A

TATA CONSULTING ENGINEERS

v.

WORKMEN EMPLOYED AND VICE-VERSA

November 13, 1980

B [V. R. KRISHNA IYER, R. S. PATHAK & O. CHINNAPPA REDDY, JJ.]

Industrial disputes—Tribunal making an award prescribing revised grades/scales of pay to different categories with retrospective effect from 1st January, 1976—Validity of retrospectivity of the award.

C *Industrial Disputes (Bombay) Rules, 1957—Rule 31, scope of—Whether the clarification made by the Tribunal prescribing that a flat increase of Rs. 150/- in the category of Draughtsmen and Rs. 100/- in the case of the other categories payable "to each of its employees" amounts to a supplementary award not permissible under Rule 31.*

Dismissing the appeals by special leave, the Court.

D HELD : Per Pathak, J. (Krishna Iyer and Chinnappa Reddy, JJ. concurring)

(1) Having regard to the financial capacity of M/s. Tata Consulting Engineers, the appellant, and the material on the record and the various other considerations which prevailed with the Tribunal, the granting of revised wage scales is in order. Although the wage scales were introduced as long ago as 1973 they were maintained at that level except for a slight revision some time thereafter. No dearness allowance was paid until the beginning of 1977 and E the house rent allowance also was introduced about that time. The cost of living had gone on increasing from 1972 onwards and the dearness allowance and house rent allowances made no appreciable impact in neutralising the increasing cost. During all these years, the appellant had continued to enjoy increasing profits; nonetheless the emoluments received by the workmen did not receive the impress of the appellant's growing prosperity. The Charter of Demands was presented by the Union in July, 1974 and when conciliation proF ceedings failed the State Government made a reference to the Industrial Tribunal in 1975. The several considerations which prevailed with the Tribunal giving retrospectivity to the revised pay scales and referred to by it cannot be ignored. [174C-G]

(2) It is not a universal rule that the dearness allowance should in all cases be correlated with the cost of living index. The Tribunal, in the present G case, considered the matter and found it sufficient and in accord with justice that the wage scales should be restructured with suitable increments provided therein. It noted that dearness allowance was being granted by the appellant at 10% of the salary subject to a minimum of Rs. 50/- and house rent allowance at 30% of the basic salary. Having regard to the not inconsiderable improvement in the level of the basic wage, it observed that there would be a consequent increase in the dearness allowance and house rent allowance. H In view of the increase so secured, the Tribunal rejected the suggestion that a slab system should be introduced in the dearness allowance or that there should be any other modification of the principle on which dearness allowance was being presently granted. It declared that the cumulative effect of an im-

proved wage structure together with dearness allowance operating on a slab system would throw an impossible burden of about Rs. 1 crore on the financial capacity of the appellant. It was open to the Tribunal to adopt the position which it did. If the dearness allowance is linked with the cost of living index the whole award will have to be reopened and the entire basis on which it has been made will have to be reconsidered. The award is a composite document in which the several elements of increased wage scales, larger increments, longer span of 20 years for earning increments, dearness allowance at 10% of the basic wage, besides several other benefits, have been integrated into a balanced arrangement in keeping with what the Tribunal has found to be the financial capacity of the appellant. It is not possible to maintain one part of the award and supersede another. [179 E-F]

The Hindustan Times Ltd., New Delhi v. *Their Workmen*, [1964] 1 SCR 234, 247 and *Bengal Chemical & Pharmaceutical Works Limited* v. *Its Workmen*, [1969] 2 S.C.R. 113, distinguished.

(3) The jurisdiction given to the Tribunal by rule 31 of the Industrial Disputes (Bombay) Rules, 1957, is closely circumscribed. It is only a clerical mistake or error which can be corrected and the clerical mistake or error must arise from an accidental slip or omission in the award. An accidental slip or omission implies that something was intended and contrary to that intention what should not have been included has been included or what should have been included has been omitted. It must be a mistake or error amenable to clerical correction only. It must not be a mistake or error which calls for rectification by modification of the conscious adjudication on the issues involved. [175 A-C]

Per contra

The order of 22nd December, 1978 is invalid so far as it amends paragraph 23 of the original award. The amendment has resulted in the Tribunal making, as it were, a supplementary award, whereby a further relief is being granted beyond that granted in the original award. The original award was completed and signed by the Tribunal, and it cannot be reopened now except for the limited purpose of Rule 31. In travelling outside and beyond the terms of the original award, the Tribunal has committed a jurisdictional error. The evidence contained in the award throughout provides incontrovertible proof that this flat increase (ad-hoc) was never originally intended in the award. There was only one increase contemplated in the award, in paragraph 23 of the award and it is more than plain that the increase was the one incorporated in the revised pay scales pertaining to different categories. No second flat increase was envisaged at all. The amendment made by the Tribunal has the effect of providing a second increase, this time to each individual workmen. If, as the Tribunal has stated in the amendment order, the increase in paragraph 23 was intended to apply to each individual workmen, there is nothing in the body of the award to form the foundation on which the actual figures in the restructured pay scales can be made to rest. There will be no explanation why the initial start of the revised pay scales has been increased by Rs. 150/- in the case of the category of Draughtsmen and Rs. 100/- in the case of other categories. Considering the fitment of the workmen in the revised scales, it was stated in the award that workman found drawing a salary less than the beginning of the grade would be stepped up to the beginning of the grade and if his pay fell between two steps in the reclassified pay scales the

A basic pay was to be fixed at the step higher in the revised scale. Further the award was made on the basis that the overall financial load according to paragraph 33 of the award would be to the tune of about Rs. 5 lakhs. It was that figure which the Tribunal had in mind against the backdrop of the gross annual figures when it made the revised pay scales restrospective from 1st January, 1976. [176 D-G, 177A, 178 D-F]

B The statement, Exhibit C-51 afforded an indication merely of what the additional financial load would be if a flat increase was given to the individual workmen on the alternative basis set forth therein. None of the alternatives was actually adopted by the Tribunal, because when the award was made the Tribunal proceeded instead to restructure the wage scales by the addition of Rs. 150/- in the case of the category of Draughtsmen and of Rs. 100/- in the C case of other categories to the initial pay in the wage scales pertaining to these categories. The addition was integrated as a feature of the wage scales, it was not regarded as an addition to the pay of each individual workmen. [178A-C]

It is an accepted principle that consent by a party cannot confer jurisdiction on a court. What is without jurisdiction will remain so. [178 E-F]

D *Per O. C. Reddy, J.* (Majority view, Iyer and Reddy, JJ.)

The order dated December 22, 1978 of the Industrial Tribunal which purports to correct the award dated December 20, 1978 cannot be considered in effect to be a fresh award and it is in order. The omission of the words "to each employee" after the figure Rs. 150/- and again after the figure Rs. 100/- was clearly an accidental slip or omission which the Tribunal was entitled to correct. The application for the correction was made immediately, that is E to say, two days after the Award, while iron was still hot or when everything must have been fresh to the minds of the Tribunal. Even the endorsement made on the application by the Advocate for the Company to the effect "submitted to whatever this honourable Tribunal desires to do", does not indicate that the Company had any objection to the award being corrected as sought by the employees union. On the other hand the endorsement reads as if there was tacit agreement on the part of the Company to the correction sought by the F union; it cannot possibly be doubted that an Industrial Tribunal deciding upon the wage scales of the employees of an establishment would have full liberty to propose ad-hoc increase of salaries as part of the revision of pay scales, not can it be doubted that fitment into the revised pay scales is certainly a part of the revision of pay scales. This is elementary and fundamental to the jurisdiction of the Industrial Tribunal in revising wage scales. If without any flat or ad-hoc increase of salary the workmen were to be fitted into revised scales of pay, it would, obviously, result in serious anomalous situations. In the case of several senior employees, the revised scale would yield but a very small and almost a token increase in the size of the pay packet whereas the junior employees would get a large benefit. While workmen raising industrial disputes for revision of wage scales are certainly minded about their future prospects in the matter of wages, they, surely would be more concerned with the immediate benefit accruing to them. That was why the Industrial Tribunal thought that all round flat increase of Rs. 150/- in the case of Draughtsmen and Rs. 100/- in the case of other workmen—to each employee—was called for. [180C, 181D-E, G-H, 182A, 183D-E, G-H, 184A-B]

(4) While it is true that Dearness Allowance linked to cost of living index is ordinarily the best and the most scientific method of computing dearness allowance, it cannot always be said that an illegality warranting interference under Article 136 is committed if some other method is adopted. In the instant case, the Tribunal has given satisfactory reasons for adopting a different mode. [184 F-G] A

B

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2299 and 2300 of 1979.

Appeal by Special Leave from the Award dated 20-12-1978 of the Industrial Tribunal Maharashtra in Reference (IT) No. 292 of 1975, published in Maharashtra Government Gazette dated 15th February, 1979. C

G. B. Pai, Manick K. Gagrat, J. B. Dadachanji, O. C. Mathur and *K. J. John* for the Appellants in CA No. 2299 and Respondents in CA 2300/79.

V. M. Tarkunde, P. H. Parekh, S. R. Deshpande and *Miss Manik Tarkunde* for the Respondents in CA 2299 and Appellants in CA No. 2300/79. D

The following Judgments were delivered :

PATHAK, J.—This appeal by special leave has been preferred by Tata Consultancy Engineers against an award dated 20th December, 1978 of the Industrial Tribunal, Maharashtra, Bombay revising the wage scales of certain categories of employees and granting various other benefits. E

Tata Consultant Engineers, at its inception, was a partnership firm but subsequently the partnership was dissolved and in 1974 the undertaking became one of the divisions of Tata Sons Limited. It functions as a consulting organisation and a service industry, and does not manufacture any product or carry on trade. Its workforce consists of engineers and supervisors and different categories of workmen. Out of 665 employees at Bombay, the draftsmen and the administrative staff number 306. These workmen are members of the Tata Consultant Employees Union. They served a Charter of Demands in July, 1974, on the appellant, and as their demands were not accepted and conciliation proceedings proved fruitless, the State Government made a reference of the dispute under s. 10(1)(d), Industrial Tribunal, Maharashtra for adjudication. The Reference was numbered I. T. No. 292 of 1975. F G H

A The Union filed a statement before the Tribunal claiming an up ward revision of the wage scales and dearness allowance and an in crease from fifteen years to twenty years in the span for earning an nual increments. It was urged that the Efficiency Bar, as a featur of the wage scales, should be removed. The dearness allowance, i was claimed, should be granted on a slab system. The claim of th B Union was resisted by the appellant, who maintained that the existin wage scales were fair and reasonable on a region-cum-industry basi and that it would not be possible for the appellant to bear the addi tional financial burden if the demands of the Union were accepted Reference was made to the political uncertainty in Iran which hac C placed an appreciable part of the appellant's business in jeopardy anc to various other factors, peculiar to an engineering consultancy busi ness, beyond the appellant's control. There was fierce competitior also, it was asserted, from other similar organisations.

D The appellant had introduced various pay scales in 1973 and some time later they were revised. There was no separate dearness allowance until January, 1977 when it was introduced for the first time. House rent allowance was also paid. Dearness allowance became payable at 10% of the basic wage subject to a minimum of Rs. 50/- and house rent allowance at 30% of the basic salary. Nothing those E facts, the Tribunal observed that compared with the increased paying capacity of the appellant, an inference drawn from the prosperity enjoyed by the appellant over the years, there was definite need for revising the wage scales. It was pointed out that the dearness allowance and house rent allowance granted by the appellant made little impact in neutralising the cost of living. The need for revising the wage F scales was not disputed by the appellant. In proceeding to revise the wage structure the Tribunal took into account the two principles involved in the process, the financial capacity of the industry to bear the burden of an increased wage bill, and the prevailing wage structure on an industry-cum-region basis. Wage scale statements were filed by the parties before the Tribunal pertaining to several engineer- G ing consultancy organisations but in the absence of pertinent information concerning the strength of their labour force, the extent of their business, the financial position for some years, the capital invested, the precise nature of the business, the position regarding reserves, dividends declared and future prospects of the company, the Tribunal found that it was unable to rely on them as comparable concerns. H Holding it impossible in the circumstances to apply the principle of industry-cum-region basis, the Tribunal turned to a consideration of the financial capacity of the company to bear an additional burden.

In this connection, it proceeded on the footing that the appellant was a separate and independent division of Tata Sons Limited and had no "functional integrality" with the other divisions. Having regard to the net profits earned by the appellant from 1968 to 1977 it found that the acceptance of the demands of the Union would result in an increased burden of Rs. 7 crores, a burden which would dry up the appellant's resources and would be impossible for it to bear. The Union modified its demands but even the modified terms, according to the Tribunal, appeared to be on the high side inasmuch as the resulting total burden of Rs. 1.70 crores was much higher than the average profits could sustain. The particular character of the appellant, that it was a service industry and not a manufacturing concern, was taken into account and it was observed that unlike a manufacturing business there was little scope for diversification in the case of an engineering consultancy. Nonetheless, the Tribunal observed, there was every reason to expect that the appellant would be able to earn sound profits in the future, and the instability in its business activities occasioned by the turbulent political situation in Iran, would be, it was expected, compensated by contracts secured in different developing countries. For the purpose of determining the financial capacity of the appellant, the Tribunal followed *Unichem Laboratories* v. *Their Workmen*(1) where it was held that the gross profits should be computed without making deductions on account of taxation, development rebate and depreciation. It decided also that there was no ground for deducting the notional value of gratuity. Revising the figures on that basis, it computed the annual gross profits for the years 1968 to 1977 and determined the annual average at Rs. 26.69 lakhs.

The Tribunal took note of the elaborate scales of wages already existing in the wage structure of the appellant and decided "to modify the existing structure of the scales with flat increases in each category." It also observed that the category of Draughtsmen needed a special increase. But it rejected the demand of the Union for dearness allowance on the basis of a slab system, because that would have imposed an unacceptable burden on the appellant's financial capacity and there was no reason why the existing scheme of dearness allowance should be disturbed when a substantial increase was being made in the level of the basic wage. Taking into account the circumstance that besides the staff of 306 workmen represented by the Union there were several other employees who would also have to be paid, the Tribunal considered it fair, in paragraph 23 of the award, to give a flat increase of Rs. 150/- in the category of Draughtsmen and Rs. 100/- in the case of other categories. It rejected the demand of the Union

(1) [1972] 1 L.L.J. 576.

for abolishing the Efficiency Bar, but the span of 15 years for earning increment was expanded in some grades to 20 years and some adjustments were also made in specific grades. The Tribunal also noted that after the salaries of the employees had been fixed in the respective scales, senior employees would have to be given some more increments in the new scales according to their completed years of service. Taking all these factors into consideration, it made an award dated 20th December, 1978 prescribing the following revision in the existing scales of wages :

Grade & Category	Existing Grade/Scale.	Revised Grade/ Scale
I Peon/Helper/Sweeper	Rs. 250-10-300-EB-10-400.	Rs. 350-10-450-15-600.
II Driver/Asstt. House-keeper/ Caretaker.	Rs. 300-10-420-EB-15-540.	Rs. 400-15-520-20-660-EB-25-785.
III Jr. Clerk-cum-Typist/Jr. Steno/ Tel. Optr./Receptionist/Asstt. Record Keeper/Veh. Mechanic/ Jr. Librarian.	Rs. 350-15-425-EB-20-625-EB-25-725.	Rs. 450-20-550-25-800-EB-30-950.
IV Sr. Clerk/Steno/Record Keeper/ Tlx. Operator/Xerox Operator.	Rs. 450-20-530-EB-30-860-EB-35-1000.	Rs. 550-25-675-30-975-EB-40-1175.
V Office Asstt./Lib. Asstt./ Cost Asstt./Administrative Asstt./ Personnel Asstt./Comm. Asstt./ Canteen Asstt.	Rs. 590-30-740-EB-35-1020-EB-40-1300	Rs. 690-35-865-40-1265-EB-45-1490.
VI Draughtsman/Site Supervisor/ Surveyor/(Diploma Holder).	Rs. 380-30-620-40-1020-EB-50-1320.	Rs. 530-40-730-50-1230-EB-60-1530.
VII Junior Architect (Engineering Graduate)	Rs. 760-40-1000-50-1300.	Rs. 860-50-1160-60-1700.
VIII Sr. Draughtsman (Diploma Holder)	Rs. 1000-50-1300-60-1600-75-1750.	Rs. 1100-60-1340-70-1690-80-2010.

The Tribunal maintained the existing schemes of dearness allowance and house rent allowance, and observed that in view of the revised basic wages there would be a resultant increase in the dearness allowance and house rent allowance.

The revised wage scales, the Tribunal directed, should take effect retrospectively from 1st January, 1976. It also laid down the principle enabling the actual fitment of the workmen in their respective wage scales as on that date and also provided for the number of increments to which they would be entitled having regard to the period of completed service.

Two days after the award was made, an application was made by the Union stating : A

> "In the said award, your Honour has observed, at the end of para 22, "In view of the increase that is being allowed in the basic pay, I do not propose to revise the existing scheme of Dearness Allowance." Further, it appears that the Tribunal intended to grant the increase of Rs. 150/- to each draughtsman and Rs. 100/- to all other workmen in their basic pay. However, this is not clearly mentioned anywhere in the award due to accidental slip or omission." B

The Union prayed that the position may be clarified and the award corrected accordingly. On the same date, the Tribunal disposed of the application by the following order : C

> "There can be no doubt that a flat increase of Rs. 150/- to each of the employees in the category of Draftsmen and of Rs. 100/- to each employee in the other categories has been granted under my award. The same has been made clear in paragraph No. 23, but it appears that the words "to each employee" after the figure "Rs. 150/-" were omitted. Similarly, the same words "to each employee" after the figure "100" were omitted. When the award is sent for publication, a necessary corrigendum be made in the award and the aforesaid words after the figures Rs. 150/- and Rs. 100/- be added. It may be mentioned that only from that point of view viz. to grant flat increase of Rs. 150/- and of Rs. 100/- to the employees in the category of Draftsmen and the other categories respectively that a burden statement was called for from the company and the same was submitted (vide Ex. C-51). The fitment has also to be done only after the flat increase is added to the present basic salary of each employee. I do not think that any problem would arise for interpretation of the award. Since the award has been already signed, I do not think anything further can be added to this award. D E F G
>
> sd/- K. N. Wani
> INDUSTRIAL TRIBUNAL."

In this appeal, the learned counsel for the appellant had covered a wide field, but in the end he states that the appellant is aggrieved by two matters only. One is the retrospectivity attached to the revised wage scales, and the other is the flat increase given to each H

A employee of Rs. 150/- in the category of Draughtsmen and Rs. 100/- in other categories resulting from the order dated 22nd December, 1978.

The workmen have filed an appeal by special leave, Civil Appeal No. 2300 of 1979, in which they have challenged the rejection by the B Tribunal of their claim in respect of dearness allowance which, they contend, should be pegged to the cost of living index and should not be a fixed amount.

Considering the appeal of Tata Consulting Engineers first, the contention of learned counsel for the appellant is that having regard C to the financial capacity of the appellant the Tribunal erred in making the wage scales retrospective and, in any event, in ranging the retrospectivity back to 1st January, 1976. We have been taken through some of the material on the record in the attempt to support the contention, but after giving careful thought to the matter, I think there is ample justification for what the Tribunal did. It must be re- D membered that although the wage scales were introduced as long ago as 1973 they were maintained at that level except for a slight revision some time thereafter. No dearness allowance was paid until the beginning of 1977 and the house rent allowance also was introduced about that time. The cost of living had gone on increasing from 1972 onwards and, as the Tribunal has found, the dearness allowance E and house rent allowance made no appreciable impact in neutralising the increasing cost. During all these years, the appellant had continued to enjoy increasing profits; nonetheless the emoluments received by the workmen did not receive the impress of the appellant's growing prosperity. The Charter of Demands was presented by the Union in July, 1974 and when conciliation proceedings failed the State Go- F vernment made the reference to the Industrial Tribunal in 1975. The Tribunal has referred to various considerations which prevailed with it in giving retrospectivity to the revised pay scales. They are considerations which cannot be ignored. Accordingly, the contention raised on behalf of the appellant against retrospectivity of the wage G scales must be rejected.

The challenge embodied in the second contention against the amendment of the award is more serious. It is urged that the amendment results in the inclusion of a flat increase of Rs. 150/- to each workman in the case of Draughtsman and Rs. 100/- to each workman in the case of other categories, a result wholly unwarranted, it H is said, by the intent of the original award and, therefore, falling beyond the jurisdiction of the Tribunal. In making the application of 22nd December, 1978, the Union invoked the jurisdiction of the

Tribunal under rule 31 of the Industrial Disputes (Bombay) Rules, 1957. Rule 31 provides : A

> "31. The Labour Court, Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it or he issues."

The jurisdiction given to the Tribunal by rule 31 is closely circumscribed. It is only a clerical mistake or error which can be corrected, and the clerical mistake or error must arise from an accidental slip or omission in the award. An accidental slip or omission implies that something was intended and contrary to that intention what should not have been included has been included or what should have been included has been omitted. It must be a mistake or error amenable to clerical correction only. It must not be a mistake or error which calls for rectification by modification of the conscious adjudication on the issues involved. B C

Is the instant case one where the amendment made by the Tribunal in the original award can be said to correct a mere clerical mistake or error arising from an accidental slip or omission? To answer the question, it is necessary to examine the basis of the award and the intent which flows from that basis. The terms of reference in the State Government's order required the Tribunal to revise the scales of pay and dearness allowance, and there was no mention of giving any ad hoc increase in the basic pay of individual workman. It would do well to recall that the claim of the Union filed before the Tribunal also centred on the need to revise the wage scales. That was the main issue between the parties. It is to the task of revising the pay scales that the Tribunal addressed itself, and throughout the material part of the award it is that task which held its focussed attention. The financial capacity of the appellant, and the related study of its annual profits from 1968 to 1977, were examined from that view point. The sufficiency of the existing pay scales was considered in detail, and regard was had to their original structure and the accretions made subsequently by way of dearness allowance and house rent allowance. For the purpose of restructuring the pay scales the Tribunal ruled on the paying capacity of the appellant, both with reference to the profits of the preceding year as well as the prospects of the future. The financial capacity, as the Tribunal observed, constituted one of "the principles which are required to be followed in the fixation of the wage structure." A clear statement of its intention is found in paragraph 22 of the award, where the Tribunal stated : D E F G H

> "I only propose to modify the existing structures of the scales with flat increases in each category."

A No ad hoc increase to the pay of each individual workman was intended. And that is confirmed by what was stated in paragraph 23 of the award :

> "Considering this outgoing the flat increase of Rs. 150/- in the category of Draughtsman and Rs. 100/- in the case
B of the other categories would be fair."

It will be noted that the pay scales of different categories were being restructured, and the flat increase envisaged there related to an increase in the general pay scales of different categories. Individual workmen
C were not present to the mind of the Tribunal. That the increase was pertinent to the general pay scales in the revised wage structure is patently clear from a comparison of the existing pay scales and the revised pay scales. The comparative table of existing pay scales and the revised pay scales has been reproduced earlier. The revised pay scales of all categories, except the category of Draughtsmen, shows
D an increase of Rs. 100/- in the initial pay fixed in each scale, the increase in the case of the category of Draughtsmen being Rs. 150/-. There was only one increase contemplated in the award, in paragraph 23 of award, and it is more than plain that the increase was the one incorporated in the revised pay scales pertaining to different categories. No second flat increase was envisaged at all. The amend-
E ment made by the Tribunal has the effect of providing a second increase, this time to each individual workmen. If, as the Tribunal has stated in the amendment order, the increase in paragraph 23 was intended to apply to each individual workmen, there is nothing in the body of the award to form the foundation on which the actual figures in the restructured pay scales can be made to rest. There will be no
F explanation why the initial start of the revised pay scales has been increased by Rs. 150/- in the case of the category of Draughtsmen and Rs. 100/- in the case of other categories. Considering the fitment of the workmen in the revised scales, it was stated in the award that a workman found drawing a salary less than the beginning of the grade would be stepped up to the beginning of the grade and if his pay fell
G between two steps in the reclassified pay scales the basic pay was to be fixed at the step higher in the revised scale. Conspicuous by its absence is any reference to a flat increase in the pay of an individual workmen. Even when considering the range of permissible retrospectivity the Tribunal stated in the award :

H > "In view of the revision of the wage scales, there would be consequent increase in the dearness allowance and the house rent allowance."

And the clinching circumstances of all is that the award was made on the basis that the overall financial load according to paragraph 33 of the award would be to the tune of about Rs. 5 lakhs. It was that figure which the Tribunal had in mind against the backdrop of the gross annual figures when it made the revised pay scales retrospective from 1st January, 1976. This liability taken with the liability accruing on the need to increase the salaries of the other staff determined the Tribunal's deliberations in regard to the several features of the award, including the grant of increments related to completed periods of service, the expansion of the span from 15 years to 20 years for earning increments, and other benefits. It cannot be the case of the Union that the figure of Rs. 5 lakhs mentioned in paragraph 33 of the award represented the result of adding a flat increase to the pay of each workman in addition to the benefits conferred by the revised pay scales and other awarded reliefs.

In its order of 22nd December, 1978, the Tribunal has referred to the statement (Exhibit C-51) filed by the appellant when called upon to indicate the increased financial burden apprehended by it. The Tribunal has relied on this statement as evidence showing that the appellant knew that a flat increase of Rs. 150/- and Rs. 100/- was intended to each of the employees in the category of Draughtsmen and the other categories. In so construing the statement, Exhibit C-51, the Tribunal has grievously erred. It seems from a perusal of the document, Exhibit C-51, that it is a statement giving trial figures of the increased financial load on different bases. On the basis that a sum of Rs. 150/- per month was added to the pay of each Draughtsman and a sum of Rs. 100/- was added to the pay of every other workman, who belonged to the Union staff, the financial load would increase to Rs. 9,22,032/-. Likewise, if a flat increase of Rs. 100/- was given to individual workmen of all categories, including Draughtsmen, the increased financial load would total Rs. 7,64,256/-. The statement then goes on to indicate that if a flat increase of Rs. 75/- per month were given to individual workmen of all categories the total increase would be Rs. 5,78,220/-. Again, if the flat increase is Rs. 65/- per month to the individual workmen of all categories, the additional load would total Rs. 4,97,772/-. Finally, on the basis that the individual Draughtsman would be given an increase of Rs. 75/- per month and the individual workmen of other categories Rs. 50/- per month, the additional load was calculated at Rs. 4,63,092/-. It will be noted that the statement, Exhibit C-51, was prepared on the basis of the employees' strength as in December, 1971. A similar statement was prepared on the basis of the employees' strength as in September, 1978. These statements cannot be regarded as evidence

A that the appellant was cognizant of the intention of the Tribunal to provide a flat increase to the pay of each workman. The statement afforded an indication merely of what the additional financial load would be if a flat increase was given to the individual workman on the alternative basis set forth therein. None of the alternatives was actually adopted by the Tribunal, because when the award was made B the Tribunal proceeded instead to restructure the wage scales by the addition of Rs. 150/- in the case of the category of Draughtsmen and Rs. 100/- in the case of other categories to the initial pay in the wage scales pertaining to those categories. The addition was integrated as a feature of the wage scales; it was not regarded as an addi- C tion to the pay of each individual workman.

It seems that the Tribunal was betrayed by a curious confusion in accepting the plea of the Union that a flat increase to the pay of each workman was intended in the original wage and, consequently, it fell into the error of amending the award. The evidence contained in the award throughout provides incontrovertible proof that this flat increase D was never originally intended in the award. The amendment has resulted in the Tribunal making, as it were, a supplementary award, whereby a further relief is being granted beyond that granted in the original award. The original award was completed and signed by the Tribunal, and it cannot be reopened now except for the limited purpose of Rule 31. In travelling outside and beyond the terms of the original E award, the Tribunal has committed a jurisdictional error. Our attention has been drawn to what purports to be an endorsement by counsel for the appellant on the application dated 22nd December, 1978 filed by the Union before the Tribunal to the effect that the appellant would submit to whatever the Tribunal decided, and it is urged that the appellant is bound by the order made on the application. It is F an accepted principle that consent by a party cannot confer jurisdiction on a court. What is without jurisdiction will remain so. In the circumstances the order of 22nd December, 1978 is invalid so far as it amends paragraph 23 of the original award. The corrigendum amending the award in consequence is liable to be quashed. The second contention of the appellant is entitled to succeed.

G

I shall now consider Civil Appeal No. 2300 of 1979 filed by the workmen. The only contention of the workmen is that the Tribunal should have fixed the dearness allowance in communion with the cost of living index. It is wrong in principle, it is said, to provide a fixed dearness allowance. Reliance was placed on *The Hindustan* H *Times Ltd., New Delhi* v. *Their Workmen*(1) where it was observed by this Court that dearness allowance should not

(1) [1964] 1 S.C.R. 234, 247.

remain fixed at any figure but should be on a sliding scale in order to neutralise a portion of the increase in the cost of living. Reference was also made to *Bengal Chemical & Pharmaceutical Works Limited* v. *Its Workmen*(1). Now, it is not a universal rule that the dearness allowance should in all cases be correlated with the cost of living index. The Tribunal, in the present case, considered the matter and found it sufficient and in accord with justice that the wage scales should be restructured with suitable increments provided therein. It noted that dearness allowance was being granted by the appellant at 10% of the salary subject to a minimum of Rs. 50/- and house rent allowance at 30% of the basic salary. Having regard to the not inconsiderable improvement in the level of the basic wage, it observed that there would be a consequent increase in the dearness allowance and house rent allowance. In view of the increase so secured, the Tribunal rejected the suggestion that a slab system should be introduced in the dearness allowance or that there should be any other modification of the principle on which dearness allowance was being presently granted. It declared that the cumulative effect of an improved wage structure together with dearness allowance operating on a slab system would throw an impossible burden of about Rs. 1 crore on the financial capacity of the appellant. It was open to the Tribunal to adopt the position which it did. If the dearness allowance is linked with the cost of living index the whole award will have to be reopened and the entire basis on which it has been made will have to be reconsidered. The award is a composite document in which the several elements of increased wage scales, larger increments, longer span of 20 years for earning increments, dearness allowance at 10% of the basic wage, besides several other benefits, have been integrated into a balanced arrangement in keeping with what the Tribunal has found to be the financial capacity of the appellant. It is not possible to maintain one part of the award and supersede another.

Accordingly, the appeal filed by the workmen must fail.

In the result, Civil Appeal No. 2299 of 1979 is allowed in part insofar that the order dated 22nd December, 1978 of the Industrial Tribunal, Maharashtra Bombay is quashed to the extent that it modifies the original award dated 20th December, 1978, and the corrigendum made consequent thereto is also quashed. Civil Appeal No. 2300 of 1979 is dismissed. There is no order as to costs.

CHINNAPPA REDDY, J. We have had the advantage of perusing the judgment prepared by our learned brother Pathak, J. we agree with

(1) [1969] 2 S.C.R. 113.

A him that Civil Appeal No. 2300 of 1979 should be dismissed. We also agree with him that Civil Appeal No. 2299 of 1979 should also be dismissed in so far as it relates to the award dated December 20, 1978. However, we do not agree with our learned brother that Civil Appeal No. 2299 of 1979 should be allowed in so far as it relates to the order dated December 22, 1978 of the Industrial Tribunal which B purports to correct the award dated December 20, 1978. In our opinion Civil Appeal No. 2299 of 1979 should be dismissed in its entirety.

We do not propose to give our reasons to the extent we are in agreement with Pathak, J. and we propose to state our reasons for the C disagreement only.

It is needless to recapitulate all the basic facts which have been set out in the judgment of Pathak, J. The Award of the Industrial Tribunal was made on December 20, 1978. On December 22, 1978, that is to say, two days after the Award was made and when everything must have been fresh to the minds of the Tribunal, the respective D parties and their Advocates, the employees Union made an application under Rule 31 of the Industrial Disputes (Bombay) Rules, 1957 seeking a correction of an error, which it was claimed, had crept into the Award. The application was as follows :

> "In the above reference your honour was pleased to pass E an award on 20th December, 1978.
>
> In the said award, Your Honour has observed, at the end of Para 22, 'In view of the increase that is being allowed in the basic pay, I do not propose to revise the existing scheme of Dearness Allowance'. Further, it appears that the Tribunal intended to grant the increase of Rs. 150/- to each F draughtsman and Rs. 100/- to all other workmen in their basic pay. However, this is not clearly mentioned anywhere in the award due to accidental slip or omission.
>
> The Union therefore prays the honourable Tribunal to clarify the position and correct the award accordingly".

G On this application, the Advocate for the employer company made the following endorsement :

> "Submitted to whatever this Hon'ble Tribunal desires to do".

Thereafter the Tribunal made an order on the same day in the follow- H ing terms :

> "There can be no doubt that a flat increase of Rs. 150/- to each of the employees in the category of Draftsmen and

of Rs. 100/- to each employee in the other categories has been granted under my award. The same has been made clear in paragraph No. 23, but it appears that the words "to each employee" after the figure "Rs. 150/-" were omitted. Similarly, the same words "to each employee" after the figure "100" were omitted. When the award is sent for publication, a necessary corrigendum be made in the award and the aforesaid words after the figures Rs. 150/- and Rs. 100/- be added. It may be mentioned that only from that point of view viz. to grant flat increase of Rs. 150/- and of Rs. 100/- to the employees in the category of Draftsmen and the other categories respectively that a burden statement was called for from the company and the same was submitted (vide Ex. C-51). The fitment has also to be done only after the flat increase is added to the present basic salary of each employee. I do not think that any problem would arise for interpretation of the award. Since the award has been already signed, I do not think anything further can be added to this award".

This order was made in the presence of Shri Manak Gagrat, Advocate for the Company and Shri N. P. Mehta, Advocate for the workmen. The endorsement made on the application by the Advocate for the company does not indicate that the company had any objection to the award being corrected as sought by the employees union. On the other hand the endorsement reads as if there was tacit agreement on the part of the Company to the correction sought by the union. The order dated December 22, 1978 of the Tribunal also does not reveal that there was any opposition by the company to the application for correcting the award. Even so we propose to examine whether the correction sought by the employees union was within the bounds of the authority of the Tribunal or whether it was, in effect, a fresh award.

The primary and basic question considered by the Industrial Tribunal, in making the award dated December 20, 1978 was the question of revision of the wage-scales. Implicit and intrinsically connected with the question of revision of the wage-scales were the questions of fitment of employees into the wage-scales and flat or ad-hoc increase of salaries of workmen wherever considered necessary. It cannot possibly be doubted that an Industrial Tribunal deciding upon the wage-scales of the employees of an establishment would have full liberty to propose *ad-hoc* increase of salaries as part of the revision of wages. Nor can it be doubted that fitment into the revised pay scales is certainly a part of the revision of pay scales. This in our opinion is

A elementary and fundamental to the jurisdiction of the Industrial Tribunal in revising wage-scales.

In the present case the Industrial Tribunal on a consideration of the material placed before it came to the conclusion that the company B was in an undoubted position to bear the additional financial burden. At the end of paragraph 15 of the Award, the Tribunal stated : "But there can be no doubt that the company can very well bear the additional burden. The question is what should be the extent of such a burden?" At the end of paragraph 18 of the award the Tribunal said : "A mere reading of Exhibit U-15 will immediately dispel the C mis-givings about the future of the present company. For some years to come this is likely to be one of the few Consulting Engineers who will be securing major contracts". Again in Paragraph 19 it was said : "I have no doubt that the present Company would be able to bear the additional burden for the years to come. This is further borne out from the trading results of the Company for the year 1968-69 to 1977. D The profits have increased all along. The copy of the letter dated July 23, 1973, alongwith the Annexures from the Company to the Director General, Posts & Telegraphs, Delhi (Ex. C-27) indicates the important projects the Company was handling in India and abroad, and the amount of foreign exchange earned and repatriated. I will; E therefore, proceed on the ground that the present Company can bear the additional financial burden". Finally at the end of paragraph 21 the Tribunal said : "In view of this position, the Company can easily bear some burden that might fall as a result of the upward revision of the wage-scales. The question is to what extent the relief should be given to the employees ?"

F

After expressing himself in categoric terms about the capacity of the company to bear the additional financial burden, the Tribunal went on to say : "I only propose to modify the existing structure of the scales with *flat increases in each category*". The Tribunal then con- G sidered the question whether Draftsmen should get a higher flat increase and the question whether the existing scheme of Dearness Allowance should be revised. The Tribunal then observed : "..... the *flat increase of Rs.* 150/- *in the category of Draftsmen and Rs.* 100/- *in the case of the other categories would be fair*". Thereafter various other matters were considered and finally the Tribunal H revised the wage scales in the manner already mentioned by my brother Pathak, J. The question of "Fitment" was then considered in the following manner :

"34. Fitment :—

If as on 1st January, 1976, an employee is drawing a salary less than the beginning of the respective grade, he should be first stepped up to the beginning of the grade. If the pay of an employee does not coincide with any step in the revised pay scale, and falls between two steps in the re-classified pay scales, the basic pay of that employee shall be fixed at the step higher in the revised scale.

35. After fixing the salary of the employees in the scales as above, the employees should be given increments in the new scales as noted below :—

(i) Employees who have completed 5 years or more as on 1st January, 1976, 3 increments.

(ii) Employees who have completed 4 years of service as on 1st January, 1976, 2 increments.

(iii) All other employees with more than one year's service shall be given one increment".

Now, if, without any flat or *ad hoc* increase of salary, the workmen were to be fitted into the revised scales of pay, it would obviously result in serious anomolous situations. In the case of several senior employees, the revised scale would yield but a very small and almost a token increase in the size of the pay packet whereas the junior employees would get a large benefit. While workmen raising industrial disputes for revision of wage-scales are certainly minded about their future prospects in the matter of wages, they, surely would be more concerned with the immediate benefits accruing to them. That was why the Industrial Tribunal thought that an all round flat increase of Rs. 150/- in the case of Draftsmen and Rs. 100/- in the case of other workmen was called for. It was clearly so intended by the Tribunal as is evident from the reference to "*flat increase of Rs.* 150/- *in the category of Draftsmen and Rs.* 100/- *in the case of the other categories*". Since there was to be a flat increase of Rs. 150/- and Rs. 100/- in the case of draftsmen and other workmen respectively, the revised wage scale had necessarily to commence with figures Rs. 150/- and Rs. 100/- above the existing wage scales. Immediately after the award was pronounced, while the iron was still hot as it were, the employees apparently realised that the employer might take advantage of the circumstance that it was not clearly mentioned in the award that all the employees were to get additional pay of Rs. 150/- and Rs. 100/- respectively and might contend that the Tribunal had only revised the wage scales by increasing the salary on entry into the service and res-

A tructuring the scale of pay and never granted any *ad hoc* increase of salary to all employees. Therefore, they filed an application before the Tribunal for correcting the award so as to bring out what was intended. As it has now turned out what the employees apparently suspected the employer might contend, is precisely what the employer is not contending, though the employer did not choose to so contend
B before the Industrial Tribunal itself when the employees filed the application for rectification. The application before the Tribunal was filed under Rule 31 of the Bombay Industrial Disputes Rules 1957, which is as follows :

> "A Board, Court, Labour Court, Tribunal or Arbitrator
C may, at any time, *suo moto* or on an application made by any of the parties concerned, may correct any clerical mistake or error arising from an accidental slip or omission in any proceedings, report, award or as the case may be, decision".

D The omission of the words to each employee first after the figure Rs. 150/- and again after the figure Rs. 100/- was clearly an accidental slip or omission which the Tribunal was entitled to correct. We are unable to see how it can be held to be otherwise. We are not impressed with the submission of the learned counsel for the Company that the corrigendum was in effect a fresh award. We, therefore, see
E no ground for quashing the order dated December 22, 1978 of the Tribunal. The result of the foregoing discussion is that Civil Appeal No. 2299 of 1979 has to be dismissed in its entirety.

We have already indicated that we agree with our brother Pathak, J., that the appeal (Civil Appeal No. 2300 of 1979) filed by the workmen should also be dismissed. While we find lot of force in the
F submission of Shri V. M. Tarkunde, learned counsel for the workmen that Dearness Allowance linked to cost of living index is ordinarily the best and the most scientific method of computing dearness allowance, it cannot always be said that an illegality warranting interference under Article 136 is committed if some other method is adopted. The
G Tribunal has given satisfactory reason for adopting a different mode and we are not disposed to interfere with the award of the Tribunal. In the result both the appeals are dismissed without any order as to costs.

ORDER

H In view of the opinion of the majority both the appeals are dismissed and there is no order as to costs.

S.R. *Appeals dismissed.*