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Judgment  
reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Transfer Application No.186 of 1986.

Union of India and others	....	Opp.party appellants.
Versus		
UC Misra	.....	Applicant- respondent.

connected with

TRANSFER APPLICATION NO.1374 of 1986

U C Misra	...	Applicant-appellant.
Versus		
Union of India and others.	....	Opp.parties respondents.

Hon'ble D.S.Misra-Member-A  
Hon'ble G.S.Sharma-Member-J

(Delivered by Hon'ble D.S.Misra )

These are cross appeals under section 17(1)(a) of the Payment of Wages Act against the judgment and order dated 9.8.1984 passed by the Learned Authority under Payment of Wages Act Moradabad in Case no. 35/11 of 1983. It is pertinent to mention that against the order of the learned authority, both parties filed appeals in the court of District Judge Moradabad. The appeal preferred by the Union of India was numbered as Civil Appeal no.207 of 1984 and the appeal preferred by the applicant (U.C.Misra) was numbered as Misc.Appeal No.195 of 1984. Both these appeals have come to us on transfer under Section 29 of the A.T.Act, which are being disposed of by a common judgment herewith.

2.The admitted facts of the case are that the applicant UCMisra, while working as Assistant Station Master Bareilly Junction, was dismissed from service in May,1974 on account of his arrest in connection with the railway strike on 10.5.1974. The applicant was given an interview by the Divisional Superintendent Moradabad

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on 25.9.1974 and was allowed duty from 3.10.1974 with the following punishment:

- a) Reduction in pay to Rs.350/- in the grade of Rs.330-560.
- b) Increment was stopped for 3 years.
- c) The period from 10.5.1974 to 3.10.1974 was treated as suspension.

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The applicant was again suspended from 20.11.1975 and dismissed from 30.4.1976 due to conviction by the court of Special Judge Delhi. The applicant claimed before the authority under the payment of Wages Act ( hereinafter referred to as the authority) that he was entitled for the full salary from 10.5.1974 to 3.10.1974 and further the balance of unpaid amount from 4.10.1974 to 2.5.1976 vide Railway Board's letter No. E L R 117800 S/8/17-11.1978 issued with reference to May,1974 Railway Strike.

3. In their reply, opp. parties stated that the applicant has been paid due wages for the period stated in his application and nothing is due and his application is liable to be dismissed with costs. It was also stated that the application was time barred and the claim was liable to be dismissed.

4. Learned Authority upheld the claim of the applicant for the period 10.5.1974 to 30.4.1976 relating to the arrears of salary amounting to Rs.3604/27 P. and directed its payment alongwith a sum *bt* of Rs.18021-35 P. as compensation. The claim of the applicant was upheld mainly on the basis of Railway Board's instructions dt.28.9.78 followed by the instruction of D.S.Moredabad contained in his letter dt. 22.9.1979. Learned authority had also held that as the application was made on 26.9.1979, it was maintainable u/s <sup>15</sup> ~~section~~ *bt* of the Payment of Wages Act.

5. We have heard learned counsel for the parties. The claim of the applicant-respondent has been upheld by the learned authority mainly on the interpretation of Railway Board's letter dt.28.9.78 (copy at paper no.16/1). This letter stipulated that the Railway *bt* Employees, who were prosecuted in the court of law and were acquitted



either after due prosecution or as a consequence of the withdrawal of the prosecution were entitled to full pay for the period from the date of suspension/termination/removal to the date of reinstatement. Based on this letter, the applicant has claimed full salary for the period 10.5.1974 to 3.10.1974 during which he was under suspension. For the subsequent period he was paid salary but the grievance is that this was less than what should have been paid to him in terms of the Railway Board's letter, mentioned earlier. It is not undisputed that the services of the applicant were terminated w.e. from 30.4.1976 and he ceased to be a railway employee from 1.5.1976.

6. The main point for consideration is whether the claim of the applicant would come within the provisions of the Payment of Wages Act. The applicant has stated that the amount claimed by him was wrongly deducted from his salary and the learned authority has also upheld this plea of the applicant. Sub-section(1) of Section 7 of the Payment of Wages Act states as follows:

7;1 Deductions which may be made from wages.--(1) Notwithstanding the provisions of sub-section(2) of Section 47 of the Indian Railways Act, 1890 (9 of 1980), the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

(Explanation I)-- Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(Explanation-II)-- Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely--

- (i) the with-holding of increment of promotion (including the stoppage of increment at an efficiency bar);
- (ii) the reduction to a lower post or time scale or to a lower stage in a time scale; or
- (iii) suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by Notification in the Official Gazette."

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The case of the applicant is not covered by Explanation(I). Explanation(II) appears to be applicable to the present case. The applicant was paid suspension allowance due to his being placed under suspension by the competent authority and such suspension has not been declared invalid by any competent authority. Similarly the punishment of reduction of his pay from Rs.440/- P.M. to Rs. 350/- p.m. ,w.e.from 4.10.1974 was passed by a competent authority. On his reinstatement w.e.from 4.10.1974 he was paid salary at the rate of Rs.350/- p.m. upto 19.11.1975 when he was again placed under suspension. From 20.11.1975 to 30.4.1976, he was paid suspension allowance at the rate of 50 per cent of his salary of Rs.350/- p.m.. He was dismissed from service w.e.from 1.5.1976. None of these orders have been declared invalid by any court of law. What is emphasised by the learned counsel for the applicant is that the Railway Board's Circular had the effect of nullifying the above mentioned orders and that the applicant was entitled to full wages along with the increment falling due to him from concerned date. We have considered this matter and we are of the opinion that the clarification given in Explanation(II) of Sub-section(1) of Section 7 of the Payment of Wages Act makes it clear that loss of wages to the applicant resulting from suspension and imposition of the punishment of reduction to a lower stage in the time scale of pay could not be considered as deduction from wages. Sub clause(h) of sub-section(2) of Section 7 of the Act also makes it clear that deduction required to be made by an order of a court or other authority competent to make such order is permissible under the Act. If for the sake of argument, it is taken that the loss of wages would come within the definition of deduction, the provisions contained in Section 7(2)(h) would make it legal and valid. We are of the opinion that the learned authority has erred in coming to the conclusion that the loss of wages claimed by the applicant could be claimed under Section 15 of the Payment of Wages Act.



6. Sub-section(2) of Section 15 of the Act would also be applicable if the application was to be considered under the Payment of Wages Act. The proviso to sub-section(2) of Section 15 of the Act clearly lays down that every such application shall be presented within 12 months from the date on which the deduction from the Wages was made or from the date on which the Payment of Wages was due to be made as the case may be. The application was filed on 26.9.1979, several years after the dates on which the alleged deductions were deemed to have been made. The instructions of the Railway Board were in the nature of guidelines to be followed by the authorities competent to pass orders in respect of employees under their jurisdiction. The amounts claimed by the applicant would become due to him only after the competent authority has made compliance with the instructions of the Railway Board and passed suitable orders modifying the order of suspension/reduction of pay, etc, and making the applicant entitled to receive wages to which he would have been entitled, had he not been placed under suspension, and awarded the punishment of reduction in salary etc.. In our opinion the authority under the Act is not the correct forum for redressal of the grievances of the applicant, who had alleged that the Divisional Railway Manager had failed to pass orders on his various representations. Besides, the Divisional Railway Manager and the General Manager, the applicant could have moved the Railway Board for issue of necessary orders in respect of his grievances. If he failed to get his dues even after approaching the Railway Board, the applicant could move the Civil Court but the authority under the payment of Wages Act was not the correct forum for this purpose.

7. For the reasons mentioned above, we allow the <sup>appeal</sup> petition filed by the Union of India and others and set aside the judgment and order passed by the learned authority. The appeal preferred by Sri U.C. Misra is dismissed. We make no order as to costs.

Member-A *[Signature]* 12/11/86  
Member-J *[Signature]* 12/12/86