

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 10th March, 2017**

+ **W.P.(C) No.8212/2007**

**ALL INDIA RAILWAY EMPLOYEES
CONFEDERATION**

..... Petitioner

Through: Dr. Pradeep Asthana & Mr. T.D.
Singh, Advs.

Versus

THE CHAIRMAN, RAILWAY BOARD & ORS Respondents

Through: Mr. R.V. Sinha & Mr. R.N. Singh,
Advs. for R-1&2.

AND

+ **W.P.(C) No.2203/2013**

**ALL INDIA RAILWAY EMPLOYEES
CONFEDERATION**

..... Petitioner

Through: Dr. Pradeep Asthana & Mr. T.D.
Singh, Advs.

Versus

THE CHAIRMAN, RAILWAY BOARD

..... Respondent

Through: Mr. R.V. Sinha & Mr. R.N. Singh,
Advs. for R-1&2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The questions for adjudication in both the petitions (as confined to during the hearing on 17th February, 2016 and as recorded in order of that day) are (I) whether Clause 2(a) of the “Modalities for conducting secret ballot for the purpose of granting recognition to registered Railway Trade

Unions representing all categories of Group ‘C’ and Group ‘D’ Employees of Indian Railways” (hereinafter called as Modalities) formulated by the respondent Railways are contrary to Chapter XXV and Chapter XXVI of the Indian Railway Establishment Manual (Manual); and, (II) whether the rejection dated 31st October, 2007 of the respondent Railways of the nomination submitted by the petitioner for the election for recognition of a Trade Union at the Zonal level, on the ground of the same being violative of Clause 2(a) supra, is bad.

2. W.P.(C) No.8212/2007 was filed when the Modalities were formulated and W.P.(C) No.2203/2013 was filed aggrieved from the rejection of nomination. The petitions have however been argued as one only.

3. Chapter XXV titled “Rules for the Recognition of Service Associations of Railway Servants” in Part A thereof provides for ‘Rules for the recognition of Service Associations of gazetted railway servants’ and in Part B thereof provides for ‘Rules for the recognition of associations of non-gazetted railway servants’. We are in these petitions concerned with the Associations of non-gazetted railway servants.

4. Paragraph 2512 in Part B of Chapter XXV of the Manual *inter alia* provides that recognition will not ordinarily be granted or continued to any association unless it (a) consists of a distinct class of Railway servants; (b) makes eligible for membership all railway servants of same class; and, (c) it is registered under the Indian Trade Unions Act, 1926.

5. Chapter XXVI titled “Staff Councils and Negotiating Machinery” of the Manual in Section I thereof titled “Staff Councils” deals with objectives of creating Staff Councils, Powers of Staff Councils, Composition of Staff Councils etc. Section II titled “Negotiating machinery for dealing with disputes between Railway Labour and Railway Administrations”, in paragraphs 2615 and 2616 thereof provides as under:

“2615. *The machinery is to work in three tiers, viz.—*

- (i) ***the Railway level***—*In this the recognised union will have access to District or Divisional Officers and subsequently to officers at the Headquarters including the General Manager.*
- (ii) ***the Railway Board level***—*In cases where matters are not settled at Railway level, they will be taken up by the Federations with the Railway Board.*
- (iii) ***the Tribunal level***—*In cases in which agreement is not reached between the Federation and the Railway Board and the matters are of sufficient importance, reference will be made to an ad hoc Railway Tribunal composed of representatives of the Railway Administration and labour presided over by a neutral Chairman.*

2616. *The following detailed procedure is laid down for the working of the machinery referred to above:—*

- (i) *At the district or divisional level, the District or Divisional Officers should meet the branches of the recognised Unions which may be established in the districts or divisions at least once in two months and oftener if necessary. Each workshop will be considered as a district. The particular branches which should meet the District or Divisional Officers as prescribed above should be agreed upon between the General Manager and the Union. In the Divisional pattern of working, the*

Divisional representatives of a union, who shall represent all the branches of the union in the Division should be enabled to meet the Divisional Superintendent, who may or may not be assisted by the branch officers. The detailed procedure of arranging these meetings would be agreed upon with the Union, but this should include a provision that the branch should supply in sufficient time before the meeting the subjects which it proposes to raise at the meeting with complete memoranda setting out its points of view.

- (ii) At the Railway Headquarters, the General Manager or the Assistant/Deputy General Manager in charge of staff will meet the Unions at least once a quarter and oftener if necessary.*
- (iii) All disciplinary matters and subjects like promotion, transfer etc., of individual members of the staff which do not involve any general principle will be excluded from the scope of the discussions at all these levels, except at the discretion of the officer concerned. Where, however, Unions have been given certain privilege in these matters these will not ordinarily be curtailed.*
- (iv) At the district or divisional and railway levels, subjects will comprise of those which are within the powers of the officers concerned.*
- (v) Questions concerning pay scales, allowances, etc., will only be discussed between the Federation and the Railway Board and not at lower levels.*
- (vi) At the centre, negotiations will be between the Railway Board and the Federation and for this purpose, there will be quarterly meetings between the Railway Board and the Federation.*
- (vii) When a matter which is raised for discussion at the district or divisional level is not settled by agreement, it may be raised at the railway level for*

further negotiation. Similarly, a matter not settled at the Railway level may be brought up by the Federation to the Railway Board for discussion.

- (viii) All subjects brought up for discussion at the various levels should be disposed of as expeditiously as possible. Brief minutes of discussion, indicating the decision arrived at, should be sent to Unions concerned for their information.*
- (ix) If, after discussion between the Railway Board and the Federation, agreement is not reached on any matters of importance, such matters may be referred to an ad hoc Railway Tribunal which will be set up for dealing with them at the Centre. This Tribunal will consist of an equal number of representatives of railway labour and the Railway Administration with a neutral Chairman. The Tribunal will be enabled to make such investigations as they deem necessary before they give their decision.*
- (x) It would be open to Government of accept, reject or modify the decision of the Tribunal and where the matters in dispute affect the workers under Ministries other than the Railway Ministry, those Ministries will be consulted as to—*
 - (i) whether they have any objection to the disputes being referred to the Railway Tribunal, or*
 - (ii) whether they would like the dispute to be referred to an ad hoc Commission on which they will also be represented.*
- (xi) On matters which have been settled by agreement or in which Government ultimately accept the decision of the Tribunal, it will not be open to the Federation to raise the same issue again for a period of two years. In those cases in which*

Government have rejected or modified the decision of the Tribunal, the issue may be raised at the end of one year.”

6. Clause 1 of the Modalities provides that election under Secret Ballot system for giving recognition to Trade Unions will be conducted under the supervision of Chairman, Secret Ballot Committee appointed specially by the Ministry of Railways for this purpose. Clause 2 of the Modalities, insofar as relevant for the present purposes, is as under:

“2. Who all are eligible to contest the elections:-

(a) All registered trade unions of the Railways which are registered under the Trade Union Act, 1926 for at least one year as on 31.12.2006 and which exclusively represent the interests of all group ‘C’ and ‘D’ employees of the concerned zonal railways.

(b) These registered trade unions must not have been formed on the basis of any caste, tribe or religious denomination or of any group within or section of such caste, tribe or religious denomination.

(c) The registered jurisdiction of the Union should geographically conform to the jurisdiction of the concerned zonal General Manager to whom the application is made and who is competent to recognize the union and also competent to take any action against unions as and when necessary.”

7. The petitioner is admittedly a Federation of unions of all group ‘C’ and group ‘D’ employees of all Zones of the Railway.

8. The petitioner, at the time of holding of elections in the year 2013 for recognition of recognised union at Zonal level, sought participation therein but the nomination of the petitioner was rejected vide impugned letter dated

31st October, 2007 setting out the reason therefor as under:

“Nomination form submitted by you in reference to above were scrutinized and it is noticed that as per article 4 of the Constitution of AIREC it is a federal body of the categorical / departmental Associations / Councils and Unions functioning on Railways on Industrial pattern, all duly registered under Trade Union Act. Further composition of General Body is also base on Constituent Units. The Constituent Units of AIREC as submitted along with the Constitution does not include all the categories and trades working over Northern Railway, hence, the condition 2(a) of the modalities is not fulfilled and nomination papers filed by AIREC have been found invalid after scrutiny by the Returning Officer, Northern Railways.”

9. The contention of the counsel for the petitioner is that Clause 2(a) of the Modalities restricting the participation in the election for recognition of Trade Union at Zonal level to Trade Unions of group ‘C’ and group ‘D’ employees of that Zone only and refusal of participation to the petitioner, representing not only group ‘C’ and group ‘D’ employees of the Zone but of all over India, is contrary to the Manual.

10. One of the requirements for recognition, as per paragraph 2512 of Part B of Chapter XXV of the Manual, as aforesaid, is that the Union must consist of a distinct class of Railway servants. It does not say what that distinct class should be; whether it refers to the stature / post / class in the Railways or in a particular Zone or all India.

11. Paragraph 2615 of Section II of Chapter XXVI of the Manual, while providing that the machinery for negotiation of disputes between Railway Labour and Railway Administration is to be at three levels i.e. at the level of District or Divisional Officer and subsequently to Officers at the

Headquarters and if not resolved therein, at the Railway Board level and if not resolved therein at the Tribunal level. The same also gives no indication, whether negotiations are to be with the Trade Union of the particular Zone or of all India level. However while at the first level i.e. level of District or Divisional Officer the negotiations are to be with the “recognised Union”, at the second and third level i.e. level of Railway Board and at the level of Tribunal, negotiations are to be with the “Federations”. The same is indicative of the Manual envisaging two different entities i.e. ‘Trade Union’ and ‘Federation’ which can only be of several trade unions.

12. Paragraph 2616 in Section II of Chapter XXVI of the Manual, while providing for the detailed procedure for working of the machinery provides that A) at the District or Divisional level, the District or Divisional Officer should meet the “branches of the recognised Union which may be established in the Districts or Divisions”; “the particular branch which should meet the District or Divisional Officers should be agreed upon between the General Manager and the Union”; “in the Divisional pattern of working, the Divisional representative of the Union should meet the Divisional Superintendent”; “at the District or Divisional level subjects will comprise of those which are within the powers of the officers concerned”; B) “at the Railway Head Quarters, the General Manager will meet the Unions”; C) “at the centre, negotiations will be between the Railway Board and the Federation” “Questions concerning pay scales, allowances etc will only be discussed between Federation and Railway Board and not at lower levels”.

13. Both paragraphs 2615 and 2616 provide for negotiation at the District/Divisional level with the “recognised Union” and negotiation at the Railway Board level and the Tribunal level by the “Federation”. Thus, a distinction has been drawn between a “recognised Trade Union” and a “Federation”.

14. While according to the petitioner, a Federation, as the petitioner is, is also a recognised Trade Union though of all India level but entitled to be recognised at the District/Zonal level also, according to respondent Railways, at the Zonal level negotiations have to be with a recognised Trade Union comprising of group ‘C’ and group ‘D’ employees of that Zone only and it is only at the Railway Board or the Tribunal level that a Federation of such recognised Trade Unions of all Zones can negotiate.

15. During the hearing on 17th February, 2016, it was felt by me and observed in the order of that date that at the Zonal level group ‘C’ and group ‘D’ employees of that Zone only would form a distinct class and the refusal of the respondent Railway to allow an All India level Trade Union representing group ‘C’ and group ‘D’ employees, besides of that particular Zone, of all other Zones also, could not be said to be unreasonable. It also appeared that from the use in paragraph 2615 in Section II of Chapter XXVI of the Manual of two distinct expressions i.e. recognised Union and Federation, also it could not be said that the Modalities were contrary to the Manual. It was felt that negotiations at the Zonal level by a Trade Union representing group ‘C’ and group ‘D’ employees of that Zone only could be more effective and beneficial for the employees than negotiations by All India level Union, the concern whereof would be not only for the employees

of that Zone but for employees of all the Zones of the Railways.

16. The counsel for the petitioner during further hearing drew attention to the order dated 30th October, 2007 in W.P.(C) No.7840/2007 earlier filed by the petitioner to impugn Clause 2(c) aforesaid of the Modalities restricting the jurisdiction of the Unions eligible to contest in the election to geographical jurisdiction of the concerned Zone and holding (i) that a Trade Union registered on all India basis / jurisdiction would conform to Clause 2(c); (ii) that a registered Union of All India jurisdiction would also have a jurisdiction in respect of a particular Zone; (iii) that the interpretation of the respondent Railway would result in exclusion of some member employees of All India Railway Unions from the process (sic); (iv) that the object of the process is broadest inclusion of all sections of employees; (v) that Clause 2(c) should be construed and interpreted as to include those Trade Unions which have All India jurisdiction and are registered as such; (vi) that the difficulty projected by the Railways i.e. need to negotiate with the Union at a local level can be redressed in a different manner; one mechanism could be to require the All India Union having presence in multiple Zones to have a nominated representative in the Zone; there can be other methods of dealing with the problem. The counsel for the petitioner informed that no appeal was preferred by the respondent Railways against the said order; however the petitioner, aggrieved from non-grant of the reliefs claimed, had preferred LPA No.1341/2007 but the same was dismissed on 16th September, 2008 owing to the filing of W.P.(C) No.8212/2007, leaving it open to the petitioner to therein urge all contentions concerning the modality of the election process.

17. Though Clause 2(a) now under challenge was also in existence at that time but the petitioner did not challenge the same and chose to challenge only Clause 2(c) of the Modalities and which challenge succeeded.

18. Clause 2(a) of the Modalities supra also uses the words registered Trade Unions which exclusively represent the interests of group 'C' and group 'D' employees of the "concerned Zonal Railways". The purport of Clause 2(a) and the purport of Clause 2(c) is not different. I have wondered whether, owing to the order in the earlier writ petition, the challenge by the petitioner now to Clause 2(a) should also succeed and it be held that the rejection of the nomination of the petitioner for election for recognition of Zonal level on the ground of the petitioner being All India level Union and not Union of the concerned Zonal Railways only, should be allowed.

19. On consideration I am of the opinion that the question as has arisen in these petitions cannot be said to be not *res integra*, for the reason of the order dated 30th October, 2007 supra. I say so because though the court therein held that Clause 2(c) of the Modalities should be construed and interpreted to include All India level Unions also but also found merit in the contention of the counsel for the respondent Railways that there is a need to negotiate with Union at local level. The Court then proceeded to suggest that there were mechanisms to take care of the same and suggested one such mechanism. However no definite finding in that regard was given. Moreover, during the hearing of appeal preferred against that order, though not this question specifically but all other questions arising with respect to elections for recognition of Trade Unions in accordance with Chapter XXV and XXVI of the Manual, which I emphasise are not under challenge, were

left open for decision in this petition.

20. During the hearing I enquired from the counsel for the parties as to what could be the mechanism to allow a recognised Union of All India level to negotiate qua the Zonal issues.

21. The counsel for the petitioner drew attention to the constitution of the petitioner. The relevant Articles 3,4,8,9 & 30 whereof are as under:

“Article 3. The Confederation shall be Registered under T.U. Act, 1926.

Article 4. Composition of the Confederation

a) The Confederation shall be a federal body of the categorical / Departmental Associations / Councils and unions functioning on Rail wayson Industrial pattern, all duly registered under T.U. Act.

*b) **Number of Representatives:-** The Constituent units shall have equal status and privileges in the Confederation. However, the number of representatives in the Confederation shall be determined proportionately according to their membership strength.*

c) The units shall have full guarantee for representation / Negotiation facility upto the highest level through the representatives of their choice from the units concerned.

d) The confederation shall consist of the General body, National Council, Central working committee and Zonal Divisional and Branch Committee.

*e) **General body:-***

I) General body shall be supreme body of the Confederation.

II) It shall constitutes of all CWC members.

III) One delegate per 200 enrolled members from each Constituent unit subject to a minimum of 3 delegates with maximum ceiling limit of 75 delegates of each unit.

IV) One delegate for every 200 enrolled Combined membership (all Units) from each Zonal Unit / AIREC, Divl. Presidents

and Divl. Secretaries of AIREC.

f) **Formation of National Council:-**

National Council shall constitute of

- I) All CWC Members.
- II) One delegate per thousand (1000) enrolled members from each unit.
- III) All Zonal office bearers of the confederation.
- IV) All Divl. and Branch Secretaries of the Confederation.

G) **Formation of Central Working Committee:** CWC shall constitute of

- I) All Central office bearers of the Confederation.
- II) All Presidents and General secretaries of Constituents of the apex level.
- III) One member per 3000 enrolled members of fraction there of from each constituent unit with minimum of 1 (one) and ceiling of ten such members.
- IV) Zonal Presidents and Zonal Genl. Secretaries of AIREC.
- V) One member per 5000 enrolled membership of the combined unit strength of the Zone Concerned.

H) **Central Office Bearers / AIREC:**

I) They shall be post of:-

President	:	1 (one)
Working President	:	1 (one)
Vice Presidents	:	2 (two)
Secretary Genl.	:	1 (one)
Dy. Secy Genl.	:	3 (Three)
Secretary Finance	:	1 (one)
Secretary Publicity	:	1 (one)
Internal Auditor	:	1 (one)
Total	:	11

II) In order to provide proportionate representation to all Constituent units as many posts of Vice Presidents and Dy. Secy Genl may be created to that extent.

III) COBS' & CWC members shall be elected from amongst the serving Railway Employees subject to the condition that retired Railway Employees may be elected only to the posts of working President and Vice Presidents in term of T.U. Act only.

IV) Inclusion of retired Railway Employees in any body of confederation shall be subject to the provision of section 22 of T.U. Act.

V) The COBS' and CWC Members should not be the office bearers and members of any other organisations. (i.e. other than units of AIREC)

i) **Set up of AIREC at Zone, Division & Branch level.**

To manage the functioning of AIREC properly at all levels the body of Confederation shall be formed at Zonal, Divl. and Branch Level.

I) **At Zone level** it shall be named AIREC (N/Zone, SE/Zone, SR/Zone, W/-Zone, C/Zone, E/Zone, SC/Zone (and the like)

II) Production units shall be considered as Zones.

III) Zonal Bodies shall constitute of members of each constituent unit. Members enrolled by each unit shall be deemed to be the members of AIREC.

IV) Number of Zonal Office Bearers shall be same as for COBS'. But they will be prefixed by "Zonal" and "Genl." Shall be omitted.

V) **Zonal Genl. Body shall constitute:-**

(A) All Zonal working Committee Members

(B) One delegate for every 75 members

(C) Divl. President and Divl. Secy of the Confederation as well as constituent units of AIREC

(D) Branch President and Branch Secy of AIREC.

(E) **Zonal working Committee shall constitute** as all Zonal office bearers, Divl. President, Divl. Secretary AIREC of all Divisions and two elected members at Zonal level of each unit of AIREC.

J) **Formation of Divisional / Branch Bodies of AIREC.**

I) Each Division shall have a branch, workshops, sheds, and store, where strength is above 500 may also form as AIREC Branch.

II) Posts shall be the same as for Zones but they shall be prefixed by Branch or Divisional.

III) **Divl. General body shall Constitute-**

- A) All Divisional working Committee members.
- B) One delegate for every 50 members Subject to minimum three of the Constituent.
- C) Branch President and Branch Secretaries of the Confederation.
- IV) Divisional Working Committee; It shall be
 - (I) Divl. Office bearers of AIREC (on the pattern of COB)
 - (II) Two members from each unit of AIREC
 - (III) Branch secretaries & Branch Presidents of AIREC.
- V) Branch Genl. Body:-
 - (A) All the branch executives Committee Members.
 - (B) One delegate for every 25 members subject to the minimum three of each unit.
 - (C) Branch office bearer of all units.
- VI) Branch executive committee shall constitute:-
 - (A) Branch office Bearers.
 - (B) Two Members of each constituent unit.
 - (C) Branch President and Branch Secy. Of each unit of AIREC.

Article 8. Membership :

- (i) The membership of the Confederation shall open to all serving Railway Men. However, Membership may be granted to the Retired employees subject to the provision of T.U. Act 1926 for the purpose of electing office bearers post of AIREC.

Article 9. Terms of Affiliation:

The Units seeking affiliation shall comply with the followings:-

- I) It must possess the qualification laid down in Clause 4(a) of the Constitution of Confederation.
- II) It shall not be parallel to any existing unit of the Confederation. Besides this no overlapping or dual Membership shall be permissible. The CWC shall be competent to decide the sphere and organisational scope of each unit.
- III) Subject to the provision of clause 10 of the Constitution the Unit shall agrees to pay any

special levy as may be fixed time to time by the Confederation.

- IV) *It shall agree to expose its membership for Scrutiny if and when deemed necessary by the Confederation.*
- V) *It shall abide by the provisions of the Constitution of the Confederation and give such undertaking in writing. It also agrees to abide by mandates and decisions taken by the confederation from time to time.*
- VI) *All applications seeking affiliation to the confederation shall be placed in CWC/AIREC meeting. It will see that granting affiliation does in no way harm to existing constituents units. CWCs's decision for affiliation for or against shall be final.*
- VII) *It shall also give undertaking that without having consultation and taking into confidence of CWC AIREC, affiliated units at any level (i.e. Central / Zonal / Divisional) will resort direct action.*
- VIII) *Affiliation shall not be granted to any such organisation which is maintaining affiliation with other organisation. It should be applicable at all levels.*
- IX) *For Affiliation to the Central body of the Confederation the units shall function at the All India level and industrial unions at Zonal level.*

“Article-30. (a) DISAFFILIATION:

The affiliates of the Confederation shall lose its / their affiliation provided that:

- (i) *Dues are not paid to the Confederation within the stipulated time;*
- (ii) *Other Constitutional obligations are not fulfilled.*

The disaffiliated unit shall have the, opportunity in respect of getting affiliation restored on payment of all arrears due within further three months, assigning satisfactory reasons for the default. The disaffiliated unit shall also have the right to appeal before the National Council or the General body as the case may be and the decision of the appeal shall be final.

(b) DISCIPLINARY ACTION:

- (i) *The office-bearer or working committee*

member of AIREC including in indiscipline or working against the interest / aims /objects of organisation will be issued show cause notice and may be suspended from the Membership of the Committee by 2/3rd majority decision of the respective committee or higher committee.

- (ii) *The member so suspended / expelled has a right to appeal to the respective general body whose decision will be final.”*

22. I am however still unable to see as to how an All India level Trade Union, required to redress the issues in the interest of All India workmen, can redress issues of one particular Zone and which issues may either not concern any other Zone or may be in conflict with the interest of group ‘C’ and group ‘D’ employees of another Zone. Rather, it is found that the constitution of the petitioner also is as a Federation of different Unions. However the petitioner, instead of having separate unions for different Zones who may form a federation, has provided for a federal structure within itself. The petitioner, in my view, would not satisfy the requirement of paragraph 2512 of Part B of Chapter XXV of the Manual of the Union to consist of distinct class of Railway servants. The Railway servants of All India, even if of the same class i.e. group ‘C’ and group ‘D’, cannot be considered as a distinct class vis-à-vis the disputes at Zonal level.

23. Moreover, paragraph 2615 in Section II of Chapter XXVI of the Manual also, as aforesaid, envisages negotiations at the Zonal level by recognised Union and at the Railway Board or Tribunal level by Federation of such Unions. The only inference can be that the Manual envisages recognition of Unions at local level and with a Federation of such Unions at the All India level. An All India Union cannot satisfy the requirement of the

local level.

24. Paragraph 2616 in Section II of Chapter XXVI of the Manual leaves the choice of particular branches of the recognised Union which should meet the District or Divisional Officer to the agreement between the General Manager and the Trade Union. Similarly, the detailed procedure of arranging meetings is also left to such agreement. Paragraph 2616(iv) also prescribes that at the District or Divisional level, subjects of negotiations will be only those which are in the powers of District or Zonal Officers. The periodicity of the meetings at the District/Divisional level with the Zonal Trade Union and at the Railway Board level with the Federation is also different.

25. It thus cannot be said that Paragraph 2(a) of the Modalities prescribing the condition of “which exclusively represents interest of all Group C & D employees of the concerned Zonal Railway” for a trade Union for eligibility to contest election for recognition or interpretation of the respondent Railways thereof as excluding a Federation, is contrary to the Manual.

26. The Division Bench of this Court in ***Delhi Electricity Workers Union Vs. NCT of Delhi*** 2012 SCC Online Del 3590 dealing with a contention that in law and in principle there can be recognition of majority Trade Union across an industry rather than only in respect of a constituent Unit of such industry and that the essence of a Trade Union is collective bargaining and greater the collective, greater the bargaining power and hence the question “whether collective bargaining should be establishment wise or industry based” (a) cited with approval the recommendations of the National Commission of labour, 1967 that (i) practice of recognising Union at

industry / area level should be encouraged; (ii) there should be proper demarcation of rights and functions of the industry / area recognised Unions and plant-wise Unions and on the basis of well defined conditions; (b) cited with approval the Code of Discipline prescribing that if a Union of workers in a particular establishment has a membership of 50% or more of the workers of that establishment, it should have the right to deal with matters of purely local interest—all other workers who are not members of that Union might operate through the representative of that Union for the industry; (c) held that in a given case what is feasible, whether industry wise recognition or establishment wise recognition, can be gone into by the Industrial Tribunal by means of adjudication; the Industrial Disputes Act, 1947 contemplates such mechanism to sort out such issues; (d) held that the ability and keenness of any Union to effectively represent the employees on a particular issue has to be seen in the light of the particular facts of a case and the class of employees who would be effected by such negotiation and the question, recognition of Trade Union can be at what level needs adjudication for which the appropriate forum would be Industrial Tribunal; (e) held that there is no statutory provision which gives right to a Union to seek such recognition and such a right can be claimed only by raising industrial dispute.

27. I must mention that Supreme Court, vide order dated 4th January, 2016, in SLP(C) No.13498-13501/2013 has granted leave to appeal against judgment aforesaid and which appeal is learnt to be still pending. There is no stay of the judgment aforesaid of the Division Bench.

28. The same Division Bench of this Court, in ***Union of India Vs. Rail Coach Factory Men's Union*** ILR (2012) III Del 84, also held that though right to form a Trade Union may be a fundamental right under Article 19(1)(c) of the Constitution of India, imposition of conditions for recognition would not *per se* be viewed as an unreasonable restriction within the meaning of Article 19(4)—it is the prerogative of the employer to set down the conditions for recognition. Though the question as has arisen herein did not arise in that case but a reading thereof shows existence of Zonal Unions in Railways and rules of recognition thereof. SLP(CC) No.23523/2012 preferred thereagainst is found to have been dismissed on 22nd January, 2013.

29. In ***C.N.S. Officer's Guild (Regd.) Vs. Chairman, Airport Authority of India*** MANU/DE/4333/2015 I had occasion to deal with the associations as distinct from Trade Unions of Airport Authority of India (AAI) and therefrom AAI also appears to have department wise associations and recognition.

30. The action of respondent Railways impugned in these petitions, of not allowing the petitioner, an All India level Trade Union, to seek recognition at Zonal level is thus not found to be contrary to the Manual or otherwise bad in law. As aforesaid, recognition is not a right of the petitioner as a Trade Union and the respondent Railways as employer, if of the view that the negotiations should be at different levels with different Unions and so lays down procedure for recognition thereof, is entitled to do so. It is perhaps for this reason only that the counsel for the petitioner challenged the Modalities only on the ground of being contrary to the

Manual. However it is not found so. Moreover, even if there be any ambiguity in the language of the Manual, once the respondent Railways is found to be entitled to impose such conditions, its interpretation of the said language will prevail and the petitioner, without having any right of recognition, cannot interpret the language of Modalities differently. The petitioner, as an All India Trade Union, if satisfies other conditions of eligibility, can only seek recognition as a Federation.

31. The petitions thus fail and are dismissed.

No costs.

MARCH 10, 2017

‘bs’..

RAJIV SAHAI ENDLAW, J.