

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
O.A. No. 1839 of 1993  
the 15th day of December, 1993

(4)

Hon'ble Mr. J.P. Sharma, Member (J)  
Hon'ble Mr. B.K. Singh, Member (A)

1. Union of India,  
through the General Manager,  
Northern Railway, Baroda House,  
NEW DELHI
2. Sr. Divisional Personnel Officer,  
Delhi Division, Northern Railway,  
Chelmsford Road,  
New Delhi.

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Applicants

By: Shri R.L. Dhawan, Counsel for Applicants.

VERSUS

1. Shri Suraj Ram,  
S/o Shri Ram Dev Ram,  
Khallasi (Under suspension)  
Quarter No.112-A/E,  
Railway Colony, Thomson Road,  
New Delhi.
2. Presiding Officer,  
Central Government Labour Court,  
Ansal Bhavan, 11th Floor,  
Kasturba Gandhi Marg,  
New Delhi.

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Respondents

By Advocate: Shri K.N. Nagpal

O R D E R (Oral)

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

The Union of India, through the General Manager, Northern Railway, along with the Senior Divisional Personnel Officer, have filed this application under Section 19, CAT Act, 1985. Aggrieved by an award given by the Presiding Officer, Central Govt. Labour Court, New Delhi vide order dated 8th October, 1992 by which a claim preferred by the opposite party, Suraj Ram in an application under Section 33 (C-2) moved on 27.6.1989 was considered and allowed decreeing an amount of Rs.7826.00 as part of unpaid wages for the period from 4.9.75 to February 1980 on the ground that the wages paid

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to the applicant were not paid on the principles of equal pay for equal work.

2. The applicants prayed for the grant of relief that the impugned award of the Labour Court dated 8.10.92 passed in LCA No.80/89 awarding the claim of Rs.7826/- be quashed and set aside.

3. A notice was issued to the respondents, i.e. the petitioner before the Labour Court, Suraj Ram. The learned counsel for the respondent, Suraj Ram appeared and only filed reply to the M.P. for stay of the relief prayed by the applicants for not disbursing the decreed amount to the respondent, Suraj Ram. No reply was filed to the application obviously with the understanding that this application by the applicants is analogous to an appeal filed against the award of Labour Court. However, the case of the respondents is not to go for the fault on account of various averments made by the applicants in the present application.

4. We have heard the learned counsels for the parties at length on several aspects of the matter. At the conclusion of the hearing, the learned counsel for the respondents, Shri K.N. Nagpal, desired more time saying that he wants to produce certain more facts but since we have already heard the matter at length, we do not now consider it necessary to further adjourn the case only because certain queries put to the learned counsel for the respondents <sup>though</sup> have been replied by him, but he, having an apprehension, desired some time. Normally time is not refused but seeing to the nature of the case and the law cited before us, we do not consider the request of the learned counsel for the respondents as bonafide. Therefore we proceeded to deliver this judgments on the basis of arguments advanced.



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5. The first contention raised by the learned counsel for the applicants is that the principle of equal pay for equal work on the basis of which the Labour Court has given its findings is not within the jurisdiction and scope of the Presiding Officer, Central Govt. Labour Court. The provision of Section 33-C(2) is 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 specified in this behalf by the appropriate Government (within a period not exceeding three months):

(Provided that where the presiding officer of a 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)".

6. The above clearly shows that there should be entitlement vested in the workman. In the present case the respondent No.1 undisputedly worked as a daily rated casual labour with the applicants, Railways, from 4.9.75 to 10.7.77. Thereafter he was retrenched and was paid compensation to which he was entitled under Section 25-F of the I.D. Act, 1947. Under the scheme, Re-engagement, he was again appointed as a daily rated casual labour w.e.f. 9.9.77. He, having completed the requisite period of daily work on re-engagement, was granted a temporary status w.e.f. 18.1.1980. Thereafter the respondent has been paid a regular salary available to regular employees according to the schedule of pay enforced in the Railways at that time. This will go to show that at no point of time the respondent No.1 had no vested claim for equal pay available to Group 'D' employees when he

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was working on daily wages as casual labour till January 1980. In view of this unless there is a direct declaration in favour of the respondent No.1 to the effect that he was doing the same work which the similarly situated persons getting regular pay-scales were doing, he cannot claim a vested right for getting same pay-scale from the Railways. Fundamentally, the right of equal pay for equal work has been enshrined in Art.39 of the Constitution of India. It was earlier ~~and disputed~~ <sup>abstract</sup> doctrine but only after the decision of the Hon'ble Supreme Court in the case of Dhirendra Chamoli Vs. State of U.P. decided in 1986 by the SC

the equal pay for equal work was enshrined as social responsibility ~~of~~ directing the employer that engagement of daily wagers, if such a daily wager is performing the same duty must be paid on the same scale of pay as is being paid to the regular employees. Thus, at the time the respondent No.1 was working as a daily wager, he had no vested right. The matter came before the Hon'ble Supreme Court in the case of Central Inland Water Transport Corpn. Ltd. Vs. its workmen reported in 1977 (SC L&C page 421) where it has been laid down that there must be an entitlement to the claim by the workmen in order to invoke Section 33-C(2) of the ID Act, 1947. The matter has also come before the Ernakulam Bench in the case of Divisional Personnel Officer Southern Railway Vs. K.K. Gopalan & Ors. reported in 1993 (Vol. 23 ATC page 74) where also it has been held that the workmen must have an existing right in their favour.

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7. In view of the above direct authority supported by the latest authority of the Hon'ble Supreme Court, the learned counsel for the applicants argued that the decree passed by the Labour Court is totally without jurisdiction. The learned counsel for the respondent (workmen) argued that in the objection filed before the Labour Court such a plea was not taken. The applicants have filed a copy of the objections preferred before the Labour Court and in para c(1) they have taken the preliminary objection that the application is not maintainable under Section 33-C(2) of the I.D. Act. The Labour Court has not given any finding on this issue. Further the Hon'ble Supreme Court in the case of Ram Kumar Vs. Union of India reported in 1989 (SLJ Vol. 1 page 102) considered the matter of casual labours employed in the Railways. The Hon'ble Supreme Court observed that a casual labour who works for 120 days in a year and 360 days of continuous work in the project acquires a temporary status and sooner he acquires that status, he is entitled to all benefits available to a regular employees of the Railway excepting pensionary benefits. The law laid down by the SC in Ram Kumar case has also been earlier laid down in the case of Inderpal Yadav reported in 1985 (SLJ Vol.2 page 406). In the present case the respondent has acquired temporary status from January 1980. In view of this he became entitled to the regular wages w.e.f. that date and there is no complaint that thereafter he was not paid regular scale of pay.

8. The learned counsel for the applicants further substantiated the argument by filing before the Bench a copy of the judgment in the case of P.K. Singh & Ors. Vs. Presiding Officer & Ors. reported in AIR (1988 SC page 1018) Civil Appeal No. 2640 (L) 1980, decided on 15.7.1988.

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That is a case directly under Section 33-C(2) of I.D. Act 1947 where the petitioner has claimed that he had been appointed as Grade 'C' fitter on the ground that he had been performing the duties which were similar to the duties of Grade 'D' fitter. It was held by the Supreme Court that by merely doing same kind of work which is done by Grade 'D' fitter, a workman appointed as 'C' grade fitter will not <sup>be</sup> ~~entitle~~ <sup>to</sup> him to claim the charges of grade 'D' fitter unless he is duly appointed after getting through a trade test. In the present case also the respondent No.1 acquires <sup>temporary</sup> status in January 1980 and therefore was not entitled to the same scale of pay available to a regular employee earlier to January 1980. Ofcourse, invoking the principle of equal pay for equal work, a decision has been arrived at by the Hon'ble SC in the case of Dhirendra Chamoli (supra) but the ratio of the case cannot be applied retrospectively, a decade before the applicants ~~was~~ the casual labours. The law laid down by the Hon'ble SC was for the first time in 1986 while the Labour Court has considered the matter of the respondent for the year 1975 to 1980, even though the Labour Court <sup>jurisdiction</sup> had no ~~in~~ in that regard. Thus the findings of the Labour Court on the point that the respondent was entitled to regular scale of pay as a daily wager cannot be sustained on the above reason.

9. There is a factual defect in the award of the Labour Court regarding entertaining the claim which is <sup>in filing the claim</sup> belated and the delay ~~and~~ laches have not been explained, though the Limitation Act as such is not applicable in the proceedings under Section 33-C(2) of the I.D. Act 1947. But at the same time delay defeats the remedy

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and a remedy is not available if there was no existing right, that too is lost. If the perception <sup>placed and</sup> ~~is~~ also argued by the learned counsel for the respondent (workman) then all settled matters will be unsettled and all those who worked as daily rated labour would raise the issue even years after their retirement from service. Thus the claim of the respondent is also barred by delay and laches and in this connection the learned counsel for the applicants has referred to a decision of CAT Madras Bench reported in G.M. Southern Railway Vs. L.M. Nalasan reported in 1991 (Vol.17 ATC page 803). The award also does not deal with this aspect of the matter though the Railways have taken a special preliminary objection in para 2. A judgment cannot be sustained if it omits to cover the points raised as preliminary objection. In fact in the Award there is no discussion on this aspect. The learned counsel for the respondent (workman) argued that the Railways did not place this matter properly in the form of an objection as well as argument before the Labour Court. Basically the Labour Court has to decide the issues on the pleadings before it supplemented by the arguments advanced in support of the pleadings. At this point of time it cannot be said that these pleas were waived by the Railways.

10. The learned counsel for the respondent (workman) argued that the claim of similar workman, Jaya Lal Vs. G.M. arising out of LCA No.365 of 89 was also allowed by the Labour Court and that also covered for the period from October 1975 to January 1981 and a decree in favour

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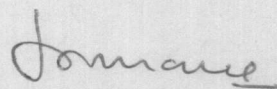
of Jaya Lal was given for an amount of Rs.6731/- on 7th February 1992. It is therefore emphasised that the respondent (workman) should not be defeated in this application as it would be discriminatory, equals being treated as unequals. We have considered this matter also. It is for the Railways to decide whether to assail any order regarding its correctness before the Tribunal. If an order has been given in favour of a particular person and that has not been assailed that would not be a good exemplar to decide the case pending before the Tribunal. There will be so many cases where for one reason or the other, an order for or against is not judicially assailed before the competent forum but such unassailed orders do not give sanctity to those orders to be followed in other cases. We therefore do not find that this argument helps the case of the respondent (workman).

11. In view of the above careful consideration, we find that the Award given by the Labour Court cannot be sustained and is therefore quashed and set aside. The interim order was for depositing the amount but not to be paid to the respondent (workman) till the decision of this application. Since the amount has not been given to the respondent (workman) so the interim order is vacated.

There will be no order as to costs.



( B.K. Singh )  
Member (A)



( J.P. Sharma )  
Member (J)