

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.661/90

Date of decision: 07.04.1993.

Union of India

...Applicant

Versus

Shri Ram Bahal & Another

...Respondents

Coram:-

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman
The Hon'ble Mr. I.K. Rasgotra, Member(A)

For the applicant

Shri D.S. Mahendru, proxy
Counsel for Shri P.S. Mahendru,
Counsel.

For the respondents

None

Judgement(Oral)
(Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman)

This Application, at the instance of Union of India through the Chief Engineer (Construction) Northern Railway (hereinafter referred to as the Employer) is directed against the award passed by the Central Government Industrial Tribunal, New Delhi (hereinafter referred to as the Tribunal) on 28.9.1989.

2. A reference was made to the Tribunal for an adjudication of the Industrial Dispute as to whether the action of the Employer in terminating the services of Shri Ram Bahal Shri Ram Darash and Shri Nakul Thakur (hereinafter referred to as the Workmen) was legal and justified.

3. The Tribunal in paragraph-3 of its award records: "This case was fixed for Management evidence on the date of hearing 17.7.1987. Thereafter as many as 13 adjournments were given to the Management for producing its evidence but it failed to do so. Today no-one appeared on behalf of the Management and it was proceeded exparte."

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4. The workmen were charged with misbehaviour with one Shri K.K. Mishra. The Tribunal has recorded a finding that neither any chargesheet was given to the workmen nor any enquiry was held ~~or~~ nor was any opportunity given to them to put-forward their version by the Management before it passed the order terminating their services. The Tribunal has also recorded a finding that in proceeding before it Shri Nakul Thakur remained absent, as it was reported to it that he has been given a fresh employment. It has, therefore, confined its award to Shri Ram Bahal and Shri Ram Darash.

5. The Employer having absented itself in proceeding before the Tribunal, it, in our opinion, was justified in proceeding ex-parte. It was also justified in passing the award once it came to the conclusion that the services of the two workmen had been done away without holding an enquiry or without giving any opportunity to defend themselves. No illegality, therefore, is discernible in the award.

6. In paragraphs 4.4, 4.5 and 4.6 of the Application the material averments are these. The Employer had engaged Shri D.K. Seth, Advocate to defend ^{it} ~~him~~ before the Tribunal. It after perusing the impugned award for the first time came to know that evidence on his behalf had not been adduced inspite of repeated adjournments. Prior to receipt of the impugned award, the Employer did not receive any communication from his counsel, informing it about the date of hearing fixed nor about the ex-parte hearing that has taken place.


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7. A reply has been filed on behalf of the workmen. In paragraph 4.5 the material averments are these. The employer was wilfully refraining from producing the evidence so as to delay the case. It had no case before the Tribunal. It is wrong that it acquired knowledge of the ex-parte proceedings of the Tribunal after presenting the impugned award. It had taken as many as 12 adjourments ^{from} before the Tribunal. The departmental representative appeared before the Tribunal for taking adjourments. It is, therefore, false to suggest that prior to the communication of the award the Employer did not have the knowledge of the proceedings before the Tribunal.

8. We have already referred to the material averments in paragraph-3 of the award. It is a well settled legal proposition of law that any statement of fact recorded in the judicial order must be accepted to be true particularly when the other party asserts that such a statement has been correctly recorded. We are, therefore, unable to accept the version of the applicant that it had no knowledge of the proceedings before the Tribunal and its counsel did not inform it of the 12 adjourments taken by him for producing the evidence in support of the case of the applicant. We are, therefore, of the opinion that there is no substance in the Application.

9. It, therefore, fails and is dismissed.

10. However, there shall be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)


(S.K. DHAON)
VICE-CHAIRMAN

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