

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, JABALPUR**

NO. CGIT/LC/C/07/2013

Present: P.K.Srivastava

H.J.S..(Retd)

**P. S. Sarkar,
S/o Shri S. Sarkar,
Sr. Overman (CHP-I Mines)
Chhatarpur Mine No. 1,
Q.No. B/43, Shobhapur Colony,
P.O. Patherkheda,
District Betul (M.P.)**

Workman

Versus

**The General Manager,
Western Coal Fields Ltd.,
Patherkheda Area,
Chhatarpur Mine No. 1,
Patherkheda, District Betul (M.P.)**

Management

(J U D G M E N T)

(Passed on this 03rd day of October, 2025)

The petitioner workman has filed this petition under Section 33(c)(2) of the ***Industrial Disputes Act 1947*** (in short the 'Act') with a case that he was initially appointed by the management as permanent Overman, and superannuated on 30.06.2013, vide order of management dated 18.01.2013, he is the Secretary of the Union. There was a settlement

between the Union and the Management on 16.02.1996, with respect to overtime salary and Sundays leave pay of NCDC staff in light of **Section 33 of Mines Act, 1952 & Rule 3 of Mine Rules, 1960** and a circular in this respect was issued by management on 24.08.1992.

According to this settlement, the daily wages were to be computed on the basis of 1/26 i.e., on the basis of calculation of 26 days in a month divided by total wages paid. But, management did not pay him on this basis right from 1995 to date of his superannuation which he is entitled to, the difference of wage comes out Rs. 400/- a day. Management did not pay the overtime for work done by him on Sundays and also did not pay the wages for work done on National Holidays, all this amount comes @ Rs. 23/- Lac, which the management is under obligation to pay with interest. The petitioner has sought relief for holding his calculation legal, he is held entitled to receive this amount from management.

The case of management is mainly that such a claim cannot be entertained under Section 33(c)(2) of the Act for enforcement of a non-existing right for grant of higher wages on the basis of 26 days wages calculation instead of 30/30 wages calculation because the petitioner was an Ex-NCDC employee.

Management has further stated that all the claims made by the petitioner workman are denied. The workman had filed W.P. No. 3891/1997 along with all other workmen before Hon'ble High Court of M.P., claiming the identical relief which was disposed by Hon'ble High Court vide its order dated 09.11.2010, copy filed by management as *Annexure-M/12*, their reply.

According to management, the petitioner was employee of NCDC, which was absorbed into service after nationalization of Coalmines in fact, the calculations are paid to the workman in light of settlement between

management and the workman, reached at between them on 26.07.1995, he has been paid charge allowances as per his attendance in every month on calculation based on 30/31 days, the VDA issue has been settled by Hon'ble High Court in the aforesaid writ.

The management has prayed that the petition be dismissed.

Both the sides have filed affidavits and documents, to be referred to as and when require.

I have heard arguments of Learned Counsel for Management Mr. Neeraj Kewat and Learned Counsel, Mr. Swapnil Khare for the Petitioner workman. I have gone through the record as well.

The first objection is with regards to the maintainability of the petition. According to management, these claims are yet to be settled between the parties, hence, they are outside of scope of Section 33(c)(2), management has referred to the Judgment of Hon'ble Supreme Court in the case of ***Municipal Corporation of Delhi vs. Ganesh Rajak & Others, (1995) 1 SCC 235***, the relevant paragraphs is being reproduced as follows:-

"Where the very basis of the claim or the entitlement of the workman is disputed, there being no earlier adjudication recognition thereof by the employer, the dispute related to entitlement is not identical to the benefit claimed is therefore, clearly outside of proceeding under provision of U/S 33-C-(2) of the Act. The labour court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under provision of Section 33-C-(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation of enforcement thereof some ambiguity

requires interpretation that the interpret action is treated as incidental to the labour court power under provision of 33-C-(2). That of executing power to interpret the decree for the purpose for its execution. The power of labour court under provision of Section 33-C-(2) extends to the interpretation of the award or settlement on which the workmen right rest".

In light of principle of law laid down by Hon'ble Supreme Court, since there are rival claims between the parties and there is no settled right under Regulation or Act or Award or Settlement. It is held that this petition is not entertainable by this Tribunal for the relief claimed in the petition.

Hence, on the basis of above discussion and findings, the petition lacks merit and is liable to be dismissed.

Petition dismissed.



DATE:- 03-10-2025

**(P.K.SRIVASTAVA)
PRESIDING OFFICER**