

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

NO. CGIT/LC/C/02/2013

Present: P.K.Srivastava

H.J.S..(Retd)

**Dayaram Ramchandani,
S/o Late Jagatram Ramchandani,
Aged about 61 years,
R/o Indore (M.P.)**

Workman

Versus

**State Bank of India,
Through its
Regional Manager (RBO-8),
Regional Business Office – 8,
Indore (M.P.)**

Management

(J U D G M E N T)

(Passed on this 25th day of September, 2025)

The Petitioner has filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947, hereinafter referred to by the word 'Act', wherein he has stated that he joined his services with the Bank as Clerk Typist on 17-12-1976 and superannuated as a Special Assistant (in clerical cadre) on 30.11.2011 from its C.C.P.C. Branch Indore (M.P.). He was required by Management to continuously officiate as Officer Junior Management Grade Scale-1 for period of 58 months from 1-7-2007 to 30-11-2011 with powers and responsibilities applicable to Cash Officers with User Administration under Core Banking Solution (User Capability -5) (Transaction Book-9 and User Type 60). He was entitled to payment of officiating allowance and other ancillary benefits for the period he worked as Officer Junior Management Grade Scale-1 in the light of the Bi-partite Settlement and relevant circulars in this respect but the Management has not paid his claim which has led him to

file this petition before this Tribunal for computation of his claim and direction to management to pay it according to the table in the petition.

In its written statement, Management has taken the stand that **firstly**, the petition is not maintainable under Section 33-C(2), **secondly**, the petitioner was working as a Special Assistant in Clerical Cadre. He claims to have performed duties of Officer Junior Management Grade Scale-1 for the period 1-2-2007 to 30-11-2011. His claim was duly considered by the management and it was found that the services of petitioner were utilized as per his designation and he was not fit/ eligible for any Officiating elements in the terms of the relevant guidelines issued in this respect, as claimed by him. Management pleads that, there is nothing on record to show that the petitioner worked and performed the work of OJM-I. There was no such order issued by any Competent Authority assigning him the work of OJM. His services were utilized as per his designation and wages were paid to him accordingly. He never worked as OJM-I on Officiating basis for the period as claimed by him. According to Management, the concept of User Capability was itself introduced for the first time in 2009. Hence, there is no occasion of petitioner working under the said concept prior to 2009.

In evidence, the petitioner has filed his affidavit as his examination in chief. He has filed and proved documents Ex. W-1 to W-11, to be referred to as and when required. He was cross-examined by Management. He has reiterated his claim. He further states that vide his representation dated 7-6-2011 sent by him to management, he reminded the bank regarding his claim and officiating pay and attendant benefits. The Management through the Regional Manager of the Bank issued a letter dated 20-1-2012 to its Branch Manager for verification of the fact as to when the capabilities of OJMGS-1 were assigned to the petitioner and also advised the Branch to take the services of CDC/ITS Department which shows that the petitioner had officiated as Officer JMGS-1 from 1-8-2007 as claimed by him. He further states that the differential which was paid to him by the Management was applicable to the post of Senior Special Assistant in award staff category and not to the post of OJMGS-1 of which he officiated, as it is evident from the letter dated 30-5-2013, letter No.BR/13-14/27.

The workman has proved his five representations on different dates. He has further proved copy of RTI documents as claimed by him.

In his cross-examination, he states that he had worked as OJMGS-1 under the oral orders of the Branch Manager, there was no order in writing but his User Capability-5 was shown in CBS Computers.

The Management has filed affidavit of its witness Malendu Sekhar Shukla as his examination in chief. He was discharged by Management and another affidavit of other Management witness Pankaj Kumbhare was filed as his examination in chief. This witness was cross-examined by petitioner.

Under the order of this Tribunal dated 29.07.2022, the Management was directed to file an affidavit on the point of User Capability allotted to the Petitioner in the core banking within the period 01.02.2007 to 30.11.2011 and also disclosed whether the User Capability allotted to the petitioner is allotted to OJM-I or not.

In compliance of the said direction, affidavit of Management witness Vikram Vinash Vijay Sindhe was filed in which it was stated that within the period from 01.02.2007 to 04.12.2008 the User Capability of the petitioner was 4 and from 05.12.2008 to 30.11.2011, the User Capability was 5. This affidavit also states that the senior Special Assistant in Clerical Cadre and OJM-I in Officers Cadre both are allotted capability 5 but User Type of these two are different. The Special Senior Assistant in Clerical Cadre, who is assigned the duty of Cash Officer with user admin rights, is assigned User Capability 5 and User Type 60, which is also assigned to OJM-I. Whereas, passing Officer with admin rights are assigned User Type 40 which is the User Type for Senior Special Assistant, the petitioner in the case in hand. The petitioner was assigned User Type 40.

In a rebuttal to this affidavit of the Management, the petitioner filed his affidavit in which he stated that while working in C.C.P.C., he was directed to perform the duties of passing officer without user admin, he tried to obtain information in this respect through RTI which was rejected. The only

information provided to him by way of RTT was that, his User Capability was 5 and User Type was 40. He has filed on record the original RTI information.

Thereafter, the petitioner filed an application on 19.07.2024 seeking production of User Control Register and User Capability amendment reports. This application was allowed vide order dated 13.09.2024.

The Management filed an affidavit in response to the order dated 19.07.2024 wherein it was stated that, records of very old and they are not traceable. It was also stated in the affidavit that at the relevant time, Cash Officer with user admin (User Type 60) was for OJM-I whereas passing officer with admin was assigned User Type 40 which is for Senior Special Assistant. The petitioner was never assigned User Type 60.

Thereafter, the Management filed another affidavit of its witness Nidhi Khare, who stated that the User Type in the Core Banking System is not a determinative factor in coming to a conclusion that if an employee was working with certain User Type, he will be deemed to be working on a particular post only on this ground. She has referred to a Circular of the Bank dated 18.12.2009, which states that under no circumstances the Special Assistant or other employee should be given officiating powers treating the positions categorized as Senior Special Assistant.

I have heard argument of Learned Counsel for petitioner Mr. Shantanu Seth and Mr. Pranay Choubey for Management Bank. Both the sides have filed written submission also, which are part of the record. I have gone through the written submissions and the record.

Management witness has reiterated the claim of the Management as taken in their written statement of defense. He further stated that since there was no record available in the office to show that the petitioner had performed the work of OJMGS-I within the period 24-10-2009 to 30-6-2011, which were verified from the records. He further stated that the concept of User Capability-5 was introduced for the first time in the year 2009, hence the question of petitioner working under the said concept prior to year 2009 did not arise. This witness further states that in fact Core Banking was introduced in the year 2004 where under the capability was fixed of different cadre. The concept of User

Capability of higher cadre being used for lower cadre employee was introduced in the year 2009 only.

In his cross-examination from the side of the petitioner, the witness admits that if an official on the lower post discharges duties of Higher Management Post, he is paid the difference of pay and other benefits. There is nothing significant in his cross-examination. The Management has not filed or proved any document.

As submitted by learned counsel for the Management, the petition is not maintainable as such.

Learned counsel has referred to a three Bench decision of Hon'ble the Apex Court in the case of *State of U.P. & Another Vs. Brijpal Singh (2005)8 SCC 58* in this respect.

Learned Counsel for the petitioner has referred to a 5 Bench decision of Hon'ble the Apex Court in the case of *Central Bank of India Limited Vs. P.S.Rajgopalan, AIR 1964 SC 743 and another three Bench N 2022 Judgement in Canara Bank Ltd. And another Vs. Anant Narayan Surkund & Another(1964) 3 SCR 256.* The following paragraphs 16, 17, 18, 19 of the Judgment in P.S. Rajgopalan case (Supra) are being reproduced as follows:-

“16. Let us then revert to the words used in Section 33-C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub-section (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of sub-section (2) is similar to that of sub-section (1) and it is pointed out that just as under sub-section (1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under sub-section (2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one in relation to the computation of the benefit in terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in term of money, the Labour Court inevitably has to deal with the question as to whether the workman

has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit". The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-section (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under Section 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution [Maxwell on Interpretation of Statutes p. 350] ". We must accordingly hold that Section 33-C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. Incidentally, it may be relevant to add that it would be somewhat odd that under sub-section (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-section (2). On the other hand, sub-section 3 becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub-section (2).

17. It is, however, urged that in dealing with the question about the existence of a right set up by the workman, the Labour Court would necessarily have to interpret the award or settlement on which the right is based, and that cannot be within its jurisdiction under Section 33-C(2), because interpretation of awards or settlements has been specifically and expressly provided for by Section 36-A. We have already noticed that Section 36-A has also

been added by the amending Act 36 of 1956 along with Section 33-C, and the appellant's argument is that the legislature introduced the two sections together and thereby indicated that questions of interpretation fall within Section 36-A and, therefore, outside Section 33-C(2). There is no force in this contention. Section 36-A merely provides for the interpretation of any provision of an award or settlement where any difficulty or doubt arises as to the said interpretation. Generally, this power is invoked when the employer and his employees are not agreed as to the interpretation of any award or settlement, and the appropriate Government is satisfied that a defect or doubt has arisen in regard to any provision in the award or settlement. Sometimes, cases may arise where the awards or settlements are obscure, ambiguous or otherwise present difficulty in construction. It is in such cases that Section 36-A can be invoked by the parties by moving the appropriate Government to make the necessary reference under it. Experience showed that where awards or settlements were defective in the manner just indicated, there was no remedy available to the parties to have their doubts or difficulties resolved and that remedy is now provided by Section 36-A. But the scope of Section 36-A is different from the scope of Section 33-C(2), because Section 36-A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of Section 33-C(2). Whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under Section 36-A.

18. Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the executing court to interpret the decree for the purpose of execution. It is, of course true that the executing court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests.

19. We have already noticed that in enacting Section 33-C the legislature has deliberately omitted some words which occurred in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in Section 33-C(1) because Section 33-C(1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter V-A. It is thus clear that

claims made under Section 33-C(1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter V-A. These words of limitations are not to be found in Section 33-C(2) and to that extent, the scope of Section 33-C(2) is undoubtedly wider than that of Section 33-C(1). It is true that even in respect of the larger class of cases which fall under Section 33-C(2), after the determination is made by the Labour Court the execution goes back again to Section 33-C(1). That is why Section 33-C(2) expressly provides that the amount so determined may be recovered as provided for in sub-section (1). It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under Section 33-C(2). There is no doubt that the three categories of claims mentioned in Section 33-C(1) fall under Section 33-C(2) and in that sense, Section 33-C(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chapter V-A, may also be competent under Section 33-C(2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under Section 33-C(2), because they formed the subject-matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under Section 33-C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract, cannot be made under Section 33-C(2). If a settlement has been duly reached between the employer and his employees and it falls under Section 18(2) or (3) of the Act and is governed by Section 19(2), it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative, no claim can be made under Section 33-C(2) inconsistent with the said settlement. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may arise thereafter may to be dealt with according to the other procedure prescribed by the Act. Thus, our conclusion is that the scope of Section 33-C(2) is wider than Section 33-C(1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under Section 33-C(2) which may not fall under Section 33-C(1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd. [1962 (1) LLJ 234] that Section 33-C is a provision in the nature of execution should not be interpreted to mean that the scope of Section 33-C(2) is exactly the same as Section 33-C(1) (p. 238).”

It is worth mentioning here that this proposition that a person on lower grade will be entitled to benefits of higher grade if the Management takes from that person the duties assigned on a post of higher grade is affirmed by Management witness. Thus the claim to receive a higher grade pay while working on higher grade is settled and not disputed. What is disputed is whether the petitioner worked on higher grade for the period as claimed by him or not.

In the light of the principle of law laid down in the case of **P.S. Rajgopalani (Supra)** the three Bench Judgement of Hon'ble Apex Court in **Brijpal Singh(Supra)** can be distinguished on facts.

This Tribunal is held within its powers under Section 33 C(2) to look into the matter whether the petitioner is entitled to the claim or not as claimed by him, in the case in hand.

Hence, in the light of discussion, the primary objection and submission of the management regarding maintainability of this petition under Section 33 C (2) of the Act is not accepted and the petition is held maintainable before this Tribunal under Section 11 C(2) of the Act.

As regards the claim of the petitioner, it is evident from the respective claims of the parties, the petitioner claims to have worked on higher grade post of OJMGS-1 from 1-7-2007 to 30-11-2011, whereas the Management does not admit the claim. According to the Management the petitioner never discharged duties as OJMGS-1 as claimed by him. The issue arises here is whether from the evidence, the petitioner has successfully proved his claim that he discharged duties of OJMGS-1 within the period 1-7-2007 to 30-11-2011.

On this issue, the petitioner has examined himself on oath and has corroborated his claim in his statement on oath. He admits that there was no order of any Superior Officer in writing, directing him to work as OJMGS-1 for that period. The Petitioner has further stated that when Core Banking System was introduced in the year 2004, authorization was decided by capacity level. He has filed a list of Core Banking System 2004 in this respect, wherein User Capability Level-5 is assigned to Cash Officer and Passing Officer with User Admn. User Capability Level-4 is assigned to in CBS. It is undisputed that User Capability Level-5 is assigned to Senior Special

Assistant and OJMGS-1 both .Cash Officer is a post of OJMGS-I. The Management witness has stated on this point that concept of User Capability of higher grades being used for lower cadre employee was introduced in the year 2009 and not in the year 2004 but his this statement is not substantiated by any document in this respect, whereas on the other side **User Administrative Manual of year 2009 establishes the stand of the petitioner that User Capability was introduced in the year 2004 without any discrimination for officers or clerks.**

Case of Management is mainly that, the User Type or User Capability may not be a determinative factor in coming to the conclusion that if an employee was working with certain User Type and capacity it will be deemed that he was working on a particular post inspite of the fact that there was no formal order deputing him on that post.

In the case in hand, it is established that the petitioner was working in User Type 5 with User Capability 40 and 60 which is for the OJMGS Grade-I.

It is in evidence that, the post of Senior Special Assistant was created in 2009, it means that when the Workman was working on User Type and Capacity before the day in 2009 on which the post of Senior Special Assistant was created for the first time, he will be entitled to the emoluments and attendant benefits admissible to OJM Grade-I within the period dated 01.02.2007 to date the post of Senior Special Assistant was created in 2009 in the light of the admitted factual position that he worked with User Type and Capacity admissible to Junior Manager Grade-I.

It also comes out that, after the post of Senior Special Assistant was created in 2009, the User Type and Capacity which was granted to Senior Special Assistant, was also granted to the Officer in Junior Management Scale-I when the Officer Worked as a Passing Officer with User Admin, the same User Type capability level was granted to Senior Special Assistant when he worked as Cash Officer with User Admin. Since, the Workman was a Special Assistant and it has been proved that after the post of Senior Special Assistant was created in 2009, he worked and discharged the duties of a Senior Special Assistant. He is held entitled to the emoluments and attendant benefits admissible to the Senior Special Assistants for this period till 30.11.2011.

No other point has been pressed.

In the light of above discussion and findings, the petition stands disposed.

No order as to costs.

DATE:- 25-09-2025

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

