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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 422/89 to 440/89.

~~TxAxxNox~~

DATE OF DECISION 18-10-1993.

Union of India & Ors. Petitioners

Mr. B.R. Kyada, Advocate for the Petitioner(s)

Versus

Shri Bhupat Gagji & Ors. Respondents

Mr. B.B. Gogia, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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O.A.No. 422/89 & 423/89

Union of India
through
Additional Divisional Railway Manager,
Western Railway,
Rajkot. Applicant.

V/s.

Bhupat Gagji
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia,
Advocate,
10 Junction Plot,
Rajkot.

.... Respondent.

O.A.No. 424/89

Union of India, through
Addl. Divl.Railway Manager,
Western Railway,
Rajkot.

.... Applicant.

V/s.

R.L. Dave
Workman/Substitute Khalasi,
C/o. Shri B.B. Gogia,
Advocate,
10, Junction Plot,
Rajkot.

.... Respondent.

O.A.No. 425/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway,
Rajkot.

.... Applicant.

V/s.

Hukumsingh. B.
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia,
Advocate,
10, Junction Plot,
Rajkot.

.... Respondent.

O.A.No. 426/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway,
Rajkot.

.... Applicant.

V/s.

Chandrapal Sharma,
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia, Advocate,
10, Junction Plot,
Rajkot.

.... Respondent.

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O.A.No. 427/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway,
Rajkot.

.... Applicant.

V/s.

Dilip Amratlal
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia, Advocate
10, Junction Plot,
Rajkot.

.... Respondent.

O.A.No. 428/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

Pravingar. S
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia, Advocate,
10, Junction Plot,
Rajkot.

.... Respondent.

O.A.No. 429/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

M.G. Pandya,
Workman/Substitute Khalasi
C/o. Shri B.B.Gogia,
Advocate,
10, Junction Plot,
Rajkot.

.... Respondent.

O.A.No. 430/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

Vijaypal Singh
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia, Advocate,
10, Junction Plot, Rajkot.

.... Respondent.

O.A.No. 431/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

Kantigiri. C.
Workman/Substitute Khalasi,
C/o. B.B.Gogia, Advocate,
10, Junction Plot, Rajkot.

.... Respondent.

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O.A.No. 432/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

..... Applicant.

V/s.

Harun Jusal,
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia, Advocate
10, Junction Plot, Rajkot.

..... Respondent.

O.A.No. 433/89

Union of India, through
The Addl. Divl. Railway Manager,
Western Railway, Rajkot.

..... Applicant.

V/s.

Nareshpal Singh. R.
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia, Advocate
10, Junction Plot, Rajkot.

..... Respondent.

O.A.No. 434/89

Union of India, through
The Addl. Divl. Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

Kishore. B
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia, Advocate,
10 Junction Plot, Rajkot.

.... Respondent.

O.A. 435/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

..... Applicant.

V/s.

Hansraj. S.
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia, Advocate,
10, Junction Plot, Rajkot.

..... Respondent

O.A.No. 436/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

Dilipsingh. P.
Workman/Substitute Khalasi
C/o. Shri B.B.Gogia, Advocate
10, Junction Plot, Rajkot.

.... Respondent.

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O.A.No. 437/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

Bahadursingh. H.
Workman/Substitute Khalasi,
C/o.Shri B.B.Gogia, Advocate,
10, Junction Plot, Rajkot.

.... Respondent.

O.A.No. 438/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

Prahald. R.
Workman/Substitute Khalasi,
C/o.Shri B.B Gogia, Advocate,
10, Junction Plot, Rajkot.

.... Respondent.

O.A.No. 439/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

Amrat Bizaal,
Workman/Substitute Khalasi,
C/o.Shri B.B.Gogia, Advocate,
10, Junction Plot, Rajkot.

.... Respondent.

O.A.No. 440/89

Union of India, through
The Addl.Divl.Railway Manager,
Western Railway, Rajkot.

.... Applicant.

V/s.

R.M.Zala
Workman/Substitute Khalasi,
C/o. Shri B.B.Gogia, Advocate,
10, Junction Plot, Rajkot.

.... Respondent.

COMMON JUDGMENT

O.A.422/89, 423/89, 424/89, 425/89, 426/89
427/89, 428/89, 429/89, 430/89, 431/89
432/89, 433/89, 434/89, 435/89, 436/89
437/89, 438/89, 439/89, 440/89

Date: 18-10-1993.

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Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

These 19 applications have been consolidated together and are heard together by consent of learned advocates of the parties and are being disposed of by common judgment in O.A.No. 422/89.

2. These 19 O.As have been filed under section 19 of the Administrative Tribunals Act, 1985 by the original respondents, Western Railway, against the common award passed by the learned Presiding Officer, Labour Court, Rajkot dated 15th July, 1989 by which the learned Labour Court Judge allowed the Recovery Application Nos. 116/84, 117/84, 118/84, 119/84, 122/84 to 135/84 and 21/85 filed by the respondents before us, who were original applicants in the Recovery Applications. The Recovery Applications were filed by the present respondents before the learned Labour Court Judge under section 33(c)(2) of the Industrial Disputes Act, 1947. The learned Judge consolidated all the 19 Recovery Applications and gave a common award. The respondents had filed Recovery Application Nos. 116/84, 117/84, 118/84, 119/84, 122/84 to 135/84 and 21/85 alleging that they were 'workman of the Railways which is an 'industry' and that they were working as substitute khalasi under the Station Superintendent, Western Railway, Hapa.

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The case of the respondents, as mentioned in their respective Recovery Applications was that they had completed four months period/continuously and were in service enjoying the status of temporary railway servants, and therefore, their services could not be terminated without following procedure prescribed for temporary railway servants under the relevant rules. It was also alleged, *inter alia*, in the Recovery Applications that they were pressed by the Station Superintendent, Hapa, on account of the instructions from the applicant No.2 to give leave applications for the period from 2nd April, 1984 to 17th April, 1984 and hence they gave such applications for leave, which was sanctioned by the applicants. It was the case of the respondents that they were not offered any work from 18th April, 1984 by the applicants and were kept spare and according to him, they were entitled, therefore, to the wages from 18th April, 1984 to 31st August, 1984 because according to them, though they were ready and willing to work, they were not paid any wages during the period. According to the respondents, they were entitled to this salary as on account of contract of service between them and it was the duty of the applicants to take work from them, but they did not choose to work from them and so the

applicants could not deny salary to them for the said period. These respondents had also filed Central Recovery Application No. 21/85 and had preferred jointly the wages for the period from 1st September, 1984 to 30th April, 1985 incorporating the same facts which they had mentioned in the respective Recovery Applications.

Thus, the respondents had claimed their wages from the applicants for the period from 18th April, 1984 to 31st August, 1984 and from 1st September, 1984 to 30th April, 1985 under section 33(C)(2) of the Industrial Dispute Act, 1947. The learned Labour Court judge, Rajkot, declared that these respondents, who were original applicants, were entitled to their wages from the present applicants, who were respondents in the Recovery Applications, for the entire period from 18th April, 1984 to 31st August, 1984 and from 1st September, 1984 to 30th April, 1985 as claimed in their respective applications and he also awarded the cost of Rs. 150/- to each of the said respondents.

2. Feeling aggrieved and being dissatisfied by the said common award passed by the learned Labour Court Judge, the original respondents have preferred these applications contending that the award passed by the learned Presiding Officer, Labour Court, Rajkot was bad in law, that he had also erred in not considering the proviso of the I.D. Act,

that he has erred in interpreting Rules 2302 and 2318 of Indian Railway Establishment Manual that the learned Labour Court Judge has erred in not considering the status of the respondents. It is also mentioned in this original applications that the ~~substitutes~~, who have acquired temporary status, have no right of absorption or no permanent standing on lien on particular posts but they are engaged only against temporary vacancies which fall due on leave or sick leave etc. ^{and} as soon as those on leave resumed the duties, the substitutes would go as the word itself is sufficient to clarify the position of employees. It is contended in this O. Asby the Railways that the substitutes are entitled for wages only for the period for which they are engaged, but they are not entitled to get wages without work. More over, the principle of 'no work no pay' has also not been considered by the learned Judge. They have contended that the learned Judge has erred in holding that after completion of 120 days, though the respondents had given application for leave and actually had not worked, they were entitled to the wages for that period for which they have not worked. It is contended that after getting temporary status, the substitutes or casual labourers have to go for medical examination, screening and after

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empanelment as per their turn according to seniority, they can be absorbed in regular employment. It is also contended that the learned Judge has erred in relying on the decision in T.A.No. 1310/86. The Railways have therefore, prayed in these O.A. that the award passed by the learned Presiding Officer, Labour Court, Rajkot is illegal, null and void and the same be quashed and set aside and these applications be allowed. No reply is filed in any of the original applications by the respondents. We have examined the record and papers of the Recovery Applications which we called from the Trial Court and have heard learned advocates at length on all points urged before us.

3. The jurisdiction of this Tribunal under section 227 of the Constitution of India is limited. The question therefore, which requires to be considered would be whether award of the learned Judge suffers from non application of mind or whether it is based on no legal evidence or whether he has exercised the jurisdiction not vested in him or exceeded in his jurisdiction. The learned Labour Court Judge has observed in his award in para 4 as under: "It is undisputed fact on record that the applicants were substitutes and they had completed four months period continuously, and had enjoyed status of temporary railway servants and can not be terminated by the opponent

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without following the procedure of termination meant for temporary Railway Servants, while according to the opponents no such procedure of termination of service meant for temporary railway servants was required to be followed for termination of service of the applicants. It is also admitted position on record that the applicants were not offered any work and were kept spare by the opponent during the period from 2nd April, 1984 to 17th April, 1984 and from 1st September, 1984 to 30th April, 1984 though they were ready and willing to work". The learned advocate Mr. Kyada for the Railways submitted that merely because the present respondents completed 120 days in service it can not be held that they were granted temporary status. However, it is important to note that in the written statement filed by the Railway in the Recovery Applications they have contended that on completion of 120 days of continuous service, the substitutes are granted temporary status and with the grant of temporary status they are entitled to rights and privileges as may be admissible to temporary railway servants from time to time. The learned ~~Labour~~ ^{High} Court Judge has also referred to their averment made in para 2 of the written statement of Railways in his award para 2. So the railway can not now be heard on the point that the original applicants had not enjoyed the status of temporary railway servants. Reading the written statement of the Railway, it transpires that their

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case was that substitutes when not engaged, they are not entitled or eligible for any wages. They have denied in their written statements /that the applicants were pressed by Station Superintendent Hapa on account of instructions from Opponent No.2 to give leave application for the period from 2nd April, 1984 to 17th April, 1984 as alleged, but they were only asked to give leave application for that period with a view to examine possibility of their reengagements at other stations, as on completion of Second Phase of BG Conversion Project from Hapa to Okha, workload was to be decreased considerably at Hapa and also at other stations on the Section and as a result of the same, contraction of cadre strength was to be inevitable in Class III and Class IV services, and an adjustment of regular staff as well as substitutes was necessary. They further contended in their reply that after examining the possibility, as there was no possibility for reengagement of the applicants at Hapa, the applicants were kept ~~as~~spare and the applicants being substitutes were not paid wages for the period from 1st September 1984 to 30th April, 1985 ~~on the~~ principle of 'No work no pay'. Therefore, it is clear from the written statements / that the applicants were asked to give leave application from 2nd April, 1984 to 17th April, 1984 with a view to examine possibility of their reengagement at other stations but after examining the possibility, as

there was no possibility for reengagement of the applicants at Hapa, they were kept spare and they were not paid wages for the period in question. The learned advocate Mr. Gogia for the respondents submitted that as the applicants were ready and willing to work during that period and as they had acquired temporary status and as the respondents did not offer~~ed~~ any work nor did they terminate applicants' services, the applicants were entitled to wages from the respondents for that period. The learned Labour Court Judge in para-7 of the judgment observed as under:

"7. It is admitted position on record that the applicants had attained status of temporary railway servant by continuously working for 4 months period in the opponent. So the only question which requires to be considered is whether the services of the applicants were required to be terminated by the opponent or not, before stopping to give wages to the applicants."

Thereafter, following the judgment in T.A.1310/86 decided on 26th April, 1982 by this Tribunal he held that the applicants were entitled to the wages for the said period and he also relied on Rule 2302 & 2318 of the Indian Railway Establishment Manual and also he has referred to Railway Servants (Discipline & Appeal) Rules.

4. The learned advocate Mr. Kyada assailed the ~~ward~~ of the learned Labour Court Judge on the ground that the

proceedings under section 33-C(2) of the I.D.Act are in the nature of execution proceeding and therefore when the right of the applicants to relief for wages is in question and the corresponding liability of the respondents to pay wages was not admitted, such applications can not be made under section 33-C(2) of I.D.Act. He submitted that the workman cannot put forward a claim in an application under section 33-C(2) in respect of a matter not based on existing right. He submitted that reading Section 33-C(2) of the I.D.Act, the question of the right of the workman to claim should be undisputed, in other words the workman can only press into service section 33-C(2) of the I.D.Act, when admittedly the amount is due but when the dispute is only about the computation in terms of money and dispute of the amount of money due or as to the amount at which such benefit should be computed. He submitted that here the main question about right of the applicants to claim wages was in dispute namely, whether the applicants were entitled to the wages of the period for which they had not worked and which alleged right was strongly resisted in the written statement by the Railway. The question was also to be considered whether under the Rules 2302 and 2318 of Indian Railway Establishment Manual or under the Railway Servants Discipline & Appeal Rules, the applicants even if, they had acquired temporary status whether they are entitled to the recovery of the amount of wages they claimed by making such application without first getting their right decided by proper forum.

He submitted that all these questions can not be decided under section 33-C(2) of the I.D.Act. The learned advocate Mr. Gogia relying on the decision of this Tribunal referred in the judgment and one other judgment in T.A. 1316/86 decided on 22nd March, 1988 in the case of Kailash Maganlal Dave V/s. Union of India & Ors., submitted that it was open for the learned Labour Court Judge to decide this question. It is important to note that in T.A. 1310/86 decided by this Tribunal on 26th April, 1988 which is heavily relied upon by the learned Labour Court Judge to decide the matter at issue, the Tribunal came to the conclusion that the workman, who had acquired temporary status is entitled to the benefit of temporary status which includes the benefit of Discipline & Appeal Rules and not engaging or taking the workman for work could not terminate their services may have significance regarding the consequences, but the basic adverse effect of not paying them against their entitlement to receive their wage on doing the work has been caused and therefore, in that case the contention of the applicant was upheld. It is important to note that the Administrative Tribunal can consider and decide all these questions about the right of a substitute khalasi having completed four months period continuously

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and the effect of temporary status and also the interpretation of several rules under Indian Railway Establishment Manual and also the question about the benefit under the Discipline and Appeal Rules, but the question is whether the Labour Court Judge under Recovery proceeding under section 33-C(2) of the Act can probe into these / when these questions are in dispute before him. Mr. Gogia also relied on the other decision in T.A.1316/86 decided on 22nd March, 1988 which is not important at all in this case.

Mr. Gogia also read before us some rules under Chapter XXIII of the Indian Railway Establishment Manual, 1960 edition (Second edition), read Rule 2302 about termination of service and periods of notice, Rule 2308 definition of 'substitute' rule 2315 and Rule 2318 / rights and privileges admissible to the substitutes.

Mr. Kyada replying to the submissions submitted that the learned Judge of the Labour Court could not probe into these questions / the rights of substitutes who have acquired temporary status and about the / applicability of Rule 2302 or 2318 or other rules of the Indian Railway Establishment Manual or the provisions of Railway Servants Discipline & Appeal Rules, unless the competent authority has first decided those questions in favour of such workman and have decided that they are entitled to the

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wages for these periods. We find much substance in the submissions of the learned advocate for the applicants Mr. Kyada.

5. Reading Section 33-C(2) of the I.D.Act, we have no doubt in our mind that the proceedings under that section are in the nature of execution proceedings and unless the right of the workman was already established to claim the amount of money due prior to such application the learned Labour Court Judge had no jurisdiction to probe if this was disputed before him such as the alleged right of the applicants substitute for claiming money or wages for the period for which they have claimed by interpreting the the relevant rules of the Indian Railway Establishment Manual or Railway Servants Discipline & Appeal Rules. The Industrial Tribunal or an Administrative Tribunal in substantive application can decide such question but the Labour Court Judge can not proceed to decide it in recovery proceedings when the Railway had itself disputed the very nature of the work of the applicants for claim of wages. The learned Labour Court Judge thus has misdirected himself by raising an issue in para-7 of the judgment that the only question which requires to be considered is whether the services of the applicants were required to be terminated by the opponent or not, before stopping to give wages to the applicants and has further misdirected himself by relying the judgment

of the Tribunal in TA 1310/86 and Rules 2703 & 2318 of the Indian Railway Establishment Manual. The respondents Railway had specifically contended that merely because the applicants had attained temporary status, they were not entitled to the wages for the period they did not work, because they had no permanent standing and they no ^{have} lien of particular posts. They had specifically contended that such substitutes were engaged only against the temporary vacancies where available and when work was available. The applicants were kept in spare. The respondents had examined the possibility of reengagement of the applicants at Hapa but they found that there was no such possibility and therefore, it was not possible to offer work to them for the relevant period and hence the question was whether under the recovery proceedings they were entitled to claim the said amount. In our opinion, the learned Labour Court Judge has fallen into legal error by probing into this questions and there is illegality in procedure adopted by him, which has resulted in miscarriage of justice to the original respondents. There was no legal evidence on record to show that they were entitled to such amount which the respondents did not pay. On the contrary, the right of the applicants itself was in dispute before him.

6. There is a decision in Wilson K. & Ors. V/s. Union of India & Ors., (1991) 17 ATC 22. In this case before the Central Administrative Tribunal, Madras, an application was filed with a prayer to direct the respondents Union of India & Ors. to pay the OTA, TA and other allowances from January 1987 with interest. The Tribunal observed that the applicants can very well get a certificate under Section 33-C(1) of the ID Act in order to get payment of his dues and if there is any doubt regarding the amounts due, the same may be computed by the Labour Court under section 33-C(3), if the applicant files a petition under section 33-C(2) of the ID Act and the same may be recovered under Section 33-C(4) of the said Act and therefore, the Tribunal held that such application can not be entertained. The learned advocate for the applicants contended before the Tribunal ⁱⁿ that case that the stand of the department was that the applicants were not entitled to the claims and that if such a plea is taken before the Labour Court in a petition under Section 33-C(2), then the Labour Court can not resort to compute the amounts that are due. The Tribunal observed that when the question of entitlement itself forms an issue, the proper remedy for the applicant would be to raise an industrial dispute, which will come very well within the schedule of matters within the power of the Industrial Tribunal. In this case also, the Railway has

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disputed the claim of the applicants that they were entitled to the wages for the period for which they have not worked. In the matters before us also as observed in the above case, question of entitlement of wages forms an issue, which the Labour Court under Section 33-C(2) can not decide and cannot resort to compute the amounts. Here the right to claim wages is not admitted much less question of computing the amount due. Thus our reasoning is supported by the above decision. Therefore, in such a case workmen have to raise an industrial dispute which may be decided by the competent Court and if such dispute is then referred to the Labour Tribunal or Labour Court then such Court can decide the point referred to it, but in our opinion, the learned Labour Court Judge in Recovery application under Section 33-C(2) of the I.D.Act, 1947 had no jurisdiction to decide this question. There is no legal evidence that the right to claim wages was already established by the applicants and that the only question was regarding the payment of the wages. As observed above, the entitlement of wages of the applicants was at issue and hence in our opinion the learned Labour Court Judge has completely misdirected himself in passing an award in favour of the original applicants in the recovery proceedings.

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In our opinion this question can only be decided by a competent Labour Tribunal or Labour Court if the applicants raise an industrial dispute but not in a Recovery application under Section 33-C(2) of the I.D. Act, 1947. Hence we reject the submissions of the learned advocate Mr. Gogia for the respondents before us and we accept the submissions of the learned advocate Mr. Kyada for the applicants before us and we allow this applications and we quash and set aside the award passed by the learned Labour Court Judge. We pass the following order :

O R D E R

O.A.Nos. 422/89, 423/89, 424/89, 425/89, 426/89, 427/89, 428/89, 429/89, 430/89, 431/89, 432/89, 434/89, 435/89, 436/89, 437/89, 438/89, 439/89, & 440/89 are allowed and the common award passed by the learned Presiding Officer, Labour Court, Rajkot in Recovery Applications No. 116/84, 117/84, 118/84, 119/84, 122/84 to 135/84 & 21/85 are set aside and the Recovery Applications are dismissed. No order as to costs.

M. R. Kolhatkar
(M.R.Kolhatkar)
Member (A)

R.C.Bhatt
(R.C.Bhatt)
Member (J)

vtc.