

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Original Application no. 751/90
Transfer Application no. _____

Date of Decision 29.11.96.

Union of India & others Petitioner

CA Sri Prashant Mathur Advocate for the
Petitioner

V E R S U S

Prescribed Authority & others Respondents.

CR Sri Anil Kumar Advocate for the
Respondents.

C O R A M

Hon'ble Mr. Dr. R.K. Saxena, J.M.

Hon'ble Mr. Mr. S. Dayal, A.M.

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordship wish to see the fair copy of the judgement ?
4. Whether to be circulated to all Bench ?

} No


SIGNATURE

PIYUSH/

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 751 of 1990

Allahabad this the 29th day of Nov. 1996

Hon'ble Dr. B.K. Saxena, Member (Jud.)
Hon'ble Mr. S. Dayal, Member (Admn.)

1.
Union of India through General Manager, North Eastern Railway, Gorakhpur and Others.

2. F.A. and C.A.O., N.E. Railway, Gorakhpur.

3. Divisional Railway Manager, N.E. Rly. Gorakhpur.

APPLICANTS

By Advocate Sri Prashant Mathur.

Versus

1. Prescribed Authority under Payment of Wages Act, 1936, Gorakhpur 2, Police Lines Road, Gorakhpur.

2. Krishna Bihari Lal, ~~S/o~~ Late Shri Ram Sunder Lal, Trains Clerk, North Eastern Railway, Gorakhpur, R/o Quarter no. T/2, Station Colony, Gorakhpur.

RESPONDENTS.

By Advocate Sri Anil Kumar

ORDER

By Hon'ble Dr. B.K. Saxena, Member (J)

This O.A. has been preferred by the Union of India and two others challenging the award dated 16/5/90 given by the Prescribed Authority under Payment of Wages Act in P.W. case no.179 of 1985 Sri Krishna Behari Lal Vs. General Manager, N.E. Railway, Gorakhpur and Others.

2. Briefly stated the facts of the case are that the respondent no.2 was working as Trains Clerk in N.E. Railway, Gorakhpur. He was placed under suspension vide letter dated 29.3.1974 on the charges of acceptance of illegal gratification. He was charge-sheeted on 15.4.1974 and the inquiry proceeded against

him. The charges were found established and thereafter the Inquiry Officer submitted his report dated 25.8.76. The Disciplinary Authority issued notice of show-cause on 13.10.1976 as to why he should not be removed from service. On receipt of the explanation, the Disciplinary Authority passed the order on 19.11.1976, withholding the increment for two years. The appeal was preferred by the respondent no.2 against the order of penalty. The Appellate Authority issued notice to the respondent no.2 on 07.1.77 to show-cause as to why the penalty should not be enhanced. The respondent no.2 then submitted his reply on 02.9.77. The Appellate Authority imposed the punishment of reduction to the lower grade besides maintaining the order of withholding the increments for two years. The order was passed on 10/17-5-78. The appeal preferred to General Manager was dismissed on 28.9.78.

3. The respondent no.2 then challenged the order of punishment dated 10/17.5.78 by filing the Civil Suit no. 263 of 1979. The said Suit was decreed on 28.2.81. Since the order passed by the Appellate Authority on 28.9.78 dismissing the appeal was not challenged in the Suit, the said order remained ~~unforced~~^{enforced}. Anyway, the present applicants preferred an appeal against the order of the Munsif in Civil Suit no. 263 of 79 but, it appears that the appeal was dismissed. The applicant then approached the High Court in second appeal which was also dismissed on 03.9.1984.

4. It appears that respondent no.2 approached the Prescribed Authority and filed P.W. case no. 179 of 1985

in which it was contended that the non-payment of salary of Senior Trains Clerk in the grade of Rs.330-560/- did amount deduction in the salary. It appears that despite the Judgment in Civil Suit, the respondent no.2 was paid salary of Trains Clerk in the grade of Rs.260-400/-. He, therefore, claimed Rs.23,834-00 as the deducted amount of salary and also claimed compensation. The Prescribed Authority-respondent no.1 upheld the plea taken by the respondent no.2 and the present applicants were directed to make payment of Rs.23,834-00 towards salary, an amount of Rs.47,668-00 towards compensation and Rs.500-00 as cost. Feeling aggrieved by this award, this O.A. has been filed on the ground that the respondent no.1 had illegally exercised the jurisdiction and passed the award.

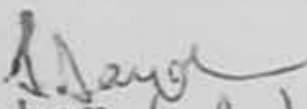
5. It has been challenged by the respondent no.2 on various grounds including the ground that this O.A. is not maintainable before the Tribunal.

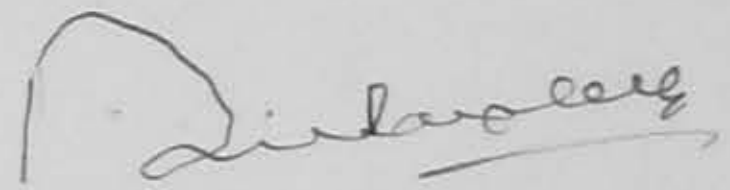
6. We have heard Sri P. Mathur, counsel for the applicant but, none appeared for the respondents. The record was also perused.

7. The main ground taken on behalf of the respondents no.2 is that the O.A. is not maintainable. The dispute has been settled by the decision of the Hon'ble Supreme Court in the case 'K.P. Gupta Vs. Controller, of Printing and Stationery A.I.R. 1996 S.C. 608 in which it is held that the jurisdiction of the Appellate Authority prescribed under Section 17 of Payment of

Wages Act, has not been taken away by Section 28 of the Administrative Tribunals Act, 1985. The sum and substance of this legal position is that before approaching the Tribunal, the aggrieved party should have exhausted the remedy of appeal which is provided under Payment of Wages Act. Since the present applicants have not exhausted the statutory remedy of appeal provided under the Act, the O.A. does not remain maintainable here. It is, therefore, dismissed.

8. The applicants, if so advised, may approach the Appellate Authority even now. The stay order which was granted on 17.9.90 stands vacated and if the applicant had deposited any amount, they shall be at liberty to withdraw the same. No order as to costs.


Member (A)


Member (J)

/M.M./