

(23)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. 1567/90

M.A. 911/94

New Delhi this is the 22nd day of Aug., 1994.

Coram:

HON'BLE SHRI A.V. HARIDASAN, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Union of India
Through General Manager,
Northern Railway,
Baroda House,
New Delhi

.... Applicant

Versus

1. Shri Shanti Sarup,
Son of Late Shri Bishal Sahai,
R/O 1588, Lal Kuan,
Delhi.
2. The Presiding Officer,
Central Government Labour Court,
Nirmal Tower,
Barakhamba Road,
New Delhi-110 001.
3. Assistant Collector,
Old Civil Supplies Building,
Tis Hazari,
Delhi. Respondents.

ORDER

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O.A.1567/90

Dt.of order:22.08.1994

M.A. 911/94

ORDER

(As per Hon'ble Shri A.V.Haridasan, Member(J))

This application under Section 19 of the Administrative Tribunals Act, was filed by the Union of India, through General Manager, Northern Railway, challenging the legality and correctness of the order of the 2nd respondent --The Presiding Officer, Labour Court, New Delhi, in LCA/98/1985. The first respondent was the applicant in LCA 98/1985 and the applicant was the respondent. ~~→~~ The first respondent had earlier filed LCA 94/1981 before the second respondent claiming re-fixation of pay and arrears of pay and pension from 1.1.1947 onwards, claiming that, he was a workman and that the amount claimed in the application were liable to be computed and paid to him under Section 33.C(2) of the Industrial Disputes Act. Though the applicant herein contested the above said application, inter-alia contending that the first respondent herein was not a workman, as defined in the Industrial Disputes Act, and that, the Labour Court had no jurisdiction to adjudicate the claim made in the LCA under Section 33.C(2) of the Industrial disputes Act, the second respondent herein rejected the contentions and passed an order on 8.8.84 (Annexure A-1) directing the applicant herein to pay to the first respondent a sum of Rs.63,000/-. Challenging the above order, the applicant had filed a Writ Petition CWA No.441/85 before the ~~High Court of Delhi~~ High Court of Delhi. On 21.2.1985 when the above writ petition came up for hearing the ~~High Court of Delhi~~ High Court of Delhi passed an interim order staying the implementation of the order of the second respondent in LCA 94/1981. However, before the said order could be served on the first respondent, payment persuant to the order was made. The Writ Petition of the applicant CWA 441/1985 has been admitted and the same is pending before the ~~High Court of Delhi~~ High Court of Delhi. In the meanwhile, the first respondent filed

LCA98/1985 before the second respondent under Section 33.c(2) of the Industrial Disputes Act, claiming that he was entitled more to get certain amount based on the decision in LCA 94/1981.

The claim was made under four heads. Item No.(iii) of the claim was for Rs.3077.15/ being pension and dearness relief on pension, for the period subsequent to 31.3.1981. The applicant contended that the first respondent was not a workman, that he was not entitled to claim the amount, that the order of the second respondent in LCA 94/1981 is under challenge before the Hon'ble High Court of Delhi and that the claim made was not sustainable. The second respondent without advertizing to the contentions raised in the reply statement of the applicant herein, allowed the claim of the first respondent for Rs.3077.15 and interest totally amounting to Rs.5000/- and by the impugned order dated 5.1.1990 directed the applicant to pay a sum of Rs.5000/- to the first respondent within two months from the date of the order. The other claims were dis-allowed. It is challenging this order of the second respondent dated 5.1.1990, that this application has been filed by the applicant.

2. It has been alleged in the application that the second respondent has gone wrong in not considering the preliminary objections raised by the applicant and in allowing the claim under item No.(iii), solely ~~passing~~ basing on the order in LCA 94/1981, inspite of the fact that the above said order was under challenge before the High Court and there was a stay of implementation of the order.

3. The first respondent in his reply statement has contended that the Tribunal has no jurisdiction to entertain the application, that the application is barred by limitation and that there is no error in the order of the ^{second} first respondent requiring judicial intervention by this Tribunal.

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4. When the application came up for final hearing, Shri ~~Shyam~~ Moorjani, counsel ~~appeared~~ for the applicant. None appeared for the respondents. However, we have gone through the pleadings and have heard learned counsel for the applicant. A reading of the order of the second respondent in LCA 98/1985 at Annexure A-5 makes it clear that the second respondent did not consider the preliminary objections raised by the applicant, in the reply statement filed before it. It appears that the second respondent simply followed the order in LCA 94/1981, despite the fact that the Writ Petition ~~Ex~~ CWA 441/85 had been admitted by the High Court in which the order in LCA 94/1981 was under challenge and that, an order of interim stay had been issued by the ~~Ex~~ High Court staying the implementation of the order in LCA 94/1981. It appears that the fact that the order of stay had been issued by the ~~Ex~~ High Court of Delhi was not brought to the notice of the second respondent at the time 98/1985 when the LCA was heard. As the order in LCA 94/1981 having been challenged before the ~~Ex~~ High Court of Delhi, has not become final on the date on which the impugned order at Annexure A-5 was passed by the second respondent, it was incumbent upon the second respondent to have dealt with the various contentions raised by the applicant before it in LCA 98/1985. The second respondent should have given its finding as to whether the first respondent was a workmen and should have considered whether the claim made fell within the purview of Section 33.C(2) of the Industrial Disputes Act or not. Even if a ~~xx~~ question whether the claim do fall within the ambit of Section 33.C(2) of the Industrial Disputes Act or not was not sustainable- specifically raised before ~~xx~~ exercising jurisdiction under Section 33.C(2) of the Industrial Disputes Act, the second respondent was bound to consider whether it had got jurisdiction to entertain and settle the dispute. We are convinced that the second respondent has not

considered these aspects and given findings on that.

5. The contention of the first respondent that the application is barred by limitation has no basis; because, the application has been filed by the applicant before the expiry period under Section 19/ of one year from the date of the order at Annexure A-5. Further, the contention of the first respondent that this Tribunal has no supervisory jurisdiction over the second respondent has also no force because the dispute in this case concerns a service matter and in view of the decision of the Hon'ble Supreme Court in Sampathkumar's case, this Tribunal being a substitute of the High Court in service matters, can exercise the powers, which the High Court could exercise under Art. 226 and 227 of the Constitution in such matters.

6. Since the second respondent has not considered and decided the objections raised by the applicant in his reply statement to the LCA 98/1985, we deem it necessary that the matter should be remitted to the second respondent for a fresh disposal in accordance with law and considering the rival contentions on merits. In the result, the impugned order at Annexure-A-5 of the second respondent dated 5.1.1990 in LCA 98/1985 is set aside and the LCA is remanded to the second respondent for a fresh disposal in the light of the observations made above, in respect of claim no.(iii) mentioned in paragraph 2 of the impugned order.

7. A copy of this order may be sent to the second respondent. The parties will appear before the second respondent for a fresh hearing of LCA 98/1985 on 20.12.1994. No orders as to costs.


(B.K. SINGH)
MEMBER (A)


(A.V. HARIDASAN)
MEMBER (J)