

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA.No.2146/93

Dated this the 14th of December, 1994.

Shri C.J. Roy, Hon. Member(J)

1. Union of India through  
Northern Railway,  
Baroda House, New Delhi.
2. Divisional Personal Officer,  
Northern Railway, New Delhi. ...Applicant

By Advocate: Shri H.K. Gangwani.

versus

1. Shri Ved Prakash,  
S/o Shri Telu Ram,  
76/A-2, Railway Colony,  
Moti Bagh, Delhi.
2. Presiding Officer,  
Central Government Labour Court,  
11th Floor, Ansal Bhavan,  
New Delhi - 1. ...Respondents

By Advocate: Shri Pratap Rai.

O R D E R  
(By Shri C.J. Roy)

This OA is filed by the Union of India (Railways) against the order of the Presiding Officer, Central Government Labour Court in LCA No.92/89 dated 21.1.93 (Annexure P-1). They have prayed for a relief to quash the said award and for issue of a direction in the nature of writ or certiorari to the Presiding Officer (respondent No.2 herein) not to entertain any application without compliance of Sec.10(1) of the Industrial Disputes Act.

2. The facts of the case are that the respondent No.1 Shri Ved Prakash filed an application under Section 33 (C-2) of the Industrial Disputes Act, on the ground that a sum of Rs.18990/- as DCRG was deducted from him and the same was not paid to him when it became due on retirement on 31.4.1985.



3. The Railways took a stand that due to non-vacation of quarter allotted to him and due to non-payment of rent and electricity bills, a sum of Rs.18990/- as arrears, was forced to be deducted from his DCRG (Annexure P-2). It is further stated that without considering their submissions and arguments, the Labour Court has decreed the claim of the respondent Shri Ved Prakash to the extent of Rs.18990/- along with interest at the rate of 12% from the date it became due to the date of actual payment by their order dated 21.1.1993.

4. Aggrieved by the said order, the respondent in LCA 92/89 before the Learned Presiding Officer, Central Government Labour Court has come before this Tribunal by way of an OA.2146/93 praying for the above relief.

5. After hearing the learned counsel for the applicants in OA.2146/93, this Tribunal on 8.10.93 issued notice to the respondents herein and suspended the operation of the judgement passed by the learned Presiding Officer, Central Government Labour Court, New Delhi for a period of 14 days, the interim order of which, was later on directed to be continued till further orders.

6. The respondents No.1 in their reply raised a preliminary objection to the effect that the Labour Court under Section 33-C(2) of the I.D.Act, 1947 is a quasi judicial authority, as such, its impugned order

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Judgment.



cannot be an order and, therefore, the present OA is not maintainable and is liable to be dismissed on this ground alone.

7. On merits, it was submitted that the Labour Court based its order on WW1/1, by which, the quarter in question was regularised in the name of Shri Surender Singh, the son of Respondent No.1 from 1.5.85, as the respondent No.1 had retired from service w.e.f. 30.4.1985 (Annexure R-1). Therefore, the question of unauthorised use and occupation by the respondent no.1 did not arise.

8. The applicants have filed their rejoinder in which it is stated that the Labour Court has suo-moto assumed jurisdiction in the matter and ignored the fact that the son of the applicant was not entitled to type-II quarter. Further,, as per Railway Rules, the applicant is solely responsible for giving vacant possession, failing which, allotment of the Railway Quarter shall be cancelled and market rent shall be recovered for the use and occupation till vacation. The applicant sought permission to retain the Railway quarter for two months owing to financial problems on 23.4.84, which was granted by the Railways on normal rent. Again the permission sought for, for the period 1.7.85 to 31.8.85 was also granted on payment of double the rent or 10% of the emoluments, whichever is higher. A type-I quarter from GRO/DSL/SSB pool was regularised in the name of applicant's son for which the son of the applicant agreed. The applicant was in unauthorised occupation since 1.9.85 and he was informed by letter dated 5/6.11.86 that his son is not

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entitled to Type-II quarter and therefore, the quarter be vacated, failing which, market rent will be recovered w.e.f. 1.9.85. It is stated that the Labour Court ignored the fact that the son of the applicant is not entitled to the Type-II quarter, as a result of which, he was allotted vide letter dated 21.8.87 a type-I quarter on out of turn basis, and was asked to take over the possession. But neither the Type-I quarter was taken over nor the Type-II quarter was handed over/vacated. It is at this juncture, at the request of the applicant's son vide letter dated 29.1.88, an alternative Type-I quarter No.76/A-2 was allotted and the possession was also taken by him but the type-II quarter allotted in the name of the father was still not vacated and unauthorisedly retained the same despite several notices. Accordingly, the deductions of penal rent w.e.f. 1.6.85 as per extant rules till the vacation of the quarter has legally been made from the dues of the applicant. Therefore, the respondents in the labour court and applicants herein, are not liable to pay any amount and the claim be dismissed with costs.

9. I have heard the learned counsel for the parties and perused the documents on record.

10. The short point involved in this case for consideration is since the regularisation is not done, the distinction is only in regard to entitlement of type-I quarter to the son of the applicant.



11. The learned counsel for the respondents states that it is not an actual regularisation but a decision taken to regularise the quarter.

12. However, it is relevant to note that the son of the respondent No.1 is not made a party in this case.

13. The learned counsel for the applicants produces a copy of the Railway Board's letter dated 13.5.86, across the bar, which is taken on record. The said Railway Board's letter reads as follows:-

" The competent authority has approved the regularisation of railway quarter in the name of Sh. Surinder Singh, DSL. Cleaner under GFO/DSL/SSB w.e.f. 1.5.85 after retirement of his father Sh. Ved Prakash on 30.4.85. He should be allotted Type-I railway quarter from SSB Pool and General Pool quarter should be got vacated from him" "

14. As regards the preliminary objection taken by respondent No.1 in their reply, the Hon. Supreme Court in JT 1994 (7) S.C. 476, in the case of Municipal Corporation of Delhi versus Ganesh Razak and Another, has held that:

"It is clear that there has been no earlier adjudication by any forum of the claim of these workmen of their entitlement to be paid wages at the same rate at which the regular workmen of the establishment are being paid and there is no award or settlement to that effect. In short, this claim of the workmen has neither been adjudicated nor recognised by the employer in any award or settlement. The real question therefore is : Whether in these circumstances, without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis are maintainable under Section 33C(2) of the Act? In our opinion, the question for decision is no longer res integra



being long settled by earlier decisions of this Court. Some of the decisions have been referred by the High Court in the impugned judgement, but the application of the settled principle made by the High Court is erroneous (Paras 4 & 5).

This decision itself indicates that the power of the Labour Court under Section 33C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents.

The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution (Para 12).

The workman's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of 'equal pay for equal work' being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement of the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made,



particularly of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33C(2) of the Act by these respondents (Para 13)."

15. It is clear, therefore, following the guidelines laid down by the Hon. Supreme Court, the labour court has no power to adjudicate the matter which has already been decided. It is also argued by the learned counsel for the applicant in this case that unless a reference is made or conciliation proceedings are made under Section 10(1) of the Industrial Disputes Act, the Labour Court has no jurisdiction under Section 33C(2) of the I.D. Act.

16. One of the points raised by the respondent No.1 is that the labour court is a quasi judicial authority as such, its impugned order cannot be an order in terms of Section 19 and, therefore, the present OA is not maintainable in this Tribunal.

17. The learned counsel for the respondent No.1 argued that the court has no jurisdiction also on the authority of payment of wages act. This point cannot be sustained because, the Full Bench Judgement in the case of Union of India versus Sarup Chand Singla in OA.524-PB of 1986 and OA.No.673/PB/87 decided on 17.10.88, has held that:

"Therefore, we do not entertain an iota of doubt that the scheme of the PW Act is to set up a Special Tribunal, confer a special jurisdiction upon that Tribunal and to oust the jurisdiction of ordinary Civil Courts. The exclusion is absolute and does not depend on the choice of the claimant, so far as the matter specifically dealt with under the PW Act

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otherwise the Authority has certain trappings of a Court. All the same, it is difficult to equate to the Authority with a 'Court' as envisaged in section 28 of the Act. The dividing line between an Administrative Tribunal and a Court is always very difficult to demarcate."

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"To sum up, therefore, an Authority constituted under section 15 of the PW Act as also the Commissioner for Workmen's Compensation are only special Tribunals, but not courts. So they can exercise the jurisdiction and powers vested in them respectively in respect of matters and disputes falling under the said Acts. However, this Tribunal will have the jurisdiction, powers and authority in respect of "service matters" of Central Government employees in respect of which it has jurisdiction, powers and authority by virtue of section 14(1) of the Act. Further, the Tribunal is competent to grant relief to the aggrieved employee/workman as the case may be in accordance with the provisions of PW Act and WC Act. Moreover, this Tribunal shall also have all the appellate powers of the Court of Small Causes in a Presidency town and the District Court elsewhere under Section 17 of the PW Act as also of the High Court under section 30 of the WC Act, as the case may be. Lastly, this Tribunal is also vested with the extra-ordinary writ jurisdiction of the High Court under Article 226 and 227 of the Constitution in respect of matters falling under Section 14(1) of the Act. We answer this reference accordingly and both these cases be now placed before regular Bench for further hearing on merits."

18. Besides the Labour Court has passed an order that:

".....According to letter Ex.WW1/1 the quarter in question was regularised in the name of Surinder Singh S/o the applicant Ved Prakash w.e.f. the date of his retirement i.e. from 1.5.85 and it was ordered that he would be allotted accommodation according to his entitlement of type I by the department. This order had to be passed because Surinder Singh had moved for regularisation of this accommodation as earlier his father Ved Parkash the present applicant had obtained sharing permission from the department for this accommodation alongwith his son and his family. With this letter issued by the department/Competent Authority the liability for retaining the house of higher type or not vacated the same in time and is not accepting the accommodation offered to him later on by the department is that of Surinder Singh and not of Ved Parkash workman in this case. The representative for the workman has also made statement in the court that he has no objection if according to rules any amount becomes

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payable by Surinder Singh is recovered from him. Since Ved Parkash was absolved of the responsibility of this quarter as the same was regularised in the name of his son so there was no justification for the department to retain the DCRG of Ved Parkash amounting to Rs.18990/- from the date it became due to him. The Management shall also pay interest @ 12% per annum from the date it became due to the date of actual payment.....'

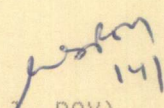
19. I am satisfied with the contention of the learned counsel for the applicants after hearing the parties confining to the prayer made in the OA. In the circumstances, I feel the other points raised in the OA and other judgements quoted therein, are not germane to the present issue, in view of the Hon.Supreme Court rulings and discussions above in regard to preliminary objections.

20. In the circumstances, the award passed by the respondent No.2 dated 21.1.93 is quashed and set aside.

21. If the respondent No.1 is aggrieved, he may choose his own legal remedy.

22. The OA is disposed of accordingly.

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(C. J. ROY)

MEMBER (J)