted that living wage means (1) [1961] 1 L.L.J. 227.

that every male earner should be able to provide for his family not only the essentials but a fair measure of frugal comfort and an ability to provide for old age or evil days. Fair wage lie., between the concept of minimum wage and the concept of living wage.

During the years wage determination has been done on industry-cum-region-basis and by comparing, where possible, the wage scales prevailing in other comparable concerns. The Constitutior by Art. 43 laid down a directive principle :

> "The State shall endeavour to secure, by suitable legislation or economic Organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a de- cent standard of life and full enjoyment of leisure and social and cultural opportunity....."

It may thus be taken that our political aim is 'living wage though in actual practice living wage has been an ideal which has eluded our efforts like an ever-receding horizon and will so remain for sometime to come. Our general wage structure has at best reached the lower levels of fair wage though some employers are paying much higher wages than the general average.

In July 1957 the Fifteenth Indian Labour Conference met as a Tripartite Conference and one of the Resolutions adopted was "The recommendations of the Committee as adopted with certain modifications, are given below:-

> (2) With regard to the minimum wage fixation it was agreed that the minimum wage was 'need-

based' and should ensure the minimum human needs of the industrial worker, irrespective of any other considerations. To calculate the minimum wage, the Committee accepted the following norms and recommended that they should guide all wage fixing authorities, including minimum wage committees, wage boards, adjudicators, etc;

(i) In calculating the minimum wage the standard working class family should be taken to consist of 3 consumption units for one earner, the earnings of women, children and adolescents should be disregarded.

(ii) Minimum food requirements should be calculated on the basis of a net intake of 2700 calories, as recommended by Dr. Aykryod for an average Indian adult of moderate activity.

(iii) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average worker's family of four a total of 72 yards.

(iv) In respect of housing the norm should be the, minimum rent charged by Government in any area for houses provided under the Subsidised Industrial Housing Scheme for low income groups.

(v) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent of the total minimum wage.

(3) While agreeing to these guide lines for fixation of the minimum wage for industrial workers throughout the country, the Committee recognised the existence of instances where difficulties might be experienced in im-

plementing these recommendations. Wherever the minimum wage fixed went below the recommendations, it would be incumbent on the authorities concerned to justify the circumstances which prevented them from the adherence to the norms laid down.

The Association and the Union desire that the wage-floor should be the need-based minimum determined at the Tripartite Conference in the above Resolution and that the emoluments of the middle class staff should be determined with a proper coefficient. They suggest a co-efficient of 120% in place of the80% applied by the National Tribunal, to determine the wages of the middle class staff in relation to the wages of the working classes. In support of their case the employees first point to the Directive Principle above- quoted and add that the First Five Year Plan envisaged the restoration of "prewar real wage as a first-step towards the living wage" through rationalisation and modernisation and recommended that "the claims of labour should be dealt with liberally in proportion to the distance which the wages of different categories of workers have to cover before attaining the living wage standard." The employees next refer to the Second Five Year Plan where it is stated :

> "21. Wages A wage policy which aims at a structure with rising real wages requires to be evolved. Workers' right to a fair Wage has been recognised but in practice it has been found difficult to quantity it. In spite of their best efforts, industrial tribunals have been unable to evolve a consistent formula. . . . . ". (p. 578 para 21). The establishment of Wage Boards, the taking of a wage census and the improvement of marginal industries which operate as a 'drag' on better industries was suggested in that Plan. Finally, it is submitted that the Third Five Year Plan has summed up the position thus; in pares 20 and 21 at p. 256 :

"20. "The Government has assumed responsibility for securing a minimum wage for certain sections of workers, in industry and agriculture, who are commercially weak and stand in need of protection. Towards this end the Minimum Wages Act provides for the fixation and revision of wage rates in these occupations. These measures have not proved effective in many cases. For better implementation of the law, the machinery for inspection has to be strengthened..... "21. Some broad principles of wage determination have been laid down in the Report of the Fair Wages Committee. On the basis of agreement between the parties, the Indian Labour Conference had indicated the content of the need-based minimum wage for guidance in the settlement of wage disputes. This has been reviewed and it has been agreed that the nutritional requirements of a working family may be reexamined in the light of the most authoritative scientific data on the sub- ject.....

The Association and the Union contend that the National Tribunal ought to have accepted the Tripartite Resolution and determined the basic wage in accordance therewith.

The National Tribunal in adjudicating on this part of the case referred to the Crown Aluminum Works v. Workmen(1) where at page 6 this Court observes "Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objec-

(1) [1958] 1 L.L.J. 1.

tive in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted co- operation in the task of production In achieving this immediate objective, industrial adjudication takes into account several principles such as, for instance, the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay In deciding industrial disputes in regard to wage structure, one of the primary objectives is and has to be the restoration of peace and goodwill in the industry itself on a fair and just basis to be deter-mined in the light of all relevant considerations. . . . . ".

The National Tribunal pointed out that the Planning Commission had set up an official group for study and as a result of the deliberations, the group decided to prepare notes on different aspects of wage so that they could be sent to wage fixing bodies. Four such notes were drawn up and were circulated to the 15th Indian Labour Conference and the 15th Indian Labour Conference deliberated on them and the Resolution on which reliance is placed by the employees was the result. The National Tribunal, while appreciating the importance of the Resolution, was not prepared to act on it pointing out that it was not binding but recommendatory, that Government did not accept it and that the Peserve Bank not being a party was not bound by it. There is no doubt that Government in answer to a query from the Pay Commission answered .lm15 "The Government desire me to make it clear that the recommendations of the Labour Conference should not he regarded as decisions of

Government and have not been formally ratified by the Central Government. They should be regarded as what they are, namely, the recommendations of the Indian Labour Conference which is tripartite in character. Government have, at no time, committed themselves to taking executive action to enforce the recommendations".

The National Tribunal, therefore, did not consider itself bound in any way by what the Resolution said.

The National Tribunal then considered the Resolution on merits as applicable to the case in hand observing :

> "For the first time in India, norms have been crystalised for the purpose of fixation of a need based minimum wage in a Conference where the participants were drawn from the ranks of Government, industry and labour. These recommendations represent a landmark in the struggle of labour for fixation of a minimum wage in accordance with the needs for the workmen. The resolution lays down what a minimum wage should be. It recognises that the minimum wage was "need-based'. The National Tribunal, however, could not accept the Resolution because the Resolution standardised norms applicable to all industrial workers whatever their age or the number of years of service or the nature of their employment. It felt that there was difficulty in accepting the basis of three consumption units at all stages of service or the net intake of 2700 calories at all ages pointing out that this much food was what Dr. Aykroyd thought its proper to be consumed. The National Tribunal did not see the need for changing the co-efficient of 80%. The National Tribunal held that in the economy of our country the need-based minimum suggested by the Resolution was merely an ideal to be achieved by slow stages but was impossible of achievement instantly. We have been addressed able and very moving arguments on behalf of the employees by Mr. Chari. There can be no doubt that in our march towards a truly fair wage in the first instance and ultimately the living wage we must first achieve the need-based minimum. There is no doubt also that 3 consumption units formula is, if anything, on the low side. In determining family budgets so as to discover the workers' normal needs which the minimum wage regulations ought to satisfy, the size of the standard family is very necessary to fix. One method is to take simple statistical average of the family size and another is to take into account some other factors, such as,
>
> (i) the frequency of variations in family sizes in certain regions and employments;
>
> (ii) the number of wage earners available at different stages;
>
> (iii) the increase or decrease in consumption at different stages in employment, that is the age structure and its bearing on consumption.

The plain averages laid down in the Resolution may have to be weighted in different regions and in different industries and reduced in others. It is from this point of view that the Reserve Bank has pointed out that though the consumption units are taken to be 2.25, the earning capacity after 8 years' service is sufficient to provide for 3 consumption units as required by the need base formula. The question thus is whether the National Tribunal is in error in accepting 2.25 consumption units instead of 3 as suggested in the Resolution.

In our judgment, the Tribunal was not wrong in accepting 2.25 consumption units. But it seems to us that if at the start the family is assumed to be 2.25, it is somewhat difficult to appreciate, that the family would take 8 years to grow to 3 consumption units. We are aware that the Pastry Tribunal thought of 3 consumption units at the 10th year and the Sen Tribunal at the 8th year but we think these miss the realities of our national life. In our country it would not be wrong to assume that on an average3 consumption units must be provided for by the end of 5 years' service. The consumption units in the first five years should be graduated. As things stand today, it is reasonable to think that 3 consumption units must be provided for by the end of five years' service, if not earlier.

The difficulty in this case in accepting the need-base formula is very real. The Reserve Bank is quite right in pointing out that the minimum wage so fixed would be above per capita income in our country and that it is not possible to arrive at a constant figure in terms of money. According to the Association and the Union, the working class family wage works out to Rs. 1659 (though the demand is reduced to Rs. 145 by the, Association and Rs. 140 by the Union) while according to the Reserve Bank to Rs. 107.75. The middle class wage, according to the Association, will be Rs. 332-75 while, according to the Bank-, Rs. 202. This is because emphasis is placed on different dietary components in the first case and the increased differential in the second case. Further the food requirement of 2700 calories was considered by the Pay Commission to be too high and by the Planning Commission (Third Plan) to be a matter for re- examination. It will have to be examined what type of food should make up the necessary .calories and how many calories are the minimum. Further the amount of minimum wage calculated on the need-base formula was said by the Pay Commission to be extraordinarily high. This was also the view of the Labour Appellate Tribunal in East, Asiatic Co. v. Workmen(1). Both these documents contain valuable calculations and they show the enormous increase per saltum which would certainly cause enormous unrest among workmen in general in the country. It is also to be noticed that the Reserve Bank, which Mr. Chari claims is the best employer, to apply the formula, is not really the right place for the experiment. If the experiment has to be performed it must have a beginning in a commercial concern after thorough examination and a very careful appraisal of the effect on the resources of the employer and on production. The Reserve Bank is not a profit-makiag commercial undertaking. Its surplus income is handed over to Government and becomes national income. Its main sources of income are discounting Treasury Bills and interests on, sterling securities and rupee securities held against the note issue. Income from exchange on remittances, commission on the management of Public Debt and interest on loans and advances to Banks, and Governments is small. It would, therefore, appear that the Reserve Bank is not a proper place to determine what the need-based minimum wage should be and for initiating it. It cannot also be overlooked that even without the formula it pays better wages than elsewhere.

There is, however, much justification for the argument of Mr. Chari. The Tripartite Conference was a very representative body and the Resolution was passed in the presence of representatives of Government and employers. There must be attached proper value to the Resolution. The Resolution itself is not difficult to appreciate. It was passed as indicating the first step towards achieving the living wage. Unfortunately, we are constantly finding that basic wage, instead of moving to subsistence plus level, tends to sag to poverty level when there is a rise in prices. To overcome this tendency our wage structure has for a long time been composed of two items, (a) the basic wage, and (b) a dearness allowance which is altered to neutralise, if not entirely, at least the greater part of the increased cost of living. This does not solve the problem of real wage. At the same time we have to beware that too sharp an upward movement of basic wage is likely to affect the cost of production and lead to fall in our exports and to the raising of prices all-round. There is a vicious circle which can be broken by increased production and not by increasing wages. What we need is the introduction of production bonus, increased fringe benefits, free medical, educational and insurance facilities. As a counterpart to this capital (1) [1962] I L.L.J.610.

/ must also be prepared to forego a part of its return. There is much to be said for considering the need-base formula in all its implications for it is bound to be our first step towards living wage. As in many other matters relating to industrial disputes the problem may, perhaps, be best tackled by agreement between Capital and Labour in an establishment where a beginning can be safely made in this direction.

The next objection to the Award is in respect of the co- efficient chosen by the Tribunal. The difference in the cost of living between the members of the clerical staff and the subordinate staff has been held to be an increase of 80% over the remuneration of the latter. This was laid down by the late Mr. Justice. Rajadhyaksha in a dispute between the Posts & Telegraphs Department and its non-gazetted employees. Mr. Justice Rajadhyaksha's. calculation was made thus :

> "In 1922-24 there was a middle class family budget enquiry in Bombay and it was found that a family consisting of 4.58 persons spends Rs.
>
> 138-5-0 per month. But the average expenditure of the middle class family in the lowest income group (having incomes between Rs. 75 and 125) per month was Rs. 103-4-0. In 1923 the cost of living Index figures was 155 whereas in 1938-39 it was 104. According to these index numbers the cost of living of the same family would be 103*10/155 = Rs. 69 class budget enquiry consisted of 329 consumption units. Therefore for an average family of 3 consume in 1938-39. The lowest income group in the middles units, the expenditure required in 1938-39 would have been 329 = Rs. 63. According to the findings of the Rau Court of Enquiry a working class family consisting of3 consumption units required Rs. 35 for minimum subsistence. It follows therefore that the proportion of the relative cost of living of a working class family to that of a middle class family of 3 consumption units is 35 : 63, i.e. the cost of living of a middle class family is about 80 per cent higher than that of a work- ing class family."

The family budget enquiry and the Rau Court of Inquiry were in 1922 and 1940 respectively. The Sen Award was in favour of reducing the coefficient because the income of the working classes had increased remarkably in most cities after 1939. The Shastry Tribunal actually reduced it. The Central Pay Commission fixed .the minimum pay of middle class employee as Rs. 90 as against the minimum pay of the subordinate staff of Rs. 55, thus making the coefficient 64%. The Labour Appellate Tribunal restored the coefficient to 80%. The Association asked for a coefficient of 120% but the Tribunal in its award in Reference No. 1 gave reasons for not accepting it. The National Tribunal was in the advantageous position of knowing the views of employees of commercial Banks and comparing them with the coefficient demanded here. Other Unions and Federations did not .ask for such a high co-efficient. The National Tribunal not having any data felt helpless in the matter and preserved the co-efficient at 80%. It observed as follows :

> "In the year of grace 1962 this Tribunal is in no better position than the earlier Tribunals who have dealt with the matter. The inherent infirmities in this coefficient have been pointedly referred to before me. I am not at all certain whether I would be very much wiser by an enquiry which may be conducted at present. Expenditure is conditioned by the income received by the class of persons whose expenditure is being considered. By and large, over a period of time expenditure cannot exceed the income. The only pattern which such enquiry may reveal may be a pattern based on the income of the class of persons whose case is being considered."

This Court is in no better position than the National Tribunal to say what other coefficient should be adopted. When fresh and comprehensive enquiries are conducted, the results would show whether the coefficient should go up or down. With the rise of wages to higher levels among the working class the differential is bound to be lower and this is a matter for inquiry. Till then there is no alternative but to adhere to the co-efficient already established. We shall now take up for consideration some minor points which were argued by Mr. Nargolkar. The first is a demand by the Association for a combined seniority list so that promotion may be based on that list and not upon the reports about the work of the employee. The National Tribunal dealt with it in Chapter XVII of its award. Regulations 28 and 29 of the Reserve Bank of India (Staff) Regulations, 1948 deal with seniority and promotion and provide :

> .lm15 "28. An employee confirmed in the Bank's service shall ordinarily rank for seniority in his grade according to his date of confirmation in the grade and an employee on probation according to the length of his probationary service."
>
> "29. All appointments and promotions shall be made at the discretion of the Bank and notwithstanding his seniority in a grade no employee shall have a right to be appointed or promoted to any particular post or grade."

Promotion, it will therefore appear, is a matter of some discretion and seniority plays only a small part in it. This dispute is concemed with the internal management of the Bank and the National Tribunal was right in thinking that the item of the reference under which it arose gave little scope for giving directions to the Bank to change its Regulations. The National Tribunal, however, considered

the question and made an observation which we reproduce here because we agree with it :

> "..... I can only generally observe that it is desirable that wherever it is possible, without detriment to the interests of the Bank and without affecting efficiency, to group employees in a particular category serving in different departments at one centre together for the purpose of being considered for promotion, a common seniority list of such employees should be maintained. The same would result in opening up equal avenues of promotion for a large number of employees and there would be lesser sense of frustration and greater peace of mind among the employees."

Seniority and merit should ordinarily both have a part in promotion to higher ranks and seniority and merit should temper each other. We do not think that seniority is likely to be completely lost sight of under the Resolutions and Mr. Palkhivala assured us that this is not the case. Mr. Hathi next raised the question of seniority between clerks and typists but we did not allow him to argue this point as no question of principle of a general nature was involved. The duties of clerks and typists have been considered by the National Tribunal and its decision must be taken as final.

The next point urged was about gratuity. In the statement of the case the Association and the Union had made numerous demands in regard to gratuity but it appears from paragraph 7, 10 of the Award that the dispute was confined to the power to withhold payment of gratuity on dismissal. Rule 5(1) of the Reserve Bank of India (Payment of Gratuity to Employees) Rules, 1947, provides as follows:-

> "5 (i) No gratuity will be granted to or in the case of, an employee--
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> (a) if he has not completed service in the Bank for a minimum period of 10 years, or
>
> (b) if he is or has been dismissed from service in the Bank for any misconduct."

The Association and the Union demanded modification of sub- rule (b) quoted above. The Sastry Tribunal had recommended that there should be no forfeiture of gratuity on dismissal except to the extent to which the misconduct of the worker had caused loss to the establishment. The Labour Appellate Tribunal modified the Sastry Award and decided in favour of full forfeiture of _gratuity on dismissal. The Reserve Bank relied on the Express Newspapers (Private) Ltd, and another v. Union of India and others(1) in support of the sub-rule and also contended that there was no jurisdiction in the National Tribunal to consider this subject under item 20 of Schedule 1 or item 21 of Schedule 11. The Reserve Bank relied upon item 7 of Schedule I and item 6 of Schedule H. The demand of the Association and the Union was rejected by the National Tribunal. It had earlier rejected a similar demand in connection with the commercial banks. The Reserve Bank did not, however, pursue the argument before us perhaps in view of the later decisions of this Court reported in the Garment Cleaning Works v. Its Workmen (2) Greaves Cotton Co. Ltd. and others v. Their Workmen(3) and Burhanpur Tapti Mills Ltd. v. Burhanpur Tapti Mills Mazdoor Sangh(4). In these cases it was held by this Court that gratuity is not a gift but is earned and forfeiture, except to recoup a loss occasioned to the establishment, is not justified. Mr. Palkhivala undertook to get the rules brought

in line with the decisions of this Court.

The next demand was with regard to pensions. In the Reserve Bank there are only two retiring benefits, namely, provident fund and gratuity. There is no scheme for pensions. It appears, however, that a few employees, from the former Imperial Bank, who are employed with the State Bank, enjoy all the three benefits. The demand,therefore, was that the (1) [1961] 1 L.L.J. 339.

(2) [1962] 1 S.C.R. 711.

(3) [1964] 1 L.L.J. 342.

(4) A.T.R. 1965 S.C. 839.

Reserve Bank should provide for all the three benefits, namely, provident fund, gratuity and pension. The Reserve Bank contended that the National Tribunals had no jurisdiction under the Reference to create a scheme of pensions for the employees. The National Tribunal did not consider the question of jurisdiction because it rejected the demand itself. In the statement of the case filed by the Association this decision is challenged on numerous grounds. The ground urged before us is that the National Tribunal failed to exercise jurisdiction in respect of this demand and indirectly declined jurisdiction by rejecting the demand itself. The National Tribunal came to the conclusion that two retirement benefits were sufficient and it is difficult for us to consider this without reopening the question on merits of the demand and reexamining the view- point of the Reserve Bank. We stated, therefore, at the hearing that we were not inclined to enter into such a large question not of principle but of facts.

The next demand was with regard to the confirmation of ,temporary employees. The Association had filed a number of Exhibits (Nos. S. 7 1, S72, S 109 to S 112) and the Union (R. 45 to R. 47) to show that a very large proportion of employees were borne as temporary employees and that it took a very long time for confirmation of temporary servants. The Bank in reply filed Schedules (T. 67 to T. 69 and T. 112 to T. 125) The question of confirmation and the period of probation are matters of internal management and no hard and fast rules can be laid down. It is easy to see from the rival schedules that probationary periods are both short and long. As no question of principle is involved we decline to interfere and we think that the National Tribunal was also justified in not giving, an Award of a general nature on this point.

The next point is about the extra payment which the gradu- ates were receiving and the figment of persons in receipt of such extra amounts in the new scale provided. In the year 1946 the Bank accepted the principle of giving an allowance to employees who acquired degrees while in employment. At the time of the present dispute graduates were in receipt of Rs. 10 as special pay. The question was whether in making figment in the new time scales these amounts should have been treated as advance increments. It appears that the National Tribunal reached different conclusions in the two awards arising from Reference No. 1 and the present Reference. In the case of CT 165-5 Commercial Banks the figment was on a different principle and Mr. Palkhivala agreed to make fitment in the new scale taking into account this special ad hoc pay as advance increment.

The next demand made by both the Association and the Union was that they should be allowed to participate and represent workers in disputes between an individual workman and the Reverse Bank. The Tribunal did not accept this contention for the very good reason that if Unions intervene in every industrial despite between an individual workman and the establishment the internal administration would become impossible. In our judgment, this demand cannot be allowed. The last contention is with regard to the time from which the award should operate. The stand-still agreement reached in 1954 expired in October 1957 and the demand was that the Award should come into force from November 1, 1957 or at least from March 21, 1960, the date of the reference. The National Tribunal has made its award to operate from January 1, 1962. The Reserve Bank strongly opposes this demand. According to the Reserve Bank the Tribunal acted more than generously and gave more to the employees than they deserved. The Reserve Bank submits that the employees had made exorbitant demands and wasted time over interim award and, therefore, they cannot claim to have the award operate from the date of the reference much less from November 1. 1957. The Reserve Bank relies upon the Lipton's cave(1) and also contends that the Tribunals decision is discretionary and this Court should not interfere with such a decision. Reliance is placed in this connection on Remington Rand's case, (2) Rajkamal Kalamandir (Private) Ltd. v. Indian Motion Pictures Employees Union and others (3) and Western India Match Company Ltd. v. Their Workmen(4) . In reply the Association contends that the demand was not at all extravagant or exorbitant because it was based upon the Resolution of the 15th Indian Labour Conference and the Reserve Bank itself was guilty of delay after 1957 inasmuch as it asked that the report of the Pay Commission should be awaited.

The solution of this dispute depends upon the provisions of s. 17.A of the Industrial Disputes Act, 1947. That section reads as follows (1) [1959]1 L.J. 431 (2) [1962] 1 L.L.J. 287.

(3) [1963] 1 L.L.J. 318.

(4) [1962] 2 L.L.J. 459.

> "17A. Commencement of the award.
>
> (1) An ward (including an arbitration award) shall become enforce-able on the expiry of thirty days from the date of its publication under section 17 Provided that-
>
> (a)
>
> (b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be expedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in subsection (2).

(4) Subject to the provisions of sub-section (1) and sub-

section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be." Ordinarily, an award comes into operation from the time stated in sub-s.(1). The Tribunal, however, is given the power to order that its award shall be applicable from another date. The Tribunal stated that the date from which the award should come into operation was not a term of reference and the Reserve Bank had also contended that there was no specific demand for retrospective operation of the award. In Wenger & Co., and others v. Their Workmen,(3) it was explained that retrospective operation implies the operation of the award from a date prior to the reference and the word 'retrospective' cannot apply to the period between the date of the reference and the award. There was no claim as such that the award should operate from November 1, 1957 and the demand cannot be considered in the absence of a reference to the National Tribunal. The question, however, is whether a date earlier than January 1, 1962 but not earlier than March 21, 1960 should be chosen. Sub- section (4) quoted above gives a discretion to the Tribunal and this Court in dealing with that discretion observed in The Hindustan Times Ltd. v. Their Workmen(5) that no general principle was either possible or desirable to be stated in relation to the fixation of the date from which the award should operate. The Tribunal in fixing a date earlier than that envisaged by the first sub-section justified itself by stating that much of its time in the beginning was occupied by Reference No. 1 and a significant amount thereafter was occupied by Reference No. 3 and there was justification in making the award operate from January 1, 1962. From the way in which the Tribunal expressed itself in this award and in the award in Reference No. 1 it appears that but for the delay that took place the Tribunal would have made the award to operate as laid down in sub-s. (1). It has been ruled in the three cases-Remington Rand's case,(2) Rajkamal's case (4) and Western India Match Company's case(5)-that a discretion "exercised on judicial principles by the Tribunal about the commencement of the award should not be interfered with. Nothing was shown to us why the award should be made to commence earlier. Both sides were to blame in regard to the time taken up (1) [1963] 2 L.L.J. 403.

(3) [1962] 1 L.L.J. 287.

(5) [1962] 2 L.L.J. 459.

(2) [1964] 1 S.C.R. 234.

(4) [1963] 1 L.L.J. 318.

and the Tribunal perhaps found it difficult to reach aconclusion earlier in view of the number of the references beforeit. In the circumstances, it cannot be said that the selection ofJanuary 1, 1962, when the inquiry in the present reference wascompleted, except the preparation of the Award, was bad. Inany event this was a matter of discretion and it cannot be said that the dis- cretion has not been exercised on judicial principles. We decline to interfere.

In the result the appeal fails and it will be dismissed. It may, however, be said that the appeal would have partly succeeded but for the creation of new scales of pay for Class 11 employees and acceptance of some of the minor points by the Reserve Bank. In this view of the matter we make no order about costs.

Appeal dismissed.