

394828/2023

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/. 379. ./(LC-IR)/ Date: .16/05/. .2023.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/659-IR/I.R./11L-107/95 dated 03.06.2008 the Industrial Dispute between M/s. Wockhardt Ltd. (Merind Division), P-25, CIT Road, Scheme - VI(M), Kolkata - 700054 and its workmen represented by All West Bengal Sales Representative's Union, 44/1, Gurupada Chowdhury Lane, Kolkata - 700006 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, First Industrial Tribunal, West Bengal.

AND WHEREAS the First Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 24/04/2023 on the said Industrial Dispute vide memo no. 527 - L. T. dated. 28/04/2023.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)
By order of the Governor,

Sell

Assistant Secretary
to the Government of West Bengal

I/394828/2023

No. Labr/.379/1(5)/(LC-IR)

Date:.. 16/05 . /2023.

Copy, with a copy of the Award, forwarded for information and necessary action to:

1. M/s. Wockhardt Ltd. (Merind Division), P-25, CIT Road, Scheme – VI(M), Kolkata - 700054.
2. All West Bengal Sales Representative's Union, 44/1, Gurupada Chowdhury Lane, Kolkata - 700006.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



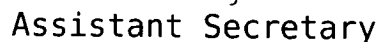
Assistant Secretary

No. Labr/.379/2(2)/(LC-IR)

Date:.. 16/05 . /2023.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 527 – L. T. dated. 28/04/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.



Assistant Secretary

1/1A ITH
16/5

Ananda
17/25/2023

In the matter of an Industrial Disputes exists between M/s Wockhardt Ltd. (Merind Division) having its original office at P 25, CIT Road, Scheme – VI(M), Kolkata – 700 054 and head office at Wockhardt Towers, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 and its Workmen represented by All West Bengal Sales Representative's Union of 44/1, Gurupada Chowdhury Lane, Kolkata – 700 006.

G.O. No. 659-I.R/IR/11L-107/95, dated 03.06.2008

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 24.04.2023

Case No.: VIII – 41/2008



The instant case has been initiated on receipt a copy of Government Order No. 659-I.R./IR/11L-107/95, dated 03.06.2008 from the Labour Department, Government of West Bengal, referring an industrial dispute exists between M/s Wockhardt Ltd. (Merind Division) having its original office at P 25, CIT Road, Scheme – VI(M), Kolkata – 700 054 and head office at Wockhardt Towers, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 and its Workmen represented by All West Bengal Sales Representative's Union of 44/1, Gurupada Chowdhury Lane, Kolkata – 700 006 for adjudication of the issues mentioned below:

ISSUES

- 1) Whether the allegation of the Union, All West Bengal Sales Representative's Union that the leave entitlement of the Workmen have been illegally reduced by the Management of M/s Wockhardt Ltd. (Merind Division) having its original office at P 25, CIT Road, Scheme – VI(M), Kolkata – 700 054 and head office at Wockhardt Towers, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 is justified?
- 2) What relief the Workmen are entitled to?

The fact of the case of the union under reference as stated in the written statement in a nutshell is that the union under reference is a registered omnibus trade union under Trade Union Act 1926. The Register No. of union is 12662. It is affiliated to National Federation of the Sales Representative Union, Mumbai. It represents all employees working in the category of sales representative of different companies throughout West Bengal. It fights for the betterment of service condition of the employee from its inception.

It is further stated that the Company under reference is reputed concern in the field of pharmaceuticals industry. A good number of employees are employed in the Company.

The Union is the only operating device in the Merind Division of the company under reference. It represents Medical Representative (herein after to be referred as MR) working within the territory limits of State of West Bengal.

It is stated that in the present dispute the number of concerned MRs are six, all initially employed under M/s Tata Pharma, a division of Lakhme Limited. In 1997 M/s Merind Limited took over the aforesaid company with all employees being employed in the category of MR.

In 1999 it was intimated by M/s Merind Limited to the effect that all such concerns MRs became part of the Wockhardt Group.

It is further stated that at the time of reference another MR namely Ashis Banerjee, who was attached with the dispute and during the pendency of the proceeding he retired from service on 31.07.2008.

Be it mentioned here that Mr. Banerjee was employed in 1974 under the management of M/s Merind Limited.

It is further stated in February 1998 the Company under reference took over M/s Merind Limited resulting all concerned MRs started their working under the management of the company under reference in Merind Division.

It is further stated that the condition of the employment of all MRs employed in M/s Merind Limited were regulated by the Memorandum of Settlement duly signed and executed by and between the management of the company and their workmen represented by All India Merind and Allied Companies Union.

The last Memorandum was signed on 27.12.1997 and the effect of such settlement was given on and from 01.01.1996 and the period of such settlement was up to 31.03.2002 and even after 31.03.2002 the settlement dated 27.12.1997 was very much in existence and therefore, after taking over the MRs who joined from M/s Merind Limited to company under reference i.e. M/s Wockhardt Limited were automatically allowed to enjoy the benefits continuously in terms of such settlement dated 27.12.1997 and it was remain unchanged in respect of the MRs under the management of the company under reference.

It is further stated by the concerned MRs in the present dispute were also enjoying the leave facilities i.e.

Privilege Leave -	30 days per calendar year.
Sick Leave -	17 days per calendar year.
Casual Leave -	10 days per calendar year.
Paid holidays -	12 days per calendar year.

Accumulated

Privilege Leave -	180 days maximum.
Sick Leave -	102 days maximum.

These above leave facilities were mentioned in the Memorandum of Settlement dated 27.12.1997.

It is further stated that at the time of taking over or thereafter the management of the company under reference never intimated either to the union or to the concerned MRs that they would not allow to enjoy the rates and privileges being in existence for MRs in the company under reference.

Facts remains that all MRs of M/s Merind Limited were taken on the master roll of the company under reference with their existing rates and privileges. But in the year 2004 the management of the company suddenly and unilaterally changed the existing leave rules and quantum thereof by resisting on their own will without serving any notice as required u/s 9A of the Industrial Dispute Act, wherein it has been mentioned that no change in the condition of service can be made within 42 days of giving such notice u/s 9A of the Industrial Disputes Act.

Be it mentioned here that it is not the case of either party to the dispute that such change in respect of leave facility was made in persuasion of any settlement or Award.

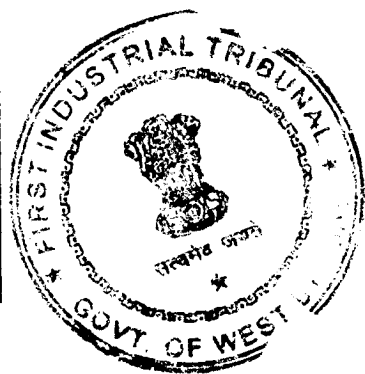
It is further stated that union under reference raised objection in writing to the company but the management of the company did not pay any heed to the same. So, union under reference sought for intervention of the Labour Commissioner, Government of West Bengal.

The management of the company duly participated in the conciliation proceeding on subject of reduction of existing facilities and entitlements of such MRs.

Since the conciliation proceeding failed, the dispute has been referred to this Tribunal for proper adjudication by fixing 2 (two) issues as stated above.

The Union under reference respectfully stated that the concerned MRs. are in fact entrusted by the company for promoting the products of the company in the State of West Bengal and therefore, they all are covered u/s 2S of the Industrial Disputes Act 1947.

It is further pointed out by the union under reference that the company under reference unilaterally changed the designation of few workmen just 1 or 2 years back but nature of duties remains same as was before changing the designation with oblique motive to avast them from the purview of Industrial Disputes Act 1947 but as per settled position and law mere definition cannot be decisive factor to keep away any employee within the coverage of Industrial Disputes Act and for that in spite of unilateral change they are still workmen as per provision of the Act, 47 as per law being claimed by the union under reference.



Lastly the union under reference humbly prayed before this Tribunal to pass an Award holding inter-alia that the action of the Company under reference in reducing the leave facilities in respect of regular and accumulated leave of the MRs is solely arbitrary, unjustified and illegal and therefore, they prayed for necessary direction to be given to the company under reference so that the leave facilities as were enjoyed by the concerned MRs be restored or to pass any other order which this Tribunal may deem fit and proper and also to pass necessary direction upon the company under reference to pay the total amount of loss suffered by the concerned workmen due to such illegal curtailment of leave facilities as made in the year 2004.

On the other hand, the company under reference appeared and filed written statement denying all material allegations against them and contending inter-alia to the effect that the union under reference has no locus-standi and / or the representative character to espouse the causes of employees working in Merind Division of the Company and as such the reference is bad in law, suffers from non-application of mind, mis-concept and not maintainable in law.

The company under reference further states the union known as All West Bengal Sales Representatives Union is a stranger one. The company firmly denies that the Merind Division of the Company does not have any MR at all on its rolls in the State of West Bengal.

It is admitted that after taking over Tata Pharma the employees became the employees of Merind Limited and as such they became the employees of Merind Division of the Wockhardt Limited.

The company further denies that one of the employees namely Ashis Banerjee was concerned with the present dispute but the company admits that Mr. Banerjee on attaining the age of superannuation retired from the service w.e.f. 31.07.2008. The company further firmly states that the memo of settlement dated 27.12.1997 was signed by and between the management of the company and All India Merind Employees Association, which was in force up to 31.03.2002.

It is specifically claimed by the company under reference that after 31.03.2002 the union (not named) terminated the said Memorandum of Settlement and after such alleged termination as claimed by the company under reference the question of continuing the benefits under the said Memorandum of Settlement does not arise at all and they are covered by the terms as agreed thereafter (company did not specifically mentioned any date of such terms).

The company further denies that the leave facilities as provided in the Memorandum of Settlement dated 27.12.1997 became the condition of the service as alleged because of the fact that once a separate division known as Merind Division was formed the service condition of such employees of Merind Division relates to leave facilities or any benefits have to be in accordance with rules which are being enjoyed by the employees of Merind Division of Wockhardt Limited.

The company further states that before the Labour Directorate the company fortified the stands of the said the union under reference has no representative character and therefore the alleged dispute sought to be raised as non-existent dispute and the purported conciliation proceeding on the behest of the said union under reference are solely untenable resulting the reference out of said proceeding is bad in law.

The company again claims in repeated nature to the effect that the concerned employees were duly informed all the necessary entitlement of leaves and the accumulation thereof under different heads and the same were accepted by the concerned employees and as such the question of issuing notice u/s 9A of the Industrial Disputes Act does not arise at all.

Moreover, they being the Territory Manager after due elevation and acceptance of such upliftment in service the concerned employees cannot be covered u/s 2S of the Industrial Disputes Act 1947 because they were not MR at all.

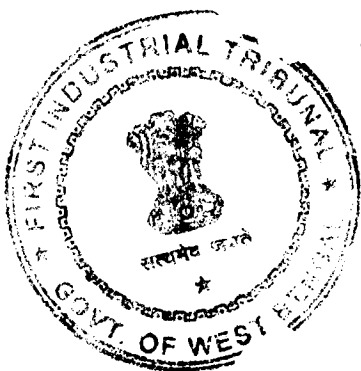
The company denies that there is no unilateral change in the designation as alleged and the category of Territory Manager is different and distinct from the category of Medical Representative.

The company prays that the legal/jurisdictional objection regarding the maintainability of the present reference may be taken up at the first instance and if any valid and sustainable reason, is found as maintainable in that event an opportunity may be granted to the company for adducing the evidence on merit to establish the contention raised by the company under reference.

Thus, the company at last humbly prayed that the Tribunal may be pleased to hold that the reference is not maintainable and to pass award by holding that the union and/or the concerned employees are not entitled to any reliefs whatsoever as prayed for.

Since the present case being referred from the Labour Department, Government of West Bengal vide memo No. as mentioned aforesaid, issues have already been framed by the referring authority which are as follows:

ISSUES



- 1) Whether the allegation of the Union, All West Bengal Sales Representative's Union that the leave entitlement of the Workmen have been illegally reduced by the Management of M/s Wockhardt Ltd. (Merind Division) having its original office at P 25, CIT Road, Scheme – VI(M), Kolkata – 700 054 and head office at Wockhardt Towers, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 is justified?
- 2) What relief the Workmen are entitled to?

**UNION'S/WORKMEN'S
EVIDENCE:**

In support of the case the Workmen represented by the union under reference have adduced the following oral evidence:

- 1) Shri Prabir Kumar Hore, Worker of M/s Wockhardt Ltd. (Merind Division). Earlier of M/s Tata Pharma as PW-1.
- 2) Shri Ashis Kusum Ghosh, President of Union under reference as PW-2.
- 3) Shri Tanay Kumar Roy, Worker of M/s Wockhardt Ltd. (Merind Division) as PW-3.
- 4) Shri Jayanta Chatterjee, Worker of M/s Wockhardt Ltd. as PW-4.
- 5) Shri Monoj Kumar Bhowmick, Worker of Company under reference as PW-5.
- 6) Shri Smrithy Sourab Shamal, Worker of Company under reference as PW-6.
- 7) Shri Joydeep Sinha, Worker of Company under reference As PW-7.

That apart the union under reference has filed some documents as per list which has been marked as follows:

- 1) Appointment letter of PW-1 issued by M/s Tata Pharma on 29.04.1983 – Exhibit-1.
- 2) Confirmation letter issued by M/s Tata Pharma on 24.12.1984 - Marked as Exhibit-2.
- 3) Appointment letter dated 15.03.1997 of PW-1 issued by M/s Merind Limited who took over M/s Tata Pharma – Marked as Exhibit-3.
- 4) Information letter, dated 12.07.1999 to Workmen issued by M/s Wockhardt Limited (company under reference), who took over M/s Merind Limited. Marked as Exhibit – 4.

In Exhibit- 4, it has been specifically mentioned that the terms and condition which the workmen have enjoyed in M/s Merind Limited will remain unchanged .

- 5) Memorandum of Settlement dated 27.12.1997 ..Exhibit – 5.
- 6) The letter dated 21.05.2004 issued by the union under reference addressed to the Company .. Exhibit- 6.
- 7) A letter dated 20.05.2004 issued by union under reference addressed to the Labour Commissioner, West Bengal .. Exhibit – 7.
- 8) Comments letter of company under reference dated 09.06.2004 to Labour Commissioner, West Bengal ... Exhibit-8.



- 9) The leave details of Shri Tanay Kumar Roy containing 3 pages issued by the Company on 14.01.2009, wherein e-mail ID of the company has been specifically mentioned .. Exhibit-9.
- 10) The rules and constitution of the union under reference along with the signature of the then Union Secretary C. K. Sanyal with the seal on the reverse side of the constitution... Exhibit-10 & 10/1 respectively.
- 11) The annual return from March to December, 2004 of the union under reference along with signature of the PW-2 as executive committee member... Exhibit-11 & 11/1.
- 12) The original minute book for the year 2003-2004 along with the relevant entry of the minute of the meeting dated 17.04.2004 ... Exhibit-12 & 12/1.
- 13) 10 (ten) Pukka receipt of subscription of membership issued by the union to the members namely Ashis Kumar Banerjee (2), MononBhowmick, TanayRoy (2), Jayanta Chatterjee (2), Prabir Hore, Joydeep Sinha and S. S. Shamal ... Exhibit-13.
- 14) The original agreement executed between PW-3 and the management dated 26.11.2008 and another agreement executed between Jayanta Chatterjee and the management dated 26.11.2008 ... Exhibit-14 & 14/1.
In this agreement the designation of the workman has been recorded as Medical Representative.
- 15) The original document dated 26.11.2008 along with the signature of PW-5 ... Exhibit-15. (Exhibit-5 was executed when laptop was given by the company to the workman, which was signed in the year 2008).
- 16) Agreement between PW-6 and the Company . Exhibit-16.
- 17) The agreement dated 24.11.2008 between PW-7 and the Company. Exhibit-17.

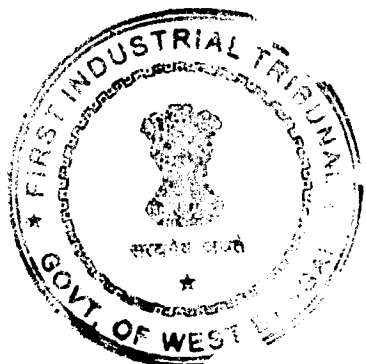
**COMPANY'S
EVIDENCE :**

On the other hand, the company under reference has cited oral evidence of Shri Durgesh Sharma, Manager HR of Wockhardt Limited as CW-1.

That apart the company under reference cited the following documents which have been marked as follows:

- 1) A letter dated 03.05.2006 issued by the Sales and Marketing Department of Wockhardt Limited to PW-1 Exhibit-A.

- 2) A letter of increase dated 01.08.2008 issued by the Company to PW-1 by which the salary of PW-1 has been increased ... Exhibit-B.
- 3) Letter dated 12.07.1999 issued by General Manager, Sales and Marketing of the Company to Tanay Kumar Roy, PW-3 ... Exhibit-C.
- 4) The letter dated 03.05.2006 issued by Vice President, Sales and Marketing to PW-3 ... Exhibit-D.
- 5) Copy of letter dated 12.07.1999 by Company to WW-4 .. Exhibit-E
- 6) A letter dated 03.05.2006 issued by Vice President, Sales and Marketing to Jayanta Chatterjee, PW-4 ... Exhibit-F.
- 7) The copy of letter dated 03.05.2006 issued by the Company to PW-5 ... Exhibit-G.
- 8) Copy of letter dated 01.08.2008 issued by Company to PW-5 by which salary was increased ... Exhibit-H.
- 9) Copy of pay slip for February 2009 of PW-5 ... Exhibit-I.
- 10) Letter dated 12.07.1999 issued by the Company to PW-6 .. Exhibit-J.
- 11) Letter dated 03.05.2006 issued by the Company to PW-6 .. Exhibit-K.
- 12) Pay slip of PW-6 for February 2009 ... Exhibit-L.
- 13) Letter dated 12.07.1999 issued by the Company to PW-7... Exhibit-M.
- 14) Letter dated 03.05.2006 issued by the Company to PW-7 ... Exhibit-N.
- 15) Letter dated 01.08.2008 issued by the Company to PW-7 ... Exhibit-O.
- 16) Salary slip of Tanay Kumar Roy for February 2009 .. Exhibit- P.
- 17) Computer generated pay slip of Jayanta Chatterjee for the month of February 2009 ... Exhibit-Q.
- 18) Letter dated 12.07.1999 issued by Merind Limited to Monoj Kumar Bhowmick .. Exhibit-R.
- 19) Letter dated 12.07.1999 issued by Merind Limited to Prabir Kumar Hore .. Exhibit-S.



- 20) Letter dated 01.08.2008 issued by Merind Limited to Tanay Kumar Roy Exhibit-T.
- 21) Letter dated 01.08.2008 issued by Merind Limited to Jayanta Chatterjee Exhibit-U.
- 22) Letter dated 01.08.2008 issued by Merind Limited to S. S. Shyamal Exhibit-V.
- 23) Pay slips of Prabir Kumar Hore for month of June 2006 and October 2008 ... Exhibit-W & W/1 respectively.
- 24) Leave policy of the Company containing 3 sheets .. Exhibit-X.
- 25) Computer generated Pay Slip of Joydeep Sinha for February 2009 ... Exhibit-Y.

Scanning of Evidences

PW-1

PW-1, Shri Prabir Kumar Hore states in his examination in chief to the effect that he was working in the Company as Medical Representative. He is connected with the All West Bengal Sales Representatives' Union (AWBSRU) and including him 7 (seven) Medical Representatives are connected with the present case. Asis Banerjee has retired in the month of July 2008.

PW-1 joined his service on 13.06.1963. His appointment letter has been marked as **Exhibit-1**. He was confirmed on 24.12.1984 by **Exhibit-2** and in 1997 M/s Merind Limited took over M/s Tata Pharma and thereafter, M/s Merind Limited issued appointment letter on 15.03.1997 by **Exhibit-3** and it is provided in respect of facilities have been specifically stated in their claim statement.

Then in 1999 the present Company under reference took over M/s Merind Limited and it was informed by letter dated 12.07.1999 (Exhibit-4). In that letter it was specifically mentioned that the terms and conditions which PW-1 and others would enjoy in earlier M/s Merind Limited Company would remain unchanged.

The conditions of employment were regulated by virtue of a settlement arrived at by and between All India Merind and Allied Companies Employees Union and the management. The Memorandum of Settlement executed by and said Merind Limited, Mumbai and aforesaid union on 27.12.1997 for the period from 01.01.1996 to 31.03.2002 by **Exhibit-5**. According to **Exhibit-5** the Workman would enjoy Privilege Leave for 30 days, Sick Leave for 17 days and Casual Leave for 10 days in a year and Privilege Leave (PL) be accumulation upto 180 days and Sick Leave upto 102 days and according to PW-1 **Exhibit-5** was still in existence when they started working at the Company under reference and after expiry of **Exhibit-5** no



such agreement was arrived at in respect of Medical Representatives by and between the Union and the management.

Thereafter from April 2004 Privileged Leave was reduced from 30 days to 25 days and accumulated Privileged Leave was also reduced from 180 days to 75 days and Sick Leave from 17 days to 5 days and days accumulation was reduced from 102 days to 15 days and Casual Leave was reduced from 10 days to 7 days by the Company for the reasons best known to them.

A protest for consideration to be revised in respect of earlier leave summary in details have been furnished by the Union under reference.

Be it mentioned here that according to PW-1 no prior notice regarding the above facts was ever issued and due to reduction of aforesaid leave the Union raised dispute before the management vide **Exhibit-6** by letter dated 21.05.2004 and when the management did not pay any heed to their prayer the Union raised their dispute before the Labour Commissioner, Government of West Bengal by **Exhibit-7** vide letter dated 20.05.2004.

Thereafter, conciliation meetings were held. The management participated and they submitted their comments by **Exhibit-8** vide letter dated 09.06.2004. Since the conciliation failed the present reference has been come into existence.

According to PW-1 the other 6 (six) employees including him joined M/s Tata Pharma. AshisBanjerjee joined in M/s Merind Limited. All were working in West Bengal.

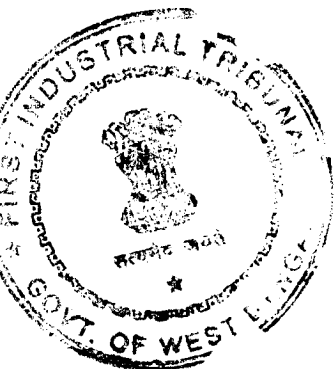
PW-1 denies that they were working in the Company as territory manager rather their designation were all along as Medical Representative. The management through e-mail at first informed them about the new leave system followed by verbal information. The workers used to visit the chamber of Doctors, Chemist Shops and Stockists and would submit their report twice in a week. They were engaged to promote sales production of Company and no worker was working under them and also they never performed their duties in the capacity of managerial or supervisory or administrative post.

According to existing rule the worker aged about 52 years would get accumulated Privilege Leave for 180 days and the worker aged about 52 -60 years would get accumulated Privilege Leave for 240 days.

PW-1 claimed that union is a registered union under the Trade Union Act. They prayed before this Tribunal to restore their leaves facilities which have been wrongly curtailed by the management.

From the cross examination it is revealed that one Tanay Kumar Roy is the co-employee of the PW-1.

PW-1 stated the e-mail No. of the Company i.e. www.wockinifinity.com , the Company would give information to PW-1 through his e-mail ID.



PW-1 has stated that **Exhibit-9** containing 3 pages is the leave details of Shri Tanay Kumar Roy, wherein Privilege Leave, Casual Leave and Sick Leave have also been mentioned in **Exhibit-9**.

It is revealed from cross examination of PW-1 that one Mrs. Susmita Bhattacharya was the Regional Manager of the Company.

PW-1 further admits that as per document dated 03.05.2006, they have been redesignated as Territory Manager.

PW-1 further admits that he did not signed on the written statement filed by the Union. He was Territory Manager in the year 2008. He received **Exhibit-A** on 03.05.2006 from the Sales and Marketing Division Department of the Company under reference. He approached after getting **Exhibit-A** before the management that he did not want to accept redesignation as Territory Manager instead of Medical Representative though he did not file any letter in this respect before this Tribunal.

He admits that after elevated to the Territory Manager his pay has been revised which he accepted by **Exhibit-B** dated 01.08.2008.

He denied that their union has got no locus standi or he was not the member of the said union (AWBSRU).

PW-1 in his cross examination disclosed the name of other persons including himself. He also admitted that he was getting salary and benefit which a Territory Manager was entitled to. The 7 (seven) employees of the Company under reference were addressed regarding their new nomenclature as Territory Manager vide letters dated 03.05.2006.

According to PW-1 settlement dated 27.12.1997 remain in force to 31.03.2002.

PW-1 further admitted that he covered a part of the area of South Calcutta as Territory Manager but he denied that he was discharging duties as supervisory or administrative capacity as Territory Manager and this has not been challenged.

PW-1 also stated that he did not receive leave policy issued by the management.

PW-1 also admitted that in 2004 the management informed him about the new leave system through e-mail but he could not file that copy of new leave system as the same was not available from the internet.

PW-1 also states that he was enjoying Privilege Leave, Sick Leave and Casual Leave as per leave policy of the Company under reference which was invoked and which was informed him in 2004 through e-mail.



PW-1 denied all other questions.

PW-2

PW-2, Shri Asis Kumar Ghosh, the President of All West Bengal Sales Representatives Union states that the Union under reference is a registered Union under the Trade Union Act having constitution (**Exhibit-10**) duly signed by the then Secretary C. K. Sanyal, **Exhibit-10/1**.

PW-2 further states that the annual return was submitted in support of their Union as per example (**Exhibit-11**) i.e the annual return from March to December 2004. He being the member of the executive committee signed the return as one of the office bearers (**Exhibit-11/1**). He has filed the copy of minutes of the weekly executive committee meeting held for the year 2003-2004, marked as 'Y' for identification, which has been originally marked as **Exhibit-12** and the relevant entry of said minutes of the meeting dated 17.04.2004 has been marked as **Exhibit-12/1**, which relates to the present dispute to be raised to the appropriate authority.

PW-2 states that excepting their union there is no other union of Medical Sales Representatives in Merind Company.

PW-2 claims the Workmen were working as Medical Sales Representatives even after 2006.

PW-2 further states that the union under reference raised this dispute on account of reduction of leave which the Medical Sales Representatives used to enjoy all through.

From cross examination it is revealed that he could not file any document to show that he was the President at the relevant point of time.

PW-2 also could not file the registration certificate of their union but he claims that the then Secretary of the union was the signatory of the constitution whose signature and seal appears on the reverse side of the pages of the constitution though at the bottom there is no signatories or date.

PW-2 also could not file any document to show that constitution was adopted in the general bodies meeting by the members.

It is also revealed from cross examination that PW-2 filed original constitution along with one photocopy of the same.

PW-2 also admits that none of the pages of **Exhibit-12** i.e. minutes book bears the seal of the union and the signature of the members as it is the 30 (thirty) years practice of the said union that the members who used to be present in the meeting they did not put their signature as member in the minute book.



PW-2 also states that each of the back page of the constitution are not typed and bears no seal and signature as this is photo copy of the constitution.

He denied that the entire minute book along with the resolution are manufactured or created for the purpose of this case.

PW-2 is an employee of CadilaPharmaceuticals Private Limited not an employee of the company under reference.

PW-2 denied all other suggestions.

PW-3

PW-3, Tanmoy Kumar Roy, an employee of M/s Wockhardt Ltd., Merind Division as Medical Representative, working there for the last 24 (twenty-four) years as on 19.02.2013.

PW-3 further states in 2006 they were designated as Territory Manager which was communicated through the letter of their increment.

PW-3 states that agreement dated 26.11.2008 which was executed at the time of supply of laptop to them.

The original agreement (lying in the custody of the management) having his signature thereon and on behalf of the management one Rajesh Kumar, Regional H.R. put his signature and in that agreement PW-3 has been shown as Medical Representative. The agreement has been marked as **Exhibit-14**. Like him another agreement was executed with his colleague Jayanta and in that agreement also the designation of Jayant has been described as Medical Representative but the original agreement of Jayanta is also in the custody of the management and that agreement has been marked as **Exhibit-14/1**.

PW-3 identified the letter being marked as **Exhibit-C** dated 12.07.1999 along with the letter dated 03.05.2006 being **Exhibit-D**. In **Exhibit-D** he has designated as Territory Manager.

PW-3 states that his designation was Territory Manager in 2008. He denies that in spite of being Territory Manager he falsely described himself as Medical Representative in coloumn B of **Exhibit-14**.

PW-3 further states that the designation of Rajesh Kumar has not been noted in **Exhibit-14** and it has no stamp or seal of the Company on any page and he has not filed any document to show that Rajesh Kumar was the Regional H.R. at the relevant point of time or he was authorized to execute the agreement on behalf of the Company.



PW-3 denied that the designation of Territory Manager was a promotion as the nature of job remains same excepting the benefits towards good-conduct allowances. He also denied that **Exhibit-14** was handed over to him in blank form or it was not executed in presence of Rajesh Kumar.

PW-4

PW-4, Jayanta Chatterjee states that he was working under M/s Wockhardt Limited as a Medical Representative, served the company for last 25 years as on 01.10.2013.

He is a member of the union under reference. His job was same as of PW-1.

He claims that other workmen namely Monoj, Prabir, Tanmoy, Joydeep and Mr. Sasmal are his colleagues as Medical Representatives.

This witness has corroborated the evidence of PW-3. He adds that the management never raised any kind of objection about the agreement being executed between the management and Workman after taking the custody of original. He denies that he has been running his service under the company since 2006 as Territorial Manager.

PW-4 identifies **Exhibit-E** being a letter dated 12.07.1999 and the **Exhibit-F** a letter dated 03.05.2006.

PW-4 further states that **Exhibit-14/1** is the agreement meant for laptop use and compliance. He explained that since they all through were working as Medical Representatives even after redesignation as Territory Manager they have written their designation as Medical Representative in that agreement.

PW-5

PW-5, Monoj Kumar Bhowmick, working under the Company under reference is a Medical Representative states that he is a member of the union under reference. He corroborated the evidence of other witnesses. He identifies the **Exhibit-15**.

From his cross examination it is revealed likewise other PWs the employees of the Company under reference. He identifies **Exhibit-G** and **H**.

PW-5 further identifies his pay slip for the month of February 2009 (**Exhibit-I**).

PW-5 denies all other suggestions as usual like other PWs.

PW-6

PW-6, Smrithy Sourab Shamal working in the company under reference as a Medical Representative, states that he is a member of the union under reference. He also corroborates the evidence of other witnesses as an employee. He identifies **Exhibit-16**, **Exhibit-J** and **K**.



PW-6 also identifies his pay slip (**Exhibit-L**). He denies all other suggestions like other PWs. He also denies that at Siliguri 11 (eleven) stockists were under his charge. He always claims himself as a worker being worked as Medical Representative in the Company under reference even after redesignated him as Territory Manger by the Company.

PW-6 has confirmed that he is ready to refund the salary accepted by him as Territory Manager for the last 10 years.

PW-6 identifies **Exhibit-17** which the agreement being executed between himself and the Company dated 24.11.2008.

PW-7

PW-7, Shri Joydeep Sinha, working in the company under reference as Medical Representative states that he is a member of the union under reference. He corroborated the evidences of other PWs.

PW-7 identifies the agreement i.e. **Exhibit-17** dated 24.11.2008 held in between himself and company, wherein his designation has been described as Medical Representative on the second page and this agreement was in the custody of the management of the company and company never informed him that his designation as mentioned is incorrect.

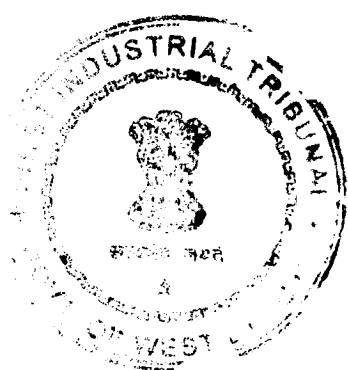
PW-7 admits that he has been receiving his salary as Territory Manager since 2006 to till date and he is ready to return the salary drawn by him as Territory Manager.

CW-1

CW-1, Durgesh Sharma, the Manager of the company under reference states that there is no category of Medical Representatives in the company under reference in the State of West Bengal after taking over the Merind Limited by Wockhardt Ltd.

CW-1 admits that the petitioners namely Monoj and others are member of Wockhardt Group. The Memorandum of Settlement dated 27.12.1997 was signed between All India Merind Employees Association and the management of Merind Limited was in force up to 31.03.2002 and thereafter, the said union terminated the said settlement and after such termination the question of continuing of terms said settlement does not arise and after formulation of Merind Division there has no scope of application of said settlement.

CW-1 claims that once a separate Division known as Merind Division was formed the service condition of such employees, so far as it relates to leave benefits have to be in accordance with which are enjoying by the employees of Merind Division of the company under reference.



CW-1 further claims that the quantum of leave under different heads and their accumulation thereof were accepted by the employees and as such question of notice u/s 9A of the Industrial Disputes Act does not arise.

CW-1 further claims since the employees were elevated to the post of Territory Manager being accepted by them are not worker u/s 2S of the Industrial Disputes Act, rather they falsely described themselves in the agreement as Medical Representative instead of Territory Manager.

CW-1 also claims that function of Territory Manager is different from the function of Medical Representative.

CW-1 exhibits some documents which have been marked as **Exhibit-R, S, T, U, V, W, W/1, X** and **Y**.

From cross examination it is revealed that union under reference made a representation to the Company prior to the instant reference that the company did not give any reply to the union against such representation, the instant reference has been arose thereafter.

CW-1 admits that from the documents filed by the company nothing can be seen that the company has raised this point before conciliation proceeding that the union under reference has no locus-standi to espouse the cause of the employees working in the Merind Division of the Company.

CW-1 admits that company has not filed any document to show that after 31.03.2002 the union terminated the settlement **Exhibit-5** at any point of time and 6 (six) employees vide **Exhibit-4** became members of Merind Division of the Company in the year 1999 when **Exhibit-5** was in force and the leave benefits which they were entitled to get have been mentioned in **Exhibit-5**.

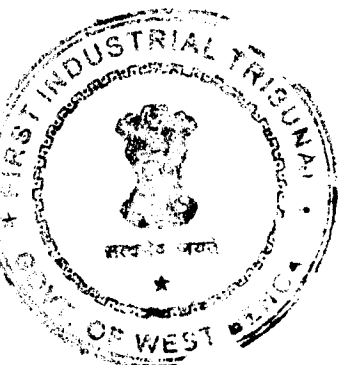
CW-1 also admits that the contention of paragraph-9 of his affidavit in chief do not find any place in **Exhibit-4**.

CW-1 further admits that from **Exhibit-X** there is nothing mentioned about any date from which the leave policy was formulated or came into force.

The management did not challenge for adjudication of issues involved in the proceeding followed by government reference.

CW-1 demands that appointment letter of PW-1 reflects the leave policy and other matters being categorically mentioned in **Exhibit-3**.

CW-1 admits that in **Exhibit-3** it is said in the concluding portion that other terms and conditions of his employment as well as other component of his salary will remain



unchanged and nothing has been mentioned in **Exhibit-4** that the condition of leave of PW-1 has been changed and when **Exhibit-4** was issued to PW-1.

The **Exhibit-5** was in existence in which in clause No. 3.20 the matters relating to the leave has ben enumerated and no other settlement was made by and between the parties during continuance of the settlement i.e.**Exhibit-5** and he could not produce any document to show that the signatory of the Union in **Exhibit-5** terminated the terms and conditions of **Exhibit-5**.

CW-1 fairly admits that he does not know whether the manager at any point of time issued any letter to PW-1 with the provision of leave as enumerated in **Exhibit-3** be altered or changed and he claims that in the year 2004 the leave policy of the employees was changed with the policy of Wockhardt in that record but he could not produce any document to show that since the employees working will be covered as per leave facility of the employees working in the Wockhardt.

CW-1 admits the enjoyment of the leave as per settlement i.e.**Exhibit-5** which has been changed and the present leave policy has been circulated among the employees working in their company but he could not file any document to show that the present leave policy **Exhibit-X** has been circulated among the employees.

CW-1 admits that after 2002 there has been no further settlement in between the union and the company under reference.

CW-1 also failed to file any document which could show that the concerned employee presently belongs to the management category and he also could not file any document to show that the nature of job of Territory Manager is different from the job of Medical Representative.

CW-1 denies that the management unilaterally reduce the leave amount causing financial loss to the employees.

FINDINGS: (DECISION WITH REASONS)

On perusal of oral evidences as well as documentary evidences led by the parties and after due consideration of the submission of Ld. Respective Counsels for the parties supported by the rulings of Ld. Counsel for the Company only [(i)DEEPAK INDUSTRIES LTD., and another vs STATE OF WEST BENGAL, and Others passed on October 11, 1974 by Calcutta High Court, and (ii) Food Corporation of India vs Central Government Industrial Tribunal and others, 1996 LAB. I.C. 1597], it is the admitted position of the case that the status of the Union has been challenged by the management or the Company under reference, leaving away the main issues referred by the Government of West Bengal and therefore, I did not find any reason to consider the said rulings here filed by the Company.



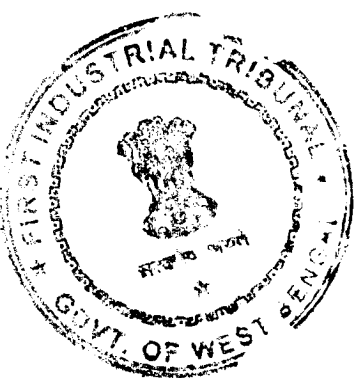
It is fact that in 1997 M/s Merind Limited took over M/s Tata Pharma and in 1999 M/s Merind Limited was taken over by present Company under reference.

Exhibit-4 reflects that the terms and conditions enjoyed by the workers shall be unchanged which were regulated by a Memorandum of Settlement which was executed on 27.12.1997 for the period from 01.01.1996 to 31.03.2002 being marked as Exhibit-5 and after expiry of Exhibit-5 no further settlement was arrived between the parties of the present disputes but from April 2004 Leave Rules has been chanced unilaterally by the Company without any notice to the employees or the Union or without any discussion with the applicants.

Thereafter by Exhibit-6 the Union raised the present dispute with the management and by Exhibit-7 before the Labour Commissioner and Exhibit-8 reflects that the management had taken part in conciliation proceeding before the authority of Labour Department which ended in smoke and the present case appears, thereafter.

Company firstly has challenged the status of the Union for the reason that the instant dispute has been raised by the Union under reference on the strength of Charter of Demand, but could not substantiate the same in any manner whatsoever.

On the other hand, the Union under reference has claimed that the Union under reference is a registered union under the Trade Union Act and since the Company had taken part in conciliation proceeding the Company itself as per law of estoppel has lost his credential to challenge the status of the Union in any manner whatsoever rather it proves the other views to the effect that Company has recognized the status of the Union under reference as legal. That apart it is demanded that since the position of law in the statute itself declares that the concerned employees are the real parties to the dispute and their cause may be represented by the Union and it is immaterial as to whether the Union has any locus standi to represent the workmen or espouse their cause and also whether it represents minority of workmen. Even the Union is unable to produce documents as called for by the other side, the affected workmen can continue to contest the case and the proceeding may be continued as if it is a reference u/s 2(A) of Industrial Disputes Act, 1947



It has also came out according to demand of the petitioner employees that they have been clothed with new nomenclature namely Territory Manager by the Company with an attempt to show that they are the employees of management only to exclude them for getting legal benefit under the purview of Industrial Disputes Act to be treated as workmen.

It is their claim that the Company witness supported by the documents, which undoubtedly stands that though CW-1 initially has denied the case of the workmen represented by union under reference along with the status of the union as legal candidly admits that company has failed to substantiate their claims to the effect that after 31.03.2002 i.e. after expiry of Exhibit-5 the union itself had terminated the settlement along with terms and conditions being governed under Exhibit-5 and

further CW-1 being company witness admits fairly that the employees were entitled to get the leave benefits being mentioned in Exhibit-5. The management did not challenge for adjudication of issues involve in the proceeding followed by the Government reference.

CW-1 further claims by admitting the fact that the appointment letters of the concerned workmen reflect the leave policy and other matters being mentioned in Exhibit-3.

CW-1 clearly admits that the Exhibit-5 is in existence of which in clause No. 3.20 the matters relating to the leave have been enumerated and he does not know whether the management at any point of time issued any letter to the employees with the provision of leave being enumerated in Exhibit-3 has/have been altered or changed.

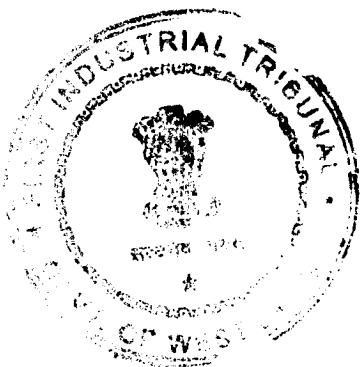
CW-1 though claims that in 2004 the leave policy of the employees was circulated with the leave policy of the company under reference namely M/s Worckhardt Ltd. in that regard but CW-1 or the company could not produce any document to show the employees were well aware about the present leave policy effected to the employees who are still working in the new company under reference which will cover the leave facility of the employees who are/were working in the M/s Worckhardt Ltd.

It is also revealed from the evidence of CW-1 that Company could not file any document to show that the present leave policy of 2004 (Exhibit-X) has been circulated among the employees at any point of time rather after 2002 there has been no further settlement made in between the union and the company under reference. The Company also failed to file any document which could show the concerned employees presently belong to the management category or the company also could not file any document to show that the nature of job of Territory Manager is different from the job of Medical Representative.

So, from the given discussions with reasons it is established that though company has tried their level best to explore the issues being sent by Government reference in an another remote angle so that this Tribunal has compelled to decide only the status of union as legal or illegal to espouse the dispute regarding the issues namely-

- 1) Whether the allegation of the Union, All West Bengal Sales Representative's Union that the leave entitlement of the Workmen have been illegally reduced by the Management of M/s Wockhardt Ltd. (Merind Division) having its original office at P 25, CIT Road, Scheme – VI(M), Kolkata – 700 054 and head office at Wockhardt Towers, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 is justified?
- 2) What relief the Workmen are entitled to?

but the Company has failed hopelessly to substantiate their own pleaded case in any manner whatsoever and on the other hand, I find no reason to disbelieve the



submission of Ld. Counsel for the Union under reference along with their established fact of the case.

In sum the instant case succeeds.

Hence it is

ORDERED

that the instant case being No. VIII – 41/2008 be and the same is succeeded and allowed on contest but without any cost.

The workmen represented by the Union under reference is entitled to reliefs as prayed for. Therefore, it is directed that the company under reference shall restore immediately the leave facility/facilities as per claim as settled between the parties upon the settlement executed on 27.12.1997 as after expiry of said settlement i.e. Exhibit-5, no further settlement was arrived between the parties and Leave Rule from April, 2004 stands inoperative being taken by the Company unilaterally and the Company is also directed to pay the total amount of loss, suffered by the workmen due to such illegal curtailment of leave facilities guided by Exhibit-5 along with an interest @ 9% P.A. till the date the payment is made from the date of accrued.

This is my Award and be sent to Government of West Bengal at once.

Sd/-

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)
Judge

JUL 20
FIRST INDUSTRIAL TRIBUNAL
KOLKATA

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

JUL 20
FIRST INDUSTRIAL TRIBUNAL
KOLKATA

