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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

~~M.A. No. of 1994~~

in

O.A.No. 199 of 1994

Between:

- ① Presiding Officer, Labour Court, Guntur
- ② The Chief Signal & Telecommunication Engineer, Railway Electrification, Vijayawada (represented by Dy.Chief, S&T Engineer (RE), Vijayawada and 2 others)
- ③ Union of India rep. by General Manager, central organisation for Railway Electrification, Secunderabad
- ④ ~~AND Dy Chief Sig & Telecom Engineer (Sig) Rly. Electrification, Secunderabad~~ - now at Vijayawada.
- Applicants / Respondents
1. Sri Y.Benerjee
Casual Khalasi through
Divisional Engineer, Railway Electrification, Secunderabad.
 2. Presiding Officer
Labour Court
Guntur, A.P.

.. Respondents / Applicants

Counter Affidavit

MISC. APPLICATION TO VACATE STAY UNDER RULE 8 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL PROCEDURE RULES 1987:

1. I, Y.Benerjee, S/o Azaraiah, aged 25 years working as Khalasi in the Railway Electrification Project in ~~Sing~~ Signal and Telecommunication Department under the Divisional Engineer, Secunderabad, do hereby solemnly affirm and state as under:

2. I am the Respondent No.1 in the O.A. No. ~~172~~ ¹⁹⁹ of 1994 filed by the Chief Signal and Telecommunication Engineer, Railways Electrification, Vijayawada and two others and well aware of the facts of the case as I was the Petitioner before the Hon'ble High Court of Andhra Pradesh and Labour Courts, Guntur and orders have been passed in my favour in both Forums.

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3. The present O.A. was filed against the orders of Hon'ble Labour Court, Guntur in CMP No. 32 of 1988 dated 6.12.1992 and this Hon'ble Tribunal suspended the impugned order on 24.2.1994 untill further orders without hearing any of the respondents.
4. The averments made in the application are not correct and contrary to the law of the land except those that are specifically admitted herein.
5. The facts of the case are that I was originally engaged as a casual labour Khalasi on 12.4.1982 on daily rate of pay by the Divisional Signal and Telecom.Engineer, Railway Electrification and posted to work under the signal Inspector, RE, Kazipet. On completion of six months period I was sent for medical examination and found fit in group 'B' and granted monthly scale of pay as per rules and regularly working. All of a sudden DSTE(RE) Kazipet issued an order dated 21.12.1984 terminating my services with effect from 29.12.1984 even without a notice or any DAR action etc. Against the action of DSTE(RE) Kazipet I filed a Writ petition No. 710/85 in the Hon'ble High Court of Andhra Pradesh as the termination of my service was illegal arbitrary and unconstitutional. The Writ petition was allowed by an order dated 13.3.1985 and the termination order was quashed, with a direction to the respondent for taking fresh DAR action as may be warranted in the circumstances according to law. I was put back to duty and the DSTE(RE) Kazipet issued a charge sheet on 12.7.1985 and I submitted my detailed explanation denying the charges and no further action was taken. Again after lapse of six months the Dy.CSTE(RE) Secunderabad issued another chargesheet on 22.1.1986 which is identical and the same as that of DSTE(RE) Kazipet. I have submitted my explanation on 3.2.1986 denying the charges, without conducting any enquiry or giving me an

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opportunity to defend my case, my services were terminated by an order dated 30.5.1986 with no other way out than approaching the Hon'ble High Court of Andhra Pradesh for redressal of my grievance. I filed a Writ Petition No. 8035/86 against the illegal removal from service. The Hon'ble High Court after hearing both sides pleased to allow the Writ Petition on 18.1.1988 quashing the orders of termination dated 30.5.1986, which is illegal and arbitrary as per orders of Hon'ble High Court.

... to duty with effect from 27.5.1988 but was not paid the wages for the period from 31.5.86 to 26.5.88.

I made a several representations to the authorities for payment of salary for the ~~next~~ period from 31.5.86 to 26.5.88 during which I was out of service on account of the illegal action of the authorities.

5. I made representations to the authorities for payment of wages for the periods I was illegally terminated from services and thereby prevented me from performing duties. As the concerned authorities have failed to treat the period as duty and pay me wages according to law, I filed CMP/32/88 in the Hon'ble Labour Court at Guntur under section 33 (C) of ID Act for payment of arrears of salary etc due to me from 31.5.86 to 26.5.88. The Hon'ble Labour Court, Guntur, after hearing both sides passed an order on 6.12.92 allowing the petition for payment of monthly wages, H.R.A., CCA, Leave credit increment and all attendant benefits from 31.5.86 to 26.5.88 to me within 2 months from the date of the order, failing which interest at the rate of 12 per cent per annum the amount due till the date of payment. The respondents in the CMP No. ³²29/88 had failed to implement

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the order of Hon'ble Labour Court, Guntur till date and now filed a O.A. No. 199 /94 in this Hon'ble Tribunal as applicants, praying to set aside the order dated 6.12.92 in CMP No. ³²~~29~~/88.

6. At the outset, the O.A. is not maintainable, as the order of the Labour Court, Guntur dated 6.12.92 to make payment within 2 months of the order was not implemented nor filed this O.A. within that period. There is a delay of more than 12 months in coming to this Hon'ble Tribunal.

7. In all cases of awards passed by the Labour Court the respondents who prefer appeal should be asked to deposit 50 per cent of the arrears, but in this case this Hon'ble Tribunal without hearing the respondents passed an exparte order suspending the operation of the judgment of Labour Court.

8. The question of payment of arrears for the period from 31.5.86 to 26.5.88 is a sequel to the orders of High Court of Andhra Pradesh which was not challenged. The orders of High Court in Writ Petition 8035/86 have become final and the authorities have not gone on SLP on these orders, when the orders of removal have been set aside it consequently follows that the period of absence has to be treated as duty and wages have to be paid.

9. Railway rules are very clear and categorical that when orders of termination are quashed the employee is entitled for the back wages as he was prevented from working. The period should be treated as duty. No work-No pay rules will not apply in this case since the employee is available to work but was prevented to do the job by the illegal action of authorities. Hence the contention of the applicants in this O.A. No. 199 /94 is contrary to law and baseless.

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Contd...5

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10 The averments made in the application are

irrelevant and do not apply in this case. The Railway Electrification is an organisation in Railways.

The rules applicable for general casual labour on the open line are applied and monthly scales of pay are granted on completion of six/four months to the casual labour. The fact that I was granted monthly scales of pay on completion of six months service proves that I am not a project casual labour and the judgment in Inderpal-Yadav case is not applicable to me while the project casual labour are to be granted monthly scales on completion of 360 days. Quoting this judgment is only to mislead the Hon'ble Tribunal.

11. The Hon'ble Labour Court, Cuntur is correct in coming to the conclusion that petition lies ~~under~~ under 33(C) (2) of I.D. Act as I am a workman under I.D. Act and eligible for payment of arrears of wages allowances, ~~benefit~~ leave credit etc for the periods I was illegally prevented from work. The Labour Court observed that the Hon'ble High Court of A.P. was pleased to quash the said termination order on 18.1.88

GROUND 5

1) The Labour Court observed that in view of the Writ Petition order, the respondents are liable to pay the said sum. Consequently on the High Court's quashing the termination orders, I am entitled to have the entire period of absence from 31.5.86 to 26.5.88 till date of reinstatement to be treated as duty and ^{Paid} the arrears of pay and allowances etc. As the authorities failed to treat the period as duty and pay me the arrears, I filed CMP No. 32 / 88 for recovery of wages which have become due to me as a result of High Court decision. The Hon'ble Labour Court having gone into the merits of the case directed the respondents to pay me arrears which is nothing but an implementation of the High Court's Orders.

The Labour Court has exercised its jurisdiction correctly and passed orders in my favour.

ii) I ~~xx~~ was removed from services without following the provisions under DAR rules and challenged the same in the High Court of Andhra Pradesh which was allowed and reinstated. Again a charge sheet was issued and removed from services without enquiry or following the procedure under DAR or giving an opportunity. On ~~acquitting~~ ^{acquitting} ~~the railway servant~~ is entitled to the ~~prosecution~~ of Article 311 (2). I challenged the illegal removal through Writ Petition No. 8055/86 in the Hon'ble High Court of A.P. and the removal order was set aside.

iii) I have been prevented from performing duty from 31.5.86 to 26.5.88 under extant rules, when the removal orders are set aside, the entire period has to be treated as duty and back wages paid.

iv) Since there was no response from the authorities, I filed ~~xx~~ a CMP in Labour Court, Guntur which was allowed.

v) The applicants have not brought any ground to deny the payment of back wages except No work- No pay which is slogan is not applicable in my case as I was actually prevented from work by illegal order, though I was prepared and ready to work.

vi) The applicants should have gone on appeal to Supreme Court on the orders of Hon'ble High Court of A.P. when my orders of termination was set aside. This was not done.

vii) The points brought out in the application are not sustainable as there were already pleaded before the Hon'ble High Court of Andhra Pradesh also and were rejected.

MP

C-A No. 197/99



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G. V. Subbarao
V. L. Narayana
Advocate

may be filed
on
20/6/94

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viii) The Hon'ble Labour Court, Guntur is correct in its decision that the entire case is bound by the order of High Court of Andhra Pradesh.

ix) When the illegal termination orders are set aside by the competent Court, the authorities are bound to treat the period as duty and payment has to be made for the period I was out of service on account of illegal and arbitrary action of the authorities. There are several judgments of various courts in my favour.

x) When the Hon'ble Labour Court has ordered to make payment within 2 months, the authorities have delayed and to gain time, this application was filed to harass me further

PRAYER :

a) It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the O.A. with costs as I have ~~xx~~ unnecessarily been put to hardship and harassment by the applicant without any valid justification.

Interim Prayer :

b) Pending disposal of the O.A. I pray that this Hon'ble Tribunal may be pleased to vacate the interim orders passed on 24.2.94 suspending the operation of Labour Court judgment as I am put to ~~irreparable~~ damage in that I have been deprived of my legitimate right to wages for the period I was not permitted to perform duty arbitrarily by the authorities.

Solemnly affirmed and signed
this 6th Day of June, 1994.

Y. Benvenge
DEPONENT

Before me

[Signature]
ADVOCATE

[Signature]
Counsel for the Respondent-1

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

..

M.A.No.420/98 with O.A.199/94

Date: July 19, 1996.

Between:

1. The Chief Signal & Telecommunication Engineer, Railway Electrification, Vijayawada (rep. by Deputy Chief Signal & Telecommunication Engineer, Railway Electrification, Vijayawada.
2. Union of India rep. by General Manager, Central Organisation for Railway Electrification, Allahabad, U.P.
3. Dy. Chief Signal & Telecommunication cation, Secunderabad Railway Electrifi- cation, Secunderabad. Applicants in O.A., Respondents in M.A.

Vs.

1. Sri Yadala Benerji, Casual Khalasi through Divisional Engineer, Railway Electrification, Secunderabad 500371.
2. Presiding Officer, Labour Court, Guntur, A.P. Respondents in O.A., Applicants in M.A.

Counsel for the applicants in O.A.: Sri N.R.Devraj, Senior Standing Counsel for Central Government.

Counsel for the respondents in O.A. Sri G V.Subba Rao.

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-Chairman

HON'BLE SHRI H.RAJENDRA PRASAD, Member

Man.

M.A.420/94 with O.A.199/94.

Date: July 19, 1996.

O R D E R.

(AS PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN)

Mr. G.V.Subba Rao for the applicant.

Mr. N.R.Devraj, Senior Standing counsel for the Respondents.

MA 420/94

The M.A., is for vacating the interim orders
the M.A., it is transpired that the O.A., itself may
have to be dismissed on the ground of lack of jurisdiction
Both the learned counsel submitted that the O.A., itself
may be disposed of. Hence no Order on M.A. It is
disposed of.

Order on O.A.199/94.

By consent heard and taken up for final disposal.

The O.A., has been filed by the Union of India
and two others representing the Central Organisation for
Railway Electrification through its Authorities challenging
the legality and correctness of the Award passed by the
Presiding Officer, Labour Court, Guntur dated 5--12--1992
in C.M.P.No.32/88 allowing the claim of the present

respondent (Applicant in Labour Court) for payment of arrears of
wages and other attendant claims
and benefits for the period indicated in the
Award.

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The dispute was entertained by the Labour Court under Sec.33-C(2) of the Industrial Disputes Act. The claim was contested by the official respondents who are the present applicants. They are aggrieved by the said Award. They pray in the O.A., that the said Award dated 5.12.92 may be quashed and set aside on the grounds pleaded in the O.A.

2. The applicants have stated that this Tribunal has got jurisdiction to entertain the O.A., under Sec.14(1)(b)(ii) of Administrative Tribunals Act, 1985.

3. The learned counsel for the respondents, Mr. G.V.Subba Rao now submits that in view of the decisions of the Hon'ble Supreme Court in the cases of KISHAN PRASAD GUPTA Vs. CONTROLLER, PRINTING AND STATIONERY (1966 (1) SCC 69 and in Sh.SURAJ RAM Vs.UNION OF INDIA (Civil Appeal No.3370/96 dated 12-2-1996) the O.A., is liable to be dismissed for want of jurisdiction ~~namax~~ in the Tribunal to proceed with the same. The learned counsel submitted that although this contention has not been raised in the counter, it is open to urge for dismissal of the O.A., in view of the law laid down by the Hon'ble Supreme Court and since the question touches the very jurisdiction of the Tribunal to entertain the O.A.

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4. Having regard to the above judgments of the Hon'ble Supreme Court we are inclined to accept the submission of Mr. G.V.Subba Rao.

5. Mr. N.R.Devraj, learned Standing Counsel for the respondents, however, sought to urge that even though the applicants would not contend that the Labour Court had no jurisdiction to entertain the dispute since that jurisdiction has been excluded under the Administrative Tribunals Act ^{but} as there is no Appellate Authority provided under the Industrial Disputes Act to challenge the Award made under Section 33-C(2), the only remedy available to the applicants being in the nature of a writ petition which the applicants could not avail in the High Court as exclusive jurisdiction in service matters is conferred upon the Tribunal under the Administrative Tribunals Act and inasmuch as the claim of the respondents relates to service conditions, the jurisdiction of the Tribunal is intact. Consequently, the learned counsel submitted that the Tribunal has jurisdiction to proceed with the O.A. on merits.

6. The argument advanced by Mr. Devraj could have merited scrutiny but the question is no longer res integra in view of the subsequent decision of the Supreme Court in SURAJ RAM's case(supra). The facts in the instant case are pari materia with the facts that arose in that case. In that case, the Labour Court had made an Award for payment to the disputant the

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the amount as specified towards part of unpaid wages. That Award was challenged before the Central Administrative Tribunal which had allowed that O.A. That has been set aside by the Supreme Court observing that as held in the case of KRISHAN PRASAD GUPTA the Central Administrative Tribunal has no jurisdiction to entertain the Application under Section 19-B of the Administrative Tribunals Act 1985 against an award/order of the Labour Court. On that view of the matter, the order of the Tribunal has been set aside. In the instant case, the award has also been passed by the Labour Court for similar claim and clearly the jurisdiction of the Tribunal to entertain the O.A. against that award does not exist. We do not therefore think that it is possible to accept the submission made by Mr. Deyraj

7. We are therefore, held that the O.A., has been filed under a mis-conception that the Tribunal has jurisdiction to entertain the same. We, however, hold that the Tribunal has no jurisdiction to deal with the O.A. although it has been entertained. As a consequence the O.A., is required to be dismissed for want of jurisdiction in the Tribunal to deal with the same.

Hence the following Order:

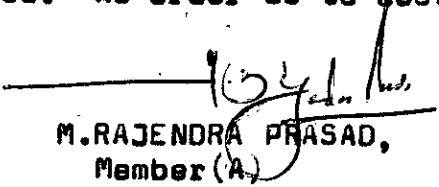
The O.A., is dismissed.

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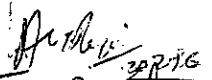
for want of jurisdiction in the Central Administrative Tribunal to deal with the same. The interim order is vacated. No order as to costs.


M. RAJENDRA PRASAD,
Member (A)


M.G. CHAUDHARI, J
Vice-Chairman.

Date: July 19, 1996

Dictated in open Court.


Deputy Registrar (cc)

888.

9/12/96

I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

12-1-1996

ORDER/JUDGMENT

M.A./R.A.C.A.No. 420/96

in

O.A.No. 595/96 199/94.

T.A.No. (W.P.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
डिस्पैच/DESPATCH
12 AUG 1996
हयदराबाद बेंच
HYDERABAD BENCH