WORKING PAPER

PROJECT: Administrative Procedure.

TOPIC: The Industrial Disputes Act, 1947.

ONE of the subjects taken up for immediate investigation under the project on Administrative Procedure in July, 1958, was the procedure followed by authorities and tribunals under the Industrial Disputes Act, 1947.

PLAN OF WORK

The Industrial Disputes Act, 1947, provides for conciliation and adjudication of industrial disputes. So it was decided that the study of administrative procedure followed in the settlement of industrial disputes be divided into two parts, the procedure followed by Conciliation Officers and Boards of Conciliation and the procedure followed by Labour Courts, Tribunals and National Tribunals. There was initially some doubt about the appropriateness of including conciliation proceedings as part of the study. But since conciliation is almost invariably, and is intended to be,[1] a precondition for referring a dispute to adjudication when labour and employment do not agree to refer the dispute to adjudication, and since a successful conciliation creates the ideal atmosphere for industrial well-being, it was finally decided that endeavours directed to possible improvements of conciliation procedures were well worth the time spent on them.

It was decided that with regard to both conciliation and adjudication a thorough study should be made of the statute (The Industrial Disputes Act, 1947), the rules framed thereunder, and the decisions of the Supreme Court and the various High Courts. Further, staff interviews of the Conciliation Officers, the Presiding Officers of Labour Courts and Tribunals, the representatives of the Management of various industries and various Trade Unions were planned. As the study is mainly one relating to procedure, it was considered essential that the Research staff should attend the conciliation proceedings and the adjudication proceedings before the Conciliation Officers and Tribunals respectively. The general questionnaire (which is already printed and circulated) was to be sent to all who could possibly make a contribution.

WORK DONE

So far as conciliation proceedings are concerned, the provisions in the Statute and the rules about Conciliation Officers and Boards of Conciliation and the case-law (there are not may cases in this particular

1. See Rule 10A (1) & (2), The Industrial Disputes (Central) Rules, 1957.

area) have been studied and analysed. The subject of labour disputes falls in the Concurrent List (List III; item 22) of the Constitution of India, and the States have variously framed their own industrial legislation,[2] or amended the Central Industrial Disputes Act in its application to their own areas,[3] or applied the Central Act.[4] It, therefore, became necessary to tabulate the differences in the provisions relating to conciliation and adjudication in the different State Acts and the Central Act.

So far the staff has not been able to attend any conciliation proceedings, because special permission from the Ministry of Labour, Government of India, is necessary. Though the Act and the rules are silent on this question the Research staff was told this by the Conciliation Officer who was interviewed. Arrangements for the necessary permission are being made and the staff will move into this area in February.

So far as adjudication of industrial disputes is concerned, the Statute, the rules and the case-law have been studied and analysed. The Research Officer has been going to the Industrial Tribunal, Delhi, and examining the files of closed cases.

A list of the cases studied, interviews made etc., is annexed to the main paper as appendices.

PRELIMINARY CONCLUSIONS & INDICATION OF QUESTIONS REQUIRING FURTHER RESEARCH.

So far as the area of conciliation is concerned, it is not possible to set out any preliminary conclusions at this stage except those that could be stated from the library work done so far.

(a) Initiation of Conciliation Proceedings.

It is mandatory on Conciliation Officers to initiate conciliation proceedings in respect of public utility services[5] when a notice of strike has been given under S. 22 of the Industrial Disputes Act, 1947.[6] In respect of non-public utility services it is left to the discretion of the Conciliation Officers to commence conciliation proceedings. On interview the Conciliation Officer told the Research Staff that usually such factors like the nature of the demands of workers, the financial position and prosperity of the Management, the effect such demands, if granted, would have on the Management as a whole are taken into consideration by the Con-

2. Bombay, Madhya Pradesh and Uttar Pradesh. The Bombay Industrial Relations Act, 1946. The Central Provinces and Berar Industrial Disputes Settlement Act, 1946. The U.P. Industrial Disputes Act, 1947.
3. Punjab, Bihar, West Bengal, Rajasthan, Madras and Mysore.
4. Assam, Andhra, Orissa and Kerala.
5. S. 2(n), Industrial Disputes Act, 1947, and the First Schedule to the Act. Railway Service; any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends; any postal, telegraph or telephone service; any industry which supplies power, light or water to the public,; any system of public conservancy or sanitation. The following industries can be delared by the Government as public utility services if the public emergency or public interest so requires :
Transport (other than railways) for the carriage of passengers or goods, by land, water or air; Banking; Cement; Coal, Cotton Textiles; Foodstuff; Iron and Steel; Defence Establishments; Service in hospitals and dispensaries and Fire Brigade Service.
6. S. 12(1), Industrial Disputes Act, 1947.

ciliation Officer before initiating conciliation proceedings in respect of non-public utility services. More Conciliation Officers and industrial employees and employers are to be interviewed before it could be stated whether the Conciliation Officers have evolved definite principles for their exercise of discretion in commencing proceedings with regard to non-public utility services. The nature, frequency and effect of the exercise of this discretion has to be further studied.

(b) **Proceedings before Conciliation Officers and Boards.**

(*i*) It has been held that the conciliation proceedings are not judicial but administrative and that the formalities of judicial trial need not be followed by the Conciliation Officers.[7]

(*ii*) The Act and the rules are silent as to whether the proceedings before a Conciliation Officer are to be held in public or camera. But the general practice is that the Conciliation Officer conducts the proceedings in private. The proceedings before a Board of Conciliation are held in public. The reasons for the difference between the proceedings of these two types of conciliation authorities, and as to how far this practice of conducting conciliation proceedings before Conciliation Officers in private is conducive to the interests of both parties, are yet to be investigated.

(*iii*) Sec. 36 (1), (2) and (3) of the Industrial Disputes Act, 1947, provides that persons who are officials of the labour unions or federations and employer associations alone can represent parties before the Conciliation Officer or Board. What is significant for the present purpose is that legal practitioners are wholly debarred from appearing in conciliation proceedings. That the presence of lawyers will prevent the creation of conciliatory atmosphere and that they tend to complicate simple matters are apparently the assumptions on which this complete exclusion of lawyers is based. However, the aim has not been wholly successful because both labour unions and employers appoint lawyers as their officers and thus circumvent this prohibition. To what extent this practice is prevalent is a matter that has yet to be ascertained, as also the fact whether it is the employees or the employers who resort to it more extensively. The legality of this method of evading the purpose of the Statute is still open to question. This point is discussed under (B) below.

(*iv*) As the very name indicates the Conciliation Officer or Conciliation Board has no power to make any binding decision. If a settlement of the dispute is arrived at, the Conciliation Officer is required to send a report to the Government along with a memorandum of the settlement signed by the parties to the dispute.[9] If no such settlement is arrived at, he has to send a detailed report setting forth the steps taken by him for ascer-

7. Royal Calcutta Golf Club Mazdoor Union *v.* State of West Bengal, A.I.R. 1956 Cal. 550.
8. Rule 30, The Industrial Disputes (Central) Rules, 1957.
9. S. 12(3), the Industrial Disputes Act, 1947.

taining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at.[10]

Even though both the Act and the Rules are silent on the point, copies of this report are, in practice, made available to both parties. But when there is a failure, the report of the Conciliation Officer is divided into two parts; one containing a factual statement and the other a recommendation to the Government suggesting future course of action. This latter report is confidential and is never disclosed to the parties. However, this recommendation is not one the Conciliation Officer is required to make under the wording of S. 12(4), especially when it is noted that the corresponding law governing Conciliation Boards (S. 13(3)) specifically requires the Boards to make such a recommendation. Evidence has yet to be gathered to conclude whether this practice of confidential reporting is on the whole justified.

(*v*) The Conciliation Officer's report is to be submitted to the Government within fourteen days of the commencement of the conciliation proceeding. From one point of view, the statutory time-limit of 14 days serves only as a legislative warning for the need for expedition in these matters. In the case of the Board two months are given. However, non-compliance by the Conciliation Officer with this provision does not render all further proceedings before him invalid.[11] From a more serious point of view, as this period of fourteen days synchronises with the period of notice of strike given under S. 22, the Conciliation Officer is really expected to find out within fourteen days the chances of settlement, so that, if such chances are remote, any further protraction of the uncertain condition in the industry may be avoided and the dispute sent to compulsory adjudication as quickly as possible. It is suggested that this is the legislative reason for providing this short period of a fortnight to finish conciliation proceedings. This hypothesis is confirmed by the fact that the Act itself provides for extension of the period on the agreement of all the parties to a dispute. Therefore, the view that the Act should be amended to provide for a longer period met with frequently by the staff at the time of interview, has to be accepted with caution.

B. ADJUDICATION OF INDUSTRIAL DISPUTES BY LABOUR COURTS, TRIBUNALS AND NATIONAL TRIBUNALS

(*a*) Reference by the Government.

Since the Labour Courts and Tribunals get jurisdiction only on a reference by the appropriate Government and since there seems to be

10. S. 12(4), the Industrial Disputes Act, 1947.
11. The State *v.* Andheri-Marol-Kurla Bus Service, A.I.R. 1955 Bom. 324.

some lack of clarity in the legal position, a word about the procedural machinery to get a dispute before the tribunal is indicated.

(*i*) As regards reference by the Government, the industries can be divided into two parts, namely, those in public utility services and those in non-public utility services. In the first, the Government is under a duty to refer the dispute unless it considers that the notice of strike has been frivolously or vexatiously given or that it would be inexpedient to do so. In the second, an absolute discretion is given to the Government in the matter of reference[12] except where the parties to the dispute apply to the Government for a reference and the Government is satisfied that the persons applying represent the majority of each party. In such a case the Government is bound to make a reference.

(*ii*) Ordinarily the Government cannot be compelled by a writ of mandamus or otherwise to refer the dispute[13] and the nature of power under Section 10 having been deemed administrative a writ of certiorari[14] is not available. But on receipt of a report of failure under s. 12(5) from the Conciliation Officer the Government is required either to refer the dispute to the Tribunal or communicate to the parties concerned its reasons for not doing so. If it does neither, a writ of mandamus will be issued to compel the Government to perform this duty.[15] If the Government decides not to refer the dispute to the Tribunal and communicates to the parties concerned its reasons therefor, the aggrieved party can canvass the reasons of the Government before the Courts and prove that the Government in refusing to refer the dispute was actuated by extraneous and irrelevant considerations, it will be deemed that the Government have failed to discharge their statutory obligation of exercising the discretion conferred on it and a writ of mandamus will lie to compel the Government to exercise that discretion.[16] This is so in respect of both public utility and non-public utility services.

(*iii*) In the case of non-public utility services the freedom to refer a dispute is almost absolute. A point arises here whether there are adequate safeguards to ensure wise exercise of this power, because many an industry though not included in the schedule to the Industrial Disputes Act and thus made a public utility service may be of great importance for some reason or other. Of course the Government can by mere notification include any industry in the schedule. There is no statutory provision for any consultation or other procedural machinery to guide the exercise of this power. Therefore the extent to which the Government exercises an abolute discretion to keep

12. S. 10(1), the Industrial Disputes Act, 1947.
13. Bagaram Touloule *v.* The State of Bihar, A.I.R. 1950 Pat. 387.
Sasamusa Workers' Union *v.* The State of Bihar, A.I.R. 1952 Pat. 210.
Madan Gurang *v.* The State of West Bengal, A.I.R. 1958 Cal. 271.
14. State of Madras *v.* C. P. Sarathy, A.I.R. 1953 S.C. 53; The Travancore Sugars and Chemicals Ltd. *v.* The State of Kerala, A.I.R. 1958 Kerala 217.
Kadachira Motor Service Ltd. *v.* State, A.I.R. 1957 Mad. 700; Radhakrishna Mills (Pollachi) Ltd. *v.* State of Madras, A.I.R. 1955 Mad. 113.
15. State of Madras *v.* Swadesamitran Printers Labour Union, A.I.R. 1952 Mad. 297.
16. Ramachandra Abaji Pawar *v.* The State of Bombay, A.I.R. 1952 Bom. 293.

an industry as a non-public utility service so that it will remain subject to another absolute discretion (under S. 10) is to be studied in detail.

(*iv*) If the Government refers a dispute to the Tribunal which is not an industrial dispute as defined in the Act, it is open to the parties to raise as a preliminary issue the question that there was in law no industrial dispute at all for adjudication by the Industrial Tribunal. The Industrial Tribunal has to decide such a jurisdictional issue in the first instance. If the Tribunal arrives at a wrong decision, the aggrieved party will be entitled to challenge the validity of the decision by an application for the issue of a writ of certiorari.[17]

Any deep analysis of this difficulty in controlling the Government in its exercise of the power under S. 10 & S. 2(*n*) of the Industrial Disputes Act and the vital interests involved inevitably compels one to question the very need for the Government to be interposed between the conciliation and adjudication machineries.

(b) Proceedings before Labour Court, Tribunal and National Tribunal.

(*i*) S. 11(1) of the Industrial Disputes Act, 1947, authorises the Labourt Court, Tribunal and National Tribunal to follow such procedure as it thinks fit subject to the rules that are made in this behalf.

(*ii*) The Act and the Rules assume but do not expressly provide anywhere that notice shall be given to the parties before the proceedings commence. In practice, this is done; and judicial opinion is that it is required to be done.[18] However, it is better to provide for it expressly.[19]

(*iii*) Similarly, there is no express provision either in the Act or in the Rules empowering the Labour Courts and Tribunals to add additional parties, even though S. 18(3)(b) seems to contemplate such a power in the Tribunals and practice and judicial view endorse it.[20]

(*iv*) As regards representation of parties before the Labour Courts and Tribunals the Act specifies as it does in the case of conciliation proceedings that officers of trade unions and associations of employers can represent the parties.[21] Lawyers can appear on behalf of the parties only with the consent of the opposite party and with the permission of the Labour Courts and Tribunals.[22] But, as at the conciliation stage, in practice this

17. Newspapers Ltd. *v.* State Industrial Tribunal, A.I.R. 1957, S.C. 532.
In re. Paramount Films of India Ltd., A.I.R. 1957, Mad. 615.
18. Indian Mining Association *v.* Koyla Mazdoor Panchayat, 1952, I.L.L.J. 789.
19. A copy of the printed form of notice issued by the Delhi Industrial Tribunal is appended to the main paper.
20. Radha Krishna Mills, Coimbatore Ltd. *v.* Special Industrial Tribunal, A.I.R. 1954, Mad. 686.
P. G. Brookes *v.* Industrial Tribunal, A.I.R. 1954, Mad. 369.
French Motor Co. Ltd. *v.* Their Workmen, 1955 II LLJ 609.
The Government has power to add parties to the reference. See Section 10(5), the Industrial Disputes Act, 1947.
21. S. 26(1) & (2), the Industrial Disputes Act, 1947.
22. S. 36 (3), the Industrial Disputes Act, 1947.

provision is being circumvented in most of the cases by appointing lawyers as secretaries of trade unions and officers of association of employers and such practices are upheld by most Courts.[23]

In view of such practice the provision in the Act which prohibits lawyers from appearing on behalf of the parties except with the consent of the opposite party and with the leave of Labour Courts and tribunals is not of much real efficacy.

(*v*) Under Rule 15 of the Industrial Disputes (Central) Rules, 1957, the Labour Courts and Tribunals can accept, admit or call for evidence at any stage of the proceedings before them and in such manner as they think fit. The broad language of this rule has given rise to a conflict of judicial authority on the application of the Indian Evidence Act to these proceedings. Some Courts[24] have held that the Act is not applicable, while Sinha J. of the Calcutta High Court has held that it applies to the extent that evidentiary materials from one party should not be accepted without giving the opposite party an opportunity to challenge them.[25] The Supreme Court held in a disciplinary proceedings case[26] that the Indian Evidence Act is not applicable to enquiries conducted by Tribunals even though they are judicial in character. The only duty, according to the Supreme Court, is to obey the essential principles of natural justice. If those observations are applicable to Industrial Tribunals it does not conflict, from the practical point of view, with the view of Sinha J. given above. However, when the practical difficulties involved in a codification of the evidentiary rules that are to bind these kinds of tribunals are considered, there is little to recommend an alteration of the existing rule on evidence.

(*vi*) The Industrial Disputes Act, 1947, does not contain any provision specifically authorising the Labour Courts and Tribunals to record a compromise and pass an award in its terms corresponding to the provisions of Order XXIII, Rule 3, of the Civil Procedure Code. But the Supreme Court has upheld the practice of the Labour Courts and Tribunals in passing awards based on compromises arrived at by the parties, since amicable settlements of industrial disputes which generally lead to industrial peace and harmony are the primary objects of the Act.[27] An express provision to this effect is also desirable.

---

23. Sarbeswar Bardoloi *v.* Industrial Tribunal, A.I.R. 1955, Assam 148 (D.B.)
Duduvala and Co. *v.* Industrial Tribunal, A.I.R. 1958, Rajasthan 20. But the Bombay High Court held differently. It observed in Alembic Chemical Works Ltd. *v.* P. D. Vyas and another, (1954) II LLJ 148, that "if a legal practitioner is transferred into an office of a registered trade union or an association of employers in order to get over the disability imposed on a legal practitioner representing a party, then such a person shall not be allowed to appear and represent a party".
Electro-Mechanical Industries Ltd. Madras *v.* Industrial Tribunal No. 2 for Engineering Firms and Type Foundries, A.I.R. 1950, Mad. 893.
Mehnga Ram *v.* Labour Appellate Tribunal, A.I.R. 1956, All. 644 (D.B.).
L. H. Sugar Factory and Oil Mills Ltd. *v.* Their Workmen, 1952 II LLJ 59.

25. Burrakar Coal Co. Ltd. *v.* Labour Appellate Tribunal of India and another, A.I.R. 1958, Cal. 226,

26. Union of India *v.* T. R. Varma, A.I.R. 1957, S.C. 882.

27. State of Bihar *v.* D. N. Ganguli, A.I.R. 1958, S.C. 1018 at 1023.

AREAS WHERE FURTHER ENQUIRIES ARE TO BE CONDUCTED

1. During the project study it was represented that the Conciliation Officers are comparatively young men without that stature or personality which compel the regard of major industrial employers and trade unions. There is some evidence given to the effect that the above fact coupled with the legal position that a failure of conciliation will normally result only in a binding adjudication creates a tendency in some of the major interests mentioned above to take an indifferent attitude towards conciliation proceedings. Investigation has therefore to be directed to the question of what experience, qualification and status the Conciliation Officers should possess in order to enhance the efficiency and prestige of this machinery. For example, should they be retired or High Court Judges or retired Senior Civil Servants?

2. Should the Conciliation Officers be empowered to administer oaths and compel the attendance of any person before them ?

3. Should it be made mandatory on Conciliation Officers to initiate conciliation proceedings in respect of non-public utility services ?

4. Is adequate notice given to the parties concerned before commencing conciliation proceedings ?

5. Do the Conciliation Officers, in practice, recommend to the Government the future course of action to be taken or not and to what extent, in practice, do the Government take into consideration their recommendations, if there are any ?

6. To what extent the records of the conciliation proceedings and report of the Conciliation Officer or Board are taken into consideration by the Labour Court or Tribunal when the particular industrial dispute in respect of which conciliation failed, is referred to the Labour Court or Tribunal ? It may be stated here that the Conciliation Officer can be called as a witness before the Labour Courts and Tribunal by either of the parties.

7. To what extent do the Labour Courts and Tribunals follow the rules of the Civil Procedure Code in enforcing the attendance of any person, examining him on oath, compelling the production of documents and material objects, issuing commissions for the examination of witnesses, discovery and inspection of documents, granting adjournment and reception of affidavit evidence ?

8. It is felt that the rejoinder statements of reply by the Management fall into a set pattern, viz., that of merely refuting the facts stated by the Management. They should be drawn up more to the point of furthering the cause of proceedings and not merely provide a formal refutation of the Management's stand.

FURTHER RESEARCH.

Now since Government co-operation is made available, it will be possible to attend conciliation proceedings. Many more interviews of Conciliation Officers, representatives of the Management and Labour have to take place and many more files of closed cases have to be looked into before any final conclusions can be given.
