

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1184 of 1992

The Union of India Applicants.

Versus

Shri P.L.Yadav Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-J

(By Hon'ble Mr. T.L.Verma, J.M.)

This application under Section 19 of the Administrative Tribunal's Act has been filed for setting aside the order dated 29.1.1986 passed in P.W. case No. 111/1984 directing the respondents to pay to the applicant a sum of Rs. 12086.60 P. together with compensation 5 times of the amount of claim allowed.

2. The facts giving rise to the present O.A. in short are that the respondent, P.L.Yadav, was Assistant Guard under the Central Railway Jhansi. He was made to retire on 31.12.1981 on the ground that he had attained the age of superannuation. This decision was challenged by the respondent in the Court of Munsif Jhansi by filing suit No. 429/1981. Munsif Jhansi rejected the claim of the respondent regarding his date of birth and dismissed his suit. The decision of the Munsif, however, was set aside in appeal No. 21/1982 by order dated 2nd April, 1984. No appeal was filed in the High Court against the judgement and decree passed by the appellate Court and as such the decree in appeal has become final. The respondent was, therefore treated as on service till the date, he retired. ^{that he} ~~in April, 1984.~~ It is alleged, was not given mileage admissible to the Running Staff to which, he admittedly

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belonged for the intervening period between his retirement and reinstatement.

belonged He, accordingly, filed case No. 111/1984 in the Court of Prescribed Authority for passing an award for the amount, illegally deducted from his salary with compensation. The claim of the respondent was accepted by the Prescribed Authority and award for a sum of Rs. 12,086.65 P. and 5 times compensation on Rs. 16,433 with cost of Rs. 50/- was allowed. by order dated 29.1.1986. The applicants filed a Misc. Writ Petition No. 1027/1986 questioning the correctness of the award passed by the prescribed authority in the High Court of Judicature at Allahabad. The High Court, by order dated 19.9.1988, directed the applicants to deposit the entire amount with the prescribed authority under the Payment of Wages Act, Jhansi and pay half of the amount to the respondent ^{said} vide Annexure A-2. The Writ Petition is/to be pending. Thereafter, while the Writ remained pending in the High Court, this application was filed on 9.8.1990.

3. The respondent has contested this application inter alia on the grounds that the same is not maintainable for nonjoinder and that the proper forum for filing appeal against the order of the prescribed authority was the District Court, as provided under Section 17 of the Payment of Wages Act. At the time of the argument, however, maintainability of this application on the ground of limitation was also taken.

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4. The first question that falls for consideration is whether this Tribunal has jurisdiction to entertain this application in view of the provisions contained in Section 17 of the Payment of Wages Act, 1936. The appellate authority designated in Section 17 of the Act, is a Court

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of small causes in a presidency town and elsewhere the District Court. After the constitution of the Administrative Tribunals, all matters relating to the service of the Central Government employees have come under the jurisdiction of the Administrative Tribunals. The question of jurisdiction to entertain applications against the awards passed by the prescribed authorities came up for consideration before the Full Bench of the Central Administrative Tribunal, Chandigarh Bench in Union of India Vs. S.C. Singla reported in 1989 (9) ATC page 167. It has been held in the above case that by virtue of Section 14 (1) of the Administrative Tribunal's Act, the jurisdiction, powers and authority exercisable by the appellate authority under Section 17 of the Payment of Wages Act vest in the Tribunal so far as service matters concerning recruitment etc. of the Central Government employees are concerned. Question of payment or non-payment of wages in respect of the Central Government employee comes within the meaning of service matters. That being so, and having regard to the principle of law laid down by the Chandigarh Bench of the Administrative Tribunal (Supra), read with the decision in A. Padmavalley Vs. CPWD rendered by a larger Bench reported in (1990) 14 Administrative Tribunal cases page 914, in which Singlas' case was reviewed, jurisdiction, power and authority exercisable by the appellate authority under Section 17 of Payment of Wages Act, now, vests in the Central Administrative Tribunal. This being the position of law, the argument of the learned counsel for the respondent that this Tribunal has no jurisdiction to entertain this application in view of the provisions of Section 17 of the Payment of Wages Act, cannot be accepted.

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5. It was next argued that Union of India is represented through the General Manager of the respective Railways in this case. The General Manager, Central Railway, has been filed through D.R.M. Central Railway, Jhansi in place of General Manager and as such the application is bad for non-joinder of necessary party. The copy of the award passed by the Prescribed Authority has been filed as Annexure A-1 to compilation No. 2. From the perusal of the cause title of the case before the Prescribed Authority, it appears that respondent had filed case No. CPW 111/1984 against DRM Central Railway, Jhansi. Since the direction in the award to make payment with compensation has been given to DRM Central Railway, Jhansi, the proper person to file appeal against the said order, in our opinion, will be the person, against whom the decree has been passed. In view of the matter, this application, by Union of India through DRM Central Railway, Jhansi, cannot be said to be suffering from legal defect so as to make the application as non-maintainable.

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6. In addition to the above, for determining whether the case is bad for non-joinder, it has to be seen whether the person left out from the array of the parties in absence of whom, no effective order can be made. In other words, whose presence is necessary for a complete and final decision of the question involved in the proceeding. The respondent was working under DRM, Central Railway, Jhansi. The D.R.M. during the relevant period. He was, for all practical purposes, competent authority in all matters so far as the applicant is concerned. The question whether the applicant was entitled for mileage, could, legitimately, have been

decided in absence of the General Manager. The General Manager, therefore, was a proper party, not a necessary party. That being so, this application can be effectively decided in absence of General Manager. We, therefore, find that this application is not bad for non-joinder of necessary parties.

7. The learned counsel for the respondent has urged that the impugned order is dated 29.1.1986. Section 21 of the Administrative Tribunal's Act provides for one years' time from the date, on which, final order appealed against was passed, as the period of limitation for filing application under Section 19 of the Administrative Tribunal's Act. The application, under Section 19 of the Administrative Tribunal's Act, dated 29.1.1986, could, thus, have been filed within one year from that date viz 29.1.1987. This application however, has been filed on 9.8.1990 viz about 3 and half years after the date, on which the impugned order was passed. This application has thus been filed after the expiry of the period of limitation. However, to the Tribunal Priviso to Section 21 gives discretion to admit an application after the period of one year, if the applicant satisfies the Tribunal that there was sufficient cause for not making the application within such period. In view of the above, before this application is held to be within time, it has to be seen, whether reasonable explanation for not filing this application within the prescribed period, has been given by the applicant or not. An affidavit has been filed on behalf of the applicant (Annexure A-3) stating therein that the delay in filing the present application was mainly on account of difference of opinion of different Benches of the

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Tribunals as to whether the jurisdiction of the District Court under Section 17 of the Payment of Wages Act has been transferred to the Tribunal or not. It was, for this reason, that the Misc. Writ Petition No. 1027/1986 was filed in the High Court of Judicature at Allahabad for quashing the order, passed by the prescribed authority which is still pending. The judgement of the Full Bench of the Chandigarh Bench of the Administrative Tribunal was reported in 1989. The delay in filing this application after the Full Bench decision was reported, has not, at all been explained. Hence, we are of the view that the applicant has failed to explain satisfactorily, the reason for the delay in filing this application even after the controversy with regard to the jurisdiction, was finally settled by the Full Bench decision of the Chandigarh Bench of the Administrative Tribunal. We are, therefore, of the view, that this application is barred by limitation.

8. The learned counsel for the applicant has urged that since the respondent was not employed for Running duty after his reinstatement, he was not entitled to Running Allowance. In support of his argument, he has drawn our attention towards ~~to~~ the decision of this Tribunal passed in O.A. No. 618/1990, Union of India through D.R.M., Jhansi Vs. P.L.Yadav. The applicant in the above case (618/1990) had claimed Running Allowance from May, 1984 to August, 1984. The claim of the applicant was disallowed following the decision of the Supreme Court in D.R.Jerry Vs. Union of India, reported in A.I.R. 1974 Supreme Court page 130. The judgement however, does not disclose as to why the respondents had

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disallowed the claim of the applicant for Running Allowance from May, 1984 to August, 1984. Therefore, we are not in a position to hold that the facts of the case relied upon by the learned counsel for the applicant and the case under consideration are in parimateria. The decision of the Supreme Court in D.R.Jerry's case (*supra*) however, has no application to the facts of the case under consideration. In D.R.Jerry's case, the applicant had been dismissed from service following his conviction in a criminal case. He was reinstated by order of the High Court after his conviction was set aside. He was reinstated to the post of Guard 'C' grade and the matter of his back wages for the period between the date of his dismissal and the date of reinstatement was decided subsequently and the applicant was accordingly informed by letter dated 13.2.1959 that the period from the date of his dismissal to the date of his reinstatement would be treated as leave due. In the facts of the case mentioned above, the Supreme Court held that the applicant was not entitled to running allowance, for the period from the date of his dismissal to the date of his reinstatement, because the intervening period was treated as leave due which exceeded the period of one month, in terms of Rule 2003 of the Railway Establishment Code. The case before us, however, is altogether different inasmuch as the applicant is to be treated as on duty during the period from the date of his retirement to the date of his reinstatement pursuant to the decree passed by the Civil Court. That being so, the provisions of Rule 2003 of the Railway Establishment Code do not cover the case of the applicant.

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9. Note to Section 2 of the Payment of Wages Act states that the term, Wages used in the Act includes Over Time and Mileage Allowance, payable to running staff..... Chapter 9 of the Indian Railway Establishment Manual Vol. I deals with running allowance Rules. Rule 902.2 (V) defines Running Allowance as an ordinary allowance ordinarily granted to running staff in terms of and at the rate specified in these Rules and/or modified by the Central Government, the Ministry of Railways in the performance of duties directly connected with charge of moving trains and includes Kilo Meter allowances and allowance in lieu of Kilo Meter but excludes special compensatory allowance. Rule 907 provides that when running staff are engaged in or employed on non-running duties as specified in Rule 3 (II), they shall be entitled to the payment of allowance in lieu of Kilo Meterage as provided in Sub Rule A & B. Rule 921 provides that waiting allowance @ 15 Kilo Meter per hour up to 10 Kilo Meter should be paid to the running staff in the case of back running staff kept in administrative interest. Rule 907 and 921 read together make it clear that a running staff kept back for doing administrative work also is, entitled to running allowance at statutory rate. The entitlement of the applicant/questioned by the respondents on the ground that he was not booked for doing running duty, it would thus appear, is inconsistent with the Rules referred to above and as such, cannot be sustained.

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10. The statutory rate of running allowance admissible to a running staff employed on the administrative side, has not been brought to our notice to show that the amount allowed by the Prescribed Authority is not correct. That being so, we have no option, but to hold that the amount of running allowance and the additional D.A. etc. has been correctly awarded.

11. In view of our discussions made above, we find and hold that this application is devoid of merit and the same is dismissed leaving the parties to bear their own cost.

J. Khan

Member-J

W.P

Member-A

Allahabad Dated: ~~21~~ 21.7.94

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