

1/392/59/2019

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

No. Labr/ 214/(LC-IR)/.....

Date : 21.02-19

.. ORDER

WHEREAS under the Government of West Bengal, Labour Department Order N 432-IR dated 07.04.2008 the Industrial Dispute between M/S: Peerless Inn, 12 Jawahar Lal Nehru Road, Kolkata-1 and their workmen represented by i) Peerless Hotels and Travels Ltd. Workers Union, 249, B.B. Ganguli Street, Kolkata-12 & ii) Peerless Inn Kolkata Employees and Workers Union, 25A, R.N. Nandan Lane, Kolkata-25 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, 1st Industrial Tribunal, West Bengal.

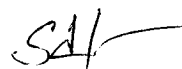
AND WHEREAS the Judge of the said 1st Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

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,



Deputy Secretary

to the Government of West Bengal

No. Labr/214/1(6)/(LC-IR)

Date : 21.02-19

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

1. Peerless Inn, 12 Jawahar Lal Nehru Road, Kolkata-1 .
2. The Secretary, Peerless Hotels and Travels Ltd. Workers Union, 249, B.B. Ganguli Street, Kolkata-12 .
3. The Secretary, Peerless Inn Kolkata Employees and Workers Union, 25A, R.N. Nandan Lane, Kolkata-25.
4. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 6. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

9/2019

No. Labn. 12.14/2(2)/(Le-IR)

Date : 19.02-19

....

Copy forwarded for information to :

1. The Judge, 1st . Industrial Tribunal, West Bengal with reference to his Memo No. 12-L.T. dated 02/01/2019..
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

In the matter of an industrial dispute between M/s. Peerless Inn, 12 Jawahar Lal Nehru Road, Kolkata- 1 and their workman represented by i) Peerless Hotels and Travels Ltd. Workers Union, 249, B.B. Ganguli Street, Kolkata-700 012 & ii) Peerless Inn Kolkata Employees and workers union, 25A, R.N. Nandan Lane, Kolkata-700 025.

(Case No. VIII-18/2005)

BEFORE THE FIRST INDUSTRIAL TRIBUNAL, WEST BENGAL

PRESENT

SHRI TANMOY GUPTA, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

The instant case arose out of an order of reference vide G.O. No. 268-IR/III-159/2003, dated 15/16-2003-2005 and subsequent reference vide G.O. No. 432-IR/IR/111-159/2003 (Pt.) dated 07.04.2008 by which an industrial dispute between M/s. Peerless Inn, 12 J.N. Road, Kolkata-700 013 and their workman represented by the i) Peerless Hotel & Travels Ltd. Workers Union, 249, B. B. Ganguli Street, Kolkata-700 012 & ii) Peerless Inn, Kolkata Employees Workers Union, 25 R. N. Nandan Lane, Kolkata-700 025 has been referred to this tribunal for adjudication.

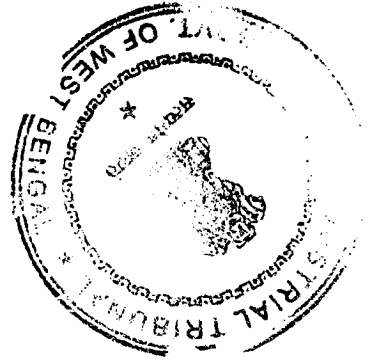
The issues specified in the said order of reference for adjudication are as follows:

I S S U E (S)

1. Whether the suspension of Sri Rajesh Sharma and 18 others (vide list enclosed) from their services by the management w.e.f. the date mentioned against each in the list is justified?

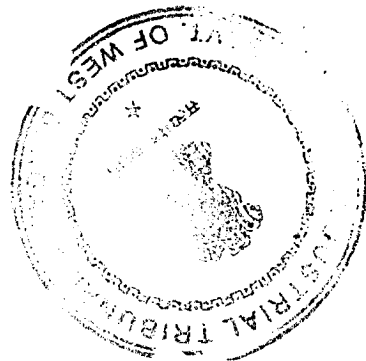
2. What relief, if any are the workmen entitled to?

The case as made out by the union for the workman in the written statement filed is that the company under order of reference is a unit of M/s. Peerless Hotel Ltd. having its registered office at 12, J. L. Nehru Road, Kolkata-13. The above-mentioned concern is one of the reputed Hotels. Restaurants, Bar, Banquates, Coffee shops and Lodge. It has units in Durgapur, Mukutmoniipur and also Resort in Andaman. The unions under order of reference always fight for betterment of the service conditions of the employee employed in different units of the company. The concerned workers were appointed at different times in 1993, 1994, 1996 and 2000 by the management of the company in various capacities. All the concerned workman are members of both the unions under order of reference. On or



about 12th December 2001 purported chargesheet cum suspension order containing allegation were issued by the management against workman named in serial 1 to 4. On 14th December 2001 identical chargesheet cum suspension order was issued by the disciplinary authority of the company containing some false allegation in respect of the workmen whose name mentioned in serial no. 5. The concerned workmen whose names are appearing in serial no 6, 7, 9, 10, 12, 14 and 19 were served with purported chargesheet cum suspension order dated 29.12.2001 containing identical allegation against each of them by the company. Initially there was one union which was operating in the company, namely Peerless Hotel and Travel Ltd. Workers Union and the management entered into a settlement with the said union on 05.11.1994. Subsequently another union, namely Peerless Inn Kolkata Employees and Workers Union came into existence. The management of the company entered into a settlement separately with those two unions in the year 1998 and both the settlements were valid up to 09.06.2001. After the expiry of two such settlements both the unions submitted their fresh Charter of demands before the management of the company for revision of existing service conditions of employment of the employees of the company which the management was trying to avoid. It is alleged that on 8th December 2001 at the time as mentioned in the alleged chargesheet the concerned workmen along with many others employees either on duty or off duty assembled in the front gate, walked through the lobby towards office of the VP and G.M.(O) shouting slogans and pasted posters both inside and outside of the hotel lobby in presence of guest including some foreigners and V.P. and G.M.(O) were kept in the illegal confinement upto around 5.45 PM and during that period abusive language was used against him and also threatened him with dire consequences. Due to such activities the guests were very much scared and some of them immediately left hotel which caused huge financial loss and reputation and image of hotels. A number of chargesheet were framed accordingly. On the date of issuance of chargesheet all concerned workmen were placed under order of suspension by the management. Management of the company started payment of subsistence allowance as per West Bengal Payment of subsistence allowances Act 1969 to each and every suspended employee and still the same is being paid since no final decision has been taken by the management of the company. On receipt of such chargesheet on different dates the concern workmen submitted their individual explanation on different dates denying allegations made therein. The management then

instituted a domestic enquiry against each and every concerned workman which were commenced in the month of February 2002 and continued till June 2003. The union under reference disputed the legal sanction of the service condition/rules of the management of the company which was framed unilaterally and there is no approval from the authority appointed under the law. After the receipt of the chargesheet dated 12.12.2001 the workman appearing serial 1 & 4 submitted their respective explanation and denied the allegations made in the chargesheet. After conclusion of the enquiry in the month of June 2003 Enquiry Officer submitted its report on 15.08.2003 after long delay for the reason not known either to the union or to the concerned workmen. Copy of enquiry report was served upon to the concerned workman in the month of September 2004. The management thereafter kept silent over the matter for above one year and no action was taken on the basis of such report of the Enquiry Officer submitted on 15.08.2003. The concerned workman after receipt of such purported report of Enquiry Officer submitted written representation in writing on 12.11.2004. But till this date no decision was taken by the management. In respect of the workman appearing in serial no. 8, 11 and 13 more or less similar chargesheet cum suspension order was served upon them on 29.12.2001 with some false allegations which were categorically denied by each of the employee in writing which was received by the company on 06.01.2002. The enquiry in respect of those workman continued over and above 9 months and the Enquiry Officer submitted its report on 16.08.2003. The company forwarded the copy of such report to the workman by letter dated 14.09.2004. The concerned workmen submitted their written representation against the report of the Enquiry Officer which was received by the management on November 2004 but till today no decision has been taken. Similarly, in respect of the workmen whose names are appearing in annexed list under serial no. 2 & 3 chargesheet cum suspension order was issued by the management on 12.12.2001 containing some false allegations. Those allegations were categorically denied by the concerned workmen by filing individual explanation. The management with pre-determine mind instituted one fake enquiry which was continued for 375 days and enquiry report was submitted on 14.08.2003 but with malice intention the management supplied the copy of the said report of the enquiry officer to the concerned workmen on 14.09.2004. The concerned workmen submitted their representation against the same in due course but the management slept over the matter and no decision has been taken as yet. In respect of the



workman whose name is appearing in serial no. 5 a chargesheet was issued on 14.12.2001 containing some false allegations which was denied by the concerned employee. The enquiry officer started enquiry on 16.01.2002 and continued up to the year 2003 and thereafter enquiry report was submitted in the last part of 2003. The management sent a copy of such report to the concerned workmen after one year i.e. in the last part of 2004. No decision has yet been taken by the company over the matter. Similarly, in respect of the workmen whose name appearing in 6.7.9.10.12.14, to 19 the management issued chargesheet on 29th December 2001 containing some false allegations which was denied by the concerned workmen by submitting explanation. Like all other cases the management initiated one fake domestic enquiry. The Enquiry Officer submitted report on 17.08.2003 but the copy of the same was supplied to the concerned workmen on 14.09.2004 i.e. after more than one year. All the workmen submitted their written representation in the month of November 2004 but till today no decision has been taken by the management. In an identical manner two separate chargesheet was issued against the workmen whose name appearing in serial no. 13 and 11 in the list attached with the order of reference containing some false allegations which they categorically denied and the enquiry officer submitted report on 14.08.2003 and 14.09.2003 respectively. But no final decision has yet been taken over such report from the enquiry officer by the company. The workmen whose name appearing under serial no. 15 to 18 in the list annexed with the written statement were assured falsely by the management of the company with regard to getting back of employment immediately, admitted the allegation but in spite of such happenings the management of the company neither allowed them to join their duties nor has withdrawn their suspension order. The union under order of reference being dissatisfied with such order of suspension in respect of all concerned workmen raised protest in writing on 20.01.2003. In another letter dated 25.01.2003 the union again focused their grievance. By letter dated 17.02.2003 the unions on record demanded withdrawal of suspension order and payment of full wages. The management did not pay any heed to the same and then the unions raised an industrial dispute before the Labour Commissioner in writing on 17.02.2003. On the basis of such representation a number of conciliation meeting were held but the matter could not be settled due to uncompromising attitude taken by the management before the conciliation officer. It is statutory obligation on the part of the management of the company to certify their standing order by



the appropriate authority under the law but same has not been done by the management of the company. It is immaterial whether the employees of the company have accepted service rules prepared by the management unilaterally or not in accordance with law. The whole plea was made out by the management of the company in suspending the concerned workmen just with a view to crush the trade union activities in the company and to avoid for coming out to any settlement on the long pending issue of charter of demands. The management filed a suit being T.O. no. 99 of 2002 which is still pending. One interim order was passed by the Hon'ble Court on 09.07.2004. Liberty was given to the unions on record to carry on their legal trade union activities as permitted under the law by order dated 06.02.2002 passed by the said Hon'ble Court and in total compliance of such order the unions are constantly pursuing their charter of demands by adopting legal trade union activities till this date but the management did not show any interest in the matter with malice. That being so, the appropriate Govt. of West Bengal finding no other alternative made another order of reference being G.O. No. 267-IR, dated 15.03.2005 which is still pending for adjudication. On representation submitted by the unions under order of reference. Additional Labour Commissioner, Govt. of West Bengal passed an order dated 26.09.2002 holding 3 workmen should be recognised as protected workman from the list submitted by union no.1 and 2. The management of the company neither showed any honour to such order nor challenged such order before any higher court of law. Both unions in writing on 26.09.2004 intimated names of office bearers of the respective union for the purpose of recognition as protected workmen as per Industrial Dispute Act 1947. In turn the management by letter dated 30.09.2004 decline to recognise any workmen as protected workmen for the reasons recorded therein. The whole action of the company is arbitrary, illegal, unjustified and malafide also.

On that score the union has prayed for an award holding that the ~~suspension of Sri Rajesh Sharma and 18 others whose name mentioned in the Annexure-A of the written statement from their services by the management with effect from the date mentioned against each in the list is fully unjustified and illegal and granting relief of reinstatement of all concerned workmen directing the company to restore them to previous effective state as was before issuance of such arbitrary illegal and unjustified suspension order and to pay the entire withheld portion of salary with interest and other consequential relief.~~



The company/hotel management, on the other hand filed a written statement containing two parts. In part no.-I it is contended by the company that the instant reference is not maintainable as on the date of reference two parallel proceedings were continued which has rendered the reference bad in law. The reference suffers from the infirmity of non-application of mind on the part of the appropriate government inasmuch as in writ petition no. 13051 (w) of 2004, the appropriate government was a party. It is contended further that the reference is not maintainable since suspension pending enquiry cannot assume the character of an industrial dispute inasmuch as suspension pending enquiry is not a punishment. The same is also not maintainable since the tribunal cannot arrogate to itself the function of a disciplinary authority inasmuch as if the charges are proved the workman would be entitled to no amount other than the subsistence allowance and if the charges are not proved, they would be entitled full salary minus the substantial allowance. Then it is contended that the reference is not maintainable since the justification of the suspension pending enquiry requires a final decision on the outcome of an enquiry proceeding which the tribunal can not at this stage give any verdict.

In part two of the written statement the hotel management has categorically denied all the allegations made against it in the written statement filed by the union for the workman. In is contended that hotel is a service institution and as such, maintaining of discipline in the hotel is a prime necessity and, in the absence, whereof the customer will feel shy to use the hotel. It is contended that the enquiry continues for several months due to the dilatory tactics resorted to by the concerned workmen. It is contended that the union deliberately stalling the decision-making process, firstly by raising the industrial dispute though in fact there was no industrial dispute at all and secondly by filing writ application challenging the order of suspension. It is then contended that there does not arise any question of avoiding to come any settlement pertaining to charter of demand which did not become possible due to adamant and uncompromising attitude on the part of the union. A perusal of the charter of demand would amply justify that demand will not only cripple the establishment but the same would also lead to a position where accommodation would be beyond the capacity of the industry to pay. The uncompromising attitude was not of the management but of the unions. It is contended further that the unions have failed to make out any ground for holding the suspension as unjustified. The prayer of reinstatement is totally misconceived.



On that score the management/company has prayed for an award dismissing the claim of the union.

In support of its case union examined three witnesses namely Debarata Dey (CW1), Tarun Chatterjee (CW2) and Moni Kumar Roy (CW3). On the other hand, the company examined three witnesses namely Sujan Kanungo (CW1), Amzad Hossain (CW2), Ashis Chowdhury (CW3) and Mr. Purusottam Chatterjee (CW4).

Besides such oral evidences the unions have relied on some documentary evidences which have been marked as exhibit-1 to exhibit-34. Amongst those documents exhibit-1 to exhibit-3 are the copies of chargesheet issued against the 19 workmen whose name transpire in the list annexed with the order of reference. Exhibit-4 to 5/1 are the copies of settlement. Exhibit-6 series are the xerox copy of the letters of the company with the enquiry report to the concerned workmen. Exhibit-7 series are written representation of the concerned workmen to the company. Exhibit-8 series to exhibit-31 are the xerox copy of the letters/correspondences made between the unions and the company, company and the Labour Department and also the unions and the Labour Department. Exhibit-32 is the xerox copy of letter dated 24.08.2006 of Mr. Tapas K. Mazumder, Advocate. Exhibit-33 is the xerox copy of the order of Hon'ble High Court, Calcutta dated 30.09.2005 in WP no. 15864(W)2005. Exhibit-34 is the xerox copy of the documents relating to full and final payment by the company to Sri P. K. Dalui, one of the workman out of 19 as named in the order of reference. The company has also relied on some documentary evidence out of which exhibit-A is the xerox copy of the WP No. - 13051 (W of 2004) and exhibit-B is the xerox copy of the company's service condition/rules.

Decision with reasons

On the basis of aforesaid oral and documentary evidences as adduced by the parties let us now decide the issues mentioned in the order of reference.

It appears from the materials that two separate unions raised disputes before the appropriate Government for the 19 workmen whose name transpires in the list annexed with the order of reference. At the outset it would be pertinent to mention that out of those 19 workmen, 10 has resigned, 2 have retired and one workman is dead. Presently the workman whose name is appearing in serial no.1,7,8,13,14 and 19 namely Rajesh





Sharma, Allyn Glass, Debobrata Dey, Bandana Prajapati, Md. Samsuddin and Tarun Chatterjee respectively are contesting the case through the union. From order no. 118 dated 02.05.2014 passed by this tribunal it appears that on 25.04.2014 the company filed a petition praying for passing an interim award in respect of some workmen namely, P.K. Datta, Mr. V. K. Dutta, Mr. Francis Manual, Mr. Arun Kr. Mitra, Mr. Pradip Kr. Sahoo, Mr. Parimal Monohar and Mr. Raju Saimon Gomes on the ground that they have settled the disputes with the Hotel management. By said order this tribunal on considering the submissions of both the parties ordered that the dispute so far as the above named 7 workmen is concerned stand disposed of. However, the case do proceed against rest 12 workmen. It is mentioned in the said order that there would be reflection of factum of settlement in the final order. But the prayer for interim award was not allowed. Further, it appears from the order no. 142 dated 08.08.2016 passed by the then Presiding Officer of this tribunal that by the said order the instant case disposed of in respect of another 3 workmen whose names are appearing in the said order with an observation that at the time of passing the final award the said matter relating to the 3 workmen and their resignation, acceptance of resignations by the concerned authority will be considered. Then it appears that on 05.01.2018 an application was filed by the hotel management seeking necessary order in respect of the 3 workmen namely, Mani Kr. Ray and Gregory Rozario, so that those 2 workmen can take appropriate steps for withdrawing their provident fund dues from the appropriate authority annexing with the said application the xerox copy of no claim declaration submitted by those 2 workmen on 31.10.2015 and 28.10.2016 respectively. This tribunal by passing order dated 05.01.2018 observed that those documents are sufficient to process the settlement of provident fund dues in respect of those two workmen. It appears from the testimony of CW1, Debobrato Dey recorded on 24.02.2009 that one workman Mr. V.K. Dutta expired in the month of May 2008. By this way at present the unions are moving the matter for 6 workmen out of 19 as mentioned earlier. From the order no. 118, dated 02.05.2014 it appears that the union has made submission that the unions are not interested at all or inclined to pursue the case on behalf of the workmen who have settled the dispute and during final hearing of the case it is submitted for the union that it is now moving the matter only for above 6 workmen out of 19 as named in the order of reference.

At the outset it would be pertinent to mention that the Hotel management challenging the order of reference moved the Hon'ble High Court, Calcutta in Writ Petition No. WP. 15864 (W) of 2005 raising a point as to whether an order of suspension passed as a contingent measure and not being an order of punishment can assume the character of an industrial dispute within the meaning of Section 2(k) of the Industrial Dispute Act. The said writ application has been disposed of by the Hon'ble High Court vide judgement dated 29.03.2017 dismissing the same with some observations and findings directing this tribunal to dispose of the reference. The Ld. Advocates of the respective parties drew attention of this tribunal as to some observations made by the Hon'ble Court in the said judgement. According to them such observations may be taken into consideration while deciding the present reference by this tribunal. Such submissions as made by Ld. Advocates of the respective parties will be considered later on.

As stated earlier, the appropriate Government in the order of reference framed two issues for adjudication by this tribunal and those two issues are namely,

- i) Whether the order of suspension in respect of 19 workmen whose names transpires in the list annexed with the order of reference is justified or not?
- ii) What other relief the workmen are entitled to?

To adjudicate the issues as mentioned in the order of reference this tribunal has to consider evidences and materials on record and other attending circumstances. Admittedly all the 19 employees named in the order of reference were served with charge sheet cum suspension order more or less on identical grounds against each of them. Exhibit-1 series, 2 series and 3 series are those chargesheet cum suspension order.

The unions moving the matter for the employees/workmen in the written statement has prayed for passing an award holding that the order of suspension is fully unjustified, illegal and for other relief.

It is argued by the Ld. Advocate for the union that while taking action the management has not followed the model standing orders and as such action taken against the employees by the management can be said to be illegal. To counter such argument, it is argued by the Ld. Advocate for the Hotel management that the model standing order is under the Industrial Employment (Standing Orders) Act, 1946 and section 1(3) of the said act



deals with the applicability of the said act. It is argued that as per said section it applies to 'Industrial Establishment' where 100 or more workmen are employed. He then submits that Section 2(ii) of the payment of wages Act 1936 has defined the 'Industrial Establishment' wherein the hotel has not been included. The Ld. Advocate also drew my attention to the provisions of the West Bengal Shops and Establishments Act 1963. Relying on the provisions of those acts it is argued that the model standing order under the Industrial Employment (Standing Orders Act 1946) has no manner of application in respect of the present company under reference.

Considered the submissions. Perused the relevant provisions of Section 1(3) of the Industrial Employment (Standing Order Act 1946). It is clear that the same applies to every industrial establishment wherein 100 or more workmen are employed, or were employed on any day of the preceding 12 months. It has further been provided that the appropriate Government may, after giving not less than 2 months' notice of its intention so to do, by notification in the official Gazette, apply the provisions of this act to any industrial employment employing such number of persons less than 100 as may be specified in the notification. Perused the provisions of Section 2 (ii) of the payment of wages act, 1936 wherein the term "Industrial or other establishment" has been described.

Section 2 (ii) of the payment of wages act 1936 runs as follows: -

2(ii) "Industrial or other establishment" means any-

(a) tramway service, or other transport service engaged in carrying passengers or goods or both by road for hire or reward

(aa) air transport service other than such service belonging to, or

exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;

(b) dock, wharf or jetty;

(c) inland vessel, mechanically propelled;

(d) mine, quarry or oilfield;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or

sale;



(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on:

(h) any other establishment or class of establishments which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette."

Perused also the provisions of Section 2(6) of the West Bengal Shops and Establishment Act 1963 (as amended). Under the said Clause Hotel, restaurant etc. have been brought under the purview of the said act.

On conjoint reading of the aforesaid provisions of those acts it is abundantly clear that the company under reference being a residential hotel can never be considered as an industrial establishment. That being so, I am unable to accept the argument as made by Ld. Advocate for the union.

It is then argued by the Ld. Advocate for the union that the prolonged order of suspension is unjustified, if not illegal. It is pointed out by the Ld. Advocate for the union that the employees named in the order of reference were issued with order of suspension cum chargesheet on different dates on 12.12.2001, 14.12.2001, 29.12.2001 containing more less identical ground and the enquiry officer has submitted report on 16.08.2003. The same was served upon the concerned employees on 14.09.2004 and they have made respective representative in the month of November 2004. It is argued that in view of the averments made out in the chargesheet cum suspension order and consequent upon the submission of enquiry report the proceedings have come to an end and as such prolonged suspension is not sustainable in law.

The Ld. Advocate for the hotel management, on the other hand, argued that at the pre-litigation stage no dispute has been raised by the unions on the said point as raised now before this tribunal during course of argument and therefore, the appropriate government did not refer the same for adjudication in the order of reference. In this connection the Ld.



Advocate for the hotel management drew attention of this tribunal in respect of some statement of the witnesses examined for the unions which have come out during their cross examination. It is argued further that admittedly the order of reference is dated 15th/16th March 2005 but nothing has been referred for adjudication whether the order of suspension can continue after submission of report by the enquiry officer. Accordingly, it is argued that in the present reference this tribunal has no scope to enter into all such aspect as the same are beyond the terms of reference.

Considered the submissions of both sides. Perused the statement of the witnesses examined for the unions as pointed out by the Ld. Advocate of the Hotel management. The PW1 during his cross examination made on 14.07.2006 has stated that it is a fact that no issue has been framed for trial in terms of prolong suspension in the present reference. During his further cross examination, he has stated that document placed before court do not show that any conciliation memo was issued using the term prolong suspension. The PW2 has admitted during cross examination that before submitting their representation against the enquiry report, they raised disputes before the Labour Commissioner, West Bengal in respect of charter of demands and suspension pending domestic enquiry. Admittedly, the Enquiry Officer submitted report on 16.08.2003. The instant order of reference is dated 15th/16th March 2005 but nothing has been referred in the order of reference for adjudication by this tribunal as to whether hotel management can keep the employees under suspension even after the submission of enquiry report. On careful consideration of all aspect of the matter I find that the appropriate government has not framed any such issue in the order of reference for adjudication by this tribunal. It is a settled principle of law that the tribunal can not travel beyond the issues framed in the order of reference. That being so, I am of the view further that this tribunal cannot exercise any power to enquire into any matter which has not been specifically mentioned in the order of reference.

It is then argued by the Ld. Advocate for the unions by placing reliance on Section 10(4) of the Industrial Dispute Act 1947 that though there is no issue on that score has been framed by the appropriate Government in the order of reference, however the tribunal has got the authority and jurisdiction to look into the aspect of prolonged suspension, the same being an 'incidental' to the issue mentioned in the order of reference. It is argued further by the Ld. Advocate for the unions that while it is opened to the

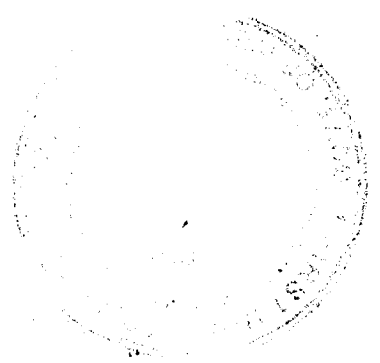
appropriate government to refer the dispute or any matter appearing to be connected therewith for adjudication, the tribunal must find its adjudication to those points of dispute referred and matter incidental thereto. It is argued that "something incidental to a dispute" mean something happening as a result of or connection with the dispute or associated with the dispute.

The Ld. Advocate for the company while countering such submissions as made by the Ld. Advocate for the unions argued that justification of suspension and so-called prolongation thereof are two separate cause of action and one can not be equated with other. It is then argued that it is a settled principle of law that "matter incidental" means which is an adjunct to the main issue and therefore something incidental cannot cut on the root of main thing to which it is an adjunct to it.

Considered the submissions of both sides. Perused the materials on record and also provisions of Rule 20 D of the West Bengal Industrial Dispute Rules 1958.

The said Rule 20(D) of West Bengal Industrial Rules 1958 provides that after the filing of the written statement by the parties, the tribunal may fix a date for framing, if necessary, issues relating to and arising out of the point or points in dispute, as referred, and matters incidental thereto, as well as additional or subsidiary issues, not enlarging in any way the scope of the points referred for adjudication on the merits, nor adding to their number but require for dealing with extrinsic contentions raised by the parties about the reference and for its hearing.

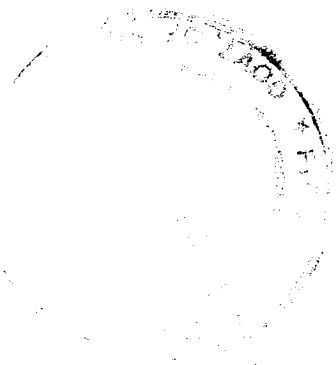
As stated earlier that the appropriate Government while referring the present matter specifically mentioned therein two issues namely, (i) whether the suspension of Sri Rajesh Sharma and eighteen others (vide list enclosed) from service by the management with effect from the date mentioned against each in the list is justified? (ii) what relief are the workman entitled? After receipt of such reference notices were issued to the parties to appear and accordingly they appeared and filed their respective written statement. At no point of time the union filed any application for framing any additional issue under Rule 20(D) of the aforesaid Rule 1958 relating to 'prolong suspension'. In this connection the Ld. Advocate for the company drew my attention to the statement of PW1 Sri Deobrata Dey which has come out during his cross examination on 14.07.2006 wherein he has stated that he knows regarding the issues for trial in the instant reference. He has also stated that it is a fact that no issue has been framed for trial in terms of



'prolong suspension' in the present reference. During his further cross examination on 17.08.2006 he has stated that the documents placed before the Court do not show that any conciliation memo was issued using the term 'prolong suspension'. The attention of this tribunal is also drawn by the Ld. Advocate for the company/opposite party in respect of the statement of PW2 Tarun Chatterjee which has come out during his cross examination on 25.08.2009 wherein he has stated that before submitting representation against the enquiry report by the union dispute was raised before the Labour Commissioner, West Bengal in respect of charter of demands and suspension pending domestic enquiry. The said PW1 has claimed himself to be an executive committee member of Peerless Hotels and Travels Ltd. Workers Union. Both the said two witnesses appear to be very important persons of those two unions. From the aforesaid statement of the witnesses it is very much clear that they are very much conscious about the fact as to the issues involved in the present reference. But at no point of time union approached this tribunal to frame any additional issue on the point of prolong suspension.

On careful consideration of the matter, I am of the view that the argument as advanced by the Ld. Advocate for the union relying on the provisions of Section 10(4) of the Industrial Dispute Act 1947 that the tribunal has got jurisdiction to look into the aspect of prolong suspension as an incidental issue can not be accepted.

From the pleadings of the parties as well as from the materials on record it is an admitted position that the departmental enquiry conducted against the employees has been completed and the Enquiry Officer has submitted his report. It is also an admitted position that such report of the Enquiry Officer has been supplied to the individual employees who are under suspension and in turn they submitted their representation/reply against the said report of the Enquiry Officer but the management has not yet taken any action against the concerned workmen on the basis of such report of the Enquiry Officer. In this connection the Ld. Advocate for the workman pointed out to the cross examination of CW2 wherein he has stated that the management did not inform either to the union or those 19 employees as to the cause of taking no final decision although enquiry was completed in June 2003 because no such action arose. It is argued for the workmen that the management deliberately kept the workers under indefinite period of suspension to victimise them. It is submitted that had



the management terminated their service then the worker could easily search for another employment. It is then argued for the workmen that challenging the order of reference the management moved the Hon'ble High Court, Calcutta in WP No. 15864(W) of 2005 contending inter-alia that the suspension pending enquiry cannot assume the character of an Industrial Dispute and the said writ application has been disposed of finally by the Hon'ble Court vide judgement dated 29.03.2017 holding that the suspension order pending enquiry certainly can be an Industrial Dispute. It is further contended for the workmen that the Hotel management has indulged in unfair labour practice by keeping the workmen in suspension for indefinite period to crush the trade union movement.

The Ld. Advocate for the Hotel management, on the other hand, argued that the management had acted within the framework of the service rules by placing the concerned workmen under suspension pending enquiry. It is argued that the management are paying the subsistence allowance to the workmen till today who are presently contesting present reference. In this connection the Ld. Advocate drew the attention of this tribunal to the cross examination of PW1 recorded on 17.08.2006 wherein he has categorically admitted that they are getting the subsistence allowance. It is further argued that all the aforesaid submissions as made by the Ld. Advocate for the union are nothing but to make an endeavour to invite this tribunal to travel beyond the terms of reference. It is submitted that it is a writ law that the tribunal can not adjudicate anything which has not been referred by the appropriate government before the tribunal for adjudication in the order of reference.

Considered the submissions of both sides. It is an admitted fact that the Hotel management challenged the instant order of reference before the Hon'ble High Court in WP no. 15846(W) of 2005 mainly on the ground that when the order of suspension has been passed as a contingent measure not being an order of punishment, the same can not assume the character of an Industrial Dispute. Perused the judgement dated 29.03.2017 by which the Hon'ble Court has disposed of the said WP dismissing the same and the Hon'ble Court has not interfered with the present order of reference and directed this tribunal to dispose of the matter at an early date. As it appears that the Hon'ble Court has held that the non-punitive order of suspension pending disciplinary action can be a subject matter of Industrial Dispute.



As already stated that the Enquiry Officer submitted report in respect of the departmental enquiry held against all the 19 workmen named in the order of reference. It is an admitted fact that out of those 19 workmen only 6 are now contesting the present reference and others have settled the matter with the management. It is argued by the Ld. Advocate for the union that the management have released the legitimate dues of all those workmen who have settled their dispute in spite of the fact that the Enquiry Officer submitted report holding them guilty of the charges. It is further submitted that such conduct of the management suggest that the management intends to victimise the office bearers of the unions.

The Ld. Advocate for the management argued that during the period of suspension, the jural relationship between the company and the suspended employee subsist and such employee has got a fundamental right to resign from service before imposing of punishment and subject to the relevant service rules, the management has got the liberty to release such employee from service of the company. It is argued further that there is no provision in the relevant service rules that the management is debarred from accepting the resignation of suspended employee pending disciplinary action.

Considered the submissions of the Ld. Advocate for the both sides. Nothing can be shown by the union that the management has violated any provision of the service rules while releasing the legitimate dues of all the 13 suspended workmen by accepting their resignation. In the instant case no final decision has been passed in respect of the chargesheet issued against the employees. That being so, I find substance in the argument as made by the Ld. Advocate for the company that the jural relationship between the company and the employee still subsists. Therefore, I am of the view that if a suspended employee applies for resignation from service and the same is accepted by the management it can not be said that the management has committed any wrong in the matter.

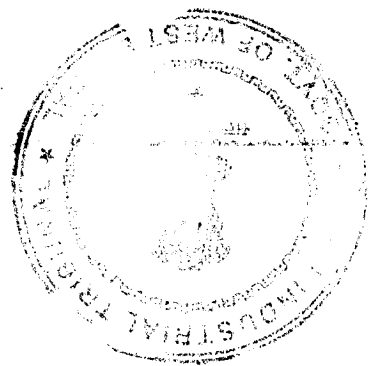
It is then argued by the Ld. Advocate for the union that a charter of demand was submitted by the unions to the management raising various demands and no final decision has come out as yet due to adamant attitude of the management. It is contended that the management unnecessarily showing some hostile attitude towards the union and consequently trying to crush the trade union activities to avoid for coming to any settlement on the long pending issues on the charter of demands. In this connection the Ld.



Advocate for the union has placed reliance on Exhibit-16/C which is copy of the order passed by the Hon'ble High Court, Calcutta. Relying on the same it is argued that the Hon'ble Court has granted liberty to the union to carry on their normal trade union activity. The Ld. Advocate for the Hotel management, on the contrary, argued by placing reliance on exhibit-16/C submits that said order of the Hon'ble Court is in favour of the management of the company whereby the union are injuncted from holding meeting inside the hotel premises.

Considered the submissions of the Ld. Advocate for the respective parties. Perused the copy of the order dated 06.02.2002 passed by the Hon'ble High Court, Calcutta in TS no. 99 of 2002. By the said order the Hon'ble Court appointed the Ld. Senior Advocates as joint Special Officer in terms of the prayer made by the writ petitioner namely Peerless Hotel Ltd. The said suit was filed by the said Hotel management against the Commissioner of Police and others. It further appears from the said order of the Hon'ble Court (exhibit-16) that the respondent no. 1 to 4 was directed to take all steps in terms of the order passed by the Ld. Executive Magistrate on 1st December 2001 and also restrained the private respondents from the carrying out any slogan shouting or demonstration within the 200 meters of the hotel Peerless Inn, Calcutta situated at 12, J. L. N. Road, Calcutta-13. The Ld. Advocate also drew my attention to the relevant portion of the order passed by the Hon'ble High Court, Calcutta on 9th July 2004 in the said case which has been marked as exhibit-16/C. On careful consideration and on perusal of those orders of Hon'ble High Court, I am of the view that no useful purpose of the union will be served to justify its case by placing reliance on the said order of the Hon'ble Court (exhibit-16 & 16/C).

The next thrust of argument as placed by the Ld. Advocate for the union drawing attention of this tribunal to the judgement dated 29.03.2017 passed by the Hon'ble High Court, Calcutta in WP No. 15864(W) of 2005 is that this tribunal is required to look into whether the order of suspension is a malafide or not. The Ld. Advocate for the Hotel management, on the other hand argued that the union could not appreciate the observations made by the Hon'ble Court as appearing in paragraph no. 27 of the said judgement in its proper perspective. It is submitted for the Hotel management that the observation as made by the Hon'ble Court as appearing in paragraph no. 27 and 32 are sufficient to come to a conclusion that the submission as made on behalf of the union are absolutely incorrect and such observation can



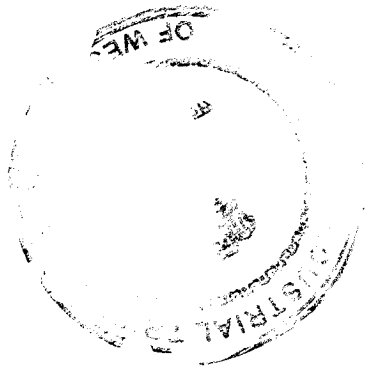
easily be considered as a good pointer in deciding the issue involved in the present proceeding. The observation and findings of the Hon'ble Court in the said judgement will be considered latter on.

The Ld. Advocate for the union then argued that from the conduct of the management it would be clear that only two victimise the workers.

the management have kept them under indefinite period of suspension which clearly suggest that the malafide intention of the management. Relying upon some observations made by the Hon'ble High Court, Calcutta in WP No. 15864(W) of 2005 as appearing in paragraph no. 27 it is argued by the Ld. Advocate for the unions that the tribunal has every right to ascertain as to whether the order of suspension has been issued maliciously to victimise the workmen in contemplation of the disciplinary proceedings. It is argued further that if it is found that such order of suspension in contemplation of the disciplinary proceedings has been actuated by malice, the tribunal can set a side such order of suspension. In support of such contention the Ld. Advocate for the union has placed reliance on a case law as reported in 1998 LAB IC1330. Relying on such case law it is argued for the union that the continuous suspension is not only against the instruction issued by the Govt. of India but also against the principles of natural justice.

The Ld. Advocate for the company, on the other hand argued that the facts involved in the present case is clearly distinguishable from the facts of the case as cited above and as such has got no manner of application.

Considered the submissions of the Ld. Advocates. Perused the said reported case. It appears that the same was passed in connection with a writ petition filed by the petitioner against the Municipal Corporation of Delhi challenging the order of suspension and keeping the same pending for years together without starting any enquiry proceeding. In the said case the higher authorities of the disciplinary authority took a view in the file that no substantial progress in the departmental enquiry was made and as such suspension order should be revoked. Moreover, the enquiry did not proceed much. On that factual matrix, the Hon'ble Delhi High Court set aside the order of suspension. In the case before us the facts involved are absolutely different. The said cited case is not under the industrial dispute act 1947. So in my view the facts of the instant case is distinguishable from the facts of the case before us. That being so, the said case law cannot come in aid to the unions in the instant case.



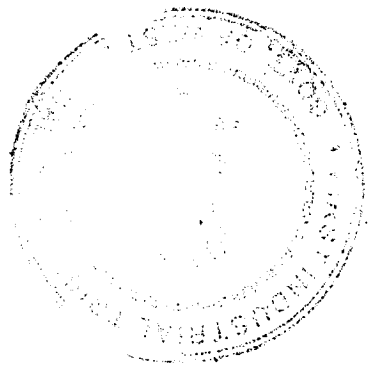
Reliance is placed by the union in another case as reported in 1996(1) CLR 140 on the point of prolong suspension. The Ld. Advocate for the company submitted that the said judgement does not lay down any ratio. It is submitted that the said judgement has been passed considering the facts and circumstances of the case before the Hon'ble Court and it is the view of the Hon'ble Gujarat High Court that the ends of justice would be made if the authorities are directed to conclude the enquiry including passing of the final order within the specified period.

Considered the submissions of both sides. Perused the said reported case. The same was also in connection with a writ petition filed by the petitioner, an Assistant Manager of the Bank challenging the order of suspension pending enquiry. It appears that during enquiry the petitioner filed two civil suits before the city Civil Court, Amedabad seeking some relief and during pendency of those two civil suits the writ application was preferred since there has been a considerable delay in completing the enquiry. In the said back ground the Hon'ble Court disposed of the writ petition with a direction to the authority to conclude the enquiry and to pass final order. On due consideration of the matter I find that the facts of the case before the Hon'ble Court and the facts of the instant case before us are not identical and as such the said case law can not come in aid of the union in the instant case.

On the identical point i.e. prolong suspension the Ld. Advocate for the union has placed reliance on some other case law and it is submitted that the prolong suspension is unjustified. Reliance is placed in this connection in a judgement passed by Hon'ble High Court, Calcutta in WP No. 19525(W) of 2004.

The Ld. Advocate for the company, on the other hand, argued that said judgement has no applicability in the instant case as the issues involved in the said case are not identical with the issues involved in the present case.

Considered the submissions made by the Ld. Advocate of the respective parties. It appears that in the said cited judgement admittedly there was an issue in the order of reference as to justification of prolong suspension. But in the instant case justification of prolong suspension is not an issue in the order of reference issued by the appropriate Government. Moreover, as discussed earlier at no point of time the union made any prayer to frame any additional issue on that point by applying the provisions of Rule 20D of the West Bengal Industrial Disputes Rules 1958. That being



so, I am of the view that the said case law as cited can not come in aid to the union in the instant proceedings.

Reliance is also placed by the Ld. Advocate for the unions on another case law as reported in (2010) 3 SCC 192 on the point that the industrial disputes act 1947 and other similar legislative instrument are keeping in view of the goals set out in the preamble of the constitution and the provisions contend in Part-4 thereon for general and article 38, 39A 2E 43 and 43A of the constitution of India. The Ld. Advocate drew the attention of this tribunal in Paragraph no. 21 of the said reported case in that regard. He has also drawn attention of the tribunal to the Paragraph no. 31 of the said reported case wherein it has been held by the Hon'ble Apex Court that – "It need no emphasis that if a man is deprived of the livelihood, he has deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of state policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private".

The Ld. Advocate for the hotel management, on the other hand, argued that the facts of the said case before the Hon'ble Apex Court is not identical with the facts of the present case before us. It is submitted that the Hon'ble Apex Court while deciding a case relating to termination of a Munsif by a public sector undertaking vis-a-vis Section 11A, Section 25A, 25G and 25H of the Industrial Disputes Act 1947 has been pleased to express the aforesaid view. It is submitted further that in the present case before us there is no termination of service and as such none of the aforesaid provisions of the industrial disputes act 1947 has got any application.

Considered the submissions of both sides. Perused the said case law as cited by the Ld. Advocate for the unions. It is a settled principle of law that each case is to be judged and decided on the basis of the facts and circumstances of each particular case. On careful consideration of all aspect, I agree myself with the submissions as made by the Ld. Advocate for the company that the present case before us is clearly distinguishable from the said case before the Hon'ble Court and the instant case before us.

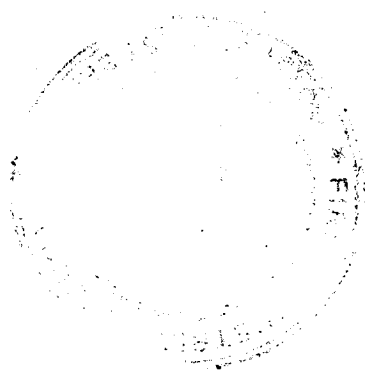
Admittedly in the instant case before us there is no termination of services and as such none of the provisions of Industrial Disputes Act 1947 has got any application. That being so, I am of the view that the said case law as cited by the union have cannot come in aid for the unions.

On careful consideration of the case set up by the union and the argument as placed it appears to me that the union have made an attempt for declaring of the order of suspension to be illegal and unjustified. As discussed earlier the appropriate government has framed two issues namely, (i) Whether the suspension of 19 employees whose name have been mentioned in the list enclosed with the order of reference from service by the management with effect from the mentioned against each of them is justified?

(ii) What relief is the workmen entitled to?

So, on plain reading of the order of reference it is evident that the appropriate government while referring the issues for adjudication by this tribunal has only confined itself about the justification of order of suspension passed by the management. It is argued by the Ld. Advocate for the company that illegality and justifiability can not co-exist. According to him when an issue pertaining to justification has been referred by the appropriate government the same presuppose the action to be legal one. It is argued further that the management has acted within the framework of the service rules. Relying on a judgement passed by the Hon'ble Apex Court as reported in CDJ 2013 SC 816 (M/s. Tata Iron & Steel Co. Ltd. Vs State of Jharkhand and Others.) and another case law as reported in CDJ 2015 SC 092 Oshiar Prasad and ors. VS the Employers in relation to management of Sudamdih Coal Washery of M/s. BCCCL, Dhanbad (Jharkhand). Relying on those two-case law, it is argued by the Ld. Advocate for the company that the tribunal can not go beyond the terms of reference.

Considered the submissions of the Ld. Advocate of the company. Perused those two reported cases. It has been observed by the Hon'ble Apex Court in the case of Tata Iron & Steel Co. Ltd. Vs State of Jharkhand as mentioned earlier that – "The Industrial Tribunal/Labour Court constituted under the Industrial Disputes Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The tribunal has to confine itself within the scope of the subject matter of reference and can not travel beyond the same. This is the view taken by this court in number of cases



including the case of National Engineering Industries Ltd. Vs State of Rajasthan and ors. 2000(1) SCC 371".

In another case as reported in CDJ 2015 SC 092 as mentioned earlier, it has been observed by Hon'ble Apex Court as appear in paragraph no. 25 that – "It is thus clear that the appropriate government is empowered to make reference u/s 10 of the act only when 'Industrial Disputes exists' or 'is apprehended between the parties. Similarly, it is also clear that the tribunal while answering reference has to confine its enquiry to the question (s) refer and has no jurisdiction to travel beyond the question(s) or/and the terms of reference while answering the reference. A fortiori, no enquiry cannot be made on those questions, which are not specifically refer to the tribunal while answering the reference".

In view of such observations as made by Hon'ble Apex Court in those two reported cases, the tribunal has not been empowered to decide and adjudicate any matter which do not find place in the order of reference and also has no jurisdiction to travel beyond the terms of reference. As discussed earlier that during course of hearing of argument it is submitted for the unions by placing reliance on Section 10(4) of the Industrial Disputes Act 1947 that the tribunal has got the ancillary power to look into the aspect of prolong suspension while considering the justification of the order of suspension the same being an incidental issue. The argument and counter argument have been considered earlier on that point and this tribunal has already observed considering the pros and cons of all aspect of the matter that the prolong suspension cannot be considered to be a matter incidental to the issues as mentioned in the order of reference.

Let us now consider as to the justifiability of the order of suspension as mentioned any point no. 1 in the order of reference issued by the appropriate government.

Now to decide the point we have to look into the charges levelled against the 19 employees. Those charges have been marked as exhibit-1 series to exhibit-3 series. On the basis the chargesheet cum suspension order issued against those 19 employees admittedly enquiry was made and the Enquiry Officer has submitted his report. In the present reference there is no scope to look into the point as to any matter concerning such domestic enquiry as well as the report of the Enquiry Officer since any observation and comments on such matter and on the report of the Enquiry Officer, if made at this stage, the same may lead to future complications. So, I refrain



myself to look into the matter relating to the domestic enquiry and the report submitted by the Enquiry Officer. However, from the exhibit-1 to 3 series i.e. the chargesheet it appears the allegation made against employees appears prima facie to be serious. The allegations may be correct or may not be but the same is within the domain of the Enquiry Officer to decide the matter.

The service rule of the hotel has been marked as exhibit-B. Rule 29 III A of the said Rule provides that a workman against whom the action is propose to be taken and/or when a police enquiry is going on against the workman he may be suspended from work and such suspension may be at any time either before issuance of show cause notice/chargesheet or simultaneously with the show cause notice/chargesheet or later depending upon the circumstances. Therefore, the said rule unequivocally authorises the management to suspend an employee pending departmental enquiry on the basis of charges framed against him/them. PW1 Sri Deobrata Dey in his evidence-in-chief has stated that he is attached with Peerless Hotel and Travels Ltd. Workers Union as Executive Committee member. So that witness can surely be considered to be a very important person of the union and expected to be acquainted with the rules and procedure prevailing at the relevant time in running the day to day administration of the hotel management. The said witness has stated during his cross examination as recorded on 17.08.2006 that it is a fact that there is a provision for making suspension pending disciplinary proceeding in the service rule at page 29 and 30 vide clause A. He has then stated that in the said clause it has written that during suspension period they shall get subsistence allowance in terms of West Bengal Payment of subsistence allowance Act and they are also getting the subsistence allowance. The said witness has further stated during evidence-in-chief that during suspended period they are getting subsistence allowance for 50% for the first 3 months and thereafter 70% per month. The PW2. Tarun Chatterjee during his cross examination has also stated regarding getting of such subsistence allowance. So, from the statement of those two witnesses it is clear that such service rule maintained by hotel management are applicable to all the employees working in the hotel. On plain reading of the said service rules it is clear that Rule 29 III A has empowered the management to place the employees under suspension pending disciplinary action. During course of hearing of argument, the Ld. Advocate for the union submitted that while taking such action against the employee's management has not followed the model standing order as

provided in the Industrial Employment (standing orders) Act 1947. That matter was seriously challenged by the Ld. Advocate for the management. On considering the submissions of both sides and on relying upon the relevant provisions of different acts this tribunal has observed earlier that the company under reference being a residential hotel can never be considered as an industrial establishment and as such the model standing order under the Industrial Employment (Standing Order Act 1946) has no application in respect of the present company.

Let us now consider the background under which the management issued chargesheet against the 19 employees and placed them under suspension pending departmental enquiry on the basis of the charges framed against them.

Admittedly the unions submitted a charter of demands with the hotel management comprising several matters. The said charter of demand was dated 09.06.2001. Over the said demand made by union a dispute was raised before the appropriate government and the appropriate government, namely, the Labour Department, Government of West Bengal has made a reference dated 15th/16th March 2005 to this tribunal to adjudicate the issue as to whether such demands of the workman are justified or not and what other relief the workmen are entitled to? The said reference is yet to be adjudicate finally and it is in the stage of hearing. The said reference will be decided and disposed of in due course. While deciding the hearing the instant case I refrain myself from deciding any matter touching the merits of the said reference concerning the charter of demands as I think that any observation made by this tribunal touching the matter of said reference may affect the decision of said reference.

The Ld. Advocate for the Hotel management argued that the company being a residential hotel comes within the purview of 'hospitality industry' and in a hotel industry the management of the hotel has to ensure the comfort of each guests and to make sure that their stay is pleasant. It is submitted further that any untoward incident or any sign of unpleasantness would have been potential to scare away the customer and mar the image of the said hotel. It is submitted further that the allegation as well as the acts and activities including the language used by the concern employees as mentioned in the chargesheet (exhibit-1 series to 3 series) leave no room for any doubt that their presence had created a serious threat to the discipline as well as smooth functioning of the organisation. In this connection the Ld.

Advocate for the company/hotel management pointed out the evidence of PW1 as recorded on 17.08.2006 during cross examination. It appears that during such cross examination the PW1 stated that exhibit-1 series will not show that the allegations brought against them therein were cropped up during the discussion of charter of demand. He admitted further that the hotel is a hospitality industry and it is fact any sort of shouting slogans, demonstration, disturbance in working hours will create disturbance upon the boarders of the hotel. He has further stated that it is a fact when the dispute dated 17.02.2003 was raised by them before the Labour Commissioner then their suspension period was continuing and the disciplinary proceeding was also in process.

It is argued by Ld. Advocate for the unions that the allegations contained in the chargesheet against the 19 workmen are false and motivated one and with some malice the hotel management framed such charges against those workmen to crush the trade union movement. It is further submitted that the management of the company refused to bargain collectively in good faith in the matter of charter of demand. It is submitted further that the Hon'ble High Court, Calcutta in title suit no. 99 of 2002 by passing an order dated 09.07.2004 granted liberty to the union to carry on with the legal activities.

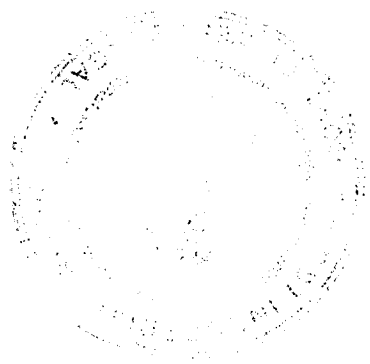
Considered the submissions of the Ld. Advocate of the respective parties. Perused the exhibit-16 series which are the copy of the order passed by the Hon'ble Court those documents have been so exhibited being filed by the unions. Exhibit-16 is the copy of the order dated 06.02.2002 passed by the Hon'ble Court in T.S. No. 99 of 2002 = CS No. 52 of 2002 (Peerless Hotel Ltd. - Vs - Commissioner of Police and ors.). From the said order passed by the Hon'ble High Court it appears that the hotel management moved the Learned Executive Magistrate, Calcutta and the said Magistrate passed an order on 11th December 2001. Since no steps have been taken by the respondent authority to carry out the order passed by the Magistrate, the petitioner has to file the aforesaid suit before the Hon'ble High Court. It further appears that the Hon'ble Court appointed two senior advocates of the Hon'ble Court as Joint Special Officer as prayed for by the hotel management since in the opinion of the Hon'ble High Court that a strong prima facie case could be made out by the petitioner. In the said order the Hon'ble Court directed the respondent No. 1 to 4 to take all steps in the matter in terms of the order passed by the Learned Magistrate. It further



appears from the said order of the Hon'ble Court that the private respondents were restrained from carrying out any slogan, shouting or demonstration within 100 metres of the hotel premises. However, it was clarified that the said order would not stand in the way of the respondent from carrying on their legal trade union activities as permitted under the law. Exhibit-16/C is the copy of the order dated 9th July 2004 passed by the Hon'ble High Court, Calcutta passed in G.A. No. 2047 of 2004 = CS No. 52 of 2002 which is in connection with the earlier order passed by the Hon'ble Court in the said suit (Peerless Hotel Ltd. - Vs - Commissioner of Police and Ors.) by which the Hon'ble Court allowed the application and granted the prayers made in prayers (a, b & c) of the application. Operative portion of the said order runs as follow:- "undisputedly, the plaintiff is running a star hotel and if the trade unions and their members are permitted to hold meeting in the hotel premises, the management is likely to suffer loss of business as the service of the hotel will be disrupted and the guests of the hotel may leave the hotel as their stay will not be as comfortable as they expect in a star hotel. In the hotel industry it is expected that the guests are to be served to the best of their expectation and any displeasure of the guests will result in loss of allegiance of the guests. The management can not be asked to suffer such loss and prejudice in the present competitive atmosphere prevailing in the hotel industry.

I do not think that the management is obliged to provide accommodation to the trade unions or their members to hold meeting inside the hotel premises, particularly when the management has decided as a matter of policy not to permit either of the trade unions to hold any function or meet inside the hotel premises....."

On careful consideration of all aspect of the matter and particularly on perusal of the documents (exhibit-16 series) it appears to me that due to the activities of the union and some members attached with those unions obviously created such a situation to meet out their demands, the same compelled the hotel management to move the Learned Executive Magistrate, Calcutta and the said Ltd. Executive Magistrate had to pass some restrained order on 11th December 2001 and ultimately the hotel management had to file the aforesaid suit before Hon'ble Court praying for a mandatory order of injunction directing the defendant no. 1 to 4 to implement the said order passed by the Executive Magistrate and for a permanent injunction for restraining the defendants no. 5 to 19 and their



agents from resorting to any act to militant trade unionism within the 200 meters of hotel premises and for permanent injunction restraining the defendants from resorting to pasting of posters or hosting of flags or banners or festoons at any place in side or in front of the hotel or at the gate of the said hotel premises and the Hon'ble High Court by the said order dated 9th July 2004 with some observations as quoted earlier allowed the application and granted prayers in terms of prayers no. a, b & c of the application filed by the plaintiff. In the aforesaid backdrop of the matter I am of the view that the aforesaid orders of the Hon'ble Court will not serve any useful purpose of the unions by placing reliance on the said exhibited documents.

As stated earlier that the hotel management moved the Hon'ble High Court, Calcutta in writ petition no. WP15864(W) of 2005 challenging the instant order of reference raising a point as to whether an order of suspension passed as a contingent measure and not being an order of punishment can assume the character of an industrial dispute within the meaning of Section 2K of the industrial dispute act. The said writ application has been disposed of by the Hon'ble Court directing this tribunal to dispose of the instant case as expeditiously as possible. By placing reliance on paragraph 27 of the said judgement it is submitted for the union that the tribunal has the scope to ascertain as to whether the order of suspension has been issued maliciously and to victimise the workman in contemplation of the departmental proceedings. In paragraph no. 27 of the said judgement it has been observed by the Hon'ble Court that – "it is true that suspension can be of two types. One is by way of punishment. The other is suspension pending or in contemplation of disciplinary proceedings..... Theoretically speaking, the power to suspend a workman can be abused or misuse by the management. It is possible that proposed disciplinary proceedings against some of the workman may be actuated by the malice or to victimise such workman. In such cases, the suspension order in contemplation of such malicious disciplinary proceedings would also be tainted by malice. Not for a moment am I suggesting that this is what has happened in the present case. I am only giving an example....."

The Ld. Advocate for the hotel management argued that the observation and findings made by the Hon'ble Court in the aforesaid paragraph no. 27 of the said judgement cannot stand in aid for the case set up by the union and it is argued by him that to misdirect the tribunal the

The Ld. Advocate for the hotel management drew the attention of the tribunal to the observation as made by the Hon'ble Court at paragraph no. 32 of the said judgement wherein it is held that- "I refrain from dealing with the said two decisions since I have not proceeded on the basis of that in the facts of the present case the order of suspensions were punitive and in my view any apparently non-punitive order of suspension in contemplation of or pending disciplinary proceedings can also be the subject matter of reference to an industrial tribunal in so far as justifiability of such order is concerned."

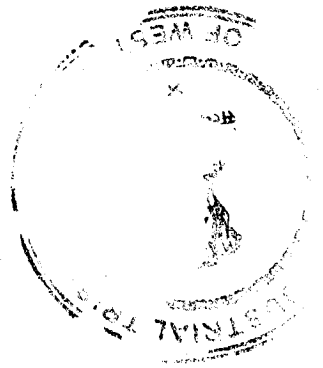
So, on due consideration of the said order passed by the Hon'ble High Court in WP No. 15864(W) of 2005 it seems to me that the Hon'ble Court has held that in the present case, the orders of suspension were not punitive in nature and according to the Hon'ble Court justification of an apparently non-punitive order of suspension pending disciplinary action can be a subject matter of an Industrial disputes. The Ld. Advocate for the union while arguing the case has placed reliance on some observations made by the Hon'ble High Court the aforesaid writ petition as appear in paragraph no. 27 of the said judgement submitted that the tribunal had the scope to decide as to whether the order of suspension has been issued maliciously to victimise the workman in contemplation of disciplinary proceedings. On perusal of the observation as made by the Hon'ble Court in the said paragraph as quoted earlier I find that therein the Hon'ble Court has categorically observed that - "not for a moment am I suggesting that this is what has happened in the present case. I am only giving an example". That being so, I am of the view that such observation made by the Hon'ble Court in the aforesaid writ petition do not justify the argument as made by the Ld. Advocate for the union.

Now while considering the totality of the facts and circumstances of the case it has come out that the hotel management issued chargesheet against the 19 employees and simultaneously placed them under order of suspension pending departmental enquiry. The service rule maintained by the hotel management has been exhibited as exhibit-B. Rule 29 III A has made a clear provision therein that a workman against whom the disciplinary action is proposed to be taken may be suspended from work and such suspension may be at any time either before issuance of show cause notice/chargesheet or simultaneously with the show cause



notice/chargesheet or later depending upon the circumstances. As discussed earlier that the witnesses examined for the union has admitted the existence of such service rules and regulations and the same is applicable to the workman. The witnesses have also admitted the aforesaid provision of the rule. That being so, apparently it is clear that the rule has empowered the management of the hotel to place a workman under suspension in contemplation of a departmental enquiry. In the instant case the concerned employees whose name are appearing in the order of reference were issued with chargesheet and simultaneously they were placed under suspension. Those chargesheet issued against the concerned workman show the nature of charges and the allegations made therein against such individual workman. The enquiry proceedings commenced on the basis of the said chargesheet issued against 19 employees and admittedly the enquiry has been done and report of the enquiry officer has already been submitted. As stated earlier that since in the instant reference this tribunal has to adjudicate as to whether the order of suspension is justified or not, there is no scope to decide as to the merits of the charges framed against the individual workman and in my opinion the same is within the domain of the enquiry officer.

From the materials it has come out that at the relevant time a matter relating to charter of demands submitted by the unions to the hotel management was pending and the said charter of demand was dated 09.06.2001. In his evidence-in-chief, the PW1, Sri Deobrata Dey has stated that the union persuaded for settlement of the charter of demand but as those persuasion failed they raised dispute before the Labour Commissioner. At the cost of repetition, it would be pertinent to mention about the documents (exhibit-16 series) which are copies of order dated 06.02.2002, 01.04.2003, 20.04.2003 and 09.06.2004 which clearly suggest that such a situation arose in the hotel premises for which the hotel management had to move the Ld. Executive Magistrate, Calcutta seeking some relief and then to move the Hon'ble High Court, Calcutta as discussed earlier to obtain an order to restore normalcy in the hotel premises and to bring out a congenial atmosphere in the hotel premises. The order passed by the Hon'ble High Court, Calcutta has been discussed earlier and the relevant portion of the order of the Hon'ble Court have already been quoted. Admittedly the hotel/company being a star hotel is a hospitality industry. From the evidence of PW1 which has come out during his cross examination it appears that he has admitted that any sort of shouting slogans



demonstrations and disturbance in working hours shall create disturbance upon the guest of the hotel. From the charges framed against the individual workman it appears the allegations made therein against them prima facie appears that such allegations to be serious one. The order of the Hon'ble Court as appearing from exhibit-16 series that the Hon'ble Court also considering circumstances restrained the unions from holding any meeting within the hotel premises and also restrained some employees/workman by order of injunction from carrying out of slogans shouting or demonstrations within the 100 meters of the hotel premises and finally the Hon'ble Court vide order dated 9th July 2004 passed in G.A. No. 2047 of 2004 = CS No. 52 of 2002 allowed the application filed by the hotel management and granted prayers in terms of prayer No. A, B & C of the application. Aforesaid order of the Hon'ble Court, in my considered opinion speaks a volume in justifying the action taken by the hotel management.

Therefore, on giving an anxious consideration of all aspects of evidences and materials on record and in view of the discussions made above and the reasons stated therein, I am of the view that the management is justified in placing the 19 workmen under suspension in contemplation of the disciplinary proceedings.

The issues mentioned in the order of reference are thus decided and disposed of accordingly.

This is my Award.

Dictated & corrected by me.
Judge.

Judge
First Industrial Tribunal
Kolkata
17.12.2018
JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

