

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

DATED : ALLAHABAD THIS 2nd DAY OF JANUARY, 1996

QUORUM : Hon. Mr. T. L. Verma, Member-J,
Hon. Mr. D. S. Baweja, Member-A.

O. A. No. 387 of 1995.

Union of India through
General Manager,

Central Railway,

Bombay V.T. and D.R.M.C.Rly,

Jhansi.

.....Applicants.

(By Advocate Sri G. P. Agarwal)

Versus

1. Tula Ram aged about 33 years, s/o. Sri Munna
r/o. village & Post Aktara, Distt. Hamirpur.

2. Prescribed Authority, under Payment of
Wages Act, 1936,
at Jhansi

.....Respondents

(BY Advocate Shri

)

ORDER

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

This application has been filed for setting aside order dated 20.7.1994 passed in P.W. Case No. 134 of 1990 (Tula Ram Vs. UOI & others) passed by Prescribed Authority, under the Payment of Wages Act, 1936. The respondent Tula Ram was working as Parcel Porter with the Central Railway Mathura Junction, filed O.A. No. 160 of 1989 challenging the order dated 30.12.1980 terminating his services. The said O.A. was allowed by order dated 23.5.1990 and the

applicants
~~respondents~~ were directed to reinstate the respondent within one month from the date of receipt of copy of the order. Payment of back wages from the date of termination to the date of reinstatement was denied. After the aforesaid order was passed, the respondents filed P.W. Case No. 135 of 1990 before the Prescribed Authority/ Assistant Labour Commissioner, Jhansi, for payment of Wages for the period 1.1.1986 to 30.9.1986. The Prescribed Authority has allowed the claim and directed the Railways to make payment of wages for the period of 1.1.1986 to 30.9.1986 togetherwith compensation at Rs. 3070/- and cost at Rs. 150/-. This application has been filed for quashing the aforesaid order on the ground that the same is without jurisdiction.

2. After the Administrative Tribunals Act, 1985 came into force with effect from 1.11.1985, the applications challenging the awards allowed by the Prescribed Authority under Section 15 of the Payment of Wages Act 1936 were being challenged before the Central Administrative Tribunals. The Supreme Court, has, however, in a recent decision in K. P. Gupta vs. Controller of Printing & Stationary, reported in Judgments Today 1995(7) S.C. Page 522 has held that the jurisdiction of the District Judge to hear appeals against the award of the Prescribed Authority has not been excluded by Section 28 of the Administrative Tribunals Act. In other words, position as was obtaining before the Administrative Tribunals Act came into force has been restored by the Supreme Court in regard with appeals under Section 17 of the Payment of Wages Act. This by implication excluded the

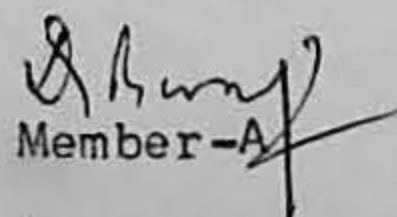
jurisdiction of the Tribunal to entertain an application under section 19 of the Administrative Tribunals Act against awards given by the Prescribed Authority.

3. The learned counsel for the applicant has vehemently argued that the Payment of Wages Authority had no jurisdiction to sit over the decision of the Central Administrative Tribunal and pass the impugned award. Since there was absolute lack of jurisdiction in the Prescribed Authority, the same is liable to be challenged before this Tribunal only under Article 226 of the Constitution of India. The Supreme Court in Sampat Kumar Vs. Union of India & others, reported in AIR 1987(SC) Page 386 has held that from the date on which the Administrative Tribunals have been constituted, jurisdiction of High Courts in entertaining the writ in service matters of Central Government employees has come to an end. It has further been held in the said case that the Tribunals are substitute for the High Court. So long the aforesaid principle of law is not reversed by the Constitution Bench Central Administrative Tribunals can entertain applications in service matter under Article 226 of the Constitution of India. The learned counsel for the applicant submits that in view of the fact that Prescribed Authority has passed the impugned order without jurisdiction, it would be only appropriate for this tribunal to admit this application in exercise of power under Article 226 of the Constitution of India.

4. We are unable to persuade ourselves to accept the above contention of the learned counsel for the applicant for the reason that the District Judge, while exercising the appellate power is competent to

examine whether the Prescribed Authority's order was without jurisdiction or not ? The ambit of the power of the appellate authority is much larger than that of the judicial review inasmuch as the appellate authority can enter into the question of fact, assess the evidences afresh and arrive at a different conclusion, After the appellate authority's order under Section 17 of the Payment of Wages Act, another opportunity of challenging the order is available to either of the parties who feels aggrieved ^{moving} ~~to~~ ^{move} the Tribunal under Section 19 of the Act. If the tribunals start entertaining application directly under Article 226 of the Constitution, without the alternative remedy under Section 17 of the Payment of Wages Act being exhausted legal remedy available at two stages shall be ~~restricted~~ to one only. This, in our opinion, will not be just and fair. For this reason, we find that the applicant should first be directed to exhaust the alternative remedy as ~~is~~ provided under Section 17 of the Payment of Wages Act before coming to this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

5. For the reasons stated above, we dismiss this application at the admission stage itself as being pre-mature.


Member-A


Member-J

Fandey/-