

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No.2653/93

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New Delhi, this the 3rd February, 1995

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

Hon'ble Shri B.K. Singh, Member (A)

Union of India
through
General Manager, Northern Railway,
Baroda House,
New Delhi.

... Applicant

By Advocate: None

Vs.

Shri Baij Nath Ram,
s/o Shri Ramdev Ram Khallasi,
Delhi Division, Northern Railway
c/o Q.No.T-79-C,
Railway Loco Colony,
Bara Hindu Rao,
Delhi.

The Presiding Officer,
Central Govt. Labour Court,
11th Floor, Ansal Bhavan,
New Delhi.

... Respondents

By Advocate: Shri D.R. Roy

JUDGEMENT

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

The opposite party Shri Brij Nath filed application under section 33-C(2) of the Industrial Disputes Act, 1947 before the Central Government Labour Court at Delhi stating that he was employed as Khalasi under the Inspector of Works Tis Hazari, Delhi, of Delhi Division over Northern Railway in pay scale of Rs. 750-940/- at Rs. 834/-. He is a workman in terms of Section 2 (S) of the Industrial Disputes

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Act, 1947. The applicant was initially appointed as a Khalasi on 20.5.1974. From the very day of his engagement he was working at the rate of Rs. 3/- per day as wages. He was performing the work as performed by permanent Khalasies who were paid Rs. 340/- per month in a regular pay scale. He has based his claim on the basis of 'Equal pay for Equal Work'. As the applicant had completed 120 days continuous service on 20. 9.1974, he acquired temporary status and in terms of Chapter-III of the Indian Establishment Manual is entitled to various service benefits like earned leave etc. The applicant also was not paid wages from the period from 13.12.1979 to 8.1.1980.

2. The Union of India opposed the application filed by the applicant that the applicant has no existing rights and thus the application is not maintainable under section 33-C(2) of the I.D.Act.

3. The Labour Court by its order dated 5th June, 1992 allowed the application and a sum of Rs.10,157.30 for the period from 29.5.74 to 28.10.1979 was allowed to the applicant with direction that the applicant should be paid the above amount in two months otherwise thereafter an interest @ 12% per annum from the date of judgement shall be payable.

4. The petitioner before the Labour Court i.e. Brij Nath opposed the present Application by filing a reply. It is stated that the applicant earlier did not join the

proceedings before the Labour Court but subsequently after getting the exparte order set aside filed the Written Statement and submitted a chart with respect to the certain amounts which has been decreed by the Labour Court. It is also stated that in an earlier decree passed by the Labour Court on 28.7.1988 for Rs. 17,400/-, the applicant/ employer/U.O.I. has availed of the alternative remedy of filing a Writ Petition No. CWP-3793/90 with C.M. No. 5840/90 before the Hon'ble High Court. It is stated that since amount has been admitted by the UOI before the Labour Court hence the application filed by the UOI needs to be dismissed. The U.O.I. has also filed the rejoinder re-iterating the facts already stated in the O.A.

5. Regarding filing of the Writ Petition against the earlier award of Rs. 17,400/- of the Labour Court, that was set aside when the Union of India on 15.12.1985 filed an application to set aside the ^{exparte} award. It is only after the written statement was submitted that the Labour Court has decided this case under Section 33-C(2) of I.D.Act on January 5, 1992. Thus the filing of the Writ Petition against the earlier order is of no consequence.

6. We have heard the learned counsel for the respondents i.e. Shri D.R.Roy for Shri Brij Nath. None appeared on behalf of the Union of India. We have gone through the pleadings of the parties and perused the record. While going through the decision

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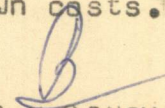
of the Labour Court we find that the Labour Court has decided the case on the basis of 'Equal pay for Equal Work' but the Labour Court has not observed that the claim of the applicant for the aforesaid period either has been adjudicated upon or there has been a settlement of the claim earlier or there has been an award to that effect. The Labour Court has acted at the chart furnished by the Union of India without admitting the claim of the workmen. The Labour Court has not given any reason whatsoever that there has been any settlement of the wages of the applicant or that there has been an award or a judicial decision in his favour. The Labour Court has referred to certain decisions of 'Equal pay for equal work' decided by the Hon'ble Supreme Court in the case of Dhirendera Chamoli and another and State of U.P. 1986(1) LLJ 134 and Surinder Singh and another and the Engineer-in-Chief C.P.W.D. and others 1986(1) LLJ 403 and decreed the claim of the workmen. The Labour Court has no such power to adjudicate upon the claim. The matter has been considered by the Hon'ble Supreme Court of India in a decision in the case of Municipal Corporation of Delhi vs. Ganesh Razak reported in Judgement Today 1994 (7) page 476. The relevant portion to this case is quoted below:-

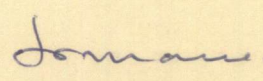
"The High Court has referred to some of these decisions but missed the true import thereof. The ration of these decisions clearly indicates that where the very basis of the claim or the

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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 33 C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under section 33 C(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 of enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33 C(2) of the Act like that of the Executing Court's power to interpret the decree for the purpose of its execution".

7. In view of the above facts and circumstances the Labour Court has not rightly decided the issue. The decision of the Labour Court is, therefore, set aside and quashed and the case be sent back to the Labour Court to decide the matter afresh ^{on merits} firstly with respect to the jurisdiction of the Labour Court and secondly about the limitation as to how the claim from 1974 to 1979 has been filed so delayed in the year 1987. The application is therefore allowed leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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