Bharat Electronics Ltd. vs Chief Labour Commissioner on 4 December, 1995

Equivalent citations: 1996IAD(DELHI)128, 1996(36)DRJ153, (1996)IILLJ193DEL

JUDGMENT

Usha Mehra, J.

(1) M/S Bharat Electronics Ltd. is aggrieved by the impugned order passed by respondent No.1, the Appellate Authority as well as by Certifying Officer. By the impugned order they amended Clause 9.1 and 14.1 of the draft standing order submitted by the petitioner for certification.

(2) Vide Clause 9.1, petitioner had proposed 18 days annual leave to its workmen. In clause 14.1 it reserved the right to transfer the employees from one unit to another and from one State or town to another. Workmen did not agree to the proposal given in these two clauses and therefore, made representation before the Certifying Officer. The Appellate Authority as well as the Certifying Officer keeping in view the annual leave granted by the Ghaziabad Unit of the Company amended Clause 9.1 thereby certifying that 30 days annual leave be given to the workmen, by amending modifying Clause 14.1 of the draft standing order they curtailed the powers of the Management, petitioner to effect transfer of its employees to other units of the company. This has been done on the presumption that Kotdwara unit of the Company and its employees had relationship of master and servant dehorse the company. Moreover, transfer if permitted would amount to termination of that relationship between the Kotdwara Unit and its employees. Hence, the power to transfer as proposed under Clause 14.1 was not certified. Aggrieved by this order, the petitioner has approached this Court.

(3) The questions for determination can he summed up as under. (1) Whether the Certifying Officer or for that matter respondent No. 1 i.e. the Appellate Authority could ignore the settlement arrived at between the workmen and, the Management thereby agreeing that no other demand would he raised having financial implication during the currency of that settlement, (2) Whether the Certifying Officer or for that matter the Appellate Authority could modify Clause 9.1 of the draft standing order by simply relying on the certified standing orders of Ghaziabad Unit of the Company; (3) What is an Industry-cum-Region Principle? (4) whether the Certifying Officer or the Appellate Authority was justified in treating the workers of Kotdwara unit as employees exclusively of that unit and hence petitioner having no power to transfer them.

(4) Before dealing with the above questions, it would be useful to glance at the first instance the facts of this case. The relevant facts are that the petitioner is one of the nine production units of M/s Bharat Electronics Ltd. (hereinafter called the company). The company is under the Administrative control of the Government of India. Its different units are situated in different parts of the country. The Company is engaged in the manufacturing of sophisticated professional grade electronic equip-

ment and components for the consumption of the armed forces of the Union of India and for defense and Civil Services, Para-military services. Department of Space. All India Radio, Doordarshan, Civil Aviation, Department of Tele-Communications. Oil Industry etc. (5) One of the unit of the Company is situated at Kotdwara in the State of Utter Pradesh. It is engaged in the manufacturing of switching equipment for defense and Department of Tele-Communication and others. This unit was established In the year 1984. It has engaged nearly 630 workmen. Petitioner being industrial establishment was required to submit draft standing order before the Certifying Officer appointed under the Industrial Employment (Standing Orders) Act 1946 (in short "Act") for certification.

(6) Prior to the submission of this draft standing orders, the workmen had submitted Charter of Demands on 2nd May, 1988 raising as many as 27 demands under various heads, namely:- CLAUSE1.General. 2.Minimum wages. 3.Revision of wage structure, 4.DA, 5.CCA, 6,Hill allowance. 7.Housing and House Rent Allowance. 8.Other allowances, 9.Advances. 10.Terminal Benefits. 11.Employment/ retirement, 12.Career Plan, Clause 13 dealt with working hours. leave and holidays and clause 13.1 dealt with Annual Leave. 14.Transport. 15.Medical facilities, 16.Education facilities. 17.Leave Travel Concession, 18.(canteen Facility, 19.Creche facilities, 20.Sports and Cultural activities, 21 .Service, 22.Rewards, 23. Workers participation in Management. 24.Safely aspects, 25.Supply of essential commodities. 20.Protection of existing facilities and 27.Duralion of settlement.

(7) Protracted negotiation took place between the workmen on one side and the Management on the other to discuss and settle these demands. After protected negotiations and meetings of the Joint Wage Negotiating Committee a Memorandum of Understanding was signed on 2nd May.1989. The said Memorandum contained a clause indicating that detailed settlement would be signed separately. Pursuance to that Clause of the Memorandum of Understanding a final settlement was signed on 20th July,1989 by all the parties before the Conciliation Officer. Since the settlement was arrived at before the Conciliation Officer hence it is binding on all the parties as per the provisions of Section 18(3) of the Industrial Disputes Act, 1949 (in short the Act). By virtue of this settlement all the demands of the workmen stood resolved and those which were not specifically mentioned it was understood that that also stood settled. Duration of this settlement was fixed for five years effective from 1st January, 1987 lasting up to 31st December, 1991. It was to continue unless terminated by either party. The draft standing orders as required under the Act were submitted by the petitioner before the Certifying Officer. The Certifying Officer did not certify the draft standing order as proposed. He instead modified two of the clauses. The proposed clauses as submitted by the petitioner and as modified by Certifying Officer and approved by the Appellate Authority are reproduced as under :

> Clause 9.1 as proposed by the petitioner As certified by the Certifying Officer "Leave: Weekly holidays will he allowed "Weekly holidays will he allowed to the to the workmen as provided in the workmen as provided under Factories Factories Act, 1948. Leave and other Act,1948 and other Holidays (except holidays will be regulated in accordance annual holidays provided herein) in with the rules of the Company, accordance with the rules of the management from time to time. Annual leave will he

allowed to the workmen @1 day for 11 days of duty provided, however, that it shall not exceed in the aggregate 30 days in a year.

Clause 14.1: As proposed by the petitioner before the as certified by the Certifying Certifying Officer officer. "Transfer: Workman may be transferred "Workmen may he transferred from from one shop/section/ one establishment/section/division department/division to another within the department to another of Bharat unit or from one unit to another Electronics Ltd. Kotdwara Unit. unit/office belonging to the company or However, in extra-ordinary from one station to another. On transfer circumstances a workman can be to another unit/office he will he governed transferred based on good and by conditions of the service of that cogent reasons to any other unit/office." unit/office of Bharat Electronics Ltd., provided there is no economic loss in the wages, bonus or other monetary and service benefits,etc. to the disadvantage of the workman.

(8) Respondent No. 1 retained the Clause 9.1 as certified by the Certifying Officer. He, however, further modified Clause 14.1 as under:-

CLUASE14.1 as amended by respondent No.1:-

"WORKMEN may be transferred from one shop/ section/department/division of Bel, Kotdwara unit to another unit/ office of Bel, Kotdwara. Inter-unit transfer of a workman may he made only if the workman has given his willingness to accept the terms and conditions as applicable in the unit to which he consents to be transferred."

(9) It is pertinent to note that since the petitioner has been dealing with the manufacturing and supply of the defense equipments, therefore, discipline and production was of paramount importance. The same could not be compromised, therefore, petitioner contended before the authorities concerned that if the annual leave of the Kotdwara unit was to be increased from 18 to 30 it would effect the efficiency and production beside creating industrial unrest in the region. Similarly, the right of transfer could not be taken away from the Management. Moreover, transfer was agreed to by the workers when they accepted the employment.

THE respondent No.2's defense is based on the fact that Ghaziabad Unit and Kotdwara Unit are situated in the same State. These being situated in the same region, the annual leaves granted to one Unit would apply to the other unit. Supreme Court infact approved the order of the appellate authority regarding annual leave certified for "Ghaziabad Unit" of the Company. Moreover, in the meetings of the Joint Wage Negotiating Committee held at Bangalore on 28th, 29th and 30th April, and 2nd May,1989 it was resolved that a separate settlement would be executed with regard to annual leave. In this view of the mailer the alleged settlement of 20th July,1989 had no relevance nor any bearing so far as the matter covered under Clause 9.1 of the draft standing order was concerned. The question of annual leave had been left open. It ultimately got finalised before the

Certifying Officer. Petitioner cannot, therefore, challenge the same now. Moreover, the draft standing order was pending before the Certifying Officer since 21st July,1988, whereas the settlement was arrived at on 20th July,1989, hence there was no relevancy of the alleged settlement in the facts of this case. The Ghaziabad unit as well as the Kotdwara unit being situated in the same State i.e. Uttar Pradesh, therefore for comparison purpose the terms and conditions as settled for Ghaziabad Unit would have a bearing on Kotdwara Unit. Number of annual leaves, as settled for Ghaziabad Unit which happens to be in the same Region, would automatically apply to the employees of Kotdwara unit. So far as transfer of employee from one Unit of the Company to another, the same cannot be done because each Unit of the company is a separate industrial undertaking having separate set of rules and regulations, therefore, without the consent of workman he cannot be transferred to another unit. It would be to his deleriment.

(10) Question No.1: What is the effect of Settlement dated 20th July,1989?

BHARAT Electronics Ltd., the Company has admittedly nine Units situated in different States and these units have their own standing orders governing the service conditions of its employees. The Kotdwara Unit of the Company arrived at a settlement with its employees before the Conciliation Officer on 20th July,1989. As per Clause 17.0 of the said settlement the demands raised by the workmen in their Charter of demands stood finally settled. The demands mentioned in their Charter of Demands particularly at S.No.1 to 10, 14 and 18 Were discussed and resolved beside indicating other benefits already enjoyed by the employees. So far as other demands which were not specifically mentioned it was presumed those were given up. In this regard reference can be had to Clause 17.0 of the agreement which is reproduced as under:-

> CLAUSE17.0:
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> 17.0The settlement is in full and final settlement of all the demands raised by the Unions in their Charter of Demands and none of them shall form a point of industrial dispute during the. period of this settlement. No other demand having financial implications will be raised during the period of this settlement.

(11) The emphasise in this clause is on the finality of Settlement to all the demands raised by the Union in their Charier of Demands. It has specifically been mentioned that no other demand having financial implications would be raised during the five years duration of this settlement.

(12) One of the demands raised was increasing the annual leaves from 18 to 30 as admissible to Ghaziabad Unit. The said Clause 13.1 of the Charier of demand reads as under:- "13.1.Annual Leave : Bel, Ghaziabad and Kotdwara units are situated in the jurisdiction of Uttar Pradesh and the rules and regulations applicable to the employees should be identical in case of annual leave. Some of the employees of this unit are transferred from BEL-GAD where they were entitled for 30 days annual leave whereas on their transfer to this unit, it is reduced to 18 days. It means that the employees of this unit are on a constant loss of 12 days at per annum while serving under the same employer and under the same State. So 30 days at should be given to all the employees with retrospective effect as is given in BEL-GAD."

(13) All the demands raised by the workmen were negotiated including Clause 13.1 in various meetings of the Joint Wages Negotiating Committee held at Bangalore. In those meetings the demands were resolved and a Memorandum of Understanding was signed on 2nd May,1989. Pursuance to this Memorandum of Understanding a final settlement was signed on 20th July,1989. Mr.Lekhi's contention that this demand was not covered in the Memorandum of Understanding signed on 2nd May,1989 as well as in the Settlement of 20th July,1989 because in the minutes of the meeting of the Joint Wage Negotiating Committee held at Bangalore on various dates and finally on 2nd May,1989 parties had agreed that with regard to the annual leave a separate agreement would be signed. That is why the demand raised vide clause 13.1 covered under Clause 9.1 of the draft standing order was agitated before the Certifying Officer. He had to adjudicate the same. Moreover, the petitioner has also admitted that Certifying Officer fairly and reasonably considered these matters. Therefore, now petitioner cannot ask this Court to read judicator those matters. This argument of Mr.Lekhi beside being contrary to facts on record is also against the provisions of Section 18 of the I.D.Acl. The reading of para 3 of the minutes of the meeting dated 2nd May,1989 clearly show that by a separate agreement rationalisation of eligibility was only to he considered. Para 3 reads as under;

PARA3 "WITH regard to annual leave it was agreed to rationalise the eligibility by a separate agreement."

(14) The emphasis in this para is on the question of rationalisation of eligibility of annual leave and not on the increase of number of annual leaves. Mr.Bhasin in this regard drew my attention to different set of workmen working in this unit. Some are eligible for annual leave, some are not. Therefore, in order to rationalise the same a separate agreement was to be executed. But by no stretch of imagination the question of eligibility can be read or presumed to mean demand of increase of annual leave. There is force in this submission of Mr.Bhasin. Apparently, if what Mr.Lekhi now contends had been the intention of the parties then why did the representatives of the workmen signed the settlement. Nothing prevented them to incorporate a para in this regard in the Memorandum of Understanding as well as in the settlement.

(15) They were aware that vide Clause 13.1 they had asked for parity regarding annual leave with Ghaziabad Unit. But this demand vide the final settlement was given up. The harmonious reading of the above said three documents namely minutes of the Committee, Memorandum of Understanding and the Settlement would lead to only one inference that workmen did not persist their demands as mentioned in Clause 13.1. They not only gave up this demand but many other demands also. That appears to be the reason that in clause 17.0 of the settlement dated 20th July,1989 and concluding para of the Memorandum of Understanding it was clarified that all other demands having financial implications stood resolved and that no industrial dispute could be raised on the basis of demands raised meaning thereby that the demands which were not specifically mentioned in the Settlement stood given up. Now if on the basis of these demands industrial dispute could not be raised, then I see no reason why on the basis of those demands which were given up or deemed to be resolved the workers could agitate the same before the Certifying Officer. Had this demand not been given up the representative of the workmen would have mentioned the same in the Memorandum of Understanding as well as in the selliement. Memorandum of Understanding and settlement were

signed without any such reservation. Rather the Memorandum of Understanding indicate that with regard to the demands settled a document detailing the settlement would be signed in due course after complying with necessary procedures. The settlement which ultimately saw the light of the day pursuance to the term of that Memorandum of Understanding nowhere mention that demand raised in Clause 13.1 was left open.

(16) The representative of the Workmen it cannot be said, were ignorant of the fact that increase in the number of annual leave would increase the financial burden on the company. They did not gel it specifically mentioned in the Settlement that this item was yet be decided. Instead they signed the Memorandum of Understanding and the Settlement without any such restriction and with their eyes open. Having settled their demands as raised in the Charier of Demands amicably with the petitioner, it does not lie in their mouth now to say that this demand was never settled or it was left open and hence could be agitated before the Certifying Officer.

(17) The settlement arrived at and signed before the Conciliation Officer has a binding force. To appreciate the same let us analyze the provisions of Sub-section (3) of Section Is of the I.D. Act, which is reproduced as under:

> SECTION18(3) of the Id Act:-
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> (3)A settlement arrived at in the course of conciliation proceedings under this Act [or an arbitration award in a ease where a notification has been issued under subsection (3-A) of Section 10-A] or [an award of a Labour Court, Tribunal or National Tribunal which has become enforceable] shall be binding on-
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> (A)all parties to the industrial dispute;
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> (B)all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board [arbitrator], Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
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> (C)where a parly referred to in clause (a) or clause (b) in an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
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> (D)where a parly referred to in clause (a) or clause (b) is composed of workmen, all persons who arc employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the dale of the dispute and all persons who subsequently become employed in that establishment or part."
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> (18) Reading of Clause 3 of Section 18 clearly stipulate that settlement arrived at in the course of conciliation proceedings under the I.D. Act shall be binding on all the parties. Admittedly in this case conciliation proceedings were pending under the I.D.Act. During the course of those proceedings the settlement dated 20th July,1989 was arrived at. It is signed by the Conciliation Officer beside being signed by the

representative of the Workmen and the Management. They are all signatory to this settlement. The Certifying Officer or for that matter the respondent No.1 by ignoring the settlement not only violated the provision of Section 18(3) of the I.D. Act but also the principle of natural justice. A binding settlement cannot be allowed to be contravened. If that is permitted then there would be no finality attached to any settlement. It would effect the industrial peace. This settlement unless validly terminated was binding on the parties. The Certifying Officer or for that matter the respondent No.1 could not ignore this binding settlement simply because Ghaziabad Unit of the Company which happens to be in the same State i.e. Uttar Pradesh was allowing 30 days annual leave. This could not be a ground to do away a binding settlement and there by create a financial burden on the petitioner.

(19) A similar question came up before this Court in the case of Indian Oil Corporation Ltd. V. Joint Chief Labour Commissioner and Ors. reported in 1990 Vol.76 Fjr page 93 wherein the Workers Union had sought amendment in the standing order seeking enhancement of the retirement age, when there was a subsisting and valid settlement in existence. That settlement contained a clause that the workmen would not raise any demand which may have financial burden on the company during the period the settlement was in force. This Court held that the workers on account of the said settlement were debarred from raising such a demand seeking increase in the age of superannuation or retirement under the provisions of Industrial Employment (Standing Order) Act,1946, because such a demand obviously had effect of imposing financial burden on the company and by the terms of the settlement no demand could be raised having financial implications. It was further observed that the parties were to remain bound by the terms of the settlement. It was only alter the settlement was terminated in accordance with the provisions of the Act that the parties could raise any dispute for fresh adjudicialion. This Court went to the extent of observing that the workman cannot be allowed to contend that although they were bound by the terms of the settlement yet they had a right to raise any demand by invoking the jurisdiction of the Certifying Officer under the Standing Orders Act, because that would conflict with the settlement. The observations of this Court in the above case on all force apply to the facts of this case. This decision has been approved by the Supreme Court in the case of Barauni Refinery Pragatisheel Shramik Parishad V. Indian Oil Corporation Ltd. & Ors. reported in Jt 1990 Vol.3 Sc page 123. In view of the settled principle of law, to my mind, it was not open to the Certifying Officer or for that mailer the appellate authority, respondent No. 1 herein to undo the binding and subsisting settlement arrived at between the parties nor the respondent No. 1 and Certifying Officer could amend clause 9(3) of the draft standing order, thereby imposing financial burden on the petitioner. It is not right for Mr.Lekhi to contend that increase in annual leave would not create financial burden on the petitioner. In fact additional paid leave mean additional financial burden which according to the settlement could not be imposed on the petitioner for a period of five years i.e. during the duration of the settlement. The Supreme Court in the Ghaziabad Unit case was not called upon to decide the effect of the settlement as per

Section 18(3) of the I.D.Act.

(20) Questions 2 & 3 relate to the principle of Region-cum-Industry and whether Certifying Officer and Respondent No.1 could amend Clause 9.1 simply by relying on the decision of Ghaziabad Unit. Karnataka High Court in the case of Bharat Electronics Ltd. Jalahalli V. Bharat Electronics Employees Union, Jalahalli C.W.No.25141/90 decided on 6th December,1991, observed that by merely relying on the decision of Ghaziabad Unit shows non application of mind by the Appellate Authority. He did not apply his mind independently before upholding the order of the certifying Officer. The Appellate Authority at Ghaziabad Unit had in fact followed he region-cum-Industry principle. Leave facility in comparable industries in the region was considered by that appellate authority. Whereas the appellate authority in the present case did not consider the region-cum-Industry principle. He also did not consider the fact that the certification at Ghaziabad was made during 1976, much water has flown between 1976101994. A serious implication would follow by allowing the workmen the benefit of additional leave without comparing the similarly situated industries in this region. The respondent No.1 instead of following this principle took the view that since Kotdwara Unit is located in same State i.e. the State of Uttar Pradesh, therefore, its workmen must have the same annual leave which was being given to Ghaziabad Unit, as this unit is also located in the same State. This the respondent No.1, did by converting the State into a region. Respondent No.1 ought to have compared similar industries situated in the same region in order to some to the conclusion as to whether those industries in the same area or in the neighborhood were granting the same quantum of annual leave to its workmen. Respondent No.1, though has used the word "industry-cum-region" in the impugned order, but nowhere mentioned with which industry he compared the question of annual leave vis-a-vis the petitioner. Rather the impugned order shows that argument of the petitioner in this regard have been rejected by the Certifying Officer and the Appellate Authority on the ground that Management could not deviate from the order of the Supreme Court passed in the Ghaziabad Unit case.

(21) The Certifying Officer and the Respondent No.1, went to the extent of saying that they did not find any justification to deviate from the order of the Supreme Court in the Ghaziabad Unit. They observed that Bharat Electronics Ltd. the Company having two units in the same State i.e. Up hence annual leave granted to its employees by Ghaziabad Unit should per se apply to Kotdwara Unit. Mere distance of the two units could not be a reasonable ground for deviation. Moreover, the petitioner having not mentioned about the national holidays, therefore, in the absence of same example of Ghaziabad Unit was the best. It has been clearly mentioned in the impugned order that regarding annual leave the criteria adopted by the Ghaziabad Unit should be adopted. By adopting the said criteria the respondent No.1 modified the proposed Clause 9(1) of the standing order. This shows nun application of mind. Ghaziabad Unit of the Company is admittedly situated in the same State, i.e. State of U.P. but by, no stretch of imagination, it could be called a region. If a State is to be treated as a

region then Ghaziabad could not be described as suburb of Delhi. Infact Ghaziabad has been described as part of Delhi or a suburb of Delhi, though technically it forms part of the State of UP. This was so held by the Supreme Court in the case of Goverdhan Prasad V. The Management of Indian Oxygen Ltd. . This the Supreme Court observed by keeping in view the a pproximity of distance from Ghaziabad to Delhi, which is hardly 20 Kms. The price structure prevalent in Delhi and Ghaziabad has hardly any difference. Therefore, Ghaziabad was treated as a suburb of Delhi. Reading of the judgment in Goverdhan Prasad's case (Supra) shows that while interpreting the principle of industry-cum-region, we have to keep in mind the a pproximity of the area of the industries which are to be compared or which are comparable. Similarly situated industries in the neighborhood of Kotdwara Unit would have given better insight about the annual leave being given to the workers of that area. While considering the annual leave of the Ghaziabad Unit, the authorities in that case had taken the comparable industries situated near Ghaziabad as well as in Delhi. It is nol disputed that there are number of industries in the neighborhood of the petitioner or in the same area. Nol only the factum of region has been ignored by the respondent No.1 but he also ignored the fact of total number of paid absences which the employees of Kotdwara unit were entitled to and eligible to avail, every year. Mr.Vinay Bhasin drew my attention to the number of paid absences given to employees of Kotdwara Unit which are; 1. Annual Leave: 18 days approx. 2. Casual Leave: 12 days 3. SickLeave: 10 days with full pay 4. National/Festival Holidays: 12 days Total: 52 days.

(22) MR.BHASIN further contended that paid absence as mentioned above do not take into account the special leave which the employees of Kotdwara Unit are entitled under clause 10 of the leave rules of the petitioner. These facts though brought to the notice of the Certifying Officer, he instead of appreciating the same went to the extent of saying that number of National Holidays were not brought to his notice. The observation in this regard by Certifying Officer, according to Mr.Bhasin, was wrong. There was no procedure for filing written submissions or application on the points discussed by the parties before the Certifying Officer or Respondent No.1, therefore, the authorities could mention anything in their order. That is why petitioner cannot give any proof that these facts were brought to the notice during the course of discussions. The Certifying Officer in his order has mentioned that the Management did not mention about the national holidays meaning thereby the petitioner mentioned about casual leave, sick leave and Special leave i.e. why he only mentioned about the National holidays. If we accept what Mr.Bhasin stales then we have to keep in mind that the fact of paid absences had not been taken into account by the respondent no.1 while passing the impugned order. Nor the special leave which the employees of the the Kotdwara Unit are entitled under Clause 10 of the Leave Rules over and above the paid absence. Leave Rules stipulates that the special leave could be without pay, half pay or full pay. Apparently the Kotdwara Unit employees are entitled to minimum of 52 days paid absence beside the special leave. How much paid absence/ leaves are provided to the employees of other industries in the region

or in the neighborhood area has not been considered either by the Certifying Officer or by respondent No.1. Respondent No.1 ought to have compared the total number of paid absences with similarly situated industrial establishment in the region. To strengthen this conclusion support can be bad from decision of the Supreme Court in the case of Indian Oxygen Ltd. V. Indian Oxygen Ltd. Workmen reported in 1963 (1) Llj 264; where the Supreme Court observed as under:- "IN support of the appeal as regards annual leave it is urged on behalf of the appellant that the result of the award will be that the workmen of this company will be enjoying many more paid absences from work than other similar industrial establishments in the region. On an examination of Chart Ii which is the comparative statement of leave facilities available to employees in different establishments in the region we find adding the provision for annual leave to the provisions for festival and national holidays that the Indian Tube allows to its monthly rated workmen 34 paid absences from work with full pay, the Indian Steel and Wire products 34, Indian Cable Company 34, Tala Engineering and Locomotive Company 36, and the Tinplate Company 32. In the appellant company, the office staff was getting 21 days as annual leave and 17 days on account of festival and national holidays, that is 38 days of paid absences; other factory staff was getting 21 days as annual leave and 10 days on account of festival and national holidays, that is a total of 31 days of paid absences. As a result of the Award, the office staff in the appellant company would be getting 47 days of paid absences on full pay and the factory staff 40 days of such absences. We can see no reason for this increase of paid absences which is clearly and distinctly above the pattern in the comparable concerns in that region. It is hardly necessary to say that especially at the present time, emphasis in the country should be more on increased production, and absence from work should not he unduly encouraged."

(23) Reliance can also be placed on the decision of Supreme Court in the case of Calcutta Insurance Company Ltd. and their Workmen reported in 1967 (2) Llj 1 and Rai Bahadur Diwan Badru Dass V. Industrial Tribunal, Punjab 1962 (2) Llj page 365. In fact in the matter of providing leave rules, industrial adjudication prefers to have similar conditions of service in the same industry situated in the same region. In the case of Monthly Rated Workmen at Vadala Factory of Indian Hume Pipe V. Indian Hume Pipe Company 1986 (Suppl.) Sc page 79, the Supreme Court observed that incase a company having different units all over the country uniformity of wage structure of all the different units in the country, if accepted, will amount to giving a go by to the well settled principle of industry-cum-region. The approach adopted by respondent No.1, therefore is not only inconsistent but contrary to the principle of industry-cum-region. For each industrial unit the comparison has to be done with other industrial establishments which are in the same area or in the neighborhood. The concept of uniformity is not the principle in the case of Wage Structure or leaves because if that is accepted then the company has nine Units all over the country and all the units are having independent Standing Orders and service conditions. For the sake of uniformity the wage structure of one Unit cannot he made applicable to the other because that depends on various factors like geographical, economical and

proximity with a place where price structure is different. That is what the Supreme Court laid down in Indian Hume Pipe Company's case (Supra). Respondent No.1 was to see what annual leave other industries in the hinterland were giving. Paid absence should not differ in different industries in that region or area.

(24) The word "industry" has been defined in Section 2(j) of the Industrial Disputes Act to mean "any systematic activity carried on by cooperation between an employer and his workmen....." Admittedly the petitioner is an industry. The question then arises is what is a "region". The word "Region" has not been defined anywhere in the Act. It has been coined vide various judicial pronouncements by the Apex Court. Therefore, for the purpose of understanding as to what would be a "industry-cum-rugion", we have to fall hack on the pronouncements of the Apex Court as well as the High Courts. The respondent No.1 bad to compare similarly situated industries in the nonbearing areas of Kotdwara and Kotdwara Unit of the petitioner. Prevailing circumstances could be radically different indifferent regions. In Kotdwara living expenes, buying capacity etc. can be radically different from Ghaziabad. Kotdwara Unit is situated near Haridwar which is about 200 KMs. from Delhi. Whereas Ghaziabad which also situated in U.P.State is at a distance of 20 KMs. from Delhi. Ghaziabad being suburb of Delhi, therefore the industries situated there or situated at Delhi could not be compared by the appellate authority with the industries situated at Kotdwara. In the present case, neither the Certifying Officer nor respondent No. 1 compared the annual leaves granted by the industries in the neighborhood of Kotdwara.

MR.Lekhi's contention that since there is only one Regional Labour Commissioner for Ghaziabad and Kotdwara hence both these units fall in the same region. Region has to be understood keeping in view that there is only one Regional Labour Commissioner for the whole of U.P. Region in the context of the present case has to he seen as per the provision of Central Act. Section 2 of the Central Act refers to I he Regional Commissioners and under that Act one Regional Commissioner has been appointed for whole of the State of U.P. There being only one Regional Commissioner for the Ghaziabad as well as Kotdwara, therefore, the State of U.P. has to be treated as one region. In this regard Mr.Lekhi placed reliance on the 7th Schedule of the Constitution. The industrial establishment like the petitioner fall under List-I whereas industries falling under List-II of the 7th Schedule are covered by the State Act. Therfore, according to him for the purposes of industries falling in List-II of the 7th Schedule, there may be more than one Regional Commissioners in the State of U.P. But so far as the industries falling in List-1 are concerned, those are to be governed by the Central Act. The industries established under the Central Act for those the State Act would not apply nor number of Regional Commissioners. For the industries established under the Central Act like the petitioner there is only one Regional Commissioner for the whole of U.P. Hence, U.P. State as a whole has to be treated as one region. Reference in this regard was made by Mr.Lekhi to Entry No.22 of List-III of 7th Schedule read with Article 246 and 254 of the Constitution of India. Refuting the argument of Mr. Vinay Bhasin, Mr.Lekhi contended that even though the State of U.P. has its own Rules under the same name as Central known as U.P. Industrial Employment (Standing Orders) Act,1946, still it will have no relevance so far as facts of this case are concerned. The

notification issued by the U.P. State pursuance to the provisions of Section 2 of the U.P.Industrial Employment (Standing Orders) Act, 1946 and the Rules framed thereunder indicate number of Regional Commissioners with different designations. But that cannot be made applicable to the industries under List-1. The said Rules 1946 of the State of U.P. are not applicable to industrial establishment under the Central Acl. Rules of 194601' the U.P. was not the subject matter of the impugned order. The petitioner is governed by the Central Act and for interpreting the Central Act, it is not proper to refer to any enactment of the State even if the State Enactment has the same title as the Central Act. Moreover, this argument, according to Mr.Lekhi, was not taken before the respondent No.1, therefore, respondent No.2 has been deprived of the fair opportunity to expose the fallacy of the sub- mission made by the petitioner based on the State Act. Mr.Bhasin fairly conceded that this argument was not taken up before the Certifying Officer or for that matter before respondent No.1. He however, contended that since Mr. Lekhi took up the argument based on Regional Commissioner being one, therefore, the petitioner had to deal with the same by placing reliance on the U.P. Industrial Employment (Standing Order) Act,1946. Be that as it may, the fact remains that this argument was neither advanced by the petitioner nor respondent No.2 before respondent No.1, therefore, respondent No.1 had no opportunity to deal with the same. At this stage new argument cannot be allowed to be advanced.

(25) Now reverting to the concept of industry-cum-region the Courts while dealing with the interpretation of this concept specifically used the word "Region" instead of "State". Instead of using the word "State" courts consciously used the word"'Region". "Region" means neighborhood of that area. "Region" is a space on the surface of the earth conceived of as divided from the rest as regarded from a particular point of view. The point of view, therefore, from which the question has to be judged is that of "industry". Boundaries set up for administrative or other purposes accordingly would be irrelevant for the purpose. Essential element of "industry" will, therefore, be the guiding factor and those must be examined. For the purpose of Wage fixation, it is a territory where economic conditions and standards of living are almost identical. In this case though wage fixation was not the question in issue hut the annual leave which if given in excess to the other industries in the region would not only have a financial bearing, hut would also create industrial unrest in the region. The respondent No.1 ought to have taken into consideration the economic conditions and the standard of living of the workers of almost identical industries in the Kotdwara area. The economic condition surrounding the Ghaziabad which is the suburb of Delhi could not have been compared with the economic conditions and the standard of living at Kotdwara which is about 200 KMs. away from Delhi or for that matter from Ghaziabad. While considering the case of Ghaziabad Unit, the Court had taken note of the fact that it is situated near Delhi and. therefore, took the economic conditions prevalent in the neighborhood of the Ghaziabad unit. To determine the financial structure of the petitioner, the Certifying officer as well as the Appellate Authority respondent No.1 ought to have taken into consideration the economic standard prevalent in the neighborhood of Kotdwara Unit. Neither the Certifying officer nor the Appellate Authority took note of the situation with regard to the annual leave given by other industries situated in the neighborhood of Kotdwara unit namely M/s Mansarovar Boating Ltd.. Najibabad. Titan Watches, Dehradun and Fcs Co-operative, Najibabad where the annual leave is granted in accordance with the provisions of the Factories Act i.e. 18 days per year. It has, however, been brought on record that the workers employed with J.B.Glass, Rishikesh are getting leave at the rate of one day for every 16

working days and the employees of Bhel, Haridwar are getting annual leave under a graded scale i.e. up to 5 years 22 days, 5-10 years 24 days, 10-15 years 26 days, 15- 20 years 28 days and above 20 years 30 days annual leave. The same is the case of the workmen employed with Idpl, Rishikesh. Therefore, the Certifying Officer or for that matter the Appellate Authority ought not to have ignored the facts nor could draw presumption that since Ghaziabad unit is granting 30 days annual leave, therefore, ipso facto that be made applicable to Kotdwara Unit also. The Appellate Authority/ respondent No.1 did not appreciate that for annual leave the standing order of Ghaziabad unit ipso facto could not be made applicable to Kotdwara Unit simply because these units happen to be in the same State.

(26) The underlined idea for keeping in mind the principle of industry-cum-region is that any financial burden imposed on an industry in that area or the region should he made applicable to other industries otherwise there would be unrest in that area. The courts ensure that the wage structure or the financial burden of similarly situated industries in the area should be the same. Therefore, the word "region" necessarily assumes importance and that is why it was confined to the neighborhood or the adjoining area in order to maintain uniformity with regard to wage structure as well as other benefits in that area. The comparison, therefore, has necessarily to be of that region/area. In this regard reference can be had to the decision of Supreme Court in the case of Workmen of New Egerton Woollen Mills V. New Egerton Woollen Mills and Ors. 1969 (2) Llj page 782, where Amritsar itself was treated as a Region though it falls in the State of Punjab. Similarly in the case of Workmen of Bharat Petroleum Corporation Ltd. (Refining Division) Bombay V. Bharat Petroleum Corporation Ltd. & Anr. 1984 Llj vol. 1 page 35, Bombay itself was treated as a Region though it falls in the State of Maharashtra. To the same effect are the observations of the Supreme Court in the case of Dunlop V. Its workmen & Ors. Air 1959 Llj Vol.II page 826 Where "Calcutta" was considered to be a region. Hence it was appropriate for the respondent No.1 to have compared similarly situated industries in the neighborhood of Kotdwara or in the same area instead of ipso facto applying the standing order of Ghaziabad Unit.

(27) Question No.4 Whether transfer of workers from one unit to another barred?

AT the outset Mr.Lekhi took the objection that the petitioner cannot be allowed to take advantage of the right of transfer in the standing orders of other units of the company because it has not so been pleaded in the petition. Therefore, the petitioner cannot be allowed to compare the right of transfer prevailing in other units. Even if we are not considering the transfer policy of the company in other units but the fact remains that the transfer is generally the condition of service. It was so held in the case of Gujarat Electricity Board and Anr. V. Atmaram Sungomal Poshani 1989 Vol.2 Llj ' page 470. One of the terms of appointment of the employees of the petitioner was that their service was tranferable. Relevant extract of a letter of appointment issued to one Shri Rajendera Kumar Durgapal is reproduced below to establish that transfer formed term of their contract.

PARA5 of that letter: "YOUR duties will be allocated by the Management, i.e. you should he prepared to serve in any position and in any department of the company and in any shift allotted to your from time to time subject to provisions of Factory Legislations. You will be liable to serve in any part of India or abroad at the discretion of the Company, and this liability will also include transfer

to any Site/Factory under Management of BEL."

(28) It is only after agreeing to this condition that appointment was made. Therefore, while certifying the Standing Order as proposed by the petitioner, the Certifying Officer ought to have taken note of this fact. Transfer is not only the exigency of service but an incident of service. Therefore, this right of the petitioner could not have been curtained by the Certifying Officer as well as by respondent No.1.The Certifying Officer restricted the transfer from one unit to another unit of the company depending on good and cogent reason and that there should be no economic loss. Respondent No.1, however, not only curtailed the right to transfer but made it subject to the consent of the workman. Since transfer is an incident of service the right of the management to transfer which formed part of service contract could notice made subject to consent. No workman will give consent and if the exigencies of the work require that he should be transferred then as per this Standing Order the petitioner would be helpless. The workman even though accepted the job with specific under standing that he could be transferred any where, but the respondent No. 1 without assigning any reason modified the same. Since all the units are under one company, therefore, it is difficult to understand how the respondent No. 1 and the Certifying Officer treated the employees of Kotdwara Unit only the employees of that unit and that on transfer being effected they would cease to be the employees of the company. Letter of appointment show it was issued by the company. It then allocate the employees for which unit they would work. Relevant extract of the same are reproduced as under;-

> "1.Further to the interview you had for the post of D'Man'B' (Civil), we have pleasure in offering you the post of D'Man'B' (Civil) in Garhwal Unit Of Bharat Electronics Limited Kotdwara (DISJT.PAURI-GARHWAL,U.P.) on the basic pay of Rs.630.00 p.m. in the scale of Rs.630-16-790-18-790.00 plus Dearness Allowance and House Rent Allowance as admissible from time to time to the employees of Garhwal Unit of the Company. The rate of Da in force effective from 1.4.1985 is Rs.425.00 per month.
>
> 8.You should be prepared to reside in the Companys quarters on payment of prescribed rent if required to do so Any residential accommodation allotted to you by the Company should be vacated immediately on termination of your services with the Company."

(29) This shows that the appointment was made by the Company for its Kotdwara Unit. Therefore, the presumption drawn by respondent No. 1 that there was relationship of master and servant between Kotdwara Unit and employee appears to be without any basis. How he arrived at this conclusion that an employee of a unit is the employee of that unit dehors the Company has not been explained. Moreover, the concept of consent is relevant only when a person is to be sent on deputation. But not when an employee is transferred from one unit of the company to another unit of the company. Therefore the question of consent was an extraneous consideration which prevailed on the respondent No.1 Hence this Court would be justified in setting aside such a decision.

(30) Contention of Mr.Lekhi that the certified Standing Orders contained statutory conditions of service. It over-rides contractual terms and conditions of service. There cannot be any quarrel with

this proposition. But the relevant facts for consideration are whether respondent No.1 took into consideration the contractual terms and conditions of the service before certifying the Standing orders.' This Court is not sitting in appeal over the decision of the Certifying Officer or for that matter appellate authority. However, since this court has come to the conclusion that finding of the Certifying Officer or for that matter respondent No.1 with regard to clauses 9.1 and 14.1 were based on extraneous consideration, therefore, impugned order to that extent is liable to be set aside. The concept of consent brought by respondent No.1 and comparison of annual leave with a unit not in the same region are extraneous circumstances. The procedure adopted by the Certifying Officer and the respondent No.1 as discussed above was not proper. Instead of evaluating the various points raised before him with regard to annual leave and on the point of transfer, he simply relied the Standing Order of the Ghaziabad Unit with regard to annual leave.

(31) Judgment relied by Mr.Lekhi are of no help to him. For example in the case of Abdul Khalique V. Heavy Engineering Corporation Ltd. & Ors. 1985 Lic page 1114, Patna High Court was dealing with enforceability of the duly certified standing orders. But that is not the case in hand. Similarly, in the case of United Provinces Electric Supply " Co. Ltd. Allahabad V. Their Workmen the Supreme Court was considering the fact of certification and not the procedure which was adopted by the Certifying Officer and the Appellate Authority for the certification of the Standing Order. As regards the case of Central Workshop Karamchari Sangh, V. Industrial Tribunal I, 7th Starchy Road, Allahabad & Ors. 1978 Lab. I.C. 1560, there is no quarrel with the proposition of law laid down by the Allahabad High Court. This Court is not sitting in appeal over the order of the Certifying Officer or for that matter the Appellate Authority. After analysing the procedure adopted by them it has been felt that there was illegality, irrationality. and procedural impropriety. In the case of Sudhir Chandra Sarkar V. Tata Iron and Steel Co. Ltd. & Ors. (1984) 3 Supreme Court cases 369, again the Supreme Court was dealing with the legal binding force of the Standing Order, but that is not the case in hand. In fact the respondent No.1 and for that matter the Certifying Officer did not apply their mind. They simply took the example of Ghaziabad Unit qua clause 9.1 and treated Kotdwara Unit's employee independent of Company. In fact for purposes of Clause 14.1 uniformity and not Industry-cum-Region for rules could be adopted. They could not have treated Kotdwara Unit of the Company as an independent of the Company. There was no rational to come to this conclusion. Therefore, the impugned order with regard to Clauses 9.1 and 14.1 cannot he sustained. The procedure adopted cannot be called a just and reasonable procedure.

(32) For the reasons staled above the order of Respondent No.1 is set aside and the order of the Certifying Officer to the extent modifying clause 9.1 and 14.1 is quashed. Case is remanded hack to the authority i.e. respondent No.1 to decide afresh with regard to clause 9.1 and 14.1, after giving opportunity to the parties.