

Central Administrative Tribunal  
Principal Bench

OA No.2419/93  
MA-3681/93, MA-871/94 & MA-1940/94

New Delhi this the 1st Day of September, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)  
Sh. C.J. Roy, Member (J)

Union of India through:

1. General Manager, Northern Railway,  
Baroda House, New Delhi.
2. Divisional Railway Manager,  
Bikaner Division, Northern Railway,  
Bikaner.

...Applicants

(By Advocate Sh. R.L. Dhawan)

Versus

1. Sh. Om Prakash s/o Sh. Amar Singh,  
Gangman, C.P.W.I. Bikaner Division,  
Northern Railway, Rewari.
2. Presiding Officer,  
Central Govt. Labour Court,  
Ansal Bhawan - 11th Floor,  
Kasturba Gandhi Marg,  
New Delhi.

...Respondents

ORDER(ORAL)

Hon'ble Mr. N.V. Krishnan: -

The applicants - the Railways for short - are aggrieved by the award of the Central Government Labour Court dated 4.6.92 in LCA-116/85 for Rs.2,594.55 in favour of first respondent, the workman. The applicants have also filed MA-3681/93 seeking the condonation of delay in filing the application.

2. When notice of the application and an interim direction were being sought to be served on respondent No.1, the workman, the applicants came to know that the workman had died on 16.7.91 (i.e., much before the award was given by the Labour Court). Therefore, the applicants

moved MA-871/94 for a declaration that, in the circumstance, the award dated 4.6.91 (sic 4.6.92) in LCA-116/85 is null and void ab initio.

3. A question arose whether certain orders can be passed without bringing on record the legal representatives of the workman the applicants have, therefore, now filed MA-1940/94 to implead the widow, one daughter and three sons of the deceased workman as legal representatives who will be respondents in the present OA.

4. We have heard the matter. In so far as MA for condonation of delay is concerned, we notice that this OA, which has been filed on 19.10.93 in respect of the award dated 4.6.92 is delayed by about four months taking the date on which the impugned order was passed viz. 4.6.92. It is stated in the MA that the application for certified copy was made on 26.11.92 and it was delivered by the Registry of the Central Government Labour Court on 31.12.92, i.e., about slightly more than one month was taken in obtaining the certified copy, the remaining delay is of about three months. This is what appears on the face of the record. In the view that we are taking, we condone the delay.

5. The more crucial question is about the death of the respondent workman on 16.7.91 during the pendency of the proceedings before the Labour Court. It is stated in the affidavit accompanying the earlier MA-874/94 filed by G.L. Kataria, Divisional Personnel Officer seeking a declaration that the award is ab initio void that the Workman, (i.e., the respondent No.1 herein) expired on

16/17.7.91 while working on shift duty. In other words, he died in harness. Therefore, the fact should have been very well known to the applicants. Therefore, it was the duty of the applicants to approach the Labour Court for seeking an appropriate order, i.e., that the proceedings initiated by the workman abated on his death, in the absence of any application by the LRs to condone the proceedings. The learned counsel for the applicants states that it was for the LRs of the workman to have moved the Court to seek their substitution to prosecute the proceedings in the Labour Court. As this amounts to laches on their part the order of the Labour Court should be declared a nullity.

6. We have considered this matter. The person impleaded as the respondent is the workman who had died as early as on 17.7.91. Therefore, no relief as sought in the O.A. can be given by us against a dead person.


7. To rectify this, for the applicants have filed MA-1940/94 seeking to implead the legal representative of the deceased workman as the respondent.

8. We have heard the learned counsel. No doubt, it was the duty of the LRs of the respondent workman to have filed a proper application before the Labour Court to prosecute the claim petition. Undoubtedly, this was a lapse on their part. Can the applicants be given any benefit on this account? We think not. It is not the case that they came to know of the respondent workman's death only now. From the affidavit accompanying MA-874/94, it is clear that they were aware of this as soon as the death took place on 17.7.91. They should, therefore, have moved

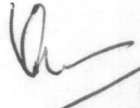


the Labour Court for terminating the proceedings at that time itself. We are of the view that the steps now being taken are inordinately delayed and that this should not be permitted. Accordingly, MAs 1940/94 to implead the LRs and MA-874/94 to declare the award of the Labour Court as null and void ab initio, are both dismissed. At this late stage it would be unfair to permit this substitution, which, in our view, ought to have been done long back.

9. In the circumstances, without going into the merits of the OA, we find that the OA has to be dismissed on the ground of misjoinder of parties, for, respondent No.1 is no more alive. O.A. is, therefore, dismissed.

  
(C.J. Roy)  
Member(J)

'Sanju'

  
1.9.94  
(N.V. Krishnan)-  
Vice-Chairman(A)