

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO.: 357/96.

Dated, this 2nd the day of May, 1996.

CORAM : Hon'ble Shri B. S. Hegde, Member (J).
Hon'ble Shri M. R. Kolhatkar, Member (A).

Divisional Railway Manager,
Central Railway,
Bombay V.T. Applicant
(Advocate by Shri S.C. Dhavan)

Versus

Shri M. R. Wagh & Another Respondents
(Advocate by Shri N.C. Saini)

: ORDER :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. Heard Shri S. C. Dhavan for the applicant and Shri N.C. Saini for Respondent No. 1. The applicant has filed this O.A. challenging the order passed by the Respondent No. 2 vide its order dated 03.10.1994 stating that "there is no period of limitation prescribed for making that claim under Section 33(c)(2). 33(c)(1) has given a period of limitation of one year. Staleness of claim is pleaded but I do not think that such genuine claim of Railway Employees should be defeated on that ground." The applicant in this O.A. has challenged the order of Labour Court on more than one ground stating that the appointment was purely on hour/daily rate and will not confer any right of permanent absorption nor will he be entitled to any other benefits. He has also taken a plea before the Labour Court about the maintainability of application under Section 33-C(2) of the I.D. Act. There was thus a dispute as to the actual status

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and to the factual position of whether the Respondent No. 1 was entitled to claim equal pay with that of the regularly appointed Announcers. Where the very basis of the claim is disputed, the proceedings under Section 33-C(2) of I.D. Act are not maintainable and the application is liable to be dismissed. When the matter came up for Admission hearing on 19.04.1996, we issued notice to the respondents to file reply. After issuing notice, the matter came up for hearing today for admission. Shri N.C. Saini appeared for Respondent No. 1 and urged that the Tribunal does not have jurisdiction to go into the merits of the judgement delivered by the Labour Court and also the application filed by the applicant is barred by limitation. In support of his contention, Shri Saini draws our attention to the recent decision of the Supreme Court in Suraj Ram V/s. Union Of India & Anr. wherein the Apex Court citing the earlier decision of the Supreme Court in Krishnan Prasad Gupta V/s. Controller, Printing and Stationery, [1996 SCC (L & S) 264] held that the Central Administrative Tribunal has no jurisdiction to entertain an application under Section 19 of the Central Administrative Act, 1985 against an award order of the Labour Court. He has also drawn our attention to the recent decision of the Jabalpur Bench in Union Of India V/s. The Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court [1996(1) ATJ 333] wherein the Tribunal has held that the Tribunal has no jurisdiction to entertain appeal arising out of the decision rendered by the Central Government Industrial Tribunal. On perusal of the aforesaid decision, We are of the view, that it is true that the Apex Court has held that if an appeal is provided under a separate statute, the aggrieved parties does not have the right to approach the Tribunal for setting aside the

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the Labour Court's order. In that event, they may have to go to appropriate forum to file an appeal. Under Section 17 of the Payment of Wages Act, an appeal is provided under the statute, therefore, it was observed that the Tribunal cannot interfere in the same by way of an appeal. Thereby, the Apex Court was perforced to make that observation in that decision. Regarding limitation, the Learned Counsel for the applicant submits that the delay is only for two months. Though the judgement was delivered on 03.10.1994, it was received by the applicant on 18.10.1994 and the O.A. was filed on 26.12.1994. The delay of two months may be condoned.

2. The Learned Counsel for the applicant, Shri S.C. Dhavan draws our attention that the decisions cited by the Learned Counsel for the respondent does not have any relevance to the issue involved in this case. In the instant case, the applicant had approached the Tribunal earlier and the Tribunal after considering the rival contentions of the parties, rejected the applicant's application under Section 19(3) of the Administrative Tribunals Act, 1985 and also observed that in view of the terms and conditions mentioned in the letter of appointment, the Tribunal do not find that the applicants are having any legal right to claim any relief. However, on humanitarian ground, directed the respondents to give one more chance to the applicants to appear in the screening test and if they are found suitable, the respondents may absorb them as commercial clerks. The applicant has been considered by the Respondents and he failed in the screening test. Thereafter, the applicant filed a petition before the Labour Court seeking relief under Section 33(c)(2) of the Industrial Disputes Act, 1947 Though the Labour Court cited the decision of the

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Administrative Tribunal vide para 7, despite the same, they have granted the relief to the applicant without the disputes being determined by the Competent Authority. Section 33(c)(2) of the Industrial Disputes Act clearly envisages that unless the legality or otherwise of the order of termination is challenged, the said order could not have been ignored by the Labour Court or the High Court, thereby computation of backwages is not justified 1996 (1) SLR 35. The Learned Counsel for the applicant Shri Dhavan drew our attention to the decision of the Supreme Court in Municipal Corporation of Delhi V/s. Ganesh Razak & Another [1995 (29) ATC 93] wherein the Apex Court has analysed the Labour Court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act, 1947 by saying that the Labour Court cannot adjudicate dispute of entitlement or basis of claim of workmen. It can only interpret the award of settlement on which the claim is based. Its jurisdiction is like that of executing court. In that case, on the basis of the fact it was held that without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis is not maintainable under Section 33(c)(2).

3. In the light of the above, there is nothing to show on record that the relief granted by the Labour Court has been adjudicated ~~at~~ an earlier point of time by any authority and on perusal of the Labour Court's order, we find that the application itself was filed under Section 33(c)(2) of the I.D. Act and if the subject matter has

already been adjudicated by the Competent Authority which infact has not been adjudicated. For the reasons stated above, we are inclined to agree with the contentions of the Learned Counsel for the applicant, Shri Dhavan that unless and until the subject matter is adjudicated by the Competent Authority, it is not open to the respondent to rest to the Labour Court by filing an application under Section 33(C)(2) of the Industrial Disputes Act. The decision of the Apex Court cited by the Learned Counsel for the respondents do not apply to the facts of this case. Since the applicant has submitted that the Labour Court does not have jurisdiction to give any relief under Section 33(C)(2) of the Industrial Disputes Act, which has been upheld by the Supreme Court in the case referred to above.

4. In the result, We hereby stay the order of the Labour Court vide dated 03.10.1994 and direct not to execute the said order against the applicant till the disposal of the O.A. The O.A. is ADMITTED. List the case before Registrar for completion of pleadings on 16.7.96 and thereafter be placed in sine-die list.

M.R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

B.S. Hegde
(B. S. HEGDE)
MEMBER (J)