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Central Administrative Tribunal
Principal Bench

O.A.No.2466/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 17th day of December, 1997

Ms. Tara Wati
d/o Late Shri Duli Chand
through Shri Chhida Lal
Booking Clerk
Railway Station
Northern Railway
Ghaziabad (UP).

Applicant

(By W Shri B.S.Mainee, Advocate)

vs.

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi.

2. The Divisional Railway Manager
Northern Railway
Delhi Division
State Entry Road
New Delhi.

Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

This is the third round of litigation before this Tribunal which irrespective of the results of the OA is a sad reflection on the manner in which the respondents, Railways have been treating the dependents of one of their employees Shri Duli Chand who expired in an accident during the course of discharging of his duties.

2. The facts of the case in brief are that the applicant's father, late Shri Duli Chand was working as a Carriage & Wagon Fitter at Nizamuddin Railway Station, New Delhi when he expired in an accident, being hit by a Railway engine, on 28.10.1990. The deceased left behind four minor children including the applicant. As late Shri Duli Chand was a widower, a guardian had to be appointed for the minor children. The Court of Additional

District Judge (Civil Court), Faridabad appointed Shri Chhida Lal nephew of the deceased late Shri Duli Chand as the guardian, on 2.6.1992. Shri Chhida Lal applied on 10.6.1992 to the Divisional Railway Manager for payment of compensation and pensionary benefits of late Shri Duli Chand. When no payment was made an OA No.2438/92 was filed before this Tribunal and the same was decided with a direction to the respondents to dispose of the representation dated 10.6.1992 within a period of two months. It was only after this direction that payment of Gratuity and Pension amounting to Rs.70,000/- by was made by Respondent No.2 and distributed amongst the minor children through deposit in their respective accounts. No compensation was however given to the survivors. This led to the filing of another OA No.673/95 praying for a direction to the respondents to release the compensation amount with interest at the rate of 18% per annum from the date of death of late Shri Duli Chand to the date of actual payment. This OA was disposed of on 23.2.1996 with the observation that the counsel for the respondents had placed a photocopy of the Cheque dated 22.12.1995 amounting to Rs.75,824/- towards the compensation amount and the OA was dismissed as infructuous "with liberty given to the applicant that if he has any surviving grievance after the payment, he will be at liberty to assail the same". The present application has been filed on the ground that while the respondents had made the payment of compensation amount in February, 1996, no payment of interest has been made.

3. The respondents have raised certain preliminary objections which need to be considered at the outset. Firstly, it is submitted by the respondents that the OA is barred by Resjudicata since the same prayer was considered and decided in the earlier OA No.673/95. The second preliminary objection

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raised is in regard to the jurisdiction of this Tribunal contending that the issue of compensation is not within the purview of this Tribunal.

4. I have heard the counsel. In so far as the question of resjudicata is concerned, I do not find that the objection of the respondents is well founded. It is correct as contended by them that the applicant had made a prayer for release of compensation as well as interest thereon for delayed payment. The Tribunal had observed as follows:

"The learned counsel for the respondents has already placed a photocopy of the cheque which is in token of the payment made to the applicant on 22.12.1995 amounting to Rs.75,824/- only. In view of this photocopy filed as Annexure-I to the counter affidavit filed, the OA is dismissed as having become infructuous with liberty given to the applicant that if he has any surviving grievance after the payment, he will be at liberty to assail the same."

5. All that the Tribunal had noted was that a Cheque had been prepared by the respondents. There was no observation as to whether the amount mentioning therein was inclusive of the interest amount or not. It was obviously due to lack of full particulars that liberty was granted to the applicant to agitate further, if he had any surviving grievance. The non-payment of interest is a surviving grievance. As the matter had not been decided on merit, it is open to the applicant to reagitate the matter in accordance with the liberty granted by the Tribunal. I, therefore, find that the OA is not barred by Resjudicata.

6. In regard to the second objection however, I find that though the objection raised by the respondents is technical in nature, nevertheless, it appears to bar my way in disposing the application on merits. The amount of compensation is determined under the Workmen Compensation Act, 1923. Section 28 of the Central Administrative Tribunals Act, 1985 exclusively jurisdiction of courts except that of the Supreme Court (now also

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High Court following the order in Chandra Kumar Vs. Union of India & Others by the constitution Bench of Supreme Court) as well as any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law, for the time being in force or from time to time. In Krishan Prasad Gupta Vs. Controller of Printing and Stationery, JT 1995(7) SC 522, the Supreme Court has gone into the question of "Corresponding Law" and observed as follows:

"The Industrial Disputes Act, 1947 and the Payment of Wages Act, 1936 are, therefore, "Corresponding Law" qua each other particularly as both are part of the same social legislative canopy made by the Parliament for immediate amelioration of Workmen's plight resulting from non-payment, or delayed payment or for that matter, short payment of their wages."

7. The preamble to the Workmen's Compensation Act, 1923 reads as follows:

"An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident".

8. Obviously the Workmen's Compensation Act, 1923 also falls within the same canopy of social legislation as the Industrial Dispute Act. The compensation in the present case is admittedly to be decided under Section 3 of the Workmen Compensation Act, 1923. Section 19 of the Workmen's Compensation Act, 1923 provides for reference to a Commissioner if any question arises in any proceedings under the Act as to the liability of any person to pay compensation or as to the amount or duration of compensation. The learned counsel for the applicant also perhaps realising this did not press the point that this Tribunal could go into the question as regards the amount of compensation awarded to the applicant. If this Tribunal does not have the jurisdiction to examine whether compensation awarded was adequate or not, then in my view it cannot also go into the question of liability of the employer for timely payment of the compensation.

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9. In the light of the above discussion, I find that the payment of compensation under the Workmen's Compensation Act, 1923 is not a service matter coming within the ambit of Section 14 of the Administrative Tribunals Act, 1985.

10. For the reasons stated above, even though I find there is considerable merit in the prayer of the applicant, I dismiss this OA on the ground of lack of jurisdiction.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER (A)

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