

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT DELHI - 1
ROOM NO.207, ROUSE AVENUE COURT COMPLEX,
NEW DELHI.**

**Present : Justice Vikas Kunvar Srivastava (Retd.)
(Presiding officer)
CGIT, Delhi-1**

Misc. Application No.4/2022 (In ID. No.132/2017 Decided)

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

2. The General Manager,
Northern Railway,
Baroda House, New Delhi,

Management (Applicant)...

Versus

Sh. Bal Mukund S/o Shri Girdhari Lal Sharma,
H.No.B-31, Pandit Mohalla, Village Badkhal,
Post and Distt. Faridabad-121001

Claimant (Opposite party) ...

Shri Rishabh Sharma, A/R for the management (Applicant).
Shri Om Prakash Gupta, A/R for the claimant (opposite party)

ORDER

1. The present application in hand is moved on behalf of the Northern Railway who has been opposite party in the Industrial Dispute Case No. 132/2017 Bal Mukund V. Northern Railway, decided on 15/03/2021 against it by means of ex parte award. The said ex parte award has also been submitted to the appropriate government, notified and published on

24/03/2021. The notice to the concerned department was sent and duly served. The said application is moved on 07/07/2021. Under order IX Rule 13 of the (Civil Procedure Code), on behalf of the management by one Sh. 'Vidur Sikka', stating himself the authorized representative of the management/applicant.

FACTUAL MATRIX

2. The ministry of Labour, Government of India referred the Industrial Dispute to this tribunal through Order No.L-41011/22/2016 (IR (B-I)) dated 27.04.2017 to the following effect "Whether the action of Northern Railway in not reinstating Shri Bal Mukund S/o Shri Girdhari Lal Sharma in duty with effect from 18.01.2014 is legal and justified? If not, relief the workman is entitled to and from which date ?" On receiving the reference the same was registered vide order of the Presiding Officer dated 22.05.2017 as ID No.132/2017. Pursuant there to statement of claim was submitted by the workman through the AR Sh.Om Prakash Gupta praying that the claimant was appointed in the post of loco cleaner on 16.10.87 and since 18.01.14 working as loco pilot shunting and his last drawn wage was 18900(basic) per month. It is also prayed that the appropriate action may kindly be initiated against the erring Officer/Officers under the Rules. Any other relief for Mental/Physical and Financial harassment may kindly be granted as the Hon'ble Court may deem fit and proper. The record of

the original proceeding of ID Case No. 132/2017, was placed for perusal. The order sheet reveals that initially, Sh.Om Prakash Gupta, for the claimant and Sh.Parmesh Kumar, for the management (Northern Railway) as the Authorized Representative of their respective parties appeared. Time for written statement was prayed by the AR of management and granted vide order of the Tribunal dated 03/01/2018 fixing 08/03/2018. On 08/03/2018 written statement filed. Subsequently the management remained absent in the proceeding on 09/07/2018, 14/08/2018 and 08.10.2018, without any justifiable reason. In order dated 08.10.2018 the management was set ex parte. 03/01/2019 AR for the management appear and case was fixed for the evidence to be adduced by the claimant". On 25.02.2019 and 29.04.2019 AR for management again present and after then 05.08.2019 and 15.10.2018 remained unrepresented and absent. Statement in evidence of the workman Sh.Bal Mukund was recorded as witness and his AR has closed the evidence. The matter was listed for argument fixing 11.02.2020, and thereafter on 20/02/2020, 01.03.2021 and 08.03.2021. The management again did not response. Consequent thereupon the arguments were heard ex parte and the case reserved for award. It is further revealed that the award was passed on 15/03/2021. The award dated 15/03/2021 was submitted to the Government Under Section 17 of the Industrial Disputes Act, 1947 who published the same on

24/03/2021 and notified under the signature of the Under Secretary to the Government of India in the official gazette.

3. Learned the authorized representative of the Northern Railway moved the present application before the Central Government Industrial Tribunal (The Tribunal) Under Order IX Rule 13 of the Civil Procedure Code and sought. Quashing/setting aside of the ex parte award dated 15/03/2021 passed by this tribunal and published/notified by the Government on 24/03/2021. To examine the merit and maintainability of the application this would be necessary to look into the provisions of the Industrial Dispute Act 1947 on this behalf and to see whether the provisions of general law of the Civil Procedure Code and specially it's one of the provision as incorporated in Order IX Rule 13 for setting aside ex parte decree is applicable in the proceeding conducted by the tribunal constituted under the **Industrial Dispute Act 1947** for adjudicating the matter relating to Industrial Disputes.

Effect of wrong reference of the Legal Provision.

4. Order IX of the Civil Procedure Code contains the rules of procedure with regard to the appearance of parties and the consequence of non-appearance in suits and other proceeding where **Civil Procedure Code 1908** (shall herein after be addressed as **C.P.C only**) is applicable.

C.P.C. is a general law of procedure which does not apply to the proceeding conducted under the provisions of special Acts like the **Industrial Dispute Act, 1947**(shall herein after be addressed as **ID.Act only**) which envisages its own rules of procedure. C.P.C is appreciable only to a certain extent which is specifically provided in that special Act Rules itself. Order IX Rule 6 provides the procedure to be followed by the court when only plaintiff appears and the defendant does not appear despite the summon served on him on the date known to him fixed for hearing. The court may make an order that the same shall be heard ex party Order IX Rule 7 of the C.P.C further provides where the court has adjourned the hearing of the suit set ex parte and the defendant at or before adjourned date of hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs as to cost or otherwise, be heard in answer to the suit. In other words the order of the court to set ex parte against the defendant for default may be recalled. Order IX Rule 13 C.P.C Provides. Setting aside decree ex parte against defendants.

Order IX Rule 13- In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from

appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

1[Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiffs claim.]

2[Explanation- Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside the ex parte decree.]

5. The I.D. Act, 1947 (14 of 1947) is an special Act, legislated to make provisions for the investigation and settlement of Industrial Dispute,

and for certain other purpose, is a benevolent legislation in welfare of the poor labours and workmen and also to maintain good industrial relations. The Act is self-contained with regard to its procedure. The C.P.C does not apply as a whole on the proceedings to be conducted before the tribunals and labour courts, established under the I.D.Act, 1947. There is analogous provisions like C.P.C. with regard to consequence of non appearance of the parties the order to proceed ex parte, its recall as well as ex parte awards passed by the tribunals. These are quoted here under from the Act and Rules.

6. Somehow akin to the remedy available to a defendant in a suit Under Order IX Rule 13 of the CPC there is provision relating to remedy in the Industrial Dispute Act. Part III of the Industrial Disputes (**Central Rules 1957**) provides the Power, Procedure and Duties of Conciliation Officers, Boards, Courts, Labour Courts, Tribunal or National Tribunal and Arbitrators. Rule **10B** deals with proceeding before the Labour court, Tribunal or National Tribunal. The relevant sub rules are quoted here under for easy reference:-

10B. Proceeding before the Labour Court, Tribunal or National Tribunal.

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9. In case any party defaults or fails to appear at any stage the Labour Court, Tribunal or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party:

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, may on the application of either party filed before the submission of the award revoke the order that the case shall proceed ex parte, if it is satisfied that the absence of the party was justifiable grounds.

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7. For revocation of the order to proceed ex parte the Tribunal is empowered if the application to this effect is moved by the affected party before the submission of the award. The submission of award and the time

after which the award becomes final and enforceable is also important to consider the scheme of the Act with regard to non- revocability of the ex parte award. Section 17 & 17A of the I.D.Act to be read simultaneously to the above provision of Rule 10B.

Section 17:- *Publication of reports and awards:**(1)Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.*

(2)Subject to the provisions of section 17A, the award published under sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

Section 17A:-*Commencement of the award-* *(1)An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17:*

Provided that-

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party;or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal,

That it will be inexpedient or public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under subsection (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where

no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section(2).

(4) Subject to the provision of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.

8. The Central rules of 1957 (Supra) further provides the redressal in case of ex parte award available to the party. The rule 22 is being quoted here under:

Rule 22 - Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte. –“ If without sufficient cause being shown, any party to proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

9. Though it is established legal principal that procedures are hand-maid of justice and technicalities cannot imprison justice, even then simple interpretation of the proviso as it appears, means that the application is to be filed before submission of the award and then the Labour Court or the Tribunal or the National Tribunal is empowered to revoke the order that “the case shall proceed ex-parte”. Further, the award shall become final on the expiry of thirty days from the date of its publication. Therefore, the award becomes final and enforceable after expiry of thirty days from publication of the award. The provision cannot be so strict as to have the same effect even before the award is published.

10. The AR of the management (**Present Applicant**) did not move any application to recall the order dated 08/10/2019 to proceed ex parte. Even the present application also has no explanation of the absence of the AR of the management Northern Railway in the proceeding on the date case was set ex parte. The tribunal had no opportunity to revoke it’s order dated 08.10.2019 for the fault on the part of the management (Present Applicant).

11. Obviously, the applicant (Management) has not preferred the application under the provisions of the Industrial Dispute Act, 1947 and the rules made there under for setting aside the ex parte award after it’s notification. It has prayed, the award to be set aside under order IX Rule

13 CPC, whereas there is special remedy in such event. Central Rules 1957 which provides that the Court/ Tribunal to proceed and decide ex parte in case any party fails to attend without sufficient cause being shown before it's passing and submission to the appropriate Government and beyond 30 days of it's publication. Under Chapter IV of the Act the procedure powers and duties of the Authorities are described. The opening sub section (1) of the section 11 provision as below :

Section 11(1):-*Procedure and power of conciliation officers, Boards, Courts and Tribunal:-* (1)*Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.*

(2).....

(3) *Every Board, Court, [Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-*

- (a) *enforcing the attendance of any person and examining him on oath;*
- (b) *compelling the production of documents and material objects;*
- (c) *issuing commissions for the examination of witness;*

*(d) in respect of such other matters as may be prescribed,
And every inquiry or investigation by a Board, Court,
[Labour Court, Tribunal or National Tribunal] shall be
deemed to be a judicial proceeding within the meaning of
sections 193 and 228 of the Indian Penal Code (45 of 1860).*

12. In M/s Haryana Suraj Malting Ltd. V. Phool Chand AIR 2018

SC 2670 the Apex Court observed: - Thus, under the statutory scheme, the Labour Court/ Tribunal is empowered to follow its own procedure as it thinks fit, meaning thereby, a procedure which is fit and proper for the settlement of the Industrial Dispute and for maintaining industrial peace. If a party fails to attend the Court/ Tribunal without showing sufficient cause, the Court/ Tribunal can proceed ex parte and pass an ex parte award. The award, ex parte or otherwise, has to be sent to the appropriate Government as soon as it is made and the appropriate Government has to publish it within 30 days of its receipt. The award thus published becomes enforceable after a period of 30 days of its publication.

13. If an application is filed under a wrong statutory provision, it does not disentitle the applicant from getting remedy or impede the court from considering the application if the remedy sought by the applicant is in legal competence of the court. The issue is no more resente gra. Apex Court in

N.Mani V. Sangeetha Theatre & others (2004) 12SCC278 and **Ram Sunty Ram V. Union of India & others 2007 (9) SCALE 197** held, “it is well settled that if an authority has a power under the law merely because while exercising that power, the source of power is not specifically referred to, or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

14. In N.Mani V. Sangeetha Theatre & others (Supra).The Apex Court held “It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

15. Thus, the Tribunal would be right if exercises its power to hear and decide the application for setting aside ex parte award, despite of the wrong reference of the provision of law, because the source of it’s power to hear and decide such an application is tracable under the Industrial Dispute Central Rules 1957. In this regard in the **Grind lays Northern Railway Ltd. V. Central Government Industrial Tribunal AIR 1981 SC 606** is also important to be noted, “Under r. 24(b) a Tribunal or other body has the powers of a civil court under O. XVII of the Code of Civil

Procedure, relating to the grant of adjournments. Under O. XVII, r. 1, a civil court has the discretion to grant or refuse an adjournment. Where it refuses to adjourn the hearing of a suit, it may proceed either under O. XVII, r. 2 or r. 3. When it decides to proceed under O. XVII, r. 2, it may proceed to dispose of the suit in one of the modes directed in that behalf by O. IX, or to make such other order as it thinks fit. As a necessary corollary, when the Tribunal or other body refuses to adjourn the hearing, it may proceed ex parte. In a case in which the Tribunal or other body makes an ex parte award, the provisions of O. IX, r. 13 of the Code are clearly attracted. It logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award.”

Power to set aside ex parte award after 30 days of it's publication.

16. The next question before the Tribunal is that in case like the present one in hand, whether the ex parte award can be set aside after 30 days of it's publication. The question was answered by the Apex Court in the case of **Grind lays Northern Railway Ltd. V. Central Government Industrial Tribunal & Others (Supra)** The **Relevant Para 14** is cited here bellow:-

***Para 14:-** The contention that the Tribunal had become functus officio and therefore, had no jurisdiction to set aside the ex parte*

award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of s. 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under s. 17A. Under s. 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under s. 17. The proceedings with regard to a reference under s. 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under s. 17A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent No. 3, acting on behalf of respondents Nos. 5 to 17 on January 19, 1977 i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed

the Tribunal had in any event become functus officio. We cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders.

17. In the case of Grind Lays Northern Railway (supra) the matter before the Apex Court was relating to the application to set aside ex parte award moved within 30 days from the date of its publication, for which the Tribunal were held to have jurisdiction up to that period to entertain and decide such application. But there is no discussion as to the power of the Tribunal to entertain and decide an application to set aside ex parte award, if the same is moved beyond 30 days of the date of publication of the award. The case of Grin lay Northern Railway (Supra) was considered by the Apex Court in **M/s Haryana Suraj Malting Ltd V. Phool Chand (Supra)** and slightly distinguished. Para 35 of the Judgement is quoted have below:-

“Merely because an award has become enforceable, does not necessarily mean that it has become binding, it should be passed in

compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/ Tribunal when it was set ex parte, the Labour Court/ Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/ Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/ Tribunal, whether we call it ancillary, incidental or inherent.”

18. In view of the judgement of the Apex Court the causes shown by the applicant for setting aside the ex parte award are need to be examined whether they are reasonably sufficient and reliable for taking into

consideration to satisfy that he had justifiable reason for his absence and not participating in the proceeding despite of his knowledge as to the dates and stages in the proceeding of the tribunal. This is also to be seen that whether the applicant (Management) was able to show sufficient cause within a reasonable time for its non- appearance in the tribunal when it was set ex parte. For this purpose the reasons stated in the application of the management to set aside the ex parte award is looked into.

19. This would be important to note that the management entered in the appearance before the tribunal on 24th July 2017 through Shri Parmesh Kumar the authorized representative. On 05.09.2017 Shri Parmesh Kumar AR for the management received the copy of claim statement. On 08th March 2018 written statement filed. Ultimately on 08/10/2018 in default of appearance of the management the proceeding set ex parte against the management. There is no explanation in the present application by the management that why and under what circumstances he remained absent on 05.08.2019, 15.10.2019, 22.01.2020, 11.02.2020, 20.02.2020, 01.03.2021 and 08.03.2021 despite, the knowledge of date which was fixed in his presence and attendance before the tribunal on 03.01.2019, 25.02.2019 and 29.04.2019. The non representation of the management through AR or anyone else on its behalf is also not explained. When the proceeding was set ex parte against the management on 08.10.2018. The

management did not opt to file recall application within 30 days from the date 08/10/2018 for setting aside/ revoking the order to set ex parte setting forth the justifiable and reasonable causes to the satisfaction of the tribunal.

20. There is no application or information to the Tribunal submitted by Parmesh Kumar with regard to his leaving the office of AR of the management. Even the new AR in his application does not state about the date since when the earlier authorized representative left the office of the authorized representative of the management. The application is moved through one Vidur Sikka claiming himself to be the new authorized representative for the management. He has also not placed on record his authorization to work for and on behalf of the management and since which date he entered into the office of AR for the management is disclosed. There is no material on record which may indicate that the management had ever been present personally before the Tribunal without it's AR.

21. After setting ex parte against the management the Tribunal Proceeded to take evidence of the claimant on 22/01/2020 and thereafter 11/02/2020 was fixed for argument but as the order sheet shows, due to covid pandemic and lockdown, the case adjourned on 18/03/2020. This position continued upto 01/03/2021 when 08/03/2021 was fixed for the

argument recording the absence of the AR for the management. On 07th July, 2021 the present application for setting aside the award dated 15/03/2021 was filed but without assigning the reason for not moving the application within 30 days prior to the date 15.04.2021 the date of publication of award lockdown was not continued during that period and position had become normalized. From the facts and conduct of the management as may be gathered from the order sheet and non-explanation on the part of Sh.Vidur Sikka who claims himself the new AR for the management without having placed any lawful authority on record .The application seems carelessly moved by him also. However, what the tribunal could carved out from the facts and circumstances pleaded in the present application and the date and stage wise order sheet are being summed up below:-

- 1. Prolonged continuance of lockdown due to pandemic of covid-19 in the country and closure of the tribunal for physical appearance only general dates were being fixed in the case and published on the website.*
- 2. For the first time after the lockdown when position of the pandemic of Covid-19 became normalized, the case was take up by the Tribunal on 06.4.2021 and pursuant to the pre lockdown order of The Tribunal dated 28.01.2020 to set ex parte, the argument of the*

AR for the claimant was heard and case was reserved for the passing of award.

3. *In the extra ordinary circumstance of long lingering lock down and closure of the Tribunal during the Period of Covid -19 pandemic of the case was taken after a considerably long time without serving notice of the date on reopening of the Tribunal for physical appearance and argument.*
4. *The authorized representative without information to the management and also to the Tribunal left appearing for and on behalf of the management, Since a long prior to the lockdown.*

22. The contention on behalf of the management (Present Applicant) have force of law in the sense that in the event of the defendant is set ex parte, the Tribunal should have been extra careful in such case when on reopening after a long period of pandemic the case was first taken physically for argument, both the parties should have been given notice of the date, irrespective of case proceeded ex parte long ago.

23. In Meenakshi Sundaram Textile V. Valliammal Textiles 2011(3) CTC 168 it is held:-

Para 21:- *From the above discussion, it is manifestly clear that even a judgment rendered ex parte and a decree is drawn on the basis of that judgment, it is appealable. In case that judgment and decree*

become final without there being any appeal, the decree is executable. In that sense, there is no difference between a judgment and decree and an ex parte judgment and decree. In view of the above, in the event the defendant is set ex parte, the Court should be extra careful in such case and it should consider the pleading and evidence and arrive at a finding as to whether the plaintiff has made out a case for a decree. In this context, it may also be mentioned that though a detailed judgment is required in a contested matter, an ex parte judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such judgment.

Effect of carelessness and mistake of the Counsel, Representative or Agents

24. The management (Applicant) has stated in it's application that they had never been careless nor negligent as it is evident from their conduct that they immediately on service of notice of the case sent by the tribunal put their appearance through their authorised representative Sh.Parmesh Kumar who committed default in appearance and submission of written statement on their behalf leaving the office of the Authorized representative without prior intimation to them. Subsequent lack of

knowledge of the proceeding of Tribunal coupled with it's closure in lock down effected during pandemic of Covid-19, was natural. The explanation seems naturally possible in the circumstances of present case. In the case of **Malkiat Singh and another V. Joginder Singh and others (1998)2 SCC 206** in somehow similar circumstance, the Apex Court held:-

The appellants in their application clearly pleaded that they were neither careless nor negligent and as soon as they learnt about the ex parte decree dated 08.02.1992 and the order dated 18.11.1991, they filed the application to set aside the ex parte decree. A perusal of the record reveals that the appellants were neither careless nor negligent in defending the suit. They had engaged a counsel and were following the proceedings. In this fact situation, the trial court, which had admittedly not issued any notice to the appellants after their counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when the counsel reported no instructions. The appellants cannot, in the facts and circumstance of the case, be said to be at fault and they should not suffer. In taking this view, we are fortified by a judgment of this Court in Tahil Ram Issardas Sadarangani V. Ramchand Issardas Sadarangani (1993 Supp (3) 256) wherein the Bench opined: (SCC p. 257, para 4)

“4. It is not disputed in the present case that on 15.03.1974 when Mr. Adhia, Advocate withdrew from the case, the petitioners were not present in court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. We are of the view, when Mr. Adhia withdrew from the case, the interests of justice required, that a fresh notice for actual date of hearing should have been sent to the parties. In any case in the facts and circumstances of this case, we feel that the party in person was not at fault and as such should not be made to suffer.”

25. The Apex Court has held further the effect of withdrawal of authority by the counsel in case of Tahil Ram (Supra) as below:-

“When the counsel for the petitioner withdrew appearance from the case, the petitioners were not present in court. There is nothing on record to show as to whether the petitioners had received the notice of hearing of the case on that day. We are of the view, when Mr. Adia withdrew from the case, the interests of justice required, that a fresh notice for actual date hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer.”

26. To sum up the matter in hand, on the discussion made here in above, this tribunal is of the considered opinion that with a view to ensure and secure end of justice and to afford opportunity of hearing the Industrial Dispute in accordance with the principal of natural justice, specially when the management (Appellant) of the present application to set aside the ex parte award has offered to come with written statement in reply of the referred dispute and claim statement his application found bonafide, therefore may be allowed to decide the case I.D. No.132/2017 Sh.Bal Mukund V. Northern Railway on merit.

27. The I.D. No.132/2017 was registered on reference by the appropriate government dated 22.05.2017 and though decided on 15/03/2021 by an ex parte award but the same still remains unfructified. Time and again the Apex Court very categorically held that the Courts/ Tribunal should pass the order on merit in all the case either it is contested or ex parte proceeding since the ex parte award is of a Tribunal Cum Labour Court and in the eye of law it has become enforceable, therefore setting aside the ex parte award for de novo hearing of the Industrial Dispute on merit will certainly pull back the claimant opposite party of the present case at the very stage of inception of the case after consuming long time of about **4 years**. He being a poor his monitory loss as well as the trauma and vexation in legal battle with a mighty employer caused due

to the carelessness and mistake of the Authorized Representative of the management (Present Applicant) should also be weighted for the purpose of compensation to the claimant. The master is also responsible to the wrongs of his agent in the course of his employment. Referring Sector 11 (3) of the I.D. Act (Supra) it would be relevant to consider the power of the tribunal as prescribed in the sub section 7 of section 11 of the I.D. Act, with regard to the imposition of cost on any party as it thinks fit incidental to the proceeding pending before it, the tribunal have the same powers vested in the civil court. The sub section 7 of Section 11 provides that the Tribunal has full power to determine by and to whom and to what extent and subject to what condition if any such costs are to be paid. The tribunal finds the present case a fit case to impose compensatory cost on the applicant (Management) who handled the case in vexation of the poor sweeper, in not enquiring the AR for a long about the stages of and steps taken in the proceedy by him before the tribunal. Thus the management is equally liable in vexation of the workman.

28. The claimant must be compensated by imposing compensatory cost to be paid to him by the management (Applicant) in the event of setting aside the ex parte award **Rs.100,000 (One Lakh Only)** is imposed as compensatory cost to be paid to the claimant making the same condition

precedent for allowing the application to set aside the ex party award dated 15.03.2021.

Claimant legal heir Smt.Sushma Sharma be paid the aforesaid amount of Rs.100,000/- by way of Demand Draft drawn in her favour from any Nationalized Northern Railway through registry of the Tribunal, within one week from the date of order and the registry shall receive the receipt from the claimant aforesaid to place the same on record of the case.

On compliance of the condition of paying the compensatory cost the Misc. Application for setting aside ex parte award shall be allowed, setting aside the award dated 15.03.2021 in ID No.132/2017 Bal Mukund V. the Management of Northern Railway.

This is made clear that the cost so paid under the order of Tribunal shall irrespective of the result on rehearing of the ID No.132/2017 aforesaid shall not be recouped or adjusted in any other amount, the claimant found entitled to be paid.

ORDER

The application in miscellanea case No.4/2022 management of Northern Railway V. Bal Mukund is allowed on payment of the compensatory cost Rs.100,000/- (One Lakh Only) within the period and manner prescribed in the order here above. On payment of cost the ex-parte award in ID No.132/2017 Bal Mukund V. Management of Northern Railway is set aside and revoked. The office on compliance of the order shall intimate the appropriate Government in due procedure with the copy of the order

forthwith. Office shall place the record of the ID No.132/2017 Bal Mukund V. Management of Northern Railway for further order and appearance of the parties to the proceedings on 15.02.2023.

Justice Vikas Kunvar Srivastava (retd.)
Presiding Officer
February 09, 2023

Vanshika Saini