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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1575 of 1990

New Delhi, this the 22nd day of August, 1994.

HON'BLE SRI A.V. HARIDASAN, MEMBER (J)

HON'BLE SRI B.K. SINGH, MEMBER (A)

Union of India through
its General Manager, N.R.
Baroda House, New Delhi

.. Applicant

(By Sri Shyam Moorjani, Advocate)

V/s

1. Sh. Hota Ram S/o Sri Punnu Ram
H.No.132-C, Vivek Vihar,
Delhi.

2. Presiding Officer,
Central Govt. Labour Court,
Nirmal Tower, Barkhamba Road,
New Delhi-110001

3. Asst. Collector,
Old Civil Supplies Building,
Tis Hazari, Delhi

.. Respondents

(By Sri M.B.D. Thareja, Advocate)

ORDER (ORAL)

HON'BLE SRI A.V. HARIDASAN, MEMBER (JUDL.)

The challenge in this application filed by
the General Manager, Baroda House, New Delhi is
against the legality, propriety and correctness,
of the order dt.21-12-89 of the 2nd respondent,
Presiding Officer, Central Govt. Labour Court, Delhi
by which the applicant had been directed to pay to

the first respondent a sum of Rs.15,724/- within two months from the date of order. The 1st respondent who retired from service on 31-10-83 while working as Chowkidar of Rest House in I.D.W., Ghaziabad filed L.C.A.No.108/86 on 25-8-86 praying that the Over Time Allowance (for short OTA) due to him from 1-8-74 to 6-4-77 may be computed U/s 33-C(2) of I.D.Act and order be made directing the respondents therein to pay him the same with interest at 12% per annum. The applicant herein who was the respondent before the 2nd respondent in the detailed reply statement filed against the claim ~~in~~ inter alia contended that the claim was barred by limitation that ~~the~~ the applicant before the Labour Court who was classified as excluded for the purpose of hours of employment rule and as he was free to adjust his duty hours according to the need, he was not entitled to any OTA and that therefore the claim was untenable.

2. The learned Presiding Officer of Central Govt. Labour Court, the 2nd respondent, however rejected the contentions and has allowed the claim of the 1st respondent. It is therefore, the applicant has filed this application.

3. The 1st respondent seeks to justify the impugned order. In the reply statement he has contended that the case put forth by the applicant before the Labour Court that the applicant was excluded for the purpose of hours of employment rules was not true fact and therefore he was entitled to maintain the claim.

4. ^{when} In the application came ^{up} before final hearing, Sri M.B.D. Thareja appeared for the respondents. None is present for the applicant. We have carefully gone

the pleadings and have heard the counsel for the respondents. Two questions arise for determination in this case. One, whether the claim preferred by the 1st respondent had to be turned down on the ground of delay in latches, and two, whether the 2nd respondent Labour Court had jurisdiction to determine the issue involved in the case while acting under the provisions of 33-C(2) of the I.D. Act. We will take up the questions in succession.

5. Admittedly, the 1st respondent who retired from service in the year 1983 moved the Labour Court only in the year 1986 and that too claiming OTA for the period between 1974 and 1977. In cases where OTA is due and admissible the claim thereof has to be preferred within time frame as mentioned in the relevant rules. There was no allegation in the claim petition that the 1st respondent had at the appropriate time preferred any claim for the OTA, if he had worked above the usual recess hours. If the 1st respondent had a grievance that his due OTA was not paid to him in time, normally and naturally he would have agitated his grievance at the appropriate time. He did not put forth any second claims. When the retiral benefits were paid to the 1st respondent even then he did not make any claim for Over Time Allowance. Though it is settled that the provisions of the Indian Limitations Act is not applicable to the proceedings before the forum prescribed under the Industrial Disputes Act, every claim has to be viewed in the circum-

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stances in which it is made and if the forum before which a claim is preferred on the assessment of the facts and circumstances of the case is convincing^{ed} that a particular claim is highly belated even without the aid of the ^{Legislation} relative Act, it is permissible for the forum to reject such a belated claim. We are of the considered view that in this case the 2nd respondent should have rejected the claim on the ground that the claim by the 1st respondent was stale and unduly belated.

6. Coming to the question of the jurisdiction of the 2nd respondent to decide the issue involved in this case, we are again of the considered view that the claim preferred by the 1st respondent did not fall within the purview of Sec. 33-C(2) of the I.D. Act for the simple reason that the applicant had in the reply statement filed before the 2nd respondent taken a categorical stand that the 1st respondent herein having excluded for the purpose of hours of employment rules was not entitled to payment of DTA. This disputed question of entitlement could not have been adjudicated by the 1st respondent. ^{U/s 33-C(2) of I.D. Act} This contention was raised by the applicant on the basis of a circular issued by the Railway Board by the General Manager on 7-6-1974 excluding the Chowkidars, Bunglow Peons etc. from the purview of hours of employment regulation. The Labour Court ^{on a} could have decided this issue only in our reference made U/s 10 of the I.D. Act ^{only}. Therefore, we find that the impugned order of the 2nd respondent is liable to be struck down. In the result, the application is allowed and the impugned order of the 2nd respondent dt. 21-12-89 is set aside. There is no order as to costs.

(B.K. Singh)
Member(A)

kmv

(A.V. Haridasan)
Member(J)