

193

DATE OF DECISION 17.3.92

Petitioner

Advocate for the Petitioners.

Versus

iRespondent

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

- Nº

(S.K.DHAON)  
VICE CHAIRMAN

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(3)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 189/92

The Divisional Railway Manager  
South Central Railway, Hubli.

.... Applicant.

V/s.

Shri Shankar Jaiwant Bhungi

Shri P.D. Apshanker  
Presiding Officer,  
Central Govt. Labour Court.

.... Respondents.

CORAM: Hon'ble Shri Justice S.K. Dhaon, Vice Chairman  
Hon'ble Shri M.Y. Priolkar, Member (A)

Appearance:

Shri P.R. Pai, Counsel  
for the applicant.

ORAL JUDGEMENT

Dated: 17.8.92

¶Per Shri S.K. Dhaon, Vice Chairman¶

The order dated 29.8.91 passed by the Labour Court No.2 at Bombay in proceedings under section 33C(2), the Industrial Dispute Act, 1947 is being impugned by the Divisional Railway Manager, Hubli, hereinafter referred to as the employer.

Shri Shankar Jaiwant Bhungi, hereafter referred to as the employee, presented an application under section 33C(2) before the Labour Court. The allegation, in brief, were these: On or before 29.5.85 the employee was working as Senior Commercial Clerk at the Zuari Ziding Sankval Station. On that date, the Station Superintendent of Sankwal Station asked him to take over the charge as a Goods Supervisor from Shri R.B.P.V. Fernandes in the scale of Rs.550-750 who was to retire from Railway Service on 31.5.1985. From that day, the employee started discharging the function of Goods Supervisor. With effect from 21.3.86 the employee was himself appointed as Goods Supervisor. He was not paid the officiating allowance for the

5

period from 1.6.85 to 20.8.86. He was also entitled to certain pensionary benefits etc. on account of the officiating appointment given to him to the post of Goods Supervisor. No payment was made.

Written statement was filed on behalf of the employer. In main, the defence was that the Station Superintendent of Sankval Station had no authority to direct the employee to perform the function of the Goods Supervisor on officiating basis, and with effect from 1.6.85 the post of Goods Supervisor had been down graded.

The Labour Court has recorded the categoricial finding that the employer failed to produce any evidence in support of either of the two afore-mentioned defences. The learned counsel appearing on behalf of the employer very fairly stated at the Bar that no evidence had been led by the employer in support of ifs defence that the post of Goods Supervisor had been down graded. He, however, contended that, in fact, under the relevent instructions the Station Superintendent had not been empowered, even to make an officiating appointment of a Goods Supervisor. We may note that, as recorded by the Labour Court,, no evidence was led in support of the assertion that the Station Superintendent had not been authorised to make an officiating appointment to the post of Goods Supervisor. Learned counsel prayed that he may be given time to produce necessary orders containing the delegation of powers. We are not inclined to grant time as we feel that nothing will turn even if the employer is able to satisfy us that in fact the Station Superintendent had not been authorised to make an appointment of a Good Supervisor in


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an officiating capacity. The fact of the matter is that the employee worked as a Good Supervisor from 1.6.85 to 20.8.86. He did so in the knowledge of the employer. There is no evidence that he was ever asked not to perform the job of a Goods Supervisor. Therefore, the employer cannot get away from its liability to pay for the work taken. Section 70 of the Contract Act squarely applied to the facts of the instant case. Once we hold that the employee is entitled to be paid for the work done as a Goods Supervisor between 1.6.85 to 20.8.86, it follows that he is also entitled to the other consequential benefits which have been given to him by the labour court.

We find no substance in the application.  
It is dismissed but without any order as to costs.

  
(M.Y. PRIOLKAR)  
MEMBER (A)

  
(S.K. DHAON)  
VICE CHAIRMAN

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