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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 736/90. DATE OF DECISION: 25-1-1991.

Union of India .... Applicant.

V/s.

Shri Bhagwan Dass & Ors. .... Respondents.

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

Shri Shyam Moorjani, counsel for the applicant.
Shri A.K. Behra, counsel for respondent No.1.
None for the other respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? ✓

2. Whether to be referred to the Reporter or not? Yes

3. Whether their lordships wish to see the fair copy of the judgment? No.

4. Whether to be circulated to all Benches of the Tribunal? No.

(J.P. SHARMA)
Member (J)

(P.C. JAIN)
Member(A)

(8)

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Shri Shyam Moorjani, counsel for the applicant.
Shri A.K. Behra, counsel for Respondent No.1.
None for the other respondents.

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

JUDGMENT

This is an application filed by the Union of India under Sections 14 and 19 of the Administrative Tribunals Act, 1985 against the order dated 7.12.1989 passed by the Central Government Labour Court, New Delhi in LCA No.234/84 titled "Shri Bhagwan Dass Vs. The General Manager, Northern Railway" praying for setting aside/quashing the aforesaid impugned order.

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

Respondent No.1, who was the applicant in L.C.A. No.232/84 decided by the Central Government Labour Court, New Delhi, vide its order dated 7.12.1989, had been working as a Highly Skilled Train Lighting Fitter (H.S.T.L.F.) in the Northern Railway. He was directed to present himself for Medical Examination, vide Memo dated 22.10.79 (Annexure A-1 to the O.A.) received by him on 24.10.79. The Divisional Medical Officer, Northern Railway, Delhi, was also separately addressed for special medical check-up of respondent No.1 for the reasons given in Annexure A-1 dated 22.10.79, given to respondent No.1 on 24.10.79. Both these communications were signed by the Electrical Foreman. According to respondent No.1, since Annexure A-1 had not been signed by the Senior Divisional

Electrical Engineer, New Delhi, the Medical Authority did not entertain the same and he accordingly reported the matter to office on 26.10.1979. He was handed over a second medical memo dated 27.10.1979 signed by the Senior Divisional Electrical Engineer (Annexure A-2) on 29.10.1979. According to the applicant, respondent No.1 absented himself from 26.10.1979 to 28.10.1979 and reported to the Divisional Medical Officer, Delhi on 29.10.1979 for special medical check-up, when he was declared unfit for B-I medical category and fit for C-II medical category(Annexure A-3). From 29.10.1979 to 12.12.1979, respondent No.1 remained under medical observation, and according to para 1017(d)(1)(b) of Indian Railway Establishment Manual (Annexure R-1), he was considered to be on leave. He was taken back in an alternative post of TLF (which was a lower post compared to H.S.T.L.F.) with effect from 18.1.1981. However, according to respondent No.1, no alternative job was given to him but he was put back to same job/post of Train Lighting Fitter and, therefore, para 1017(d)(2) of Indian Railway Establishment Manual (Annexure R-II) applies to him and according to this para, the entire period was to be treated as duty. The applicant treated the period from 26.10.79 to 28.10.79 as absence from duty and deducted wages for the period. Respondent No.1 was not paid full wages for the month of November, 1979, December, 1979, January, 1980 to March, 1980, September, 1980 to January, 1981 as either the period of absence was treated as leave of the kind due to him or it was treated as an extraordinary leave when no leave was due to him. Respondent No.1 filed an application under Section 33-C(2) of the I.D. Act claiming a sum of Rs.7735.00 in the Central Government Labour Court, New Delhi (L.C.A. No.232/84) - Annexure A-6, which was allowed and the applicant herein was directed to pay a total amount of Rs.7,735/- plus 12% interest thereon, which worked out to / Rs.15,952/-, within two months of the date of order, vide the impugned order dated 7.12.1989 (Annexure A-8).

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

4. The applicant has based its plea mainly on the provisions of Railway Board circular dated 24.1.1977 (PS No.6701) which is quoted as under: -

> "If no suitable alternative job is immediately available he should be given leave in order to find out one. Such leave is granted according to ordinary leave rules but when the railway servant has less than 6 months leave to his credit such leave shall be made up to 6 months by grant of extraordinary leave without pay."

It is further stated that respondent No.1 was taken back in alternative post of TLF (and not H.S.TLF), which is a lower category as he was fit for C-II medical category only and he had no right to challenge the action of the applicant after a lapse of more than three years and after having retired and enjoyed all the benefits.

5. Respondent No.1 has contested the application on merits, besides raising the following preliminary objections: -

(1) Sections 14 and 19 of the Administrative Tribunals Act, 1985 provide for the applications by the Government servants and not by the Government.

(2) The jurisdiction of the Labour Court under Section 33-C(2) of the I.D. Act, 1947 was specifically saved regarding such service matters and the Labour Courts have not been made subject to the appellate powers of the Tribunal.

(3) Section 29 of the Act saves the jurisdiction of the Labour Courts otherwise the claim filed by Respondent No.1 before the Central Government Labour Court would have stood automatically transferred to the Tribunal.

(4) The Tribunal does not have the power of judicial review as is enjoyed by the High Court under Articles 226 and 227 of the Constitution of India.

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(5) Even under Section 29-A of the Administrative Tribunals Act, the order of a Labour Court is not subject to appellate jurisdiction of the Tribunal as it is not the Court.

(6) The present application is barred by limitation.

Respondent No.1 has pleaded that no alternative job was given to him but he was put back to the same job/post of Train Lighting Fitter and as such, he is covered by para 1017(d)(2) of the Indian Railway Establishment Manual. In terms of para 1017(d)(1)(b) of the Indian Railway Establishment Manual, for the period from 26.10.1979 to 28.10.1979 and the period from 29.10.1979 to 12.12.1979, he was to be considered as on leave and as such, he was not under an obligation to present himself for duty. During the course of oral submissions also, learned counsel for respondent No.1 reiterated that respondent No.1 was posted back in the same pay scale and on the same pay, which he was getting prior to his special medical examination, and his case is covered by para 1017(d)(2) of the aforesaid Manual, which reads as under: -

"(2) If the examining medical authority subsequently expresses the opinion that it was unnecessary for the Railway servant to have been relieved from duty, he will be put back to duty and such leave shall not be debited to the leave account of the railway servant. The period of absence from date of relief from duty in terms of the above provision to the date he is put back to duty shall be treated as duty."

Although no such subsequent opinion of the examining medical authority to the effect that it was unnecessary for the Railway servant to have been relieved from duty, was produced, respondent No.1 took the plea that since he was put back to duty on the same post, the entire period of his absence has to be treated as duty, as has been done by the Central Govt.

Labour Court, New Delhi.

6. In the course of his oral submissions, learned counsel for the applicant drew attention to the Full Bench judgment of the Central Administrative Tribunal dated 6.10.1987 in the case of General Manager, Southern Railway, Madras & Others Vs. Presiding Officer, Central Government Labour Court, Quilon & Others (T.A. 213 to 217/1987) to emphasize that the Central Administrative Tribunal can entertain all service matters including those governed by the Industrial Disputes Act. It was also averred that the applicant herein had raised an objection before the Presiding Officer of the Central Government Labour Court also that L.C.A. 237/84 filed by respondent No.1 herein, was not maintainable under Section 33-C(2) of the I.D. Act, vide Annexure A-7, since he had not worked during the period of alleged claim. It was further averred that although the Labour Court is not governed by limitation and the bar of limitation is not applicable to an application under Section 33-C(2), yet the laches and acquiescence on the part of respondent No.1 herein in filing his L.C.A. No.237/84 even beyond three years of his retirement, could not be justified and waived, thus making the orders of the Central Government Labour Court void ab-initio. Learned counsel for the applicant herein also stressed that although respondent No.1 continued to have the same scale of pay in which he had been working prior to his special medical examination, he was placed on a lower post of Train Lighting Fitter (which was in category III) as against the post of Highly Skilled Train Lighting Fitter (which was categoried as I and II).

7. We first take up the objection raised by respondent No.1 with regard to the jurisdiction of the Central Administrative Tribunal. His contention in this regard to the effect that the Administrative Tribunals Act provides remedy / relief exclusively to the employee and not to Union of India, 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 Adm. Tribunals of disputes and / complaints with

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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 in the case of A. Padmavalley 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

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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 7th December, 1989 and the present O.A. had been filed in April, 1990, and, as such, the O.A. is within limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

10. Having come to the conclusion that the application is maintainable, we now proceed to deal with the same on the merits of the case.

11. Learned counsel for the applicant relied on the judgments of the Supreme Court in the following cases: -

(1) Central Inland Water Transport Corporation Limited Vs. The workmen and Another (1974) 4 Supreme Court Cases 696.

(2) M/s. Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another.

and

(3) Management of Hindustan Copper Ltd. Vs. N.K. Saxena and Others.

} (1978)2 S.C.C. p. 144.

He argued that in the aforesaid cases, it has been held that proceedings under Section 33-C(2) of the Industrial Disputes Act are in the nature of execution proceedings and the rights and liabilities of the parties in these proceedings cannot be adjudicated upon by the Labour Court. He accordingly urged that the Presiding Officer of the Central Government Labour Court exceeded his jurisdiction by giving his finding in the instant case. Learned counsel for respondent No.1, on the other hand, argued that the order of the Labour Court is based on the evidence available before it and that it is neither a case of 'no evidence', nor the findings based on the above evidence can be taken as perverse. He also cited the following judgments in support of his contention that in exercise of powers under Article 226 of the Constitution of India, evidence

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tendered before the Tribunal / Labour Court / Lower Courts cannot be reappraised: -

(1) Rameshwar Prasad Agarwal
Vs. The 1st Addl. District Judge, Allahabad and others.
(AIR 1976 Allahabad 323).

(2) Sadhu Ram
Vs. Delhi Transport Corporation
(1983) 4 SCC 156).

(3) Chandavarkar Sita Ratna Rao
Vs. Ashalata S. Guram
(1986) 4 SCC 447).

In Rameshwar Prasad Agarwal's case (supra), it was held that the courts exercising jurisdiction under Article 226 of the Constitution do not sit as courts on appeal, and can interfere only in case the decision is based either on irrelevant consideration, or there is no material for the conclusion reached. In Sadhu Ram's case (supra), the Supreme Court held that the jurisdiction under Article 226 of the Constitution, though wide, but for that very reason, it has to be exercised with great circumspection. It was further observed that it it is not for the High Court to constitute itself an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those tribunals. Similarly, in Chandavarkar Sita Ratna Rao's case (supra), the Supreme Court held as below: -

"....It is well settled that the High Court can set aside or ignore the findings of fact of an appropriate court if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the courts below have come or in other words a finding which was perverse in law. This principle is well settled. In D.N. Banerji v. P.R. Mukherjee, it was laid down by this Court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Article 226 and 227 of the

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Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities. .....It is true that there were discrepancies in the evidence of the obstructionists and there was inconsistency in the conduct of the judgment-debtor in resisting the suit. Yet all these are for the courts finding facts and if such fact-finding bodies have acted properly in law and if the findings could not be described as perverse in law in the sense that no reasonable person properly instructed in law could have come to such a finding, such findings should not be interfered with within the exercise of the jurisdiction by the High Court under Article 226 and Article 227 of the Constitution."

12. Learned counsel for respondent No.1 also cited the judgment of the Supreme Court in the case of Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another (1989) 4 SCC 635, in which even though promotion granted to the respondent by the Central Administrative Tribunal was held to be erroneous, yet the Supreme Court declined to interfere under Article 136 of the Constitution as the Tribunal's decision was held to be rendering substantial justice.

13. Reverting to the findings of the Presiding Officer of the Central Government Labour Court in the case before us, it is worth-while to give below the following observations of the Presiding Officer of the Labour Court: -

"3. On a consideration of the evidence placed on record, I find that the Management has made some totally false averments in its written statement and it is really reprehensible for a State institution like the Railways to do so. The copy of the letter No.2/8-E dated 22.10.79 Ex.W-1 clearly indicates that the workman was sent for medical examination on 22.10.1979. It is, therefore, wrong

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on the part of the Management to have stated in the written statement that the applicant was sent for medical examination on 25.10.79. No evidence whatsoever has been produced to prove that the workman had absented himself from 26.10.79 to 28.10.79. This averment of the Management becomes false by implication when its pleading that the workman was sent for medical examination on 25.10.79 is proved false by the document Ex.W-1 according to which he was sent for medical examination on 22.10.79. It is not denied by the Management that the applicant was a permanent railway employee. Therefore, the action of the Management in treating the period spent by the workman on his medical examination and waiting for orders as leave of the kind due and withholding his dues is unjustified and uncalled for. However, from the admission made by MW1 Shri Bhanwar Singh, Assistant Superintendent, a new picture altogether emerges which goes to show malafides on the part of the Management to have treated the workman shabbily during the period of claim. This witness has stated that the workman was declared medically fit in B1, B2 B3 upto C-1 and passed in C-2 category with glasses vide DMO Delhi letter No.64-Medical/1/79 dated 12.12.1979 Ex. M1. It speaks volumnous about the inefficiency on the part of the Management that the workman having been declared medically fit on 12.12.79, orders of his posting were given only on 18.1.1981. What was the fault of the workman that he should have been denied his wages for the period he had to wait for the orders. It has been further stated by this witness that the workman has been sent for medical examination for B-1 classification but he passed in

C-2 with glasses. At the time of his medical examination he was working as Train Lighting Fitter Gr. III. When he resumed duty on 18.1.81 it was as Train Lighting Fitter in category C-2. He further stated that when he resumed his duty it was not a lower category but his medical classification was lower. He further stated that the workman was recruited in the year 1948 and he did not know whether the persons recruited in 1948 had been exempted from the provisions of medical classification from C1 to B1. He also could not say whether the medical classification of the applicant at the time of his recruitment was C-2 only. In the light of these statements of the witness, a question arises as to why at all the workman should have been sent for medical examination. To me, it appears that he was sent for medical examination out of pique as is revealed by the letter Ex.W-2 which shows that the workman probably had an altercation with his superior. Therefore, the entire exercise of sending the workman for medical examination and subsequent delay in issuing his posting orders was as a result of malafides and there was no fault at all of the workman. As is clear the workman was in C2 category only when he was recruited and was found fit in C2 category only and he was given same job of train lighting fitter after his medical examination which job he was holding even before his medical examination."

14. The above extracts from the order of the Presiding Officer of the Labour Court show that the findings arrived at by him cannot be said to be either as misdirected in law or as perverse. It is further seen that no adjudication as such of the rights and liabilities of the parties has been resorted to; only matters which are incidental to the claim of the

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applicant have been looked into. It is a reasoned order based on the evidence on record of the case before the Labour Court. Moreover, the applicant did not dispute, even before us, that respondent No.1 herein was not put back to duty either in the same scale of pay or on the same pay in that scale of pay in which he had been working before he was sent for medical examination. This fact really clinches the issue inasmuch as this shows that it was neither necessary for him to be sent for medical examination or to be kept in waiting for posting for such a long period.

15. In view of the foregoing discussion, the order dated 7th December, 1989 passed by the Presiding Officer, Central Government Labour Court, New Delhi in L.C.A. No.232/84 cannot be faulted and we see no reason to interfere with it. The application is devoid of merit and is accordingly dismissed. We leave the parties to bear their own costs.

(J.P. SHARMA)
Member (J)

25/11/91
(P.C. JAIN)
Member (A)