inconsistent with the provisions of sections 7 and 11 of the Act.

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It remains to consider the last argument advanced on behalf of the 1st respondent that section 23 of the Act prohibits an employee from relinquishing such a right as is the subject matter of rule 3(i) quoted above. This argument proceeds on the assumption that house rent allowance which is a right conferred on the employee is an absolute right. It has already been held above that the Act read along with the rules which constitute the terms of the contract between the employer and the employee does not create any absolute right in the employee to the house rent allowance. That being so, there is no question of the employee relinquishing any such right as is contemplated by section 23.

For the reasons aforesaid, the appeal succeeds. The orders passed by the Authority are set aside. In the special circumstances of this case there will be no order as to costs.

Appeal allowed.

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March 4

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B. C. PATEL AND ANOTHER.

[VIVIAN BOSE, JAGANNADHADAS, VENKATARAMA AYYAR and SINHA JJ.]

Payment of Wages Act, 1936, (IV of 1936), Ss. 5, 7, 15(1)(2)—Claim for wages due on account of the introduction of upgrading of persons—Claimant's right to be placed on monthly wages ignored—No delay in payment of wages or deduction of wages alleged—Authority under the Act—Whether had jurisdiction to decide the complaint of the applicant.

The second respondent had been an employee of the Central Railway as a daily rated casual labourer on specified daily wages since 1941. He continued to receive his wages at the specified rate until October 1949. In October 1949 he made an application through an official of the Registered Trade Union—a person permitted by the authority under sub-section (2) of s. 15 of the Payment of Wages Act, 1936—claiming his wages due in respect of six months from May to October 1949. The respondent did not allege delay in the

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payment of his wages or deduction of his wages in contravention of the provisions of s. 5 or s. 7 of Act IV of 1936 respectively. The respondent alleged that he had been paid his actual wages as fixed by the railway administration but that after the introduction of the scheme of upgrading of persons employed under the daily wages scheme, others who were junior to him had been placed on the monthly wages scheme whereas his claim to be so placed, had been ignored and that he had not been paid wages on the scale to which he would have been entitled if he had been placed on the monthly wages scheme.

Held, per SINHA J. (VIVIAN BOSE and VENKATARAMA AYYAR JJ. *concurring*, JAGANNADHADAS J. *dissenting*), that the respondent's complaint fell under the category of potential wages and the authority appointed under the Act had no jurisdiction to decide the question of potential wages. It had the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages.

On the case as made on behalf of the respondent, orders of the superior officers were necessary to upgrade him from a daily wage-earner to a higher cadre. The authority under the Act has not been empowered under s. 15 to make such direction to the superior officers.

Per JAGANNADHADAS J.—Undoubtedly a claim to a higher potential wage cannot be brought in under the category of "claim arising out of deduction from the wages or delay in payment of the wages" if that wage depended on the determination by a superior departmental or other authority as to whether or not a particular employee is entitled to the higher wage—a determination which involves the exercise of administrative judgment or discretion or certification, and which would, in such a situation, be a condition of the payability of the wage. But where the higher wage does not depend upon such determination but depends on the application of and giving effect to certain rules and orders which, for this purpose, must be deemed to be incorporated in the contract of employment, such a wage is not a prospective wage merely because the paying authority concerned makes default or commits error in working out the application of the rules. The wage under the Act is not necessarily the immediately pre-existing wage but the presently payable wage. Whether or not an employee was entitled to wages of a higher category than what he was till then drawing would depend entirely on the scope of the rules with reference to which he is entitled to become one in the higher category and it cannot be assumed *a priori* that such a claim is a claim to "prospective wages".

On the facts of the case as found the dispute as to the wage was one that fell within the jurisdiction of the "authority" concerned.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 147 of 1953.

Appeal by Special Leave from the Judgment and Order dated the 24th day of August 1951 of the High Court of Judicature at Bombay in Appeal No. 50 of 1951 arising out of the Order dated the 19th day of June 1951 of the said Court exercising Original Jurisdiction in Misc. No. 143 of 1951.

M. C. Setalvad, Attorney-General for India (*Porus A. Mehta* and *P. G. Gokhale,* with him), for the appellant.

J. B. Dadachanji, M. V. Jayakar and *Rajinder Narain,* for respondent No. 2.

1955. March 4. The Judgment of Vivian Bose, Venkatarama Ayyar and Sinha JJ. was delivered by Sinha J. Jagannadhadas J. delivered a separate judgment.

SINHA J.—This is an appeal by special leave from the order of the High Court of Judicature at Bombay dated the 24th August 1951 upholding that of a single Judge of that court sitting on the Original Side, dismissing the appellant's petition under art. 226 of the Constitution for a writ of *certiorari* quashing the order dated the 23rd January 1951 passed by the 1st respondent, the Authority under the Payment of Wages Act (hereinafter referred to as the Act).

The facts leading up to this appeal may shortly be stated as follows: The 2nd respondent is and has been at all material times an employee of the Central Railway (formerly called the G.I.P. Rly.) represented by the appellant who has been nominated by the Railway Administration as responsible for payment of wages under section 3 of the Act. Ever since 1941, the 2nd respondent has been employed by the Railway Administration as a carpenter on daily wages, and has been treated as a daily rated casual labourer and has been paid his wages at the rate of Rs. 3-4-0 per day. He continued receiving his wages at that rate until October, 1949 without any demur, and granting receipts for the wages thus received. On the 2nd December, 1949, an application was made by one K. N. Pitkar "an official of Registered Trade Union, a person

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permitted by "the Authority" under sub-section (2) of section 15 of the Payment of Wages Act, 1936, against the G.I.P. Rly. administration through its Divisional Engineer, Parel, Bombay. It was alleged on behalf of the 2nd respondent that his wages due in respect of six months from May to October 1949 amounting to Rs. 245 had not been paid or had been subjected to illegal deductions as shown in the schedule. The schedule will be set out hereinafter. A claim for Rs. 245 plus Rs. 15 by way of compensation was made.

The appellant, as the opposite party before the Authority, resisted the claim, *inter alia*, on the grounds—

(1) that Rs. 245 had not been illegally deducted from the wages of the 2nd respondent; and

(2) that the claim of the 2nd respondent who was employed as a daily rated casual labourer on specified daily wages, to be placed on a permanent cadre on the scale of monthly rates of pay was unfounded.

It was further alleged that the 2nd respondent did not come within the purview of the Railway Services (Revision of Pay) Rules as he was a daily rated casual labourer charged to works and that no rules had been laid down governing the rates of pay and the conditions of service of daily rated casual labourers like the 2nd respondent. Hence his terms of service were the daily wages paid to him all along. It was thus contended that there had been no deduction from his wages. In this connection reference was made to the award of the Railway Workers Classification Tribunal, dated the 28th May 1948.

The Authority by its orders dated the 23rd January 1951 decided that the position of the 2nd respondent was not that of a casual labourer but that of a "temporary employee" and that therefore he was entitled to be on the scale of Rs. 55-150 plus the allowances admissible. In coming to this conclusion the Authority observed that the work done by the 2nd respondent is of the same nature as that of a member of the permanent staff. Hence the 2nd respondent could not be called a casual labourer. It also made reference to

article 39(d) of the Constitution containing the direction that there should be equal pay for equal work. The Authority also negatived the contention raised on behalf of the appellant that the question of classification of an employee was outside its jurisdiction. In pursuance of the said order the Authority allowed the 2nd respondent's application by its further orders dated the 2nd March 1951.

Against the said orders of the Authority the appellant moved the High Court of Judicature at Bombay by an application under article 226 of the Constitution for quashing the aforesaid orders. The matter was heard in the first instance by a learned single Judge of that court who by his orders dated the 19th June 1951 dismissed the application. The appellant preferred an appeal under the Letters Patent which was heard by a Division Bench of that court. The Division Bench by its order dated the 24th August 1951 dismissed the appeal and agreed with the conclusions of the Judge on the Original Side that the Authority had not acted without jurisdiction or had not exceeded its jurisdiction in entertaining the 2nd respondent's application. On the appellant's application for leave to appeal to this court being rejected by the High Court, the appellant moved this court and obtained special leave to appeal on the 2nd February 1953.

The main controversy between the parties in this court is whether, having regard to the relevant provisions of the Act, the 1st respondent was competent to pass the orders it did, which orders had been upheld by the High Court of Bombay.

The Authority set up under section 15 of the statute in question is undisputably a tribunal of limited jurisdiction. Its power to hear and determine disputes must necessarily be found in the provisions of the Act. Such a tribunal, it is undoubted, cannot determine any controversy which is not within the ambit of those provisions. On examining the relevant provisions of the Act it will be noticed that it aims at regulating the payment of wages to certain classes of persons employed in industry. It applies

in the first instance to the payment of wages to persons employed in any factory or employed by a railway administration; but the State Government has the power after giving three months' notice to extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any class or group of industrial establishments. "Wages" means—

"all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable......to a person employed in respect of his employment or of work done in such employment...." (omitting words not necessary for our present purpose).

Section 3 lays down that every employer or his representative or nominee shall be responsible for the payment to persons employed by him of all wages. Section 3 provides for fixation of "wage-periods" which shall not exceed one month in any case. Section 5 indicates the last date within which, with reference to the particular wage-period, wages shall be paid. Section 7 lays down that the wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under the Act. Section 7(2) in clauses (a) to (k) specifies the heads under which deductions from wages may be made, namely, fines; deductions for absence from duty; deductions for damage to or loss of goods of the employer; deductions for house accommodation supplied by the employer; deductions for amenities and services supplied by the employer; deductions for recovery of advances or for adjustment of overpayments of wages; deductions of income-tax payable by the employee; deductions to be made under orders of a court or other competent authority; deductions for subscriptions to, and for repayment of advances from any provident fund; deductions for payments to cooperative societies, etc.; and finally, deductions made with the concurrence of the employed person in furtherance of certain schemes approved by Government. No other deductions are permissible. It is also laid

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down that every payment made by the employed person to the employer or his agent shall be deemed to be deduction from wages. Each of the several heads of deductions aforesaid is dealt with in detail in sections 8 to 13. Section 8 lays down the conditions and limits subject to which fines may be imposed and the procedure for imposing such fines. It also requires a register of such fines to be maintained by the person responsible for the payment of wages. Section 9 deals with deductions on account of absence from duty and prescribes the limits and the proportion thereof to wages. Section 10 similarly deals with deductions for damage or loss to the employer and the procedure for determining the same. Like section 8, this section also requires a register of such deductions and realizations to be maintained by the person responsible for the payment of wages. Section 11 lays down the limits of deductions for house accommodation and other amenities or services which may have been accepted by the employee, subject to such conditions as the State Government may impose. Section 12 lays down the conditions subject to which deductions for recovery of advances may be made from wages. Finally section 13 provides that the deductions for payment to co-operative societies and insurance schemes shall be subject to such conditions as the State Government may prescribe. Section 14 makes provision for the appointment of Inspectors for carrying out the purpose of the Act, with power to enter on any premises and to examine any registers or documents relating to the calculation or payment of wages and to take evidence on the spot. His function is to see that the registers or documents prescribed by the Act containing the necessary entries as regards deductions and other matters have been properly kept by the employers or their agents in order to be able to ascertain whether any deductions from wages in excess of the provisions of sections 7 to 13 aforesaid have been made. We then come to section 15 which makes provision for the appointment of the Authority "to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of

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the wages of persons employed or paid in that area". Where the Authority finds that any deduction has been made from the wages of an employed person or the payment of any wages had been delayed, he may at the instance of the wage-earner himself or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector under the Act or any other person acting with the permission of the Authority, after making such enquiry as he thinks fit and after giving an opportunity to the person responsible for the payment of wages under section 3 to show cause, direct the refund to the employed person of the amount deducted or the payment of delayed wages together with such compensation as he may determine. The section also lays down the limits and conditions of his power to direct payment of compensation to the employed person or of penalty to the employer, if he is satisfied that the application made on behalf of an employee was either malicious or vexations. His determination is final subject to a very limited right of appeal under section 17. Section 18 vests the Authority with all the powers of a civil court under the Code of Civil Procedure, for the purpose of taking evidence, of enforcing the attendance of witnesses and of compelling the production of documents. Section 22 lays down that no court shall entertain any suit in respect of wages or of deduction from wages in so far as the claim forms the subject matter of a pending proceeding under the Act or has formed the subject of a direction in favour of or against the plaintiff under section 15, or which could have been recovered by the application under that section. Section 26 empowers the State Government to make rules to regulate the procedure to be followed by the authorities and courts referred to in sections 15 and 17 and provides that rules may be made *inter alia,* requiring the maintenance of records, registers, returns and notices necessary under the Act and the display in a conspicuous place of notices specifying the rates of wages payable to persons employed on such premises; and prescribing the authority for making a list of

imposed and the procedure for imposing such fines.
acts and omissions in respect of which fines may be

We have set out above in some detail the relevant provisions of the Act in order to point out that those provisions are not applicable to the complaint made in the present case. In this connection it is necessary to set out *in extenso* the "particulars of claim" in the schedule appended to his application which are as follows:

"The applicant is working as a carpenter-mason with the opposite party under I.O.W., Byculla. According to the orders on introduction of the prescribed scales, the Railway Administration has to make the staff working under I.O.W. on permanent monthly wages scheme under the rules of the prescribed scales. The applicant along with others was up till now under daily wages scheme. About 20 posts under I.O.W. where the applicant is working were to be made permanent. The opposite party in supersession of claim of the applicant has confirmed his juniors on the permanent scales as a skilled workman in the scale of 55-3-85-4-125-5-130, whereas the opposite party continued to pay the applicant on daily wages scheme thus depriving him of his legitimate wages under the prescribed scale, which resulted in the monetary loss to the applicant of Rs. 40-13-4 per month. Notice on behalf of the applicant was served on this count on the opposite party but of no avail and hence this application. The juniors have been paid under the prescribed scales from April, 1949, from which date the applicant was also entitled to the prescribed scale 55-130 (scale for skilled workman)".

There is no allegation of delay in payment of wages inasmuch as it is not the respondent's case that his wages were not paid within the time limit laid down in section 5; nor are there allegations to show that any payments have been made by the employed person to the employer or his agent which could be deemed to be a deduction from his wages within the meaning of section 7. None of the categories of deductions as laid down in section 7 have been referred to. In other words, it is not alleged that his wages

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were so much and that so much had been deducted under any of the heads set out under section 7(2). The allegations made by the respondent only amount to saying that he had been paid his actual wages as fixed by the railway administration but that after the introduction of the scheme of upgrading of persons employed under the daily wages scheme, others who were junior to him had been placed on the monthly wages scheme whereas his claim to be so placed had been ignored. The respondent's main grievance, therefore, appears to be that he had not been paid wages on the scale to which he would have been entitled if he had been placed on the monthly wages scheme.

In our opinion, the scheme of the Act as set forth above shows that if an employee were to state that his wages were, say Rs. 100 per month, and that Rs. 10 had been wrongly deducted by the authority responsible for the payment of wages, that is to say, that the deductions could not come under any one of the categories laid down in section 7(2), that would be a straight case within the purview of the Act and the authority appointed under section 15 could entertain the dispute. But it is said on behalf of the respondent that the authority has the jurisdiction not only to make directions contemplated by sub-section (3) of section 15 to refund to the employed person any amount unlawfully deducted but also to find out what the terms of the contract were so as to determine what the wages of the employed person were. There is no difficulty in accepting that proposition. If the parties entered into the contract of service, say by correspondence and the contract is to be determined with reference to the letters that passed between them, it may be open to the authority to decide the controversy and find out what the terms of the contract with reference to those letters were. But if an employee were to say that his wages were Rs. 100 per month which he actually received as and when they fell due but that he would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognized and given effect to,

that would not, in our opinion, be a matter within the ambit of his jurisdiction. The authority has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages; but the authority has no jurisdiction to determine the question of potential wages. The respondent's complaint in the present case comes within the latter illustration. If the respondent's claim to be placed on the scheme of higher wages had been unduly passed over by the appellant, if indeed he had the power to do so, the obvious remedy of the respondent was to approach the higher authorities of the railway administration by way of departmental appeal or revision; but instead of doing that, he has sought his redress by making his claim before the authority under the Act. The question is, has the authority the power to direct the appellant or his superior officers who may have been responsible for the classification, to revise the classification so as to upgrade him from the category of a daily wage-earner to that of an employee on the monthly wages scheme. If the respondent had been on the cadre of monthly wages and if the appellant had withheld his rise in wages to which he was automatically entitled, without any orders of his superior officers, he might justly have claimed the redress of his grievance from the authority under the Act, as it would have amounted to an underpayment. But in the present case, on the case as made on behalf of the respondent, orders of the superior officers were necessary to upgrade him from a daily wage-earner to a higher cadre. The authority under the Act has not been empowered under section 15 to make any such direction to those superior officers. The appellant is responsible to pay the respondent only such wages as are shown in the relevant register of wages presumably maintained by the department under the provisions of the Act, but he cannot be directed to pay the respondent higher wages on the determination by the authority that he he should have been placed on the monthly wages scheme.

In that view of the matter it is not necessary to go

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into the merits of the controversy as to what classification as adumbrated by the Railway Workers' Classification Tribunal, and adopted by the Railway administration, the second respondent should have been brought under. If that question were open to determination by the Authority, we would have had to remit the case to the Authority to give a fresh opportunity to the parties to adduce all the relevant evidence and then to come to its final conclusions, as it appeared to us during the hearing of the case that all relevant information had not been placed before the Authority. But, as, in our opinion, that is not a matter within its limited jurisdiction, that contingency does not arise.

For the reasons given above we allow this appeal, quash the orders of the Authority and of the High Court, but in the special circumstances of this case we make no order as to costs.

JAGANNADHADAS J.—I regret that I find myself unable to agree.

The second respondent before us, employed as a carpenter in the Railway since 1941, has been working as daily-rated casual labourer. He claimed that he should have been absorbed as a monthly-rated permanent employee and that he has been wrongly superseded. His claim to be treated as a permanent employee was apparently not accepted by the Tribunal (the Authority under section 15 of the Payment of Wages Act for Bombay). But it was held that the position of the applicant is not that of a daily-rated casual labourer but that of a monthly-rated temporary employee. His claim was treated and upheld by the Tribunal as one substantially based on the ground that the Award of the Railway Workers' Classification Tribunal in relation to the recommendations of the Central Pay Commission was approved by the Railway Board and directed to be implemented, and that by virtue thereof he was no longer a mere casual labourer but was entitled to higher wages on the footing of a monthly-rated labourer. No question arises that the order of the Tribunal is bad owing to the

variation between the claim made and the relief granted. As held by the High Court, pleadings in these cases have to be liberally construed. That his claim was understood as having been based on the Award of Railway Workers' Classification Tribunal, by the Railway Authorities themselves, is clear from the statement filed on their behalf in answer to the employee's claim. Apart from the question of jurisdiction, the defence was two-fold. (1) The applicant being a daily-rated casual labourer, charged to works, the directive of the Railway Board did not apply to him. (2) Even if it applied to a person in the situation of the applicant, he was not entitled to be brought on to the monthly-rates of pay in the skilled grade, without his previously passing a trade test to establish himself as skilled in his trade and he did not pass the test. The Tribunal, on the material referred to by it in its order, came to the conclusion (1) that the applicant did not fall within the category of work-charged staff, (2) that under the Award of the Railway Workers' Classification Tribunal, no trade test was necessary for the applicant who was a carpenter, and (3) that as per certain instructions of the concerned authority, the period of casual labour was to be limited to six months, and that since this applicant was admittedly a casual labourer under the Railway for a much larger period, i.e. since 1941, he became entitled to be treated as a temporary employee and not as a casual labourer and to receive wages as such. Whether these conclusions are right or wrong is not the question before us. The only question is whether or not the Tribunal had the jurisdiction to find that the applicant was entitled to the emoluments of a monthly-rated temporary employee and not to that of a daily-rated casual labourer, as the result of the order of the Railway Board directing implementation of the Award of the Classification Tribunal.

The jurisdiction of the Tribunal arises under section 15 of the Payment of Wages Act, 1936 (Act IV of 1936) (hereinafter referred to as the Act). The Tribunal is set up to decide "all claims arising out of deductions from the wages or delay in payment of

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wages". The relief which it is authorised to award is to direct "the refund of the amount deducted, or the payment of the wages delayed". Such a direction made by the Tribunal is final, under section 17 of the Act, subject to the right of appeal provided therein. Under section 22, no suit lies in any court for the recovery of wages or of any deduction therefrom which could have been recovered by an application under section 15. However limited this jurisdiction of the Tribunal, and however elaborate the provisions in the Act for the preparation and display by the employer of the table of wages payable to the employees, and for the inspection thereof by the Factory Inspectors, it cannot be supposed that the jurisdiction of the Tribunal is only to enforce the wages so displayed or otherwise admitted. Such a narrow construction would rob the machinery of the Act of a great deal of its utility and would confine its application to cases which are not likely to arise often, in a well-ordered administration like the Railways. Indeed, I do not gather that such a construction was pressed for, before us, in the arguments. Even a Tribunal of limited jurisdiction, like the one under consideration, must necessarily have the jurisdiction to decide, for itself, the preliminary facts on which the claim or dispute before it depends. In the instant case, it must have jurisdiction to decide what the wages payable are and, for that purpose, what the contract of employment and the terms thereof are. The judgment of my learned brothers in this case apparently recognises the jurisdiction of the Tribunal as above stated, when it said that the Tribunal has the power "to find out what the terms of the contract were to determine what the wages of the employed person were". Whether the Tribunal's decision in this behalf is conclusive or not is a matter that does not arise for decision in this case.

But, it is said that the Tribunal has no authority to determine the question of "potential wages". Undoubtedly a claim to a higher potential wage cannot be brought in under the category of "claim arising out of deduction from the wages or delay in pay-

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ment of the wages" if that wage depended on the determination by a superior departmental or other authority as to whether or not a particular employee is entitled to the higher wage—a determination which involves the exercise of administrative judgment or discretion or certification, and which would, in such a situation, be a condition of the payability of the wage. But where the higher wage does not depend upon such determination but depends on the application of, and giving effect to, certain rules and orders which, for this purpose, must be deemed to be incorporated in the contract of employment, such a wage is, in my view, not a prospective wage, merely because the paying authority concerned makes default or commits error in working out the application of the rules. In this context it is relevant to notice that the definition of "wages" in the Act is "all remuneration which would if the terms of the contract, express or implied, *were* fulfilled, be payable". The word "were" in this definition which I have underlined, seems to indicate that even a "prospective wage" which would be payable on the proper *application* of the rules in the sense which I have explained above may well fall within its scope. The wage under the Act is not, necessarily, the immediately pre-existing wage but the presently-payable wage.

In the case before us, the order of the Tribunal proceeded on the view that the applicant was presently entitled to be treated as a monthly-rated temporary employee and not as a daily-rated casual labourer, by virtue of the directions of the Railway Board for the implementation of the scheme of classification and that therefore he was entitled to the appropriate higher wage. We have not been shown any material to indicate that this higher classification of the applicant depended not on the mere application, of the classification scheme and the rules thereunder, to him but upon any determination by a departmental higher authority. If it was the latter, undoubtedly the Tribunal cannot claim to sit in judgment over that determination, whether it was right or wrong. Such

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determination, if wrong, could be corrected only by a further departmental appeal, if any, available. But the Tribunal had, to my mind, the authority to find whether the applicant's case falls within the scope of determination by the departmental authority or is one of mere application of the rules to the facts of this case. If the decision of the Tribunal in this behalf was wrong, the appropriate remedy for the Railway Authority was by way of an appeal under section 17 of the Act. Since the finding of the Tribunal in this case involved the case of as many as six persons and the net additional amount ordered was a sum of Rs. 1,341, its finding was appealable under section 17 of the Act. Whether or not an employee was entitled to wages of a higher category than what he was till then drawing would depend entirely on the scope of the rules with reference to which he is entitled to become one in the higher category and it cannot be assumed *a priori* that such a claim is a claim to "prospective wages".

In my view, therefore, there is no sufficient reason to reverse the judgment of the learned Judges of the Bombay High Court and this appeal should be dismissed with costs.

BY THE COURT. In accordance with the decision of the majority, the appeal is allowed and the orders of the Authority and of the High Court are quashed. There will be no order as to costs throughout.

Appeal allowed.