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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. C.A. 450/1990. DATE OF DECISION: 25-1-1991.

Union of India Applicant.
v/s.

Shri Ram Sarup Sharma
& Another Respondents.

COURT: Hon'ble Shri P.C. Jain, Member (A).
Hon'ble Shri J.P. Sharma, Member (J).

Shri Shyam Moorjani, counsel for the applicant.
Shri O.P. Gupta, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Shri P.C. Jain, Member (A))

JUDGMENT

This application has been filed by the Union of India under Sections 14 and 19 of the Administrative Tribunals Act, 1985, praying for setting aside/cancellation the impugned order dated 13.7.1989 passed in L.C.A. No.33 of 1987 titled "Shri Ram Sarup Sharma Vs. The General Manager, Northern Railway and Another" by the Presiding Officer, Central Government Labour Court, New Delhi. The applicant in the aforesaid L.C.A. is respondent No.1 herein.

2. The facts of the case, in brief, are as under: -

Respondent No.1 herein retired from the service of the applicant as Head Clerk/Assistant Office Superintendent on 31.12.1984. While in service, he was allotted a Railway quarter No.66/4, Type-II, Subzimandi, Railway Colony, Delhi. After his retirement on superannuation, he was allowed to retain the said quarter from 1.1.1985 to 28.2.85 at normal rent and from 1.3.85 to 31.3.85 at double the normal rent or double the assessed regular 10% of the emoluments, whichever was higher. He, however, vacated the said quarter only on 20.10.1986. The applicant treated the occupation of the said quarter for the period from 1.9.85 to 20.10.86 by respondent No.1 as unauthorised and ordered for recovery

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of market rent for the unauthorised period from his settlement dues, vide letter dated 6.1.1987 (Annexure R-1). On the strength of this letter, the applicant deducted the outstanding rent of the said quarter from the Death-cum-Retirement Gratuity of respondent No.1, and paid the balance amount to him on 15.1.1987. Aggrieved by the action of the applicant, respondent No.1 filed L.C.A. No.33 of 1987 before the Central Government Labour Court, New Delhi claiming for refund of the recovery made out of his D.C.R. Gratuity plus interest on the delayed payment of D.C.R. Gratuity paid or payable to him. Respondent No.1 also claimed for a payment of Rs.400/- on the ground that he had been given the higher grade of pay with effect from 1.1.1984 after his retirement on 31.12.1984 and the arrears of Rs.400/- were payable to him. The Central Government Labour Court, New Delhi vide its order dated 13th July, 1989 allowed the claim of respondent No.1 to the extent of Rs.7,526/- and directed the applicant herein to pay to respondent No.1 a sum of Rs.7,526/- within two months of the date of that order, failing which the applicant herein was to be liable to pay interest at 12% thereon till actual payment. It is this order of the Central Government Labour Court, New Delhi, which has been impugned in this O.A., making the Presiding Officer, Central Government Labour Court, New Delhi as respondent No.2.

3. The contention of the applicant is that respondent No.1 was liable to pay the market rent for the aforesaid quarter for the unauthorised retention period from 1.9.85 to 20.10.1986 in accordance with the orders dated 5/6.1.1987 issued by the General Manager (Engg.), Headquarters Office, New Delhi (Annexure R-1) and as such, the applicant had rightly recovered the dues on that account from the DCRG of respondent No.1. It is further stated that retired

employees, like respondent No.1, was not entitled to any arrears on account of proforma / notional fixation in the matter of implementation of the restructuring orders introduced with effect from 1.1.1984 and, as such, respondent No.2 has erred in awarding the same to respondent No.1. It is averred that respondent No.2 had not appreciated that respondent No.1 confused the issues by bringing in the case of his son Ajay Kumar who was not even a party in the case. On the other hand, the applicant has pleaded that Ajay Singh son of respondent No.1 was working as Peon and had applied for regularisation of the aforesaid quarter in his name upon the retirement of his father (respondent No.1), and he was allotted Type-I quarter at Subzimandi which he did not occupy and sought change to Delhi Kishanganj Railway Colony. The request of Ajay Singh was acceded to and he was allotted railway quarter No.146/F at Kishanganj Railway Colony, Delhi, which he occupied.

4. Respondent No.1 has contested the O.A. on the following grounds: -

- (1) It is barred by time as the order/award was passed by the Central Government Labour Court on 13.7.1989 under Section 33-C(2) of the I.D. Act and the present application was filed in March, 1990.
- (2) In such a case, the High Court has the exclusive jurisdiction, and the Central Administrative Tribunal cannot supplant its jurisdiction over Article 226 of the Constitution of India.
- (3) The Administrative Tribunals Act provides remedy/ relief exclusively to the employee and not to the employer.
- (4) Ajay Singh, son of respondent No.1, being a Railway servant became entitled to

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accommodation by operation of law and accordingly he was allotted accommodation of his entitlement and the rent, therefore, was to be charged from him and in the circumstances, withholding of settlement dues of respondent No.1 became unauthorised and illegal.

(5) Ajay Singh, son of respondent No.1 vacated the said accommodation and shifted to an alternative premises of his entitlement in Wazirpur Area and as such, Ajay Singh did not automatically become unauthorised occupant, nor respondent No.1 could be subjected to recovery of rent at the market rate. Ajay Singh was allotted Railway quarter No.1/A-3, Wazirpur and earlier 146-F at Delhi Kishanganj, Delhi and he has been paying the normal rent and no H.R.A. is paid to him.

5. In the rejoinder, the applicant has reiterated the facts as given in the O.A. and has stated that the preliminary objections raised on the maintainability of the O.A. and the jurisdiction of the C.A.T. are absolutely wrong, baseless and denied, and that respondent No.1 was solely responsible and liable to make payments for the unauthorised occupation of the railway quarter which had been allotted in his name. The letter dated 12.12.1986, from the General Manager/ Engg., Northern Railway, New Delhi, which was quoted in the order of the Central Govt. Labour Court, was not the final order and that another communication dated 6.1.987 was issued by the same office in continuation of the communication dated 12.12.86.

6. We have heard the learned counsel for the parties and have gone through the record of the case carefully.

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7. We first take up the point of jurisdiction raised by respondent No.1. His contention in this regard to the effect that the Administrative Tribunals Act provides remedy / relief exclusively to the employee and not to the employer, is not tenable. The preamble of the Act ibid makes it clear that it has been enacted to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution and for matters connected therewith or incidental thereto. It does not specify anywhere that only disputes raised by the employees can be entertained by the Tribunal. A similar issue had been raised in O.A. 2415/1989 (Council of Scientific & Industrial Research & Anr. Vs. Shri R.B. Lal) and in our order dated 9.10.1990 passed therein, we had held that the Central Administrative Tribunal has jurisdiction to entertain an application filed by an employer also. A similar view was taken by a Division Bench of the Patna Bench of the Central Administrative Tribunal in O.A. 449/1987.

8. Another objection relating to the jurisdiction is to the effect that the High Court alone has the jurisdiction in the matter. Admittedly no appeal lies against an order passed by a Labour Court in proceedings under Section 33-C(2) of the Industrial Disputes Act and only a writ petition to the High Court under Article 226 of the Constitution of India can be filed by the party aggrieved by an order passed by the Labour Court in the aforesaid proceedings. In regard to service matters, the jurisdiction of the High Court under Article 226 of the Constitution

has been ousted and has come to vest in the Central Administrative Tribunal. A five-Member Bench of the Central Administrative Tribunal (to be referred as the larger Bench) in the case of A. Padmavally Vs. CPWD (O.A. 576/86) and a bunch of 125 other cases, also held that the powers of the Administrative Tribunal are the same as those of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries Ltd. Vs. Rohtas Industries Staff Union (AIR 1976 SC 425).

9. An objection about limitation has also been raised. However, this objection is without any substance. The Central Government Labour Court passed its order on 13.7.1989 and the present O.A. had been filed in March, 1990, and, as such, the O.A. is within limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

10. Learned counsel for respondent No.1 also urged before us in the course of oral hearing that before the applicant herein filed the O.A. before the Tribunal, it should have deposited the amount as per the order of the Central Government Labour Court, as required by Section 17-B of the Industrial Disputes Act, and that as it has not been done, the application is not maintainable. We are unable to uphold this objection simply because Section 17-B of the I.D. Act is not at all applicable to the case before us.

11. Having come to the conclusion that the application is maintainable, we now proceed to deal with the same on the merits of the case. The applicant has assailed the order of the Central Government Labour Court mainly on the ground that it has exceeded its jurisdiction. It has been argued that Section 33-C of the Industrial Disputes

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Act deals with recovery of money due from an employer where such money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B. In the case before the Labour Court, there was neither any settlement nor an award, nor there was a case under Chapter V-A or Chapter V-B, under which the applicant therein ~~xxxxxxxxxxxxxx~~
~~xxxxxxxxxxxxxx~~ had sought computation of his claim and an order for payment thereof. Learned counsel for respondent No.1 also cited the cases of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another (1974) 4 Supreme Court Cases 696 and M/s. Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another and Management of Hindustan Copper Ltd. Vs. N.K. Saxena and Others (1978) 2 Supreme Court Cases 144. In both these cases, it was held that the proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947 are in the nature of execution proceedings and determination of the rights and the liabilities of the parties do not fall within the purview of such proceedings. The workmen cannot put forward a claim in an application under Section 33-C(2) in respect of a matter not based on an existing right. For example, in a case of a Workman claiming computation of his wages under Section 33-C(2), on his dismissal from service, the Labour Court cannot adjudicate on the merits of the dismissal.

12. In the case before us, the Central Government Labour Court appears to have exceeded its jurisdiction in the light of the law laid down by the Hon'ble Supreme Court, as discussed above. The impugned order of the Labour Court clearly shows that the applicant therein had been allotted, while in service, a Type-II Railway quarter. On the other hand, it is clear that his son, who was appointed as a Peon, was entitled to Type-I quarter

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and, as such, Type-II quarter in the name of his father, could not have been regularised in the name of the son in accordance with the Railway Board's instructions on the subject, as the son was entitled only to a Type-I quarter, which was allotted to him and which he ultimately occupied. The Central Government Labour Court based its order on the basis of the letter dated 12.12.1986 from the office of General Manager/Engg., Northern Railway, New Delhi, which has been reproduced in its order. The letter dated 12.12.1986 clearly indicates that "Proposal for regularisation of above noted quarter was not agreed to in favour of Sh. Ajay Kumar vide office letter No.290-W/18/1421 dt. 18.3.85." It was further stated in the aforesaid letter of 12.12.1986 that "As Shri Ajay Kumar has been under unauthorised occupation of type II quarter from 1.9.85 to 20.10.86, rent should be charged from him for this unauthorised period as per extant rules." The Central Government Labour Court adjudicated in favour of the applicant therein, who is respondent No.1 in the instant C.A. obviously because the subsequent letter dated 6.1.1987 from the office of General Manager (Engg.), Northern Railway, New Delhi (Annexure R-1) was not before it, which ordered for recovery of the market rent for the period from 1.9.1985 to 20.10.86 from the settlement dues of Shri Ram Sarup Sharma, for his unauthorised occupation of Railway Quarter No.66/4, Subzimandi. Applicant therein had been allowed to retain the aforesaid Railway Quarter for a period of two months on payment of normal rent and for a period of further six months on payment of increased rent. Thus, since he did not vacate the quarter upto 20.10.86, the period from 1.9.1985 to 20.10.86 was to be treated as unauthorised occupation of respondent No.1, who was the allottee of the said quarter during the period of his Railway service, in accordance with the extant rules.

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The above discussion clearly establishes error of jurisdiction and a wrong finding on facts presented contrary to extant rules.

13. As regards the claim of the applicant in the proceedings before the Labour Court for arrears of pay on his promotion in pursuance of restructuring of cadre from 1.1.1984, here also, the decision of the Labour Court was beyond its jurisdiction in proceedings under Section 33-C(2) of the Industrial Disputes Act. The case of the respondents therein was that no arrears were payable to the applicant therein inasmuch employees who had retired were not entitled for any arrears as in their case only notional fixation of pay was to be done. The applicant therein had not filed or produced any order to the contrary. The Labour Court gave its findings after holding on the basis of a decision of the High Court of Punjab & Haryana in the case of Jagjit Mohan Singh Bhalla and Others Vs. Union of India and Others - 1975 (II) LLJ page 243, that the applicant was entitled to arrears. This was again a case of adjudicating upon a right of the claimant which was not within the purview of the proceedings under Section 33-C(2) of the I.D. Act.

14. In view of the foregoing discussion, the decision of the Central Government Labour Court in L.C.A. 33/87 cannot be sustained and the impugned order dated 13th July, 1989 is hereby set aside. The application is accordingly allowed. We, however, leave the parties to bear their own costs.

Sharma
(J.P. SHARMA)
Member (J)

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(P.C. JAIN)
Member (A)