

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2896/2002
M.A. NO. 2222/2003

(21)

This the 19th day of November, 2003

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI BHARAT BHUSHAN, MEMBER (J)

Habib-ur-Nabi S/O Mohd. Nabi,
R/O C/O amar Singh,
C-179, Basant Village, Near Water Tank,
New Delhi.

... Applicant

(By Shri H.P.Chakravorti, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.

2. Divisional Railway Manager,
Northern Railway,
Moradabad. ... Respondents

(By Shri R.L.Dhawan, Advocates)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, V.C.(A) :

The applicant has challenged Annexure A-1 dated 20.4.2000, Annexure A-2 dated 27.11.2000 and Annexure A-3 dated 11.6.2001. Vide Annexure A-1 applicant has been informed that his period of sickness from 13.4.1998 to 10.8.1999 has been treated as commuted leave as due and that claim for regularisation of the said period as on duty is not covered under rules. Applicant's representation dated 18.9.2000 against Annexure A-1 was rejected vide Annexure A-2. Annexure A-3 too states that the period from 13.4.1998 to 10.8.1999 has been treated as follows :

- (1) 13.4.1998 to 31.7.1998 (110 days) : RMC
- (2) 1..8.1998 to 17.2.1999 (201 days) : HI AP
- (3) 18.2.1999 to 10.8.1999 : Leave without pay.

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2. The applicant's case is that he sustained injury on 13.4.1998 at 1610 hrs. while he was on duty, among two other employees, when they were taking stock of T.L. lead acid cells of 320 Amp, which slipped from a height from the possession of two TL Helpers, Diwan Singh and Mahesh Chand Sharma, and the acid penetrated the eyes of the applicant. He was rushed to the Railway Hospital vide letter dated 13.4.1998 (Annexure A-4). The applicant was placed on sick list by sick certificate dated 15.4.1998 with effect from 13.4.1998. He continuously remained on sick list on medical examination by the Railway Hospital and the All India Institute of Medical Sciences. He lost both his eyes and was ultimately declared invalidated out of Railway service on 10.8.1999 on medical grounds. He was discharged from service from 10.8.1999 (Annexure A-6). The learned counsel of the applicant claimed that applicant had sustained injury on duty and remained on sick list and under medical treatment till he was discharged from service on 10.8.1999, and as such, the entire period from 13.4.1998 to 10.8.1999 should have been treated as duty and consequent arrears of pay and allowances and enhancement of pensionary benefits should have been released to him.

3. On the other hand, the learned counsel of the respondents raised the preliminary objection that the application is barred by limitation the cause of action having arisen on 20.4.2000 when applicant's request for regularisation of the period of sickness was rejected.

4. As respects merits of the case, the learned counsel of the respondents stated that applicant had not suffered injury during the course of his official duties. It was a matter of chance that acid sprinkled upon him and in the process, his eyes got damaged.

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5. Annexures A-1, A-2 and A-3 relate to the subject of regularisation of the applicant's period of absence from 13.4.1998 to 10.8.1999. Annexure A-3 was issued by the respondents on 11.6.2001. Basically, the period for reckoning limitation would start from 11.6.2001. The OA was filed by the applicant on 8.11.2002. It is not an inordinate delay and here is a case in which we find substantial merit, in view of which the objection relating to limitation is rejected.

6. The learned counsel relied on the provisions of rule 304 of the Indian Railway Establishment Code Volume I which is reproduced below :

"Railway Ministry's decisions - (1) Where a temporary Railway employee has become medically unfit for the post held by him on account of circumstances arising out of and in the course of his employment, the employee should be granted leave due plus extraordinary leave so as to make a total period of 6 months within which alternative employment must be found.

(2) Where a temporary employee has become medically unfit for the post held by him on account of circumstances which did not arise out and in the course of his employment, the benefit under this rule will not be admissible. It has, therefore, been decided that while it is strictly not obligatory to find alternative employment for such an employee, every effort should nonetheless be made to find alternative employment. The employees concerned should be granted such leave as is due to him plus extraordinary leave not exceeding three months, the total

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not exceeding six months. If no alternative employment can be found in this period, the employee may be discharged from service.

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(3) The above rule is applicable only to permanent staff and if alternative appointment is found for temporary staff it should be regarded as a purely ex-gratia measure."

Under these rules, according to the learned counsel, the applicant could be granted such leave as is due to him plus extraordinary leave not exceeding three months and the total not exceeding six months, before alternative employment was provided to such a person on medical declassification. If any alternative employment could not be found during this period, he could be discharged from service.

7. On the other hand, the learned counsel of the applicant placed reliance on para 554 of the leave rules relating to hospital leave. The same is extracted below:

"554. Hospital leave. - (1) Hospital leave may be granted to railway servants other than in Group A or Group B, while under medical treatment for illness or injuries if such illness or injury is directly due to risks incurred in the course of official duties.

(2) Hospital leave shall be granted on production of medical certificate from an Authorised Medical Attendant.

(3) (a) Hospital leave may be granted for such period as the authority granting it may consider necessary on leave salary -

(i) equal to leave salary while on leave on average pay for the first 120 days of any period of such leave; and

(ii) equal to leave salary during half pay leave for the remaining period of any such leave.

(b) The amount of hospital leave which may be granted by the General Managers to railway servants is unlimited.

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(4) Hospital leave shall not be debited against the leave account and may be combined with any other kind of leave which may be admissible, provided the total period of leave, after such combination, does not exceed 28 months."

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The learned counsel stated on behalf of the applicant that the applicant should have been sanctioned hospital leave for having suffered injuries during the course of official duties and such hospital leave could not have been debited against applicant's leave account. The learned counsel of the respondents disputed that the applicant had suffered injury during the course of official duties. The respondents in their counter reply have admitted that while the applicant was working as Office Superintendent in Electric Department, two Helper Khalasic were doing counting of L.T. Lead acid cells which slipped down and its electrolyzed acid drops got sprinkled on the face of applicant for which applicant was sent to the Railway hospital for treatment and later directed to the Central Hospital, Northern Railway for better treatment, and was ultimately medically invalidated out of the Railway service by the medical board. This admission of the respondents establishes that the applicant suffered injuries during the course of his official duties. Official duties do not mean that he should have suffered injuries while carrying the L.T. lead cells himself. If his duty required that he was to be present when the Helper Khalasic were doing the counting of L.T. lead cells, applicant's presence on the spot and sustaining injuries by him when the acid drops sprinkled on his face would certainly come within the scope of his official duties. The period of sickness due

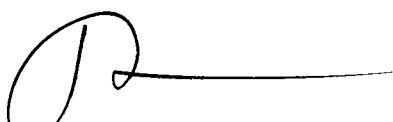
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to such injuries would certainly involve hospital leave under rule 554 ibid and not under rule 304 of the Indian Railway Establishment Code.

8. Having regard to the discussion made above, Annexures A-1, A-2 and A-3 are quashed and set aside and respondents are directed to consider the period of medical examination/treatment of the applicant from 13.4.1998 to 10.8.1999 as on duty with consequential benefits. The respondents are further directed to pass appropriate orders accordingly within a period of three months from the date of communication of these orders.

9. The OA is allowed in the above terms. No costs.



Bharat Bhushan)
Member (J)



(V. K. Majotra)
Vice-Chairman (A)

/as/