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Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-2479/93

New Delhi this the 11th Day of May, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman  
Hon'ble Mr. B.N. Dhoondiyal, Member(A)

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi-110 001.
2. The Divl. Personnel Officer,  
Northern Railway,  
Delhi Division,  
State Entry Road,  
New Delhi.

Applicants

(By advocate Sh. Ramesh Gautam)

versus

1. Shri Jagat Pal,  
S/o Sh. Ram Adhar - Khalasi,  
R/o T-79-C, Railway Colony,  
Bara Hindu Rao,  
Delhi-110 006.
2. The Presiding Officer,  
Central Government Labour Court,  
11th Floor Ansal Bhavan,  
Barakhamba Road,  
New Delhi-110 001.
3. The Asstt. Collector,  
Old Civil Supply Building,  
Tis Hazari,  
Delhi.

Respondents

ORDER(ORAL)

delivered by Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

This O.A. at the instance of Union of India & Ors. arises out of an order dated 8.4.1993 passed by the Presiding Officer of the Labour Court in proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947 (the Act) initiated by Sh. Jagat Pal, the respondent (Workman).

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Admittedly, the workman was, on the relevant date, an employee of the Railways. In his application under Section 33-C.(2), the material averments made by him were these. He was employed as a Khalasi, a Class-D employee. He had earlier filed two applications under Section 33-C (2) of the Act. The same were registered as LCA No. (C) 5/78 and L.C.A. No.97/83. These applications related to the recovery of difference of wages paid as casual labour rates and payable to the regular employees who were on the regular pay scale. Both the applications were allowed and the applicant was duly paid the amount awarded to him. - The plea raised in these cases by the Union of India & Ors. that the workman was employed on project was negatived. The workman was entitled to recover, the difference between the amount received by him and payable for the period beginning from 1.1.1983 to 2.2.1987 at the rate of Rs.300/- per month. This amount comes to Rs.15000/-. He became entitled to the payment of Rs.196/- per month on and from 3.7.1973 and then annual increments of Rs.3/- first two years and thereafter at the rate of Rs.4/- and for 12 years that would have risen to Rs. 232/-. The monthly difference would come to Rs.15/- and for 12 years would come to Rs.2,160/-. As a result of the recommendations of the 4th Pay Commission, the pay scales were revised and he was entitled to the increased pay. The amount payable in that regard was Rs.3850/-. He also became entitled to the payment of House Rent Allowance at Rs. 150/- per month from 1.1.86 which has not been paid. The total arrears is Rs.5250/-. In all, he claims a sum totalling Rs.26,260/-.

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In the written statement filed by Union of India & Ors., the material averments are these. The workman was a project casual labour. He is covered by a scheme which came into existence in deference to the orders of the Hon'ble Supreme Court of India in Civil Misc. Petition No.40897/85 decided on 11.8.86. All the benefits to which he was entitled were given to him and <sup>he</sup> is not entitled to any further payment. He was granted temporary status with effect from 1.1.1981. He was paid all the dues in accordance with extant rules and regulations and no amount is due to him for the period 1.1.1983 to 2.2.1987. He has been correctly paid in terms of the order passed in LCA No.97/83. That order operates as res-judicate. He has been paid difference of House Rent Allowance from 15.1.1986 to 30.9.1986 and the said allowance has been correctly paid to him in accordance with the rules. The workman is not entitled to any payment.

In the rejoinder-affidavit filed by the workman, it is asserted that in LCA 97/83 decided on 21.6.1985, it has been held that applicant was not a project casual labour and that decision has become final.

The Labour Court in its order observed that the case of workman is that he performed the same duty and work as in the case of permanent employees from the date of employment but the employer paid him wages at the much lower rate. Hence this application was filed under Section 33-C (2). The fact that the workman was employed on 3.1.1973 as casual labour is admitted by the respondents. The Labour Court has referred to the case of Dhirendera Chamoli and Another and State of U.P. and has <sup>given</sup> extensive quotations from

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the said judgement of the Supreme Court. Relying upon the two judgements of the Supreme Court, the Labour Court recorded the finding that the workman is entitled to the wages of regular employees right from the date of his appointment.

Then comes para-5 of the order of the Presiding Officer of the Labour Court. The contents may be extracted:-

"The management has filed an assumed chart Ex.M1 at the asking of the court without admitting the claim of the workman, according to which, the amount payable to the workman, if his claim is accepted, works out to Rs.835/- as per details given below:-

| Chart | Period       | Amount   |
|-------|--------------|----------|
| Ex.M1 | 1983 to 1987 | Rs.835/- |

The representative for the workman has accepted this amount as correct. Hence the claim of the workman is computed at Rs.835/- which the management is directed to pay to the workman within two months from today failing which it shall be liable to pay interest at 12% from today till actual payment."

We may at once deal with the argument advanced by the learned counsel for the applicant that the Labour Court acted illegally in acting upon the assumed chart. A close reading of the contents of paragraph 5 of the order of the Labour Court indicates that he arrived at the figure of Rs.835/-, which according to the applicants was payable to the workman on the footing that he should have been paid the same emoluments as a casual worker which were paid to a regularly employed Group-D employee. The sum of Rs.835/- mentioned in the chart reflected

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the difference between the amount paid and actually payable.

On 26.11.1993, the Tribunal directed the learned counsel for the applicant to produce two earlier orders of the Labour Court, referred to in Annexure-A and also the judgement of the Supreme Court as referred to in Annexure-3. On 24.2.1994, the Tribunal again directed the learned counsel for the applicant to produce a copy of the order of the Labour Court in LCA No.97/83 referred to in written statement before the Labour Court (Annex.A.3). On 8.4.1994, the Tribunal granted the learned counsel for the applicant the last opportunity to comply with the order dated 24.2.1994. On 27.4.1994, the Tribunal noted that the order dated 24.2.1994 still remained uncomplied with. However, at the request of the learned counsel for the applicant, 10 days further time was granted to file a copy of the order of the Labour Court alongwith an affidavit and the matter was adjourned to 11.5.1994. Even today, the copy of the judgement given in LCA No.97/83 has not been produced before us.

In support of this application, the learned counsel has contended that the application filed under Section 33-C(2) of the Act was a highly belated one and, therefore, should not have been entertained. We may at once note that the plea of limitation was not raised in the Labour Court. Section 33-C(2) in itself does not prescribe any period of limitation. However, in the absence of any prescribed period of limitation, an application has to be filed within a

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reasonable period. In the circumstances of this case, it should be assumed that the Labour Court considered that the application has been filed within a reasonable time and, therefore, it entertained the same and passed orders on merits.

The learned counsel has placed reliance upon the judgement of this Tribunal in the case of Union of India & Ors. Vs. Suraj Ram & Ors. (OA-1839/93) decided on 15.12.1993. On a bare reading of the judgement, it does not appear that the plea of limitation was not raised before the Labour Court itself. The answer to the question whether any particular application had been filed within a reasonable period will depend upon the facts and circumstances of each case. The learned members constituting the Bench have not held that Section 33-C (2) prescribes a period of limitation. Therefore, its judgement can not operate as a precedent. We are ~~not~~ inclined to permit the Union of India to raise the plea of limitation for the first time in this O.A.

We have explained the assumed chart in this case. It is true that the Labour Court has not passed a happily worded order. Nonetheless, its intention is discernible.

The third submission advanced is that the workman was really a project worker. The workman had contended that this question has been decided earlier in the two cases decided by the Labour Court, and, therefore, the judgement of that court on the limited question as to whether the workman was an employee on a project operated as res-judicate against the Union of India & Ors.

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We have already indicated that inspite of repeated opportunities having been given to the learned counsel for the applicant to place a copy of the judgement of the Labour Court in LCA No.97/83, no such copy has been shown to us. We, therefore, see no reason to go into the question as to whether the workman was an employee on project.

The last submission is that in view of the decision of the Supreme Court in Inder Pal Yadav's case, the Labour Court committed a manifest error of law in awarding a sum of Rs.835/- to the workman as difference between the actual wages paid and the wages payable to him. In that case, the Supreme Court has issued a direction to the Railways to frame a scheme so that the cases of the casual workers may be examined for the purpose of the regularisation of their services.

Merit apart, the Labour Court having computed a paltry sum of Rs.835/- only as payable to the workman, we do not consider this to be a fit case for interference in the exercise of our writ jurisdiction. However, we make it clear that neither the impugned order of the Labour Court nor this order can be used against the Union of India & Ors. (applicants) in some other case.

8y The application is dismissed. <sup>Summarily</sup> ~~in costs.~~

*B.N. Dhoundiyal*  
(B.N. DHOUNDIYAL)  
MEMBER(A)

*S.K. Dhoon*  
(S.K. DHAON)  
VICE CHAIRMAN

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