

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD

Dated Allahabad this the...*1st* day of *November*, 1996

CORAM : Hon'ble Mr. S. Das Gupta, Member-A  
Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 940 of 1993.

Union of India through D.R.M. Central  
Railway, Jhansi ... .. Applicant.  
(C/A Sri G. P. Agarwal)

Versus

1. Sri Roop Kishore Chaubey s/ol Sri Dwarika  
Prasad Chaubey, r/o. 6, Jurauli Galiganj,  
Basoda, District Vidisa.

2. Prescribed Authority, under the Payment of Wages  
Act, at Jhansi D.L.C.

.....Respondents.

(C/R Sri S.J.Sandilya & V.Sandilya)

O R D E R

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

This application has been filed under  
Section 19 of the Administrative Tribunals Act,  
1985 by the Union of India through the D.R.M.  
Central Railway, Jhansi challenging the validity  
of an award dated 30.3.1993 passed by the  
Authority under the Payment of Wages Act  
directing payment of Rs. 25038 as arrears of

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wages together with an equal amount of Rs. 25038/- as compensation plus Rs. 200 as cost to the respondent No.1.

2. From the facts averred in the OA as well as the Counter-Affidavit it appears that the respondent No.1, ~~xxxxxxx~~ while he was serving as Senior Time Keeper in the grade of Rs. 330-560/- in 1981, was charge-sheeted for unauthorised absence and the penalty of reversion to the lower post of Time Keeper in the grade of Rs. 260-400 was imposed on him by an order dated 31.3.1984. The appeal against this order having been rejected, the applicant filed an O.S. in the Court of Additional Munsif, Jhansi. The suit was later transferred to the Allahabad bench of the Central Administrative Tribunal. Allowing the said transfer application in part, a bench of the Tribunal, by its order dated 30.7.1987 modified the order of penalty to the extent that in the lower grade of Rs.260-400, the applicant's pay shall be fixed ~~at~~ Rs. 400/- and he would be entitled to get the arrears of pay including other allowances. The applicant thereafter ~~kept~~ on representing to the respondents for payment of arrears of salary but, as the respondents did not pay to him the arrears of wages, he approached the Authority under the Payment of Wages Act under Section 15(2) of the Payment of Wages Act, 1936, whereupon the impugned award was passed by the respondent No.2 i.e. Authority under the Payment of Wages Act.

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3. The case of the present applicant (respondent in the earlier T.A.) is that the respondent No.2 had illegally as well as erroneously entertained the application Under Section 15(2) of the Payment of Wages Act and wrongly interpreted the decision of the Tribunal, in which the allowances had not been awarded. It is further contended that maximum amount payable to the respondent No.1 worked out to Rs. 17,426/- and this sum was released even before a decision of the case and therefore, there was no question of awarding any compensation or costs. ~~xxxx~~

4. The respondent No.1 filed a Counter-affidavit in which he denied that any payment was released to him prior to the decision of the Payment of Wages Authority. He further stated that after the decision of the Tribunal he repeatedly represented for payment of his wages and even after his retirement on 31.3.1988, the arrears were not paid to him and hence he approached the Authority under the Payment of Wages Act for redressal.

5. In a rejoinder reply filed by the applicant, a plea has been taken that the salary of the applicant being above 1600/- per month, the Authority under the Payment of Wages Act did not have any jurisdiction in the matter. It has been also contended that entertainment of the application by the Authority under the Payment of Wages Act is a direct disobedience to the preamble of the Administrative Tribunals

Act, 1985 and making it nugatory. In a Supplementary respondent No.1 Affidavit, the learned counsel for the ~~applicant~~ has made certain submissions as to how the present application is maintainable before this Tribunal in the face of the decision of Hon'ble Supreme Court in K. P. Gupta's case.

6. We heard the learned counsel for the parties and perused the record.

7. Admittedly a bench of the Tribunal by its order dated 30.7.1987 directed that the pay of the applicant should be fixed at Rs. 400/- and he would be entitled to arrears of pay including other allowances. Thus, there is no substance in the contention of the applicant that the Tribunal did not order payment of allowances and the Authority under the Payment of Wages Act had wrongly interpreted the decision of the Tribunal. As regards jurisdiction of Payment of Wages Authority to entertain the application U/s. 15(2) of the Payment of Wages Act, 1936, we see no reason why such an application could not have been entertained by the said authority. The arrears of wages had clearly accrued to the respondent No.1 in terms of the direction of the Tribunal by its order dated 30.7.1987. If such wages had been denied to the respondent No. 1 or the payment thereof was delayed, the respondent No.1 could have approached the Authority under the Payment of Wages Act under Section 15(2) of the Act.



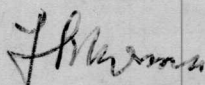
7. We have, however, noted that this application was filed before the Tribunal without filing an appeal before the District Judge. In the recent decision in K.P. Gupta's case Hon'ble Supreme Court has clearly held that the appellate jurisdiction of the District Judge under Section 17 of the Payment of Wages Act is not ousted by any provision contained in the Administrative Tribunals Act, 1985. As the applicant did not first file an appeal before the District Judge, it is clear that this application has been filed without first exhausting the statutory remedy available to the applicant. This application therefore, is not maintainable.


8. The learned counsel for the applicant sought reliance on the decision of the Chandigarh bench of the Tribunal in the case of Mohinder Singh & others vs. Union of India and others (1995) 31, A.T.C. 534 to contend that the Tribunal can assume jurisdiction in the matter under ~~Section~~ Article 226 of the Constitution. We have carefully perused the aforesaid decision. This decision relates to the question of taking cognizance of an application in labour matters without insisting on seeking of remedy first from the Labour Court. The Chandigarh Bench relying on the decision of Full Bench in the Case of A. Padmavalli held that Administrative Tribunal could assume jurisdiction in labour matters without insisting on seeking of remedy first from the Labour Court.

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9. The aforesaid decision is not applicable to the present controversy, in the case of Industrial Disputes Act, which gives the framework of the Labour Courts, does not envisage any appellate authority unlike the Payment of Wages Authority. Thus even if the Tribunal can assume jurisdiction in matters which could first be entertained by Labour Court, such is not the case in matters coming within the jurisdiction of the Payment of Wages Act as that Act clearly specifies an Appellate Authority <sup>from</sup> ~~therefrom~~ the award passed by the Authority, under the Payment of Wages Act

10. In view of the foregoing, we dismiss this application. Nothing in this order shall preclude the applicant from filing an appeal before the appropriate forum, if so advised, and from taking the plea of lack of jurisdiction on the part of the Authority under the Payment of Wages Act, if available to him.

  
Member-J

  
Member-A

(pandey)