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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 2186/90

New Delhi this the 26th day of October, 1994

THE HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN
THE HON'BLE SHRI P. T. THIRUVENGADAM, MEMBER (A)

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

And

Divisional Personnel Officer,
Northern Railway,
DRM's Office,
State Entry Road,
New Delhi.

... Applicants

By Advocate Shri Shyam Moorjani

Versus

1. Shri Raja Ram S/O Shri
Shri Jhaman Singh,
Casual Khalasi under
PWI/New Delhi, Northern
Railway, Delhi Division,
New Delhi.

2. The Presiding Officer,
Central Government Labour Court,
New Delhi.

3. The Assistant Collector,
Old Civil Supplies Building,
Tis Hazari, New Delhi. ... Respondents

None for the Respondents

O R D E R (ORAL)

Shri Justice S. C. Mathur, Chairman -

This application was called out earlier in the day when neither the counsel for the applicants nor the respondents were present. Respondent No.1 has filed his reply but he has not engaged any counsel. At the time the case was called out for hearing he was not present. We had accordingly dictated the

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order of dismissal in default of appearance. Before that order was typed out, the learned counsel for the applicants appeared and prayed that he may be heard. We have accordingly heard the learned counsel.

2. This application is directed against the order dated 1.12.1989 passed by the Central Government Labour Court, New Delhi for computing the first respondent's claim at Rs.7,946/- and directing the applicants to pay the same to him. This order has been passed in proceedings under Section 33-C (2) of the Industrial Disputes Act.

3. In his application under Section 33-C, respondent No.1 raised the plea that he was working as a casual Khalasi and was not being paid wages prescribed for a regular Khalasi. According to him, the principle of equal pay for equal work was applicable and, therefore, he was entitled to wages at the same rate as were being paid to regular Khalasis. He has indicated the period of his engagement and also the date from which he had been disengaged. The wages were claimed from 12.7.1979 to 30.11.1985.

4. In the reply filed before the Labour Court by the applicants, the period of service claimed by the respondent was denied. It was also asserted that the respondent obtained appointment as casual Khalasi by practising fraud upon the department inasmuch as he produced a bogus certificate of having been engaged on casual basis. The applicants also challenged the maintainability of the application

under Section 33-C. Their case was that the application involved determination of entitlement while under Section 33 only computation was permissible.

5. From a perusal of the order of the Labour Court it appears that four items of claim had been preferred by respondent No. 1, namely, (i) difference of wages on the basis of principle of equal-pay-for-equal-work for the period 12.7.1979 to 30.6.1981 — Rs. 3,960/-; (ii) wages less paid for the period 1.3.1983 to 30.6.1983 — Rs. 660/-; (iii) wages less paid for the period 28.2.1984 to 30.11.1985 — Rs. 6,300/-; and (iv) wages not paid for the period 1.12.1985 to 30.4.1986 — Rs. 3,750/- (total Rs. 14,670/-).

6. The respondent's case was that he was not allotted work w.e.f. 1.12.1985. The Labour Court accordingly came to the conclusion that claim No. (iv) related to entitlement and could not be raised through an application under Section 33-C. The Labour Court accordingly rejected the application so far as it related to the said claim.

7. The Labour Court thereafter proceeded to consider the first three claims. The respondent had referred to certain decisions rendered by their lordships of the Supreme Court laying down the principle of equal-pay-for-equal-work. Applying those principles to the facts of the present case, the Labour Court came to the conclusion that the respondent was entitled to wages at the same rate

at which they were being paid to regular Khalasis. The Labour Court had obtained from the department a calculation memo if the facts stated by the respondent were found to be correct. According to that calculation memo a sum of Rs.7,946.15 would be payable to the respondent if his claim was found to be sustainable. On the basis of that calculation memo, the Labour Court rounded off the amount to Rs.7,946/- and directed its payment against the applicants. The Labour Court did not go into the factual disputes raised by the applicants. The applicants had not admitted the period for which the respondent claimed to have discharged duties.

8. In support of the proposition that an application under Section 33-C lies only when the entitlement has already been established, the learned counsel for the applicants has cited - (1) Union of India vs. Motu Ram - O.A. No. 1575/90 decided on 22.3.1994; (2) Union of India vs. Ram Swarup Sharma - R. A. No. 338/93 decided on 5.10.1993; and (3) Union of India vs. Ram Sarup Sharma - O.A. No. 450/90 decided on 25.1.1991.

9. The above are the decisions of the Central Administrative Tribunal. Apart from the said decisions, the learned counsel has placed reliance upon the decision rendered by their lordships of the Supreme Court in State Bank of Bikaner & Jaipur Vs. R. L. Khandelwal (Civil Appeal No. 685/66 decided on 6.9.1967). In this case, after referring to earlier decisions, their lordships observed as follows :-

"These decisions make it clear that a workman cannot put forward a claim in an application under Section 33-C (2) in respect of a matter which is not based on an existing right and which can be appropriately the subject matter of an industrial dispute only requiring reference under Section 10 of the Act."

To the same effect are the decisions of this Tribunal.

10. Applying the principle laid down by their lordships, we find that the present was also a case in which the claim of respondent No.1 was not undisputed and it had also not been already adjudicated upon. Accordingly, the claim was not in respect of an existing right. The claim required adjudication through proceedings under Section 10 of the Industrial Disputes Act. This aspect of the matter has not been considered by the Labour Court.

11. The claim of the applicant in his application before the Labour Court was that he had been working continuously since 12.7.1979 till 30.11.1985. This claim had already been disputed by the applicants. The applicants had indicated the periods during which respondent No.1 worked. These periods if correct, show that the employment of respondent No.1 was not continuous. The effect of the break in employment was also required to be considered. The respondent's claim that the breaks were artificial while the claim of the applicants was that they were on account of non-availability of work.

12. In view of the above, we are of the opinion that the Labour Court had no jurisdiction to adjudicate upon the dispute raised by respondent No.1 through

application under Section 33-C (2) of the Industrial Disputes Act. Accordingly, the order of the Labour Court is liable to be set aside.

13. The original application is accordingly allowed and the order dated 1.2.1989 of the Central Government Labour Court, New Delhi, is hereby quashed. There shall be no orders as to costs.

(P. T. Thiruvenkadam)

Member (A)

(S. C. Mathur)

Chairman

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