

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

AII

O.A. No. 374 of 1990

Union of India & another

Applicants.

versus

Bans Raj Yadav and another

Respondents.

Shri Anil Srivastava

Counsel for Applicants.

Shri Bans Raj Yadav

Applicant in person.

Hon. Mr. Justice K. Nath, V.C.  
Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice K. Nath, V.C.)

This application under section 19 of the Administrative Tribunals Act, 1985 is for quashing the order dated 4.9.90 (Annexure A-1) passed by respondent No. 2, the prescribed authority under the Payment of Wages Act, 1936 in proceeding under section 15 of the said Act. Counter has been filed by Shri Bans Raj Yadav, the opposite party No. 1 who is present in person. Shri Anil Srivastava appearing on behalf of applicants says that no rejoinder will be filed. The case involves short point of jurisdiction of the prescribed authority and therefore, we have heard the learned counsel for the applicants as well as the applicant on merits and dispose of this matter finally at the stage of admission.

2. It appears that by judgment dated 23.12.88 in T.A. 853/86 filed by the present respondent No. 1 Shri Bans Raj Yadav against the present applicant the question of promotion of Bans Raj Yadav against the restructured post in the grade of Rs 550-750 and of

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computation of his leave in terms of certain directions of the Railway Board for purposes of leave encashment had arisen. The relevant para of judgment of the Tribunal is as follows:

"We further direct that the plaintiff's case will be examined by the defendants for consideration of the following:

(a) for promotion against the restructured post in the grade of Rs 550-750, and  
(b) for computation of his leave in terms of Railway Board's directive of January, 1980, and if he is found eligible for promotion etc., he will be given the reliefs ~~xxxx~~ as indicated in paras above. This should be done within a period of three months from the date of receipt of these orders."

3. Shri Bans Raj Yadav appears to have raised a grievance under section 15 of the Payment of Wages Act, 1936 before the prescribed authority whose judgment (Ann. -1) dated 4.9.90/is impugned in this case. A perusal of the judgment shows that since the respondent there, namely the present applicants were alleged to have not paid the applicant's wages despite the Tribunal's orders dated 23.12.88 amounting to Rs 10,573.00. Shri Bans Raj had prayed for award of those wages plus ten times compensation. The judgment also shows that while appearance was made on behalf of present applicants before the prescribed authority, the presence was not supported by the latter authority and although the prescribed authority gave opportunity to the present applicants to contest the case and also to submit a

letter of authority, they did not avail of that opportunity. The prescribed authority, therefore, decided the case ex parte. The prescribed authority relied upon the affidavit filed by Bans Raj Yadav on the merits of the case and observed that the judgment of this Tribunal directed that if the criterian of promotion to the scale of Rs 550-750 was on the basis of seniority/suitability, then the case of Bans Raj Yadav ought to be decided on that basis for the period from 1.10.80 to the period when he retired on superannuation, which the present applicants were directed to do within a period of three months. The prescribed authority observed that since no orders had been passed by the present applicants, although Bans Raj Yadav was fit for promotion, it was proper to accept the ex parte version of Shri Bans Raj Yadav. It is on this basis that the prescribed authority directed the present applicants to pay Rs 10,573.00 as wages plus four times of allowances as compensation and certain amounts of costs.

4. The contention of Shri Anil Srivastava on behalf of applicants is that the prescribed authority under the Payment of Wages Act had no jurisdiction to decide the entitlement of Shri Bans Raj Yadav for promotion or for payment of any wages on the basis of supposed promotion. The contention of Bans Raj Yadav is that the proper remedy applicable to the applicants against the order of the prescribed authority was either to apply for setting aside the said ex parte order or to file an appeal under section 17 of the Payment of Wages Act.

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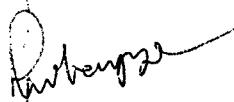
5. We have carefully considered the material on record and the provisions of sections 15 and 17 of the Payment of Wages Act. It is not possible to accede to the contention of Shri Bans Raj Yadav that the judgment of this Tribunal had directed that he must be promoted to the restructured post in the grade of Rs 550-750. The Tribunal had recorded in unmistakable terms that the respondents there, that is the present applicants, shall examine the case of the applicant namely Shri Bans Raj Yadav for promotion to that post. Shri Bans Raj Yadav referred to the contents of para 6 of the Tribunal's judgment to say that the Tribunal had ordered promotion; that is not correct. The Tribunal had clearly mentioned that in case promotion to the grade of Rs 550-750 was to be based on seniority/suitability, his case should also be considered in accordance with his seniority and fitness for fixation against the post with effect from 1.10.80 to the date of his retirement." The Tribunal went <sup>on</sup> to observe that if Bans Raj Yadav was otherwise fit, would be entitled to have his case considered for the same, and to the retirement benefits according to the revised fixation. Thus, the directions of the Tribunal in ~~un~~mistakable terms was that the present applicants were to examine the case of Shri Bans Raj Yadav for promotion. There was no direction to promote him ~~straightaway~~. The same situation prevails in respect of the relief concerning the computation of leave for purposes of encashment. The observation of the prescribed authority that the present applicants did not pass orders in compliance of the Judgment

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8. Shri Anil Srivastava has also invited our attention to Annexure A-3 and A-4, orders dated 6.3.90 and 16/20.8.90 respectively concerned with claim of promotion and computation of leave of Shri Bans Raj Yadav, the respondent No. 1 before us and points out that the prescribed authority under the Payment of Wages Act was misled to believe that no orders had at all been passed by the present applicant in compliance of the judgment dated 23.12.88 (Ann. A-2 of this Tribunal. It is needless to make any comments on this contention because the applicants had an opportunity to indicate this situation before the Payment of Wages Authority which they did not do.

9. In the result, this application succeeds and order dated 4.9.90 (Annexure A1) of the prescribed authority under the Payment of Wages Act is quashed.

  
Adm. Member.

  
Vice Chairman.

Lucknow Dt. December 11, 1990.