RESERVED:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 1208 of 1992

DATED: 10th ~~OCTOBER~~ November, 1994

Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. J.S. Dhaliwal, Member(J)

1. The Union of India, through
General Manager, Northern Railway,
Baroda House, New Delhi.

2. The Deputy Chief Commercial Manager,
Railway Station Building,
Varanasi. ... ... PETITIONERS.

(By Advocate Sri A.K. Gaur)

VERSUS

1. Ganga Ram son of Baburam
Village Saraiya (Phulwaria)
Varanasi.

2. Presiding Officer,
Labour Court, Allahabad ... ... RESPONDENTS.

(By Advocate Sri G.P. Verma)

_O_R_D_E_R_

(By Hon. Mr. S. Das Gupta, Member(A))

This application has been filed by Union of India through General Manager, Norther Railway and another under Sec. 19 of the Administrative Tribunals Act, 1985 challenging the order dated 26.5.1992 passed by the Labour Court, Allahabad (Respondent no. 2) on a claim petition filed by the respondent no.1 under Section -33(C) (2) of the Industrial Disputes Act, 1947 (I.D. Act for short) praying that the ~~stay~~ order passed by the respondent no.2 be set aside.

2. The facts of the case as stated in the application are that the respondent no.1 was involved in a criminal case unconnected with his official

duties and was placed under suspension on 11.7.1979. He was paid subsistence allowance at the rate of Rs. 523.25 and as such, the allowances were paid upto November, 1982. It appears that thereafter, the subsistance allowance was not paid as it came to the knowledge of the applicant that the applicant had been convicted in the criminal case and was behind the bars. The applicants, however, had not issued any order terminating the service of the respondent no. 1 or imposing any other penalty or reinstating him in service. It appears that on 22.9.1988, the respondent no. 1 submitted an application to the applicant for revocation of the suspension and reinstating him in service. The applicant tried to ascertain the circumstances leading to his conviction and imprisonment and of subsequent release but they could not ascertain the facts from the concerned court. The respondent no.1 also did not furnish a copy of the order of conviction. The applicant's however, came to know that the High Court had dismissed the appeal filed by the respondent no. 1 against his conviction and, therefore, they did not pay any subsistence allowance to the respondent no. 1 nor did they reinstate him in service. The respondent no.1 filed a petition before the labour court, Allahabad under Section 33(c) (2) claiming subsistence allowance for the period from December, 1982 to December,1989. The applicant contested the petition by filing a detailed written statement in which it was pleaded that the claim of the

respondent no. 1 was beyond the scope of Section 33(C)(2) of the I.D. Act. It was also pleaded that the claim was time barred. The respondent no.2, however, held that since the applicant had not issued any specific order terminating the services of the applicant nor had reinstated him in service, the claim of the respondent no.1 for substence allowance was justified and accordingly awarded a sum of Rs. 43953 as subsistence allowance for 64 months at the rate of Rs. 535.25. It is this order, which is under challenge in this application.

3. The impugned order of the respondent no.2 has been assailed mainly on the ground that the labour court did not have jurisdiction to award compensation under Section 33(C)(2) of the I.D. Act. It has also been pleaded that the findings of the labour court are perverse. An additional plea was taken during the course of argument that the application before the labour court was barred by limitation.

4. The respondent no.1 has filed a counter reply in which a preliminary objection has been taken regarding the jurisdiction of this Tribunal in entertaining the present application. It has also been pleaded that the application is time barred since a writ petition can be preferred in the High Court within 90 days of the award. It is further, stated that the suspension order was neither revoked nor withdrawn nor final order of removal was passed by the applicant and as such, the labour court

had rightly decided that he would deemed to continue under suspension and thus was entitled to the payment of susbsistence allowance. He has referred to instructions contained in the Railway Board's No. E 50 RG 6-6 dated 4th Feb.1956 and E 56 RG 6-6 dated 31st May, 1956) in support of his contention that removal from service is not automatic on conviction in a criminal case.

5. We have heard the learned counsel for both the parties and have carefully gone through the records of the case.

6. The plea raised by the respondent no.1 that this Tribunal has no jurisdiction in the matter has no force whatever. It has been fully settled in the case of A. Padmavalley and others Vs. CPWD & Telecom Full Bench Judgments of CAT (1989-91) Vol.II in it has been held that the Tribunal is fully competent to hear the matter.

7. The plea of limitation raised by the respondent no.1 also has no force since in the provision of the Administrative Tribunals Act, 1985 the period of limitation is 1 year from the date when the cause of action arises. This application has been filed well within the period of limitation.

8. We next come to the question raised by the applicant that the labour court had no jurisdiction for hearing this claim petition under Section 33(c)(2) of the I.D.Act. This Section reads as follows;

> "(2) Where any workman is entitled to receive from the employer any money or any benefit

which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government(within a period not exceeding three months).

9. The contention of the respondents appears to be that the Labour Court can decide the amount of money due for the amount at which the benefit should be compu--ted. But it is first to be established that the workman is entitled to receive the amount from the employer. The labour court cannot decide the question whether the workman is actually entitled to receive such amount or not. The respondents have sought to rely in this regard on the decision of the Ernakulam Bench of this Tribunal in the case of Divisional Personnel Officer Southern Railway Vs. K.K. Gopalan and another. In this case the Tribunal held that it is the duty of the Labour Court to find first as to whether there is existing right and to record a finding there-on. We are not in disagreement with this principle ennunciated by the Ernakulam Bench which is inconsonance with Section 33(c)(2) of the I.D. Act. The question, however, in this case is whether the labour court gave a finding about any existing right of the respondent no.1 for receiving subsistence allowance.

9. We may at this stage advert to the provisions contained in the Railway Boards circular dated 4.2.1956

and 31.5.1956 referred to in the preceding paragraphs. The contents of the circular has been extracted under Rule-14 of the Railway Servant Disciplinary and Appeal Rules, 1968. The instructions reads as follows;

> "Removal is not automatice in conviction cases:- Where an action to impose a penalty of a Railway Servant is taken on the basis of facts which led to his conviction in a criminal court; dismissal, etc. is not to be automatic and each case should be examined on its merits and orders imposing the penalty passed if the charges against the Government servant on which his conviction is based, show that he was guilty of moral turpitude or of grave misconduct which is likely to render his further retention in service undesirable or contrary to public interest. While action to dismiss , remove or reduce an employee or to impose on him any penalty on the basis of conviction on a criminal charge, is to be taken on the merits of thecase, it is not necessary to observe the usual disciplinary procedure before taking action to dismiss, remove etc."

It is clear from the above that after a Railway Employee has been convicted in a criminal case, it is the duty of the concerned authorities to consider the nature of the charges on which the employee was convicted and thereafter passed an appropriate order either dismissing/removing him from service or imposing on him any other appropriate penalty and reinstating him in service. Admittedly, no such action was taken by the applicant in this case for whatever reasons nor was the order of suspension revoked. In these circumstan-

-ces we do not find any perversity in the findings of the labour court that the respondent no.1 continued to be under suspension and as such, he had an existing right to continue to receive the subsistence allowance. There is nothing to support the contention of the applicant that the respondent no.2 either exceeded his jurisdiction or came to a perverse finding.

10. As regard the plea raised by the applicant that the petition before the labour court was barred by limitation, No time limit has been prescribed under the I.D. Act for filing a claim petition under Section 33(c)(2). The respondents, however, sought to rely on the decision in the case of K.K. Gopalan (Supra) to contend that the labour court could have considered the question of limitation. We find that the Ernakulam Bench had held in the K.K. Gopalan's case that even though, there is no statutory limitation fixed for raising a claim under Sec.33 (c)(2), where a monetary claim comes up for consideration before directing the payment, the court has a duty to examine whether the delay in making a claim has any relevance to the fixation of the claim or bonafide of the claim. In this case, the question of limitation was raised by the respondents in their written statement contesting the claim petition filed under Section 33(c)(2). The labour

court must have taken this plea into consideration while passing the impugned order. If the labour court did not find the delay in filing the application, as unacceptable, we see no reason to interfere with the award on this ground.

11. In view of the foregoing, we see no ground for interfering with the impugned order dated 26.5.1992. The application is, therefore, dismissed. There will be no order as to costs.

Member(J) Member(A)

(n.u.)