

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATE OF DECISION

:

30.3.90

P R E S E N T

HON'BLE SHRI N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.153/89

1. Senior Divisional Personnel Officer,  
Southern Railway, Palghat-2.
2. General Manager,  
Southern Railway, Madras-3.
3. The Union of India represented by  
the General Manager, Southern Railway,  
Madras-3.
4. Divisional Accounts Officer,  
Southern Railway, Palghat-2.

.. Applicants

v.

1. Regina Rajeswari
2. K.V Leela .
3. M.Subash
4. K.C.Ramachandran
5. K.S.Velayudhan
6. P.P Tharu
7. V.Chinnu
8. K.Kamalam
9. A.K Unni
10. P.Muthusamy
11. T.Radhakrishnan
12. K.Chathu
13. P.Manickam
14. P.Murugesan
15. T.Desamithran
16. K.P Velayudhan
17. C.P Soman
18. E.P Sundaram
19. K.B Ramachandran
20. C.Vijayan
21. M.George
22. K.K Mary
23. D.Parangodi
24. A.T.Unnikrishnan
25. Smt. K.Mani
26. T.Yesodha
27. The Presiding Officer,  
Central Government Labour Court,  
Kozhikode.
28. Health Inspector,  
Southern Railway,  
Calicut, Kerala.

.. Respondents

M/s. M.C Cherian, Saramma Cherian &  
T.A Rajan

.. Counsel for the  
applicants

M/s. M.Ramachandran & P.V Abraham

.. Counsel for R1 to  
R26

J U D G M E N T

Hon'ble Shri N.Dharmadan, Judicial Member

This is a case filed by the Railway challenging the award Annexure A-8 passed by the Labour Court, Kozhikode under Section 33-C(2) of the Industrial Disputes Act granting the claim of special allowance to respondents 1 to 26 who are working as Group D employees in the Railway.

2. Annexure A-1 is one of the claim petitions filed by the 6th respondent before the Labour Court claiming gas allowance at the rate of Rs.10/- per month from 1.1.73 and at the rate of Rs.20/- per month from 1.1.86 on the basis of the recommendation of the 4th Pay Commission. Similar claim petitions had been filed by all the other respondents who are workers. The claim of the respondents is that since they had worked under the conditions hazardous to their health for the periods mentioned in the claim petition, they are entitled to get the special allowance(gas allowance).

3. The applicant Railway has filed Annexure A-2 objection in which it has been stated that the claim is not maintainable under Section 33 C(2). There is no existing right in this case capable of being computed in terms of money. According to the Railway the claim pertains to a service matter and as such the adjudication of this matter has to be made by the Central Administrative Tribunal. But with regard to the facts the Railway has admitted that the respondents come within the category of persons eligible for the special allowance(Safaiwala). The Railway further submitted that all the respondents are not eligible for the allowance, only such of those

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workers who were specially deputed for work on the basis of rotation alone will be entitled for the special allowance. There is also admission about the recommendation of the Pay Commission for the grant of special allowance to the employees who were employed for doing unpleasant or uncongenial occupations attached to the medical department of the Railway. In fact there is real dispute with regard to the status of the respondents and the rate claimed by them. Along with the objection they have produced the Railway Board's letters and office memorandum dealing with the decisions taken by the Railway for fixing the rosters of work and also the grant of special allowance on the basis of the recommendations of the Pay Commission. Annexures A3 and A4 were produced to establish that the grant of special allowance was subject to certain conditions and concurrence of the Board was obtained only at a later date.

4. Hence on the facts of the case there is apparently dispute with regard to the eligibility of the respondents to special allowance. All the respondents are not eligible for the entire period for which they had made the claim. When there is dispute regarding the facts it cannot be decided by the Labour Court unless it is purely a determination of the quantum of monetary claim as an incidental matter. With regard to the amounts claimed by the respondents if the Railway has a case that all of the respondents are not eligible because of the roster system, the Railway could have very well produced the register and opposed the same. It will depend upon the entries in the register kept by the Railway. But the Railway did not produce any materials either the registers of work or any other details in support of their contention.

5. Equally unsatisfactory is the position with regard to the evidence produced by the respondents 1 to 26 for establishing their claim for the amounts.

The details of the claim as shown in one of the petitions, Annexure A1, are extracted below:-

"The petitioner P.P.Tharu a workman of M/s. Divisional Personnel Officer of Southern Railway, Palghat-2 to entitled to received from the said M/s.Divisional Personnel Officer,Southern Railway , Palghat-2 the benefits mentioned in the statement here to annexed. It is prayed that the Court be pleased to determine the benefits due."

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"The gas allowance from 19.9.62 to 31.12.72 come to Rs.406.20 at the rate of Rs.3/- pm and Rs.1560.00 from 1.1.73 to 31.12.85 at the rate of Rs.10/- pm and Rs.380.00 at the rate of Rs.20/- pm from 1.1.86 to 31.7.87. All the above items come to Rs.2346.20 (Rupees two thousand three hundred fortysix and 20 paise only)!"

The claimants have not produced any evidence in support of their claim except the oral evidence.

6. The Railway on the other hand relying on a Memorandum dated 17.11.87 (Annexure A5) contended that the special allowance is payable to 102 Safaiwalas on the basis of the rotation as shown below:-

"MS/PGT vide his letter No.JMD 52/P(Spl.Pay) dated 7.7.87 has distributed the above 102 posts as indicated below:

Name of the stations	No. of sanitary cleaners recommended for allowance of Rs.10/- per month	Trenching ground	Colony	TB Isolation ward
MAQ	3	-	1	-
CAN	3	-	1	-
CLT	3	-	2	-
SRR	3	-	2	-
PGT	3	-	2	3
PTJ	3	7	40	3
CBE	3	-	-	-
MTP	2	-	1	-
ONR	-	-	2	-
ED	4	-	4	-
KRR	1	-	1	-
SA	3	-	2	-
Total	31	7	58	6 Total:102 "

In the light of Annexure A3 Railway Board's letter, the Railway has a further case that the special allowance is payable to the employees from July 1979 and the claim for the earlier period would not be sustainable. The claim also is barred by limitation.

7. But without adverting to these aspects and considering them in detail the Labour Court by concentrating on the oral evidence of the Chief Health Inspector, Southern Railway came to the conclusion that the Railway had not produced satisfactory proof for the contention that the sweepers are specially deputed for doing arduous works. In coming to this conclusion the Labour Court overlooked the fact that the evidence produced on behalf of the claimants are also very meagre and unsatisfactory.

8. The Labour Court had not specifically dealt with each of the important legal issues arising on the facts of the case, viz. the jurisdiction of the Labour Court under Section 33-C(2) of the Industrial Disputes Act and the question of limitation specifically urged by the Railway. Without entering into a finding on these aspects the Labour Court ought not to have dealt with the matter on merits. In fact the Labour Court clubbed all the major contentions of the Railway and disposed of them in a cursory manner without entering into a finding on each of those issues separately. All these issues had been rejected summarily without giving any satisfactory or convincing reasons. Hence we are left with no other alternative but to interfere in this case at least for the limited purpose of remitting the matter back to the Labour Court for a detailed consideration of the entire matter and a proper disposal according

to law.

9. The failure of the Labour Court to deal with the question of jurisdiction under Section 33-C(2) and the limitation appears to be an error. We have (same bench) very recently held in O.A.K 193/88 as follows:-

"8. The second respondent, the Labour Court did not deal with the specific contention raised by the Railway that the Labour Court has no jurisdiction to deal with the claim of the first respondent and entered a definite finding on that preliminary objection before considering the main issue and the rival contentions raised by the parties. This view is supported by the pronouncement of the Supreme Court in R.B. Bansilal Abirchand Mills Co.Ltd v. 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 to the claimants".

10. This Tribunal again considered the same issue in the light of the decisions of the Supreme Court and High Courts and set aside the award in a more or less similar case and remanded the case to the Labour Court. This Tribunal in O.A 217/87, to which one of us (Hon'ble Shri N.Dharmadan, Judicial Member) was a party, held as follows:-

"The provision of Section 33-C have been included in the Industrial Disputes Act to give speedy remedy to the individual worker. By denying itself the jurisdiction of giving a speedy remedy to such workers by coming to a prima facie conclusion summarily, the Labour Court has defeated the underlying spirit behind this provision. As has been discussed elaborately earlier, it is true that the Labour Court on the analogy of an execution Court, cannot determine the rights and liabilities of the rival parties and confer entitlements to higher pay, higher posts or declare the legality or otherwise of an order of termination or reversion, but it is duty bound to explore the existence of the right of the petitioners even though the same is disputed by the employers, in order to determine the quantum of benefits to be computed. The Labour Court can interpret awards, settlement and Acts rules, judgments in order to determine the existence of rights as incidental to the computation of the benefits claimed. It can determine whether the prescribed rights vest in the petitioners and if they fall within the category of beneficiaries. It can determine whether the claimant was in employment or not, whether the closure was due to circumstances beyond the control of the employer as contemplated in proviso to Section 25-FFF(I) of the I.D Act. In the circumstances we feel that in the instant case, the Labour Court should have determined after hearing both the parties and keeping in view the facts and law, whether the petitioners were employed in Project works or Construction Line and if so, whether there existed any subsisting or declared right in their favour of acquiring temporary status. Even if it is found that they were working as Project Casual Labourer, they would still be entitled to the benefits of temporary status, thanks to the celebrated judgments of the Supreme Court in L.Robert D'Souza v. XEN, Southern Railway (AIR 1982 SC 854) and Inderpal Yadav and others v. Union of India and others, ((1985) 2 SCC 548) at least with effect from 1.1.1981 if not earlier in accordance with those judgments".

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"But one thing is clear that the power under this section cannot be invoked for deciding the question of status or categorisation of employee under the pretext of computing in terms of money and determine the allowance claimed by the workmen. 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.

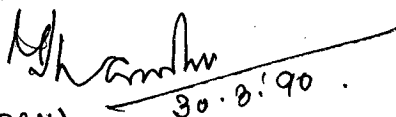
These are, according to me, the working tests in order to work out the existing rights arising from the relationship of employer and employee. So if these three ingredients are satisfied, the Labour Court can deal with the claim of such workman based on an 'existing right'. In dealing with such claim, 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 is not sufficient to oust the jurisdiction of the Labour Court".

11. Having considered the facts and circumstances of this case in detail we have a feeling that the Labour Court had not considered in detail the real issues involved in this case in the light of the decided cases. Hence we are of the view that in the interest of justice this case should be remanded to the Labour Court, Kozhikode with the following directions after setting aside the impugned award. Under these circumstances we set aside the award Annexure A8 and issue the following directions. The Labour Court should consider in the first instance whether there is any existing right available to all the claimants for being computed in terms of money, i.e. a claim coming within the purview of Section 33-C(2) of the Industrial Disputes Act, 1947 as contended by the respondents 1 to 26 and if so whether any portion of such claim is barred by limitation as claimed by the Railway. If the findings of the Labour Court on these issues are ~~in the affirmative~~ <sup>in the</sup> affirmative and in favour of the claimants it may further consider and decide the quantum of amounts payable by the Railway to each of the respondents 1 to 26 in the light of the evidence

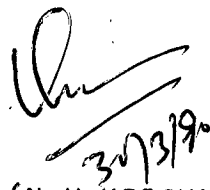


adduced by the both parties. The parties are at liberty to produce further evidence in case they are interested in giving any further evidence in support of their contentions.

12. Accordingly we allow this application to the extent of quashing Annexure A-8 award passed in this case by the 27th respondent and remit the case back to the Labour Court, Kozhikode for a fresh disposal of the claims in accordance with law taking into consideration the above observations and directions. There will be no order as to costs.

  
30.8.90

(N.DHARMADAN)  
JUDICIAL MEMBER

  
30/8/90

(N.V KRISHNAN)  
ADMINISTRATIVE MEMBER

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