

Central Administrative Tribunal

Principal Bench,
New Delhi

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D.A. No. 579/93

New Delhi, this the 14th Day of Feb., 1995.

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI B.K.SINGH, MEMBER(A)Union of India
through the General Manager,
Northern Railway,
Baroda House,
New Delhi

AND

Divisional Railway Manager,
DRM's office, Northern Railway,
New Delhi.

Applicant

(By advocate:Shri Shyam Meenjani)

Versus

1. Anand Prakash son of Shri Ramji Ballabh,
Saloon Attendant, At Carriage & Wagon
Inspector(Saloon), Northern Railway,
New Delhi r/o G-14, 1/10684, Man Sarovar
Park, Shahdara-110 032.
2. The Presiding Officer,
Central Government Labour Court,
New Delhi.
3. The Assistant Collector,
Old Civil Supplies Building,
Tis Hazari,
Delhi.
4. Dukh Haran s/o Shri Bhagwati Prasad.
5. Jawahar Lal s/o Shri Kunj Bahari r/o
B-36, Brij Vihar, GZB.
6. Govind Ram s/o Shri Hardeal.
7. Sukhbir Singh - Expired on 19.5.1992 s/o
Shri Rajaram.
- 7/1. Smt. Shanti Devi (widow) - 61 years.
- 7/2. Brij Bheeshan (son) - 40 years.
- 7/3. Smt. Usha wife of Bhagwan Dass - 43 years.
- 7/4. Smt. Santosh w/o Shiv Kumar - 35 years.
- 7/5. Smt. Munni w/o Manoj - 32 years and

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7/6. Smt. Minni w/o Ajay - 30 years
(all daughters)
all residents of A-29, Chandrak, Shahdara-32.

8. Raja Singh s/o
Shri Kishan Lal Singh.

9. Prem Lal s/o Shri Behari Lal,
r/o 34, Vivek Bihar,
D.D.A. Flat, Delhi/Shahdara.

10. Amolak Ram son of
Shri Brij Lal.

11. Shiv Ram s/o Sh. Phateh Ram,
r/o 52/C-4, Chhelly Mere Sarai,
Railway Colony,
Delhi.

12. Brahma Dutt son of
Sh. Hemant Ram.

13. Dile Singh s/i Shri Jai Singh and

14. Babu Ram son of
Shri Videshi Ram

All working as Saloon Attendants
Divisional Railway Manager,
Northern Railway,
New Delhi.

Respondents.

(By None)

JUDGEMENT (ORAL)

HON'BLE SHRI J.P.SHARMA, MEMBER (J)

12 employees who are arrayed as respondents in this Application i.e. respondent no. 1 and respondents No. 4 to 14 had filed a petition under Section 33-C(2) before the Central Govt. Industrial Labour Court for payment of certain withheld wages. The applicant i.e. Union of India through General Manager and Divisional Railway Manager, D.R.M.s office, Northern Railway was arrayed as opposite party in that petition before the Labour Court. The Labour

Court after considering the contentions of the parties

gave the award on 6th March, 1992 granting the reliefs

to the aforesaid respondents as detailed below:-

<u>Name of the applicant</u>	<u>Period</u>	<u>Amount</u>
1. Anand Parkash	1.8.74 to 15.9.75	Rs. 6017.25
2. Prem Lal	-do-	Rs. 6688.41
3. Gobind Ram	-do-	Rs. 6571.23
4. Jawahar Lal	-do-	Rs. 6712.17
5. Dukh Haran	-do-	Rs. 6319.77
6. Raj Singh	-do-	Rs. 7431.69
7. Amolak Ram	-do-	Rs. 7210.47
8. Shiv Ram	-do-	Rs. 7564.05
9. Braham Dutt	-do-	Rs. 7009.05
10. Sukhbir Singh	-do-	Rs. 7225.65
11. Dilley Singh	-do-	Rs. 7067.13
12. Baboo Ram	-do-	Rs. 7564.05

2. In this application the Union of India has prayed that the aforesaid award of the Central Govt. Industrial Labour Court be quashed. A notice was issued to the employees who filed the petition before the Labour Court and Shri H.P. Chakravarty has put his appearance on behalf of all of them. During the pendency of this O.A. one employee Shri Sukhbir Singh has died and his legal representatives were also substituted and has been served with notice regarding the pendency of this petition before this Tribunal.

3. The petitioner before the Labour Court did not file any reply to the various averments made in the O.A. though Shri HP Chakravarty has appeared on behalf of those employees and sought a number of adjournment time and again.

4. On 13.1.1995 we passed an order whereby a copy of that order was also sent to the legal representatives of deceased employee Shri Sukhbir Singh as well as to the learned counsel Shri H.P.Chakrabarty who appeared on behalf of the respondents employees. None is present on behalf of the employees respondents.

5. We heard Shri Shyam Moorjani counsel for Union of India and we find that the Learned Presiding Officer of the Govt. Industrial Court has not given any reason of coming to a finding about entitlement of the employees for overtime work performed by them and decided the matter on the basis of a Chart furnished by the respondents which was tentative in nature. The employer i.e. Union of India in their reply enclosed the annexure-2 but the points raised in the annexure were not considered by the Labour Court.

6. The contention of the learned counsel for the Union of India is that the Labour Court cannot itself declare the entitlement either of the pay or of any allowances due on account of over time work. There must be a pre-decided or adjudicated decision either by the Tribunal or by Court of Law which is not in the present case. The Learned Presiding Officer of the Labour Court though discussed the award Mian Bhai Tribunal/where certain duty hours were fixed per week i.e. 12 hours per day and that award of the Mian Bhai Tribunal was made effective from 1st August, 1974 so in case the employer i.e. Union of India has taken work from the employees in any manner which was more than prescribed duty hours then the employer is bound to pay the

ever time allowances 1½ times beyond 72 hours. We find that this observation made by the Learned Labour Court has yet to be decided either by settlement between the parties or by adjudication either by way of award or a decree of the Court. This is not the case here.

7. The relevant law on the point has been laid down by the Hon'ble Supreme Court of India in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and another reported in 1994 J.T. Volume-7 page 476. In this, the Hon'ble Supreme Court of India has decided about 100s petitions pending before it of the Municipal Corporation of Delhi where the employees were granted benefit of pay and allowances under section 33-C(2) of the Industrial Disputes Act, 1947. The Hon'ble Supreme Court of India give the ratio in para 12 of the report at page 482 which is quoted below: -

"12. 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. 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 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

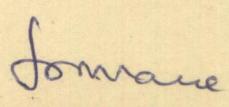
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Court's power under Section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution".

8. In view of the above facts and circumstances, the approach made by the Presiding Officer of the Govt. Labour Court is not correct. Since the employees are not being represented but we have gone through the pleadings filed by the employer itself i.e. Railways and we find that the matter is to be remanded to the Govt. Labour Court for fresh decision in accordance with law.

9. The Original Application is, therefore, allowed and the impugned order/award of the Government Industrial Court dated March 6, 1992 is quashed and in case LC No. 68/89 is remanded to the Govt. Labour Court, New Delhi for fresh decision according to law keeping in view the ratio of the Judgement given in the case of Municipal Corporation of Delhi Vs. Ganesh Razak(Supra) and considering the reply of the employer, the Labour Court shall fix a date for summoning the parties and pass necessary orders after giving full opportunity of hearing to the parties. In these circumstances, the Application is allowed leaving the parties to bear their own costs.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

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