

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : ALLAHABAD BENCH

ALLAHABAD

...

ORIGINAL APPLICATION NO.1618/94

With

REVIEW APPLICATION NO.85 OF 1995

IN

ORIGINAL APPLICATION NO.1276 OF 1993

DATED: ALLD. on this 7<sup>th</sup> Day of <sup>October</sup> September, 1997.

CORAM : Hon'ble Mr Justice B C Saxena, V.C.  
 Hon'ble Mr S Das Gupta, A.M.

ORIGINAL APPLICATION NO. 1618 OF 1994.

- (1) Union of India  
Through : General Manager  
Northern Railway, Baroda House  
New Delhi.
- (2) A.R.M. Northern Railway  
(Region), Kanpur
- (3) D R M, Northern Railway  
Allahabad Division  
Allahabad

.... Applicants.

C/A Shri B B Paul

Vs.

- (1) Sri Ram Chandra S/o  
Sri Shitla Prasad, working as  
Cook Mate in the Office of  
Divisional Electrical Engineer  
Northern Railway, Kanpur  
  
Under Chief Training Instructor  
Electrical Training School, Kanpur  
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- (2) Commissioner, workmen Compensation  
Assistant Labour Commissioner,  
Kanpur Region.

... Respondents.

C/R Shri V K BurmanREVIEW APPLICATION NO.85 OF 1995.

Union of India, through A R M  
 Northern Railway, Kanpur &  
 D P O, Northern Rly, Allahabad

... Applicant.

C/A Shri B B Paul

- (1) Ram Chandra S/o Late Shitla Prasad  
Through Sri Lalta Prasad Bajpai  
181/6, Shastri Nagar, Kanpur
- (2) Commissioner under Workmen Compensation  
Act 1923, at Kanpur.

.... Respondents.

C/R Shri V K Burman

in

ORIGINAL APPLICATION NO.1276 OF 1993

Union of India through A R M, Northern  
Railway, Kanpur and D P O, Northern  
Railway, Allahabad.

... Applicant

C/A Shri B B Paul

Vs.

- (1) Ram Chandra S/o Late Shitla Prasad  
through Lalta Prasad  
181/6, Shastri Nagar, Kanpur
- (2) Commissioner, under workmen compensation  
Act, 1923 at Kanpur

... Respondents.

C/R Shri V K Burman

ORDER

By Hon'ble Mr S Das Gupta, A.M.

Through O.A No.1618/94, the U of I & Ors have  
challenged the award giv-en by the Commissioner,  
Workmen Compensation Act, 1923 (hereinafter referred to  
as Commissioner ) in favour of Sri Ram Chandra, an employee of  
the applicants.....

The impugned order was passed by the Commissioner on the matter being remanded to him by an order of this Tribunal disposing of an earlier O.A. bearing No.1276/93 filed by the Union of India & Ors challenging an earlier order passed by the Commissioner in favour of said Shri Ram Chandra.

The Review application seeks recall of the said order of the Tribunal. As both the present O.A. and the Review application arose out of same sets of facts and circumstances, both were heard together and are being disposed of by this common order.

2. Before we take up the O.A. No.1618/94 as well as the Review application No.85/95 it would be pertinent to briefly state the background of the cases.

3. Shri Ram Chandra who was an employee of the applicants had filed an application before the Commissioner Workmen Compensation <sup>Act</sup> for an injury suffered by him <sup>arising out of</sup> and in course of employment. This application was filed in 1992 whereas the accident in which the applicant allegedly suffered injury had taken place in 1971. The Commissioner condoned the delay in filing the application and decided the matter on merit and awarded a sum of Rs.56,791/- as compensation and a penalty equivalent to 50% of the compensation amount. This award was challenged by U O I & Ors by filing O.A. No.1276/93. This O.A. was disposed of by the Tribunal by its order dated 27.04.1994 remanding the matter to the Commissioner for a fresh determination of the quantum of compensation on the basis of ~~an~~ amended provision of the Workmen compensation Act as they stood in 1971, the year in which the accident took place. The Tribunal,

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however, held that the claimant-workman was entitled to compensation with interest @ Rs. 6% together with the 50% of the amount of compensation as penalty. The U of I & Ors filed rejoinder affidavit No. 85/95 seeking recall of the Tribunal Order dated 27.04.1994. Although, the said review application was filed in October 1994, the same was found to be defective and it was registered only after an order was passed by a bench on 21.08.1995.

4. Meanwhile, the Commissioner, in compliance with the Tribunal's direction, had reconsidered the question of quantum of compensation and by an order dated 17.06.1994 had awarded a sum of Rs. 27, 489/- as compensation and 50% thereof by way of penalty. The UOI & Ors filed an application dated 17.08.1994 before the Commissioner seeking the recall of the order dated 17.06.1994 stating it was an exparte order passed without giving them any notice or opportunity of being heard. The Commissioner thereafter passed another order dated 24.09.1994 directing the UOI & Ors to pay compensation to the said Shri Ram Chandra as per the modified direction contained therein. These are the orders which are under challenge in C.A. No. 1618/94.

5. So far as C.A. No. 1618/94 is concerned, the same can be disposed of on a short point of maintainability.

6. The workmen compensation Act provided that any appeal against an award given by the Commissioner shall lie before the High Court. It is clear that the applicants in the C.A. have not exhausted this statutory remedy available to them. In view of the certain recent

pronouncement of the Hon'ble Supreme Court, this O.A. is, therefore, not maintainable before this Tribunal. O.A. is accordingly dismissed but nothing in this order shall preclude the applicants from seeking redressal of their grievances before an appropriate forum in accordance with the law.

6. So far as the review application is concerned, we find that the various grounds taken for seeking the recall of the Tribunal's order, are such that any examination of such grounds would mean a re-adjudication of <sup>the</sup> entire matter on merit. This does not lie within the short compass of a review application which can succeed only if the impugned judgement is shown to suffer from an error apparent on the face of the record or <sup>in</sup> case any new fact is brought out which would <sup>Warrant</sup> ~~award~~ a re-appraisal of the controversy.

7. The only plea which seeks to indicate an error apparent in the ~~face~~ of record is that <sup>the</sup> Tribunal as well as the Commissioner had erroneously assumed that the prayer of the claimant-workman seeking condonation of delay in filing his petition before the Commissioner was not seriously opposed by U O I & Ors. If this is an erroneous presumption on the part of the Commissioner, the same could have been taken as ground for seeking recall of the order of the Commissioner. Alternatively, this could have been taken as ground while challenging the Commissioner's award through O A No.1276/93. We have carefully gone through the averment in the O.A. We, however, find <sup>that</sup> only ground taken in this regard was that



the Commissioner had condoned the delay of more than two decades without sufficient reasons. The point now being raised regarding erroneous assumption on the part of the Commissioner was not taken in the O.A. This ground therefore, cannot be allowed to be taken in the review application. Moreover, so far as the Tribunal's order is concerned, this in any case does not suffer from any error apparent on <sup>the face of</sup> record since it only quoted the observation of the Commissioner in his impugned award that the U O I & Ors did not particularly oppose the claimant's application for condonation of delay. This was not the assumption made by the Tribunal itself and therefore, cannot be regarded as error on the face of the record.

8. The learned counsel for the applicants argued that if a view was taken that the matters regarding the award given by the Commissioner are not maintainable in this Tribunal, by the same token, this Tribunal cannot have jurisdiction in deciding the review application also. We carefully considered the submission of the learned counsel for the applicants but could not agree. The review application is for recall of the Tribunal's order and not the order of the Commissioner. Therefore, the Tribunal has jurisdiction in hearing and deciding the review application.

9. The learned counsel for the applicants next argued that if it is now held that the Tribunal has no jurisdiction in the matters arising out of award given by the Commissioner, the Tribunal could not have decided the

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earlier O.A. No.1276/93 and therefore, the order by which the matter was remanded to the Commissioner for re-determination of the amount of compensation, ~~and~~ also <sup>it</sup> be regarded as void being without jurisdiction. He further argued that the order of the Tribunal being void, the ~~specific~~ order passed by the Commissioner which is challenged in the O.A. No.1618/94, being in compliance with the void direction of the Tribunal, should also be considered as void.

10. We have carefully considered the aforesaid preposition. At the time the Tribunal had disposed off the O.A. No.1276/93, the question of the jurisdiction of the Tribunal in such matter has not come into dispute. In fact, a large number of similar cases were decided by the Tribunal <sup>assuming it had</sup> ~~exercising~~ the jurisdiction. If all such orders were to be declared void in view of the position of law which has since emerged from certain recent decisions, it will lead to a state of utter chaos and confusion. We are not, therefore, inclined to hold that the earlier order of the Tribunal was void.

11. In view of the foregoing, we find no merit in the review application and the same is accordingly dismissed.

12. The parties shall, however, bear their own cost.

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V.C.

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