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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 2479 of 1992

New Delhi this 20th of April, 1994.

CORAM:

Hon'ble Mr. J. P. Sharma, Member (J)

Hon'ble Mr. S. R. Adige, Member (A)

Union of India
through the Chief Engineer (Construction)
Head Quarters' Office,
Northern Railway, Kashmere Gate,
Delhi.

2. The General Manager, Northern Railways, Baroda
House, New Delhi.

3. The General Secretary, IRCA/Building, Chelmsford Road
New Delhi

By Advocate Shri P. S. Mahendru

.....Applicants.

Versus

Shri Vikram Singh,
s/o Shri Budhai Dass,
Peon under General Secretary, IRCA,
IRCA Building, Chelmsford Road,
New Delhi.

By Advocate Shri Pratap Rai Respondent.

JUDGMENT

By Hon'ble Mr. S. R. Adige, Member (A)

In this application, the Union of India has
impugned the order dated 9.4.92, passed by the
Presiding Officer, Central Government Labour Court,
New Delhi in L.C.A. No. 50/89 (Annexure-A1)

'Shri Vikram Singh Vs. General Manager, Northern
Railway, New Delhi & others'.

2. The respondent Vikram Singh filed an
application dated 7.4.89 under Section 32C(2) of the
Industrial Disputes Act stating that he was appointed
as a Casual Labourer (Khalasi) in the Office of the

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Chief Engineer(Construction), Northern Railway, Delhi on 16.12.75 and continued there till 16.3.82. Thereafter, he worked under the Senior Executive Engineer (Construction) Shahdra till 31.7.84, after which he joined under the General Secretary, Indian Railway Conference Association(IRCA) New Delhi. In that application, Vikram Singh has further stated that as Khalasi he performed same/similar duties as performed by permanent Khalasis employed in the regular pay scale of Rs.196-232/- and drawing a total salary of Rs.450/- per month, but he was paid @ Rs.5.25P per day from 16.12.75 for the first 180 days, and thereafter @ Rs.6/- per day from 16.6.76 to 31.7.84. In accordance with the law laid down by the Hon'ble Supreme Court in the case 'D.Chamoli & others Vs. State of U.P.'(1986(1)LLJ 134) and Surender Singh & another Vs. Engineer-in-Chief CPWD & others (1986(1) LLJ 403) on the basis of the constitutional guarantee of equal pay for equal work, the applicant claimed Rs.25,145-50P as difference in wages from 16.12.75 to 31.7.84 and Rs.15,736/- as interest on delayed payment from 16.12.75 till 30.10.89, i.e. Rs.43,881-50P were claimed in all.

3. In the impugned order dated 9.4.92, the Presiding Officer noted that the Management did not file any statement inspite of opportunities given, and none appeared for the Management on the date; the case was fixed for hearing. Proceedings were conducted ex parte and order was passed but that ex parte order was set aside on 17.11.91. Thereafter, the case was reopened but the Management again failed to

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produce its evidence and the case was again ordered to be proceeded ex parte on 30.1.92. The evidence of the Workman had, however, been recorded, and he had also filed certain documents (Ex. W1 to W3). The Presiding Officer allowed the claim of difference in wages, but rejected the claim for interest, and directed the Management to pay Rs. 28,146/- to Vikram Singh within two months, failing which they would be liable to pay interest at 12% per annum from the date of the order till actual payment.

4. It is that order of the Presiding Officer, which has been impugned in the present O.A. filed by the Management (UOI). After hearing both the parties an interim order was passed on 23.2.93, directing the applicant (UOI) to deposit the above sum in the Labour Court but staying disbursement till the O.A. was disposed of.

5. The applicant (UOI) have filed an affidavit stating that the respondent Vikram Singh was initially appointed as a Project Casual Labourer in the Office of Chief Engineer (Construction) on 16.12.75 and was paid daily rate of wages at the rates prevailing in Delhi under the Minimum Wages Act. He was granted scale rates of pay after completing 180 days of continuous service as per extant rules and was paid as such till 15.3.82. He was thereafter granted temporary status for Class IV Post w.e.f. 1.1.81, with retrospective effect as per Railway Board's letter dated 11.9.86 issued in compliance of the Hon'ble Supreme Court's judgment in the case 'Inderpal Yadav Vs. Union of India (1985 SLJ(2) 406). He worked under the Chief Engineer (Construction)

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till 15.3.82 and was paid difference in wages on account of granting temporary status w.e.f. 1.1.81 to 15.3.82 which came to Rs.699-35P as he had already been paid Rs.5316-40P for the above period. The applicants have further averred that they had filed their reply (Annexure-A4) to the application filed by Shri Vikram Singh in the Labour Court in which they had taken the grounds -that:-

- i) the application was hit by delay and latches;
- ii) Vikram Singh's case was covered by Special Scheme formulated by the Railway Board in compliance of the Hon'ble Supreme Court's direction in Indrapal Yadav's case and benefits of that scheme having been fully granted to Vikram Singh, the UOI have fully discharged all the obligations and Vikram Singh is estopped from agitating the matter.
- iii) The UOI were not responsible for the claim preferred for the period subsequent to 15.3.82 on which Vikram Singh joined duties in IRCA which is not a Govt. Organisation.

They contend that these objections were not considered by the Presiding Officer who passed the impugned order ex parte inspite of their reply being on record.

6. We have heard Shri P.S.Mahendru, learned counsel for the applicants and Shri Pratap Rai, learned counsel for the respondent Vikram Singh.

7. Section 33C(2) of the Industrial Disputes Act reads as follows:-

"Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be

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specified in this behalf by the appropriate Government (within a period not exceeding three months);

(Provided that where the Presiding Officer of Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit)".

8. From a reading of the above, it is clear that for an application under section 33C (2) to succeed, or there should be an existing entitlement/right vested in the applicant. We are fortified our view by the judgment of the Hon'ble Supreme Court in the case 'Central Inland Water Transport Corporation Vs. The Workmen(1977(SC) L & C 21) and also the judgment of DPO Ernakulam Bench of this Tribunal in the case 'Southern Railway Vs. K.K. Gopalan' 1993(23)ATC 74. There is nothing in the impugned order of the Presiding Officer that to indicate/ an existing entitlement of right of payment of difference in wages, vested in Vikram Singh, on the date he filed the application under section 32C(2) ID Act. It is true that in a judgment of the Delhi High Court dated 11.12.73 in Civil Writ Petition No.1278/71 and connected cases, collectively titled 'Yadram Vs. Labour Court, Delhi & another', relied upon by respondent Vikram Singh, it has been held that an existing right does not mean an admitted right, and the Labour Court under section 33C(2) ID Act can hold an enquiry under the existing right before determining the money dues even though the right to make such due is disputed, but from a perusal of the impugned order, it is clear that in the absence of the UOI, an ^{by the Presiding Officer} ex parte order was passed/without any detailed enquiry, or appraisal of evidence of both the contending parties. Hence this ruling does not help the respondent Vikram Singh. Another ruling relied upon by the respondent Vikram Singh is in the case 'Ajudhia Textile Mills &

others Vs. Presiding Officer, Labour Court & another' (CWP No. 33/88 decided on 13.3.90) wherein it was held that the respondent in that case, a junior Clerk was performing all the work of Chief Clerk and was, therefore, entitled to the salary of Chief Clerk on the principle of 'equal pay for equal work'. However, that conclusion was arrived at by the Presiding Officer after recording and appraising the entire evidence produced by the Management as well as the Workman, and the Delhi High Court was also taken through the evidence adduced before the Labour Court. In the case before us, however, no evidence on behalf of the Management was recorded and the impugned order, does not contain any appraisal of the available evidence to establish the applicant's claim that his work, duties, functions and responsibilities as a Casual Labourer (Khalasi) were identical to that of a permanent Khalasi, and he was, therefore, entitled to the wages of a permanent Khalasi on the principle of equal pay for equal work. The question whether the nature of duties, work, functions and responsibilities that the applicant's shoulders while working as casual labourer (Khalasi) were the same as those shouldered by the permanent Khalasi is a question of fact which is to be determined only after the recording and appraisal of evidence of both the contending parties. Unless this is established, the claim for payment of difference in wages on the principle of equal pay for equal work cannot succeed.

9. Our attention has also been drawn to the case 'P.K. Singh & another Vs. the Presiding Officer & others' (AIR 1986 (SC) 1018) which is a case directly under section 33C(2) ID Act, wherein the petitioner who had been appointed as Grade 'C' Fitter claimed the wages of Grade 'D' Fitter on the ground

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that he had been performing duties which is similar to Grade D Fitter. It has been held by the Hon'ble Supreme Court that by merely doing the work done by a Grade D Fitter, a workman appointed as Grade C Fitter would not be entitled to claim the wages paid to a Grade D Fitter unless he was duly appointed after passing a requisite trade test. The ratio of this ruling is applicable in the present case because a temporary khalasi has to be screened before being appointed as permanent Khalasi and only if he clears the screening process, ~~is he~~ made permanent.

10. In this connection, a Division Bench of this Tribunal of which one of the members (Hon'ble Mr. J. P. Sharma) is adjudicating the present case, had, in O.A. No. 1839/93 'UOI Vs. Suraj Ram & another', on similar facts quashed the award given by the Labour Court after discussing in detail the arguments advanced by both sides and referring to the relevant Hon'ble Supreme Court's rulings on the subject. We, as a coordinate Bench are bound by that decision and under the circumstances, after careful consideration we find that the impugned order dated 9.4.92 passed by the Presiding Officer, Labour Court, Delhi cannot be sustained and is, therefore quashed and set aside. As the amount in question has not been given to the respondent Vikram Singh as yet, the ~~entire~~ order is vacated. No costs.

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Adige
(S.R. ADIGE)
MEMBER(A)

J. P. Sharma
(J. P. SHARMA)
MEMBER(J)