

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT
ROUSE AVENUE COURTS , NEW DELHI**

LCA No.-970/2016

INDUSTRIAL DISPUTE BETWEEN :-

**Shri Data Ram S/o Late Shri Khacheru
R/o H No:97, Gandhi Bazari, Opposite
Police Station Pilakhuaa, District Hapur,
Uttar Pradesh**

.....Workman

VERSUS

**Delhi Transport Corporation, I.P. Estate
New Delhi-110002**

.....Management

Date of Institution	:12-08-2016
Date of Final Arguments	:25-07-2020 (Through VC)
Date of Award	:11-08-2020 (Through VC)

AWARD

- 1) The Workman has filed the present application under section 33-C(2) I.D. Act against the management-herein, for balance of payment amount pertaining to dues Under Section 17-B of the Industrial Dispute Act in terms of order dated 17-07-2014, passed by Hon'ble High Court in Writ Petition No:11850/2009 titled as " DTC Vs. Data Ram".

VERSION OF THE WORKMAN

- 2) The case of the workman is that the management/Judgment debtor had filed the above stated writ petition against the award dated 29-01-2009 passed by the Hon'ble Court of Ms. Renu Bhatagar, POLC-X in an Industrial Dispute case No:297/2006 titled as "Dataram Vs. DTC" and in the said writ petition the petitioner/workman has filed an application under section 17-B and the Hon'ble Court vide its order dated 17-07-2014 allowed the said application and directed the DTC to pay the 'last drawn wages' or 'the minimum wages' whichever was higher to the workman from the date of the award i.e. 29-01-2009. It is the case of the workman-herein stated that the management has not paid the entire amount of wages w.e.f. 29-09-2009. The workman-herein had only received Rs.4,12,854/- whereas he was entitled to receive Rs.8,22,261.19/- (including interest @24% per annum) which was payable to the workman-herein till 30-09-2014. The unpaid balance amount of Rs.4,21,790.35/- (Total amount payable to the workman-herein as on 30-09-2014 is Rs.8,22,261.19/- plus(+) additional interest since 30-09-2014 till 15-11-2014 which comes to be Rs.12,383.17/-. The net Total payable amount is Rs.4,21,790.35/-{Rs.8,34,644.36/- Minus(-) Rs.5,12,854/-}).


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- 3) As per the calculation of the workman-herein the management is liable to pay the balance amount of Rs.4,21,790.35/- is as under:-

S.no.	Period	Minimum Wages
a.	01-08-2008 to 31-01-2009	Rs.4207/- PM
b.	01-02-2009 to 31-07-2009	Rs.4358/- PM
c.	01-08-2009 to 31-01-2010	Rs.4377/- PM
d.	1-2-2010 to 31-1-2011	Rs.6448/- PM
e.	1-2-2011 to 31-1-2011	Rs.7410/- PM
f.	1-4-2011 to 30-9-2011	Rs.7826/- PM
g.	1-10-2011 to 31-3-2012	Rs.8112/- PM
h.	1-4-2012 to 30-09-2012	Rs.8528/-PM
i.	1-10-2012 - 31-3-2013	Rs.8814/- PM
j.	1-3-2013 to 30-9-2013	Rs.9386/- PM
k.	1-10-2013 to 31-03-2014	Rs.9802/- PM
l.	1-4-2014 to 30-09-2014	Rs.10,374/- PM

- 4) It is submitted by the workman that he received a reply from the management vide letter dt. 26-12-2014 but nowhere in the said reply the management had given the break-up pertaining to the assessment of amount/calculation chart showing the calculation as to how they reached to the figure of Rs.5,17,166/- instead of Rs.8,22,261.19/-. Despite giving repeated letters and notice to the management the management has failed to pay the balance amount of Rs.4,21,790.35/- to him. Hence, the present application. Workman prayed that management/judgment debtor may be directed to calculate the amount properly and pay the balance amount including all the dues with interest to the decree holder/workman at the earliest in the interest of justice.

VERSION OF THE MANAGMEENT

- 5) In its written statement the management has stated that the workman was appointed as R/C Conductor on 04-07-1986 and the services of all retainer crew conductor working on the rolls of DTC during the year 1988 were dispensed with as their services were not required in the corporation. The workman was re-appointed by the management on 28-

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4.2.2015

07-1998 as a new retainer crew conductor and was allotted new B No:24563 PT No:53347. The workman was performing his duty on 29-01-2004 with bus No:DL-IPA-2705 on route Tanak Pur-Delhi and the checking staff intercepted this bus at PUI Batia and observed that six passengers were not issued tickets after collecting due fare, for which the workman was issued challan/report. Thereafter, a preliminary inquiry was conducted and the Manager (Mech) G.P.D was appointed as enquiry officer, who established the charges levelled against the workman. Taking into account of the gravity of the workman offence, the Depot Manager, G.P.D dispensed with the services of the workman under para 5 (XIV) of executive instruction regarding employment of retainer crew vide memo No:GPD/A1/(T)/CS-10/04/2385 dt. 06-08-2004.

- 6) The management further stated that the workman preferred an appeal against his dispensing from service and same was rejected by C.M.D. Thereafter, the workman raised a case ID No:397/2006 regarding his termination from services before Labour Court and Labour Court has passed an award on 29-01-2009 in favour of the workman and directed the DTC to re-instate him with 50% of back wages. It is stated that the management preferred an appeal against the order of labour court in the Hon'ble High Court and the impugned award was stayed till the pendency of the writ petition, wherein, the workman has filed an application under section 17B of I.D. Act seeking payment of wages during the pendency of the writ petition and the Hon'ble High court, vide its order dt. 17-07-2014 allowed the said application of the workman and the management was directed to pay to the workman the 'last drawn wages' or 'the minimum wages' which ever was higher to the respondent from the date of award. Thereafter, the management considered the case of the workman and granted 17B wages to the workman and now the workman has filed the present case before the labour court.
- 7) It is submitted that the present claim application of the workman is totally false and frivolous. The amount of the period from 29-01-2009 to 28-02-2009 has already been paid in the manual bill of 50% of back wages amounting to Rs.96390/- vide cheque No:512625 dt. 30-01-2013 drawn on Syndicate Bank, IP Estate, Delhi. This amount was deposited in the office of Registrar General, High Court of Delhi in terms of the order dated 24-09-2009 passed by Hon'ble High Court in CM No:11935/09 and in WP (C) No:1850/09. Thus The amount of Rs.4,12,854/- has already been paid to the workman for the period 01-03-2009 to 30-09-2014 vide cheque No:816337 dt. 13-10-2014 drawn on Corporation Bank, Karol Bagh Branch, Delhi.



- 8) In the rejoinder the claimant has reiterated the averments of his claim and denied the version of the management-WS.

FRAMING OF THE ISSUES

- 9) From the pleadings of the parties the following issues were framed on 17-02-2017:-

- (1) Whether the claim of claimant/workman is not maintainable under section 33-C (2) of the Industrial Disputes Act, 1947 (as amended up to date), as alleged by the management? OPM
- (2) Whether the claimant/workman is entitled to the relief claimed, if so, to what amount and if with interest, at what rate? OPW
- (3) Relief

EVIDENCE OF WORMAN

- 10) The workman has examined himself as WW1 and filed his evidence by way of affidavit which is Ex.PW-1/A and he relied upon the documents which are Ex.PW1/1 to Ex.PW1-2 and Mark A, Mark B and Mark C (Exhibited as Ex.Pw1/1, Ex. PW1/4 and Ex.PW1/5).
- 11) No other witness was examined by workman and he closed his evidence on 11-09-2017 and the matter was fixed for management's evidence.

EVIDENCE OF THE MANAGEMENT

- 12) the management has examined MW1 Sh. Pushpendra Singh, Depot Manager, Gazipur, Delhi, who tendered his affidavit in evidence which is Ex. MW-1/A bears his signature at point 'A' and 'B'. He has relied upon documents :
- i) Ex.MW1/1 is the copy of draft dt. 13-10-2014 for Rs.4,12,854/- in the name of Data Ram.
- ii) Ex.MW1/2 is the Copy of computer generated statement of account u/s 17B w.e.f. 01-03-2009 to 30-09-2014
- iii) Ex. MW1/3 is the Copy of draft dt. 30-10-2004 for Rs.96340/-, drawn on Syndicate Bank, in favour of Registrar General, Delhi High Court.
- 13) No other witness was examined by management and management closed his evidence on 03-10-2018.
- 14) I have heard the final argument on behalf of workman as well as for management on 25-07-2020 and both the ARW and ARM has consented for passing of final order in this case. File perused. My findings on the issues are as under:-


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ISSUE No.(1) Whether the claim of claimant/workman is not maintainable under section 33-C (2) of the Industrial Disputes Act, 1947 (as amended up to date), as alleged by the management ? OPM

15)The provision u/s 33-C(2) I.D. Act duly empowers the labour courts regarding 'Recovery of Money Due from an Employer' after the AWARD is passed which fulfils the basic criteria of prior adjudication. The present case duly satisfies the requirements under S.33-C-2 I.D. Act as the present application seeks implementation / enforcement of the AWARD previously passed. [Jeet Lal Sharma vs Presiding Officer {reported in 84 (2000) DLT 706}]. This issue no.1 is thus decided in favour of the workman and against the management.

ISSUE No.(2) Whether the claimant/workman is entitled to the relief claimed, if so, to what amount and if with interest, at what rate ? OPW

16)The order dated 17.07.2014 passed by Hon'ble High Court in Writ Petition No:11850/2009 titled as " DTC Vs. Data Ram" is thus:

"O R D E R

17.07.2014

CM No.16430/2013

This is an application filed on behalf of the workman under Section 17B of the Industrial Disputes Act, 1947 seeking payment of wages during the pendency of the present proceedings. The learned counsel for the petitioner states that despite the best efforts the petitioner has not been able to ascertain whether the respondent is employed elsewhere or not. It is further submitted by the learned counsel for the petitioner that payment under Section 17B of the Act should be made from the date of the application and not from the date of the impugned award because though the award was passed on 29.01.2009, the present application was moved after a considerable delay in 2013.

I do not find that the contentions raised by the petitioner have any merit. It is noted that since the petitioner had not filed a reply to this application even its right to file the same had been closed by an earlier order. The law relating to payment of wages under Section 17B of the Act is now well settled. In the case of Dena Bank v. Ghanshyam: (2001) 5 SCC 169 the Supreme Court had held that the payment under Section 17B of the Act is in the nature of subsistence allowances and is liable to be paid from the date of the award. Accordingly, the application is allowed.

The petitioner is directed to pay the last drawn wages or the minimum wages whichever is higher to the respondent from the date of the award. The respondent shall also file an affidavit affirming that if any amount is to be subsequently adjusted or re-paid, the same would be complied with."


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- 17) The above-said order allowed the application u/s. 17B I.D. Act moved by the woman-herein. The crux of the assertion of the workman-herein is that 'the amount due' under S.17B has not been paid to him. The workman has held his ground during his cross-examination where he denied the suggestion that the Hon'ble High Court ordered the payment without interest and further stated that the management-DTC had made him the payment in accordance with the order passed by Hon'ble High Court. The workman was a commerce graduate {B.Com (Pass)}. However, the workman-herein (WW1) admitted that he was getting his unemployment allowance u/s 17B from the management every month. He further admitted that Hon'ble High Court did not mention about the interest in the order. It was admitted by WW1 that he had already received a sum of Rs.4,12,854/- from the management within time. The workman WW1 denied the suggestion that the management had made payment of his full and final dues as per order. It was stated by WW1 that he did not receive the amount of Rs.96340/- through cheque No:512625 dt. 30-01-2013 but he voluntarily stated that same had been deposited with Hon'ble High Court. It was admitted by WW1 that he was employed in DTC as a RC Conductor. He denied that he has filed a false LCA petition against the management for wrongful gain. He further denied the suggestion that management had made him full and final payment and had cleared dues as per the order of Hon'ble High Court.
- 18) As far as the cross examination of MW1 is concerned the said witness MW-1 stated that he had filed his evidenciary affidavit on the basis of the records available in the office. MW-1 was not working with DTC when the workman was terminated. The workman was terminated on 06-08-2004. It is also stated by MW1 that the calculation mentioned in Ex. MW1/2 is calculated by Dealing Assistant and Accountant and he is fully aware of the said calculation.
- 19) The essential aspect of the cross-examination of MW-1 reveals that that the calculation of the management had been done after the order dt.29-01-2009 of Ld. POLC Ms. Renu Bhatnagar, Karkardooma Courts. Thus the the amount mentioned in Ex. MW1/1 i.e. Rs.4,12,854/- was based on the said AWARD dt. 29-01-2009. However, the MW-1 again said the said amount was based on the order passed by Hon'ble High Court but he did not remember the date of said order but the same was with regard to the minimum wages and also regarding salary to be paid u/s 17B of ID Act. As per MW-1 the calculation mentioned in Ex. MW1/2 was based on minimum wages. The witness MW-1 agreed to the postulates of Section 17B Act that it pertains to the 'last drawn salary' by employee or 'minimum wage' whichever is higher. MW1 further stated that being Retainer Crew Conductor, the amount calculated by the Dealing Assistant and Accountant. MW-1 did not remember the formula of minimum wages calculation. The following question was put to the witness MW-1:


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Q. "As per calculation sheet Ex. MW1/2 calculation starting from March, 2009 whereas as per order of Hon'ble High Court, the calculation was to be made from 29-01-2009 i.e. date of award. What you have to Say"

MW1 replied that the calculation was made as per Hon'ble High Court order.

Another question was put to the MW1 :

"Have you personally checked the calculation mentioned in Ex. MW1/2 in terms of order dt. 17-07-2014 of Hon'be High Court?"

MW1 replied that the payment made to the ex-employee in 2014 and he joined as Depot manager in Gazipur Depot in 2015.

20) The witness MW1 also stated that he did not remember if any reminder/application had been received by the DTC from Ex-RC conductor regarding balance amount of last drawn wages or minimum wages whichever is higher to the applicant in terms of orders of Hon'ble High Court of Delhi. MW1 also did not remember if any reply had been given by DTC to the applicant.

21) The management has further contended that the amount of the period from 29-01-2009 to 28-02-2009 has already been paid in the manual bill of 50% of back wages amounting to Rs.96390/- vide cheque No:512625 dt. 30-01-2013 drawn on Syndicate Bank, IP Estate, Delhi. This amount was deposited in the office of Registrar General, High Court of Delhi in terms of the order dated 24-09-2009 passed by Hon'ble High Court in CM No:11935/09 and in WP (C) No:1850/09. It is further stated by the management that the salary of conductor is given for 26 days in a month. The management has contended that the payment has been duly made under two broad headings: As per the manual bill of 50% of back wages for the period 29-01-2009 to 28-02-2009 (Rs.96390/-); **and the** Monthly salary of conductor as per 26 days rule multiplied by the prevailing rate of the month.

22) The chart calculation of the workman-herein is based on the 'minimum wages' from time to time. However, the perusal of the Ex.MW-1/2 reveals that the management has been paying as per the 'minimum wages'. Not only that, the workman-herein has admitted to have been receiving 'unemployment allowance' monthly from the management. This is also in tune with the envisage of the provision of S.17B. The chart following MW-1/2 shows the monthly payment under the head "Amount". The chart has been compressed to show the "Amount" per month for the "Combined Period" when the 'rate per day' for the said months was the same. Thus the Net Payable has to be multiplied by the number of months in the "Combined Period". The Total, TDS and the NET Sum Total are the final gross-actual figures after all the calculations.


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Combined Period	Days per month	Rate per day (Rs.)	Amount per month (Rs.)	CPF per month (Rs.)	Net Payable per month (Rs.)
29.01.2009 to 28.02.209	26	--	<i>Paid manual bill of <u>50% of back wages</u> amounting to <u>Rs.96390/-</u></i>	---	<i>The workman is entitled to the balance amount as per <u>full wages</u></i>
Mar. 2009 to July 2009	26	167	4342	521	3821
Aug.2009 to Jan.2010	26	168	4368	524	3844
Feb. 2010 to Jan.2011	26	248	6448	774	5674
Feb. 2011 to Mar. 2011	26	285	7410	889	6521
Apr. 2011 to Sept. 2011	26	301	7826	939	6887
Oct. 2011 to Mar. 2012	26	312	8112	973	7139
Apr. 2012 to Sept. 2012	26	328	8528	1023	7505
Oct. 2012 to Mar. 2013	26	339	8814	1058	7756
Apr. 2013 to Sept. 2013	26	361	9386	1126	8260
Oct. 2013 to Mar. 2014	26	377	9802	1176	8626
Apr. 2014 to Sept. 2014	26	399	10374	1245	9129
		Total	517166	62059	455107
				TDS	42253
				Net Sum Total	412854

23)The management has vehemently asserted that after the deducting CCF amount of Rs.62,059/- and the TDS of Rs.42,253/- the net payable of Rs.4,12,854/- has been paid to the workman. The calculation of the management as per Ex. MW-1 is correct and as per the prevailing 'minimum wage'. The orders of the Hon'ble high Court has been substantially complied with by the management-DTC.


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24. The workman though premising his calculation purely on the basis of the "minimum wages" the interest @ 24% is also being added by the workman. The order of the Hon'ble High Court did not speak of any interest and the same has been admitted by the workman during his cross-examination. **Therefore the seeking interest @ 24% (as averred and sought by the workman-herein) is not justified.**
25. However, there is some force in the argument of the workman relating to the date of commencement of payment. The chart of the management commences payment from 01.03.2009 whereas the payable date ought to be from the date of the AWARD i.e. 29.01.2009. The management has been able to prove that the amount for the period from 29-01-2009 to 28-02-2009 has already been paid in the manual bill of **50% of back wages** amounting to Rs.96390/- vide cheque No:512625 dt. 30-01-2013 drawn on Syndicate Bank, IP Estate, Delhi. However, as per S.17B the amount ought to be "full back wages". The workman-herein is entitled to receive the balance amount as per "full wages" (not 50% wage) after adjusting the amount already paid by the management for the said period.
26. **Therefore the present application has to be partially allowed for the balance payment, if any, on the basis of "full wage" (not 50% wage) for the period from 29.01.2009 to 28.02.2009 alongwith the unemployment allowance u/s 17B from the management for the said period (if not already paid by the management) within 30 days of publication of this ORDER/ AWARD failing which the management will be liable to pay the amount alongwith interest @12% per annum till the date of realization of the amount.**
27. The application of the workman is disposed after been 'partly allowed'. Thus the ISSUE No.2 is disposed of as 'partly decided' in favour of the workman and against the management.
28. Reference answered accordingly in above terms/directions. Matter disposed of. File be consigned to record room.

Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act),CBI, Rouse Avenue District Courts, New Delhi.

Dated:11-08-2020



(VEENA RANI)

Presiding Officer Labour Court
Rouse Avenue Courts, New Delhi
Judge Code : DL0271

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT
ROUSE AVENUE COURTS , NEW DELHI**

LCA No.-970/2016

INDUSTRIAL DISPUTE BETWEEN :-

Shri Data Ram S/o Late Shri Khacheru
R/o H No:97, Gandhi Bazari, Opposite
Police Station Pilakhuaa, District Hapur,
Uttar Pardesh

.....Workman

VERSUS

Delhi Transport Corporation, I.P. Estate
New Delhi-110002

.....Management

11-08-2020

Present : Sh. R.B. Singh ,AR of the workman through VC.
Sh. Ashok Kumar, AR of the management through VC.

Vide my separate detailed order the application of the workman is "partly allowed". A copy of the order be uploaded on the website of RADDC. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

Announced through Video Conferencing
due to Covid-19.

Dated: 11-08-2020



(VEENA RANI)

**Presiding Officer Labour Court
Rouse Avenue Courts, New Delhi**

Judge Code : DL0271