CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
A_L_L_A_H_A_B_A_D.

DATED : ALLAHABAD THIS THE 22nd DAY OF SEPTEMBER,1995.

Original Application No. 1502 of 1992.

C ORA M :- Hon'ble Mr. T. L. Verma, Member-J.
Hon'ble Mr. K. Muthukumar, Member-A.

Union of India through General Manager,
Northern Railway Baroda House, New Delhi
and D.P.O.N.Railway, Allahabad.....Applicant.
(By Advocate Sri G. P. Agarwal)

Versus

1. Sri G. N. Trivedi r/o. 854, W.Block,
Keshav Nagar, Kanpur-208014.
2. Presiding Officer, C.G.I.T.Cum Labour Court,
Deoki Palace Road, Pandu Nagar, Kanpur.

....Respondents.

(By Advocate Sri B.N.Singh &Sri S.K.Yadav.)

O_R_D_E_R

(By Hon.Mr. T. L. Verma, Member-J)

This application is directed against the order dated 1.7.1992 passed by the Central Government Industrial Tribunal-cum-Labour Court, Kanpur passed in L.C.A.No.193 of 1990.

2. The facts giving rise to this application briefly stated are that the respondent No.1 Sri G.N.Trivedi joined Northern Railway in 1940 on a Class-III post. He retired on 30.7.1979 as Complaint Inspector/Inquiry

Inspector(Vigelance). At the time of his retirement, he was drawing pay at Rs. 795/- in scale of pay of Rs. 700-900. Shri Trivedi, it is stated, was not given the benefit of said scale with effect from 20.10.1978, the date from which his junior Sri Sarhadi was allowed the said scale. He, therefore, filed L.C.A.No.449 of 1985 under Section 33(C)(2) of the Industrial Disputes Act before the Central Government Industrial Tribunal cum-Labour Court,Kanpur. In the said case, it was alleged that the respondent No.1 was deprived of the benefit of fixation of pay at Rs. 795/- with effect from 20.10.1978 illegally. He,therefore, claimed that he should be allowed the benefit of fixation of pay at Rs. 795/- with effect from 20.10.1978,the date from which his immediate junior Sri Sarhadi was allowed the said benefit and claimed payment of Rs. 37,000/- being the difference of pay, Deerness allowance etc. paid and due. The claim of the respondent No.1 was allowed by order dated 4.3.1987. After the aforesaid decision of the Industrial Tribunal cum-Labour Court, the respondent No.1 filed L.C.A.No. 173/ 90 under Section 33(C)(2) of the Industrial Disputes Act for payment of Rs. 3808/10 being the difference of D.C.R.G., leave encashment, pension etc. paid and due. The Labour Court allowed the aforesaid application by impugned order dated 1.7.1992. The Union of India has challenged the aforesaid order dated 1.7.1992 on the ground that the claim of the respondent No.1 was barred by limitation and that the Industrial Tribunal cum labour Court has no jurisdiction to adjudicate upon the dispute under Section 33(C) of the Industrial Disputes Act.

3. We have heard the learned counsels for the parties and perused the record. So far as the argument of learned counsel for the applicant that the claim of the respondent No.1 before the Industrial Tribunal was barred by limitation is concerned, it may be stated that there is no provision, prescribing limitation for filing application under Section 33(C)(2) of the Industrial Disputes Act. This question came up for consideration before the Supreme Court also in Bombay Gas Company Limited Vs. Gopal Bhiva ; reported in Supreme Court Judgement Labour Report page 2748. The Supreme Court has held "In dealing with the question 'does the fact that for recovery of wages limitation has been prescribed by the Payment of Wages Act, justify the introduction of considerations of limitationin regard to proceedings taken under Section 33-C(2) of the Act,' it is necessary to bear this in mind that thoughthe legislature knew how the problem of recovery of wages had been tackled by the Payment of Wages Act and how limitation had been prescribed in that behalf, it has omitted to make any provision for limitation in enacting Section 33-C(2). The failure of the legislature to make any provisionfor limitation cannot be deemed to be an accidental omission. In the circumstances, it would be legitimate to infer that legislature deliberately did not provide for any limitation under section 33-C(2). It may have been thought that the employees who are entitled to take the benefit of Section 33-C(2) may not always be conscious of their rights and it would not be right to put the restriction of limitation in respect of claim which they may have to make under the said provision. The words of Section 33-C(2) are plain and unambiguous and it would be the duty of the Labour Court to give effect to

the said provision without any considerations of limitation.. It is well settled that Article 181 applies only to applications which are made under the Code of Civil Procedure, and so, its extension to applications made under Section 33-C(2) of the Act would not be justified.

In view of the ratio of the decision of the Supreme Court, referred to above, we find no merit in the argument of the learned counsel for the applicant that the claim of the respondent No.1 was barred by limitation.

4. Coming to the argument that the Labour Court had no jurisdiction to entertain the claim of the applicant under Section 33-C(2) of the Industrial Disputes Act it may be stated that the applicant has not controverted the averments made in para 7 of the counter-affidavit that the order passed by the Labour Court in LCA No.449 of 1985 has been implemented by the Railway. In the aforesaid decision, the Labour Court has held that the respondent No.1 was entitled to the benefit of fixation of pay at Rs.795/- with effect from 20.10.1978, and also allowed his claim for difference ofpay, due and paid, with effect from that date. The fact that applicant has implemented the above direction, leads to the obvious conclusion that entitlement of the respondent No.1 to the benefit of fixation of pay at Rs.795/- with effect from 20.10.1978 has been admitted by the applicants.

5. Learned counsel forthe applicant has placed reliance of the decision of the Supreme Court in P. K.Singh and others vs. Presiding Officer and others.

reported in A.I.R. 1988 Supreme Court (2) page 1618 in support of his argument that the Labour Court had no jurisdiction to entertain the claim of the applicant. The relevant portion of the judgement of the Supreme Court is extracted herein below for convenience of reference :-

> "It is obvious from the facts narrated above, which are not in dispute, that by merely doing the same kind of work which is done by a 'B' Grade Fitter, a workman appointed as a 'C' Grade Fitter will not be entitled to claim the wages of a 'B' Grade Fitter unless he is duly promoted after getting through the prescribed trade tests. Such a workman cannot complain that he is not being paid the salary and allowances due to a 'B' Grade Fitter, since he does not possess an existing right to claim it. If on an adjudication made on the said question on a reference made under section 10(1) of the Act, it is held that he should be deemed to be a member of the cadre of 'B' Grade Fitters, then only he would be able to claim the salary and allowances payable to 'B' Grade Fitters. The case before us is analogous to the claim made by a Junior Clerk, who can become a Senior Clerk only on promotion, to the salary attached to the post of Senior Clerk on the ground that both the Junior Clerk and the Senior Clerk are engaged in clerical work."

From the decision of the Supreme Court extracted above, it is clear that for maintainability of an action under Section 33-C(2) of the Industrial Disputes Act, the workman should have an existing right to claim. As we have already noticed above that the respondent No.1 had obtained an award whereby he was allowed difference of pay with effect from 20.10.1978,

That award had become final as the same was not challenged by the applicants before any forum. That being so, the respondent No.1 was entitled to computation of his pension and other terminal benefits treating his pay at Rs. 795/- with effect from 20.10.1978. He had, therefore, a consequential right in existence, flowing from the award passed in LCA No.449 of 1985, to claim arrears of pension, leave encashment etc. at the time L.C.A.No. 173 of 1990 was filed. The award passed by the Labour Court in L.C.A.No.173 of 1990 on the basis of the right recognised by the said Court in L.C.A.No.449 of 1985 and accepted by the applicants cannot be faulted. There is thus, no force in this argument also of the learned counsel for the applicant.

6. For the reasons discussed above, we find no merit in this application and the same is dismissed leaving the parties to bear their own costs.

(K. MUTHUKUMAR)
MEMBER (A)

(T.L. VERMA)
MEMBER (J)

VKP/-