

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 496/89
~~XXX No.~~

199

DATE OF DECISION 31-8-1990

Senior Divisional Personnel Applicant (s)
Officer, S. Railway, Palghat & another

M/s MC Cherian, Saramma Advocate for the Applicant (s)
Cherian & TA Rajan
Versus

M Natarajan & another Respondent (s)

Mr CP Menon, Authorised Agent Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman
&

The Hon'ble Mr. AV Haridasan, Judicial Member

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

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicants, Senior Divisional Personnel, Officer, Southern Railway, Palghat and Head Train Examiner, Southern Railway, Cannanore have filed this application praying that the order of the Central Government Labour Court, the second respondent dated 13.12.1985 in P.W.A.No.9/84 filed by the first respondent allowing the claim made in the above application and the order of the Additional District Judge, Tellicherry in Appeal Suit No.277/86 dismissing the appeal filed by the applicants against the order of the Labour Court (Annexure-A7 and A10 respectively) may be quashed.

...2...

2. The facts of the case lie in a narrow compass. As a result of dieselisation of the trains in the broad gauge in Palghat Division, the running staff like Fireman who were dealing with steam engine became surplus. They had therefore to be re-deployed to various other departments. Along with similarly placed running staff, the first respondent Mr Natarajan who was working as Fireman ^{-C at} Cannanore was transferred to carriage and wagon wing Mangalore by order dated 18.2.1983. The post to which the first respondent was transferred on re-deployment was stationery one in the mechanical side. As per rules, if an employee whose normal duties are of such nature that he would be entitled to get running allowance is put on stationery duty in the same department, he will be entitled to an allowance called Non-running Duty(NRD) allowance which is 30% of his pay. If such a person is put to work at outstations, he will be entitled to an allowance in lieu of mileage called ALM. On transfer from the post of Fireman 'C' to stationery post in carriage and wagon wing at Mangalore pending fixation of his salary, the applicant and similarly placed persons were given ALM(Allowance in lieu of mileage) at the rate of Rs.13.90 per day. During the period from 23.2.1983 to 15.6.1983 in addition to his pay. Thereafter, instead of ALM, the applicant was paid non-running duty allowance(NRDA) at the rate of 30% of his basic pay with effect from 16.6.1983 onwards. Then the pay was fixed in the new post by order dated 21.12.1984 by Annexure-A4 order taking into account 30% representing the NRDA. While so the first respondent filed PWA No.9/84 before the second

under section 15(2) of Payment of Wages Act respondent ~~com~~ complaining that his salary for ~~the~~ one month and also ALM at Rs.13.90 per day for the period from 16.6.1983 to 15.2.1984 remained unpaid. The applicants filed a written objection stating that the salary had already been paid, that the first respondent was not entitled to ALM at Rs.13.90 as claimed during the period between 16.6.1983 to 15.2.1984 ^{that} ~~for~~ ^{above} the ~~period~~ he was paid NRDA at 30% of his basic pay and that therefore the application ~~had~~ to be dismissed. But rejecting the contentions raised by the applicants, the second respondent by the impugned order dated 13.12.1985 allowed the application and directed the applicants herein to pay amount of Rs.3377.70 to the first respondent herein who was the petitioner there. Aggrieved by the above order, the ~~xxxx~~ applicants herein filed Appeal Suit No.277/86 before the District Judge, Tellichery. The District Judge dismissed the appeal ~~confirming~~ the order of the Labour Court. Challenging the order of the Labour Court and the judgement of the Additional District Court, the applicants have filed this application under Section 19 of the Administrative Tribunals Act. It has been averred in the application that the claim of the first respondent did not come within the purview of Section 15(2) of the Payment of Wages Act and that the Labour Court and the Additional District Judge have gone wrong in allowing the claim without considering the fact that the applicant was being paid NRDA during the period in question ~~xxx~~ which alone he was eligible to get.

3. The application is resisted by the first respondent.

The two grounds of which the application is resisted are that this Tribunal has no jurisdiction to review the order of the ^{District Court} ~~the~~

and that
/as the impugned order at Annexure-A7 was passed as early as
on 12.12.1985, this O.A. filed only on 10.8.1989 is barred by
limitation.

4. We have heard the arguments of the learned counsel on
either side and have also perused the documents produced.
Mr CP Menon, the authorised representative of the first
respondent had submitted a written argument. It is urged in
this notes of written argument that the Central Administrative
Tribunal has no supervisory jurisdiction over the functioning
of the statutory Tribunals like the Labour Court and Industrial
Tribunal and that the only Hon'ble High Court can exercise such
jurisdiction under Article 227 of the Constitution of India
and therefore the application challenging the decision of the
Labour Court and the District Court, Tellichery is not main-
tainable before this Tribunal. The Administrative Tribunal
Act was enacted by the Parliament as provided for ~~in~~ under
Article 323(A) of the Constitution of India. Article 323-A
provides that the Parliament may, by law, provide for the
adjudication or trial by administrative tribunals of disputes
and complaints with respect to recruitment and conditions of
service of persons appointed to public services and posts in
connection with the affairs of the Union or of any State or
of any local or other authority within the territory of India
or under the control of the Government of India or of any
corporation owned or controlled by the Government. It is
further provided that a law made under clause(1) may provide
for establishment of an administrative tribunals specifying

its jurisdiction, powers etc. and also for the exclusion of jurisdiction of all Courts except the jurisdiction of the Supreme Court under Article 136 in regard to disputes or complaints referred to above. Section 28 of the Administrative Tribunals Act reads as follows:

"EXCLUSION OF JURISDICTION OF COURTS EXCEPT THE SUPREME COURT.- On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerned members of any Service or persons appointed to any Service, or post, no court except,

- (a) the Supreme Court; or
- (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947, (14 of 1947) or any other corresponding law for the time being in force,

shall have or be entitled to exercise any jurisdiction powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

So the jurisdiction of the Supreme Court, the Industrial Tribunal, Labour Court or other authority constituted under the I.D. Act, 1947 or any other corresponding law for the time being force dealing with the matters that come before them are saved. As far as the Supreme Court is concerned, the appellate powers under Article 136 of the Constitution has been left intact. As is evident from the wording of Article 323-A and also of Section 14 of the Administrative Tribunals Act, the Tribunal has jurisdiction to adjudicate disputes with respect to recruitment and conditions of services of persons appointed to public service and posts not only in connection with the Union or of any State but also of any local or other authority or of any corporation owned or controlled by the

Government. The persons employed under the establishments owned or controlled by the Government of India are generally treated as workmen who would be governed by the provisions of I.D Act for many matters. Similar is the situation in the case of some Government employees too. Hence in such matters, the I.D.Act, payment of Wages Act and also the Administrative Tribunals Act may have application. Merely because certain classes of employees under the Government or establishment owned or controlled by the Government, the provisions of I.D. Act also would apply the jurisdiction of the Administrative Tribunals ^{set up} Act ~~for~~ the purpose of adjudication of the disputes and complaints in respect of employees including those persons will not cease to exercise jurisdiction. The Tribunals to be set up under Art.323-B, as intended for adjudication of disputes and complaints in respect of matters other than than those mentioned in Article 323-A. Therefore, even though a Tribunal can be set up under Art.323-B for the adjudication of any dispute, complaint or offence in relation to Industrial and Labour disputes mentioned in Clause 2(c) thereof, it is clear from a proper reading of Art.323-A and Art.323-B of the constitution that the matters to be ~~dealt~~ with by the Tribunals ^{be} to ~~set up~~ under Art.323-B excludes the matters covered by Article 323-A. The Supreme Court has in Sampath Kumar's case held:

"The act is a law made by Parliament under Cl.(1) of Art.323A to exclude the jurisdiction of the High Courts under Arts.226 and 227 of the Constitution"

"It accordingly follows that the Administrative Tribunal is being a substitute of

...7/-

the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Arts.14 and 16(1) of the Constitution."

In Rajendra Singh Yadav and others Vs. State of U.P and others, 1990(1) SCALE 651 has observed as follows:

"The Tribunal set up under the Central Act is deemed to be one in terms of Article 323-A of the Constitution. When such a Tribunal is set up the High Court's jurisdiction in regard to service disputes is taken away and the Tribunal functions as a substitute of the High Court."

After the pronouncement of the Supreme Court, that the Central Administrative Tribunal is a substitute to the High Court in respect of service matters, it is futile to contend that the Tribunal does not have the jurisdiction to ~~entertain~~ review the orders passed by Industrial Tribunals, Labour Court and authorities created by the Industrial Disputes Act and Acts of the similar nature. All the powers with the High Court can exercise under Article 226 and 227 of the Constitution in respect of service matters. ~~Whether~~ the provisions of Industrial Disputes Act apply to them or not can be exercised by the Central Administrative Tribunal alone after the commencement of the Central Administrative Tribunals Act. The High Court's jurisdiction is outset specifically by section 28 of the Central Administrative Tribunals Act. Therefore, there is absolutely no merit in the contention of the ^{1st} respondent,

/of the Central Government employees or employees of establishment owned or controlled by the Government

~~and~~ that the Tribunal has no jurisdiction to entertain the application.

5. The next contention of the respondents is that the application is barred by limitation since the same has been filed to set aside the Annexure-A7 order of the Labour Court which passed as early as on 19.12.1985. But against the order passed by the Labour Court, the applicant has filed appeal suit No.277/86 before the Additional District Court, Tellichery, the Appellate Authority under the Payment of Wages Act and since the appeal was dismissed on 20th August, 1988, this application has been filed by the applicant challenging the decision of the Labour Court as well as that of the Additional District Court. Therefore, we find that, there is no delay in filing this application and that the contention of the respondents that the application is barred by limitation has no merit.

6. Coming to the merit of the case, it is unfortunate to note that both the authorities below, namely the Labour Court and Additional District Court had lost sight of the applicant fact that the ~~respondent~~ had received Non Running Duty Allowance (NRDA) at the rate of 30% of his basic pay for the period between 16.6.83 to 15.2.84. His claim in the application was that his salary for a month and allowances in lieu of mileage at the rate of 30% from 16.6.83 to 15.2.84 was not paid. But while examined before the Labour Court, the applicant admitted that ^{as} his salary was paid to him what remained to be released ~~is~~ was the ALM for the period

between 16.6.83 to 15.2.84. It has been specifically stated ~~that~~ in the objection filed by the applicant before the Labour Court, (Annexure-A6) that for the period in question, the first respondent had been ~~paid~~ NRDA at the rate of 30% of his basic pay, because as he was posted to a stationery post ~~where he was not entitled to~~, the maximum that could be paid is NRDA at the rate of 30% of his basic pay, and that the applicant cannot claim ALM in addition to NRDA. The applicant has no case that he was not paid NRDA at the rate of 30% of the basic pay for the period in question. The contention of the respondent before the Labour Court that for the disputed period, the first respondent had received 30% of his basic pay as NRDA has not been disputed by the first respondent by filing a rejoinder. But the Labour Court in the impugned order at Annexure-A7 has stated as follows:

"Regarding the amount claimed, there is only the evidence of the petitioner, the daily allowance mentioned by the PWI is not disputed. The respondents have no case that they have paid any amount during the period mentioned by PWI. Petitioner is therefore entitled to get the amount claimed in the petition."

This observation is obviously erroneous because in the objection filed by the applicant herein who was the respondent before the Labour Court, it was specifically contended that the applicant before the Labour Court had received 30% of the pay, NRDA, and that he is not entitled to the ALM in addition to that. In paragraph 5 of the written objection filed by the first applicants

who were the respondent before the Labour Court it has been contended as follows:

"The applicant's claim for allowance in lieu of mileage at Rs.13.50 per day against 30% of pay per month non-running duty allowance already paid to him, is not tenable as per extant rules."

It has also been contended in the reply statement that the Railway Administration had paid the applicant and similarly situated persons 30% of the basic pay as NRDA which is the maximum permissible as per rules, and that the present claim made in the application is baseless and made a trial measure to obtain unlawful gain. But the Labour Court has lost sight of this pleading and has observed in its order that no amount has been paid at all towards running allowance during the period in question. The same mistake has been committed by the Additional District Judge also in the Annexure-A.9 order. The reliance placed by the Additional District Judge on the observation in the order of the Tribunal in TA K- 253 and 343 of 1987 that:

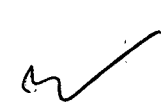
"Their entitlement for a minimum mileage allowance which is recorded as emolument was also protected."

To come to the conclusion that the first respondent was entitled to ALM, though he was transferred and posted to stationery post is misplaced. A copy of the judgement of this Tribunal in TA K-253 and 343/87 is available in the file as Annexure-A9. The observation relied ^{on} by the District Judge to come to the finding that the first respondent herein is entitled to ALM is as follows:

"While transferring them we notice that not only the pay but the minimum entitlement of running allowance of the applicant has been given protection."

The minimum entitlement of running allowance cannot be equated to ALM. In the instant case also the undisputed case is that the applicant had paid to the first respondent for the period for which the application relates, 30% of his basic pay as NRDA. This is the minimum entitlement of running allowance which a running staff is entitled when he is deployed to or transferred to a stationery post in Headquarters. It is unfortunate that the courts below have lost sight of this aspect of the case and have allowed the claim in the application without considering the fact that the first respondent who was doing a stationery job cannot be allowed to draw ALM, especially when he was paid NRDA at the rate of 30% of his basic pay, because under no circumstance an employee is entitled to draw both these allowances together. Normally we would not have interfere with the finding in facts especially when the courts have entered concurrent findings. But since the finding in this case that the first respondent was entitled to recover ALM was arrived at, without proper consideration of pleadings and without evidence at all, we will be failing in our duty if we do not interfere and set aside the finding. We find that the above finding of the Labour Court confirmed by the Additional District Court, Tellichery is unsustainable..

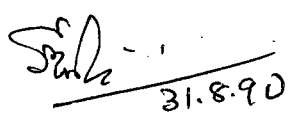
...12/-



7. In the result, finding that the Annexure-A7 order of the Labour Court and the Annexure-A10 order of the Additional District Judge confirming the Annexure-A7 order cannot be sustained, we allow the application and quash the impugned orders. The PWA No.9/84 shall stand dismissed.

In the circumstances of the case we direct the parties to bear the costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

31.8.90