

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 450
T. A. No.

1990

DATE OF DECISION 14.3.91

Sr. Divisional Personnel Applicant (s)
Officer, Southern Rly, Palghat
and others

Mr. M C Cherian Advocate for the Applicant (s)
Versus
P. Kuttan and others Respondent (s)

Mr. C. P. Menon, Authorised agent Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

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

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

This is an application filed by The Southern Railway for quashing Annexure A-7, a common order passed by the Labour Court, Kozhikode the 14th respondent in connected cases C.P.(C.) No. 42/88 and other cases granting the claims of the respondents 1 to 13 under section 33 (2) of the Industrial Disputes Act, 1947.

2. The respondents are Sanitary Cleaners working in the Palghat Division in the Southern Railway. They approached the Labour Court, Kozhikode and filed claims under section 33 C(2) of the I. D. Act for payment of special allowances for attending unhygienic and hazardous jobs. According to them the Railway Administration refused to pay them

allowances without any reason. The Labour Court in the common order held that the petitioners therein are entitled to the special allowances and allowed the petitions. The order of the Labour Court granting special allowances to the Sweepers is challenged by the Railways in this application filed under section 19 of the Administrative Tribunals' Act, 1985.

3. The Railways filed Annexure A-2 written statement and raised preliminary objection about the maintainability of the claims under section 33 C(2) and limitation. The relevant portion in Annexure A-2 read as follows:

"The claim is not maintainable factually or legally.

3. The claim is from 1972 onwards and hopelessly barred by limitation. No eyes of law can condone such 16 years inordinate delay. The law as it stands now is to the effect that each and every day delay should be explained. As such the limitation Act is also applicable in this case and three years limitation should be made applicable in the case.

4. There is no orders or rules for the payment of special pay for all the Safaiwalas. This opposite party had paid the Safaiwalas the special pay whenever they are drafted for arduous and hazardous duties on rotation basis. As such the petitioner has no existing right for the claim now made and the same does not come under the scope and purview of Section 33 C(2) of the Industrial Disputes Act. It is humbly submitted that the Labour Court has got no jurisdiction to adjudicate upon when the right to money or benefit which is disputed. The Hon'ble Supreme Court has held that as reported in AIR 1974 SC 1604 that the determination of the question as to whether the employee is entitled to right claimed by him as also whether the employer is liable to pay the amount claimed by the employee are not to be adjudicated upon by the Labour Court while dealing with the petition under section 33 C(2) of the I.D. Act. The Hon'ble High Court of Kerala in O.P. 7680/87 as reported in the Law Journal 1988(2) KLT 835 also upheld above decision."

4. The Railway has also filed Annexure A-5 and A-6 memorandum dealing with the grant of special pay containing specific conditions which are extracted for reference:

"The grant of special pay is subject to the following conditions:

(a) Special pay is admissible to those Safaiwalas who have been identified and who have attended

are actually attending to unplease and uncongenial nature of duties and are in the grade of Rs. 196-232/750-940.

(b) Safaiwalas will cease to get the special pay from the date of their promotion to scale of Rs. 200-250(775-1025).

(c) The special pay to the eligible persons is payable w.e.f. 2.7.1979.

This has the concurrence of FA & CAO/MAS vide his letter No. P.481/PC/Genl/special pay dt. 8.5.87"

(Annexure A-5)

..... The grant of special pay is subject to the following conditions:

1) Special pay is admissible to those Safaiwalas who have been identified and who have attended are actually attending to unpleasant and uncongenial nature of duties and are in the grade of Rs. 196-232/750-940.

2. Safaiwalas will cease to get the special pay from the date of their promotion in scale Rs. 200-250/775-1025.

At places where the safaiwalas in higher grades are performing the same duties may be stopped from doing.

Kindly advise and furnish the names of Safaiwalas who are actually performing this work every month duly indicating the change of names if any."

5. The case of the Railways is that though specific objection has been taken regarding maintainability of the claim of the petitioners under section 33 C(2) of the I.D. Act, the Labour Court has not considered the same and granted the prayer and allowed the claims of the respondents 1 to 13 without even adverting to the said preliminary objections. The Labour Court ought to have considered the question of maintainability as a preliminary issue giving an opportunity to the parties to adduce evidence regarding the question. It is only after taking a decision on the main issue of jurisdiction that the Labour Court could go into the quantum in respect of each claim and grant relief. The refusal to adopt such a course resulted in injustice and payment of the special

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allowances even to those who have been promoted from the post of Safaiwalas and were not working as Sweepers during the period.

6. We have considered identical question in O.A. 68/90 in which one of us (Shri N. Dharmadan) was a member.

The learned counsel Shri M. C. Cherian appearing on behalf of the Railways in this case submitted that this case is covered by our judgment in the above case and it can be disposed of with the same directions.

This is not disputed by Shri C. P. Menon, Authorised agent, appearing on behalf of the respondents 1 to 13.

7. In O.A. 68/90 we have held as follows:

"The Labour Court seems to have taken the decision for granting the claim of respondents 1 to 5 without reference to Annexures A-3 to A-5 after finding that the claim petitions of the respondents under section 33 C(2) are maintainable. The Labour Court failed to examine the eligibility of the claimants for the special pay in the light of the contentions of the railway in the objections that respondents 1 to 5 who worked as per rotation as Safaiwalas had received special pay in the respective months from 1983 to 1986 when their services were utilised in terms of Annexures A-4 and A-5 especially when there is an indication that the respondents have received the special pay when their services were utilised by the Railway.

5. It has been submitted before us that similar issue had came up for consideration before this Bench in O.A. 75/89 and O.A. 153/89. In those cases we have considered the identical question and after setting aside the award, we have remanded the cases for further consideration in the light of the facts and circumstances mentioned in the judgment."

8. Accordingly, we follow our judgment in O.A. 68/90 and connected cases and set aside Annexure A-7 common order passed by the 14th respondent, the Labour Court, Kozhikode and remand the matter back to the Labour Court, Kozhikode with a direction that the Court should consider whether the disputed claims of respondents 1 to 13 would fall within section 33 C (2)

of the I.D. Act, 1947. If the findings on this issue are in favour of the respondents 1 to 13 it may further consider the claim of each respondents with reference to the available evidence and decide the quantum to be paid to them by the Railways. The parties are at liberty to produce further evidence in support of their respective contentions.

9. The application is allowed to the extent indicated above. There will be no order as to costs.

N. Dharmadan
14.3.91

(N. DHARMADAN)
JUDICIAL MEMBER

V. Krishnan
14/3/91

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

KMN