

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ¹⁵13 DAY OF DECEMBER 1996

Original Application No. 1866 of 1993

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR. S.DAS GUPTA, MEMBER(A)

1. General Manager, Ordnance Clothing Factory, Shahjahanpur(U.P.)
2. Ordnance Clothing Factory, Shahjahanpur through its Manager

Applicants

BY ADVOCATE SHRI AMIT STHALEKAR

1. Rajendra, son of Gulla Ram, r/o Mohalla Antaja Road, Shahjahanpur(U.P.)
2. Commissioner Workmen's Compensation Act 1923/Asstt. Labour Commissioner Shahjahanpur.

Respondents

O R D E R(Reserved)

JUSTICE B.C.SAKSENA,V.C.

This OA has been filed to challenge the award dated 30.10.93 passed by the respondent no.2 in favour of the respondent no.1. The respondent no.1 had filed a claim petition under the Workmen's Compensation Act before the respondent no.2. When the OA was taken up for hearing the learned counsel for the respondent no.1 raised a preliminary objection with regard to the maintainability of the OA before this Tribunal. The learned counsel for the respondent no.1 cited ~~XXXXXX~~ the Supreme court decision in Krishna Prasad Gupta Vs. Controller Printing and Stationery reported in J.T. 1995(7) S.C. 522. That decision involved a question whether the appeals pending in the court of District Judge u/s 17 of the Payment of Wages Act ~~are~~ ^{are} liable to be transferred to Administrative Tribunal u/s 29 of the Administrative Tribunals Act for disposal on merits or the jurisdiction of the authority u/s 15 and that of the District Judge u/s 17 of the Payment of Wages Act to hear and decide the claim cases and appeals respectively remain undisturbed. Their Lordships

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of the Supreme Court in the said decision held that the Payment of Wages Act is positively covered by the Connotation "corresponding law" as used in Section 28 of the Administrative Tribunals Act. Their Lordships analysed in detail the provisions of ^{payment of} Wages Act and the Industrial Disputes Act and came to the conclusion that the Payment of Wages Act is covered by the term "Corresponding law". As indicated in Section 28 and therefore notwithstanding the Administrative Tribunals having come into being the jurisdiction of the Prescribed Authority or the District Judge as an Appellate Authority was not ousted. We put it to the learned counsel for the respondent no.1 to indicate how the Workmen's Compensation Act can be considered to be the 'corresponding law' to the Industrial Disputes Act. The workmen's Compensation Act was framed with a view to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident. The term 'workmen' has been defined in Section 2(n). The respondent no.1 clearly was not a railway servant. Clause ² of sub section(n) of Section 2 covers persons employed in any such capacity as is specified in schedule II of the said Act. A perusal of schedule II ^{shows it} covers employment even otherwise ^{than} in an Industrial Establishment. Thus we are not satisfied that the workmen's Compensation Act can be considered to be a corresponding law to the Industrial Disputes Act. The decision of the Hon'ble Supreme court in Krishna Prasad Gupta(Supra) lends no assistance to the respondent no.1.

2. The learned counsel for the respondent no.1 also placed for our consideration a Supreme Court decision in SLP no. 20141/95 decided on 6.11.95 by the same Bench which had decided Krishna Prasad Gupta's appeal. In the

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judgment passed in the said SLP it was observed:

" This court in Krishna Prasad Gupta
Vs. Controller Printing and Stationery J.T.
1995(7) S.C. 522 has held that the Central
Administrative Tribunal has no jurisdiction
to entertain application u/s 19 of the
Administrative Tribunals Act against the
award of an order of the Labour courts.
In this case the award of the Industrial
Tribunal is in favour of the respondent.
The award has been upheld by the Tribunal.
Although the Tribunal had no jurisdiction
to entertain the application against the
award of the Industrial Tribunal. Since the
same has been upheld we are not inclined
to entertain, the SLP is dismissed."

The judgment of the Hon'ble Supreme Court would only go
to show that the decision in Krishna Prasad Gupta's case
can also be applied in respect of award/order of the
Labour courts. The Labour courts are constituted under
the Industrial Disputes Act. ^{of the} Under Sec. 20 / Workmen's
Compensation Act, the state government has been
authorised to ~~engage~~ ^{appoint} any person as Commissioner for
Workmen's Compensation for such area as may be specified
in the notification. The Workmen's Compensation Act by
Section 30 provides that an appeal shall lie to the High
Court from the orders of a Commissioner awarding as
compensation a lumpsum whether by way of redumption of
half monthly payments or otherwise or disallowing a claim
or in part for a lumpsum.

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3. The applicant instead of filing an appeal before the High court presumably in view of the law laid down that in respect of service matters the Administrative Tribunal is a substitute for the High court has chosen to file OA before the Tribunal in the year 1993. Notices were

issued to the respondents but on behalf of respondent no.1 no such plea of want of jurisdiction in the Tribunal to entertain the OA had been raised.

4. A counter affidavit was filed on 5.1.1994. The learned counsel for the respondent no.1 also did not contest the position that after coming into force of the Administrative Tribunals Act the jurisdiction of the High Court in service matters stood excluded u/s 14 of the Administrative Tribunals Act. The legal question whether the Central Administrative Tribunal is a substitute to the High court as was observed in certain earlier Supreme Court decisions has now been referred to a Constitution Bench of the Hon'ble Supreme court and the matter is pending before the Constitution Bench.

5. In view of the circumstance that the parties ~~were~~ ^{have} put in appearance in the OA and it has been pending for so many years and being satisfied that no case of total want of jurisdiction in this Tribunal to decide the OA being made out, we proceed to decide it on merits.

6. The facts may be noted in brief:

7. The respondent no.1 had filed a claim petition dated 3.5.91 for payment of compensation before the respondent no.2 claiming that while working as Tailor in the skilled category on 24.10.1990 at about 2.45. pm ~~in~~ ⁱⁿ the afternoon in the Electric Sewing machine, he met with an accident as a result of which he suffered injuries in his middle finger and ring finger of the left hand. The

respondent no.1 was treated ^{for} his injuries in the factory hospital, Bareilly where he was under treatment until he was discharged on 14.11.1990.

8. The case of the respondent was that inspite of treatment availed by him he was not able to perform his work of stitching cloth fully. On account of injuries suffered by him he claimed compensation to the extent of Rs.84,720/-. The claim of the respondent no.1 ^{was} contested on behalf of the petitioners and a written statement was filed.

9. The present petitioners/administration had pleaded that the respondent no.1 at the time of accident was not aged about 45 years as claimed by him inasmuch as his date of birth is 21.11.1945 as per entry in the service record. They had denied that respondent no.1 had suffered injuries to both of his ~~fingers~~ or that he had suffered a loss of total earning capacity as a result of accident. They also plead on the basis of the statement ^{of the respondent no. 1} that the accident was caused due to the negligence of respondent no.1

10. The learned counsel for the applicant submitted that the respondent no.1 had admitted in the cross examination on 16.1.91 that the doctor had declared him fit for duty and he had joined duty on 19.1.91 in his trade of Tailor and that he had not suffered either total or partial disablement. The respondent no.1 also admitted that his five fingers are intact and have not been cut off from its roots. The injuries suffered by the respondent no.1 were of minor nature. From the statement of the respondent no.1 the applicant's counsel submitted that the respondent no.1 admitted that he had not suffered either total disablement or partial disablement as a result of the injury.

11. ^t It was also pointed out by the learned counsel for

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the applicant that the respondent no.1 in his statement dated 74.93 averred that he had been advised by the doctor of Bareilly Hospital to undergo an operation but he had declined to undergo an operation. On the basis of this the learned counsel for the ^{applicant submitted that} respondent no.1 had acted in contravention of the provisions of Section 11(vi) of the Workmen's Compensation Act. There is merit in this submission.

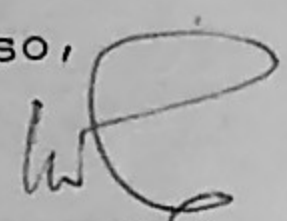
12. The applicant's case is that the medical reports dated 16.1.91 and 18.1.91 have been filed before the respondent no.2. It was submitted that the respondent no.2 in his award has totally failed to refer ^{to} the said medical certificates. The learned counsel for the applicant further submitted that the respondent no.2 has relied upon a certificate issued by the district hospital Shahjahanpur which had not been submitted before the departmental authorities at any time and ^{was} produced for the first time in the court itself when proceedings were closed and even after written arguments were filed by the Factory Management. The learned counsel submitted that since the said certificate has not been proved or exhibited the same was wholly inadmissible in evidence and could not have been relied upon and was liable to have been rejected. The respondent no.2 has mainly relied on the said certificate of the District Hospital Shahjahanpur. Thus the learned counsel for the applicant ^{has} rightly submitted that the finding being based on inadmissible evidence the award deserves to be set aside.

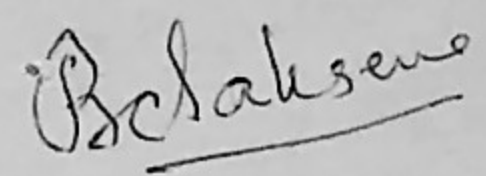
13. The learned counsel for the applicant further submitted that on the basis of the fact proved in the evidence there was no loss to any of the fingers of the right or the left hand and consequently in view of the provisions of Schedule I and part II thereof even a permanent partial disablement cannot be said to have been

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suffered by the respondent no.1. The percentage of loss of earning capacity due to permanent partial disablement as a result of injuries indicated in Part II is not attracted ~~to~~ the facts of the case.

In view of the discussion hereinabove, the OA is allowed. The award dated 30.10.1993 passed by the Commissioner Workmen's Compensation Act/Asstt. Labour Commissioner Shahjahanpur in a claim No. 6/W.C.A/91 Rajendra Vs. General Manager Ordnance Clothing Factory Shahjahanpur and Ors. is set aside. The claim petition of the respondent no.1 would be deemed to be rejected also,


MEMBER(A)


VICE CHAIRMAN

Dated: December. 13th 1996

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