

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 593/90  
~~XXXXXX~~

~~199~~  
DATE OF DECISION 8.8.91

The General Manager, Southern Applicant (s)  
Railway, Madras & 2 others

Mrs. Sumathi Dandapani Advocate for the Applicant (s)

Versus

Shri K.K.Gopalakrishnan Respondent (s)  
and another

Shri P. Sivan Pillai for R-1 Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan Administrative Member

The Hon'ble Mr. N Dharmadan 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? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

SHRI N DHARMADAN, JUDICIAL MEMBER

The order of the second respondent, the Central Government Labour Court, Quilon in C.P.No. 37/1984(C) dated 28.11.89, passed under section 33 C(2) of Industrial Disputes Act, 1947, directing the payment of a sum of Rs.5,704.50/- to the first respondent, a Travelling Ticket Examiner, is under challenge in this case. The main ground on which the order is attacked is that the Labour Court has exceeded its jurisdiction by taking a decision in a disputed

.../-

question of fact without even examining whether there is an existing legal right in favour of the applicant to get the relief under this section.

2. The first respondent was appointed as a Trainee Assistant Station Master on 22.1.65. Later he was temporarily absorbed as Assistant Station Master on Rs.150/- in the scale of Rs.130-240 w.e.f. 1.5.66 in Tiruchirappally Division. He requested for an inter-divisional transfer from Tiruchirappally to Madurai on loss of seniority. This was granted and he joined at Madurai on 5.3.1973 as Junior to all temporary and permanent Assistant Station Masters in the grade of Rs.130-240/- Madurai Division. While working there, he was found medically unfit in medical classification A-2. Since he has no right to continue as a Station Master thereafter, he was accommodated in the only vacancy which was available and could be identified viz., Ticket Collector in the grade of of Rs.260-400 as on 16.1.77. On the date of his alternate employment his pay was Rs.404 in the scale of Rs.330-560/- as Assistant Station Master. Since the only available vacancy to accommodate him due to medical decategorisation, was the Ticket Collector in the scale of

Rs.260-400/-, his pay was fixed at Rs.400 (maximum of the scale as per the rules in force.) After joining in the post of Ticket Collector, the first respondent requested for the refund of the security deposit of Rs.300/- which was granted to him through Pay Order No. 98 of 13.12.78. By virtue of this inter-departmental transfer from Tiruchirappally to Madurai from 5.3.73 and medical unfitness from 9.1.1976 he is deemed to have forfeited his lien in the post of Assistant Station Master in the grade of Rs.330-560/-. He was never confirmed as Assistant Station Master or as Ticket Collector in Madurai Division. He was, however, promoted as TTE in the grade of Rs.330-560/- from 6.4.79 and his pay was fixed at Rs.416/- from that date. Subsequently, he was promoted to officiate as Travelling Ticket Inspector/ Head Ticket Collector in the scale of Rs. 425-640 on an ad hoc basis. In this back ground he filed a petition on 26.11.84 under section 33-C(2) of the ID Act claiming a sum of Rs.29,545.20/- as arrears of pay and allowances contending that his pay was not properly fixed by

.../-

the Railway in different stages and that he is entitled to all the benefits of Assistant Station Master. Anne.I is the petition. This was opposed by the Railway by filing a detailed objection- Annexure II. The second respondent without adverting all the points raised in the objection passed Annexure-III order finding that the first respondent is entitled to an amount of Rs.5704.50 and directed the Railway to pay the same.

3. In the objection filed by the Railway it was contended that there is no existing right for the first respondent for invoking the jurisdiction and agitating the matter before the labour court under Section 33-C(2) of the ID Act. The claim of the first respondent was stated to be beyond the scope of Section 33-C(2) of the ID Act. The very claim of the first respondent that he is entitled to the pay of the Asstt. Station Master was disputed by the Railway. He was originally appointed as temporary Assistant Station Master on loss of seniority at Madurai on the basis of his request. Then he was found medically unfit

..../-

in Annexure 2 Medical classification after medical decategorisation. The 1st respondent has no right to continue as Assistant Station Master. Admittedly he was accommodated in the post of Ticket Collector in the Grade of Rs.260-400. The Railway had denied various other averments and allegations. Without deciding all the disputed questions of facts the Labour Court has no jurisdiction.

4. Having heard the matter and after perusing the records we are satisfied that the Railway has disputed before the second respondent, Labour Court the following facts,

- (i) The first respondent has not retained his lien in the post of the Assistant Station Master in Tiruchirappally Division and that he has no right to continue as Assistant Station Master.
- (ii) The only vacancy that could be identified and available as on 16.1.77 to accommodate the applicant at that time was Ticket Collector in the grade of Rs.260-400.
- (iii) The 1st respondent's confirmation either as Assistant Station Master or Ticket Collector in the Madurai Division was denied.
- (iv) The claim of the first respondent that he was posted as Travelling Ticket Examiner from the date on 16.5.77 due to decategorisation was also denied.
- (v) The fixation of the pay of the first respondent in the promoted cadre in accordance with the option was also disputed.

5. The very factual basis of the claim raised by the first respondent in the claim is disputed

by the Railway in their objection. Under these circumstances, the Labour Court should have framed a preliminary issue as to whether there is any existing right for the applicant to get jurisdiction to deal with the same under Section 33 (C)-2 of the ID Act and decided that issue before considering the claim of the 1st respondent. In the impugned order Annexure III, this aspect has not been dealt nor has there been any consideration about <sup>the</sup> existing right of the 1st respondent even though in Annexure-II objections filed by the Railway the following specific points were raised.

" The above claimed petition is not maintainable in law and facts. The petitioner has no existing right for the amount as claimed in the claim petition. It is beyond the scope and purview of section 33 C(i) of the ID Act."

6. The only issue raised and consideration by the Labour Court as seen from Annexure-III is this, "whether the petitioner is entitled to get the impugned claim ?". The Labour Court granted the claim on the basis of the evidence without deciding the important question as to whether the claim is based on an existing right to attract the jurisdiction and approach the

.../-

Labour Court, under Section 33 C(2) of the

ID Act, ~~xxxxxxxxxx~~ Labour Court has miserably

failed in deciding the claim of the applicant which  
was disputed by the Railway, <sup>by</sup> attacking the very  
basic of the claim.

7. The Labour Court also failed to examine the  
objections of the Railway, that the first respondent  
after posting him as Ticket Collector made the  
request for the refund of the security deposit of  
Rs.300 and remained quiet till 26.11.84 and thereby  
he has acquiesced himself to the situation. So  
this claim is liable to be rejected as belated and  
indefinite of any bonafides.

8. It is settled law that Proceedings under  
Section 33 C(2) of the ID Act is in the nature of  
execution proceedings and powers of the Labour  
Court are very much limited. It can only conduct  
an enquiry and settle a final claim when it is  
satisfied that the claim made is based on an existing  
right. This Tribunal in VK. Bharati & Others Vs.  
the Central Government Labour Court, Ernakulam 1990,  
12 AT cases 820 <sup>has</sup> examined in detail the scope and

...../-

ambit of the jurisdiction in the Labour Court in the light of the decided case of the Supreme Court and other courts and held as follows:

" From the above rulings the following conclusions can reasonably be derived:

- (a) In deciding a claim petition under Section 33 C (2) of the I.O. Act, the Labour Court can function only as an execution court.
- (b) In deciding on the claim petition the Labour Court must be involved not only in the mere computation of the benefit, but also in deciding incidental matters which are necessary to be gone into for computation of monetary benefits.
- (c) The incidental matters to be investigated by the Labour Court will also cover the question of existence of the rights of the Claimant.
- (d) The Labour Court, however, cannot determine or confer a right on the claimant where such a right has not already been determined by an earlier adjudication or otherwise provided for in settlement, award or scheme.
- (e) The jurisdiction of a Labour Court under Section 33-C(2) cannot be ousted merely by the objection or denial of the existing right on which the claim petition is based.
- (f) Where retrenchment is conceded, the Labour Court can decide whether the retrenchment is due to closure or lay-off or for circumstances beyond the control of the employer so as to determine the quantum or degree of monetary liability of the employer. Where, however, the retrenchment itself is dispute, the Labour Court cannot determine the right to retrenchment compensation.
- (g) In complicated matters where the rights and liabilities of parties involved are in dispute or denied, the Labour Court cannot decide the same under Section 33-C(2).
- (h) The Labour Court cannot determine the legality of dismissal/discharge or entitlement to higher pay scales."

5  
"Industrial jurisprudence is fast developing and under modern concept of industrial relations numerous benefits are conferred upon the workmen and it would be impossible to enumerate or catalogue what these benefits will be or which of them can be computed in terms of money. But one thing is clear that the power under this section cannot be invoked for deciding the question of status

.../-



status or categorisation of employee under the pretext of computing in terms of money and determine the allowance claimed by the workman. However, an existing right can be worked out even if it is affecting the status. The following ingredients should be satisfied for determining the 'existing rights' in connection with the status so as to enable the Tribunal or Labour Court to exercise jurisdiction under Section 33-C(2)--

- (i) there must be some source of liability on the employer creating certain corresponding right in favour of an employee,
- (ii) the claimant must be a workman, and
- (iii) the claim must be in respect of his employment during the period of claim.

These are according to me, the working tests in order to work out the existing rights arising from the relationship of employer and employee. So if these three ingredients are satisfied, the Labour Court can deal with the claim of such workman based on an 'existing right'. In dealing with such claim the Labour Court can under Section 33-C(2) decide whether the right claimed by the workman did exist or did not exist together with all incidental questions for the limited purpose of giving relief to the workman. The mere denial of such right by one of the parties will not oust jurisdiction. So an application for recovery of money due from employer can only be based on 'existing right', mere denial of right not sufficient to oust the jurisdiction of the Labour Court. See Board of Directors, South Arcot Electricity Distribution Co., Ltd. v. N.K. Mohammed Khan<sup>4</sup>. I think the case of the petitioners in this case squarely comes within the above working tests indicated above.

"36. Applying the above principles, it is to be held that Section 33-C(2) does not confer any general power of adjudication of justice when an employee makes a claim against the employer. But it can examine the status of an employee for the limited purpose of calculating and computing the monetary benefits available to an employee as in the case of the claim of the petitioners in the instant case as indicated above."

The Ernakulam Bench of Central Administrative Tribunal

also recently considered the issue in No. OA-193/88.

and held in para 8.

" 8.... This view is supported by the pronouncement of the Supreme Court in R.B. Bansilal Abirchand Mills Co. Ltd. Vs. The Labour Court, Nagpur and others, 1972(1) LLJ SC 231. The relevant portion reads as follows:


"..... The Labour Court's jurisdiction could not be ousted by a mere plea denying the workmen's claim to the computation of the benefit in terms of money; the Labour Court had to go into the question and determine whether on the facts, it had jurisdiction to make the computation. It could not, however, give itself jurisdiction by a wrong decision on the jurisdictional plea...." (emphasis added)

In the light of the principles laid down by the Supreme Court and High Courts the jurisdiction of the Labour Court under Section 33-C(2) is very much limited. It is a settled proposition of law that a disputed claim cannot be decided under this section by the Labour Court. Under Section 33-C(2) of the I.D. Act the Labour Court can decide only the question of quantification of liability or any financial claim arising from award or settlement or decision rendered on the basis of an existing right admitted by the parties and fix amount for granting the relief of the claimants."


9. In the light of the settled principles we are of the view that the Labour Court has exceeded the jurisdiction in examining the claim of the applicant <sup>was</sup> which/disputed by the Railway denying all the facts leading to the claim. Accordingly, the impugned order is unsustainable and it is liable to be set aside. We set aside the same and remand the matter to the Labour Court Quilon for a <sup>fresh</sup> disposal in accordance with law in the light of the above observations.

...../-

10. This application is, therefore,  
allowed to the extent indicated above. There  
will be no order as to costs.

  
P.P.91.

(N. Dharmadan)  
Judicial Member

  
8/8/91

(NV. Krishnan)  
Administrative Member.