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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01025/2017

Reserved on: 5.2.2020

Order dated: 14.2.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Mrinal Kanti Ghosh,
Working as CBC/BDC, Eastern Railway,
And residing at 61/1, Nasra Para Lane,
Police Station – Ranaghat,
District – Nadia,
Pin – 741 201.

... Applicant

VERSUS –

1. The Divisional Railway Manager,
Eastern Railway,
Howrah Division,
Howrah – 711 101;
2. The Chief Personnel Officer,
Eastern Railway,
Fairlie Place,
Kolkata – 700 001;
3. The Senior Divisional Personnel Officer,
Eastern Railway,
Howrah Division,
Howrah – 711 101;
4. The Senior Divisional Commercial Manager,
Eastern Railway,
Howrah Division,
Howrah – 711 101;
5. The Station Manager,
Konnagar Railway Station,
District – Hooghly,
Pin – 712235;
6. The Booking Supervisor,
Konnagar Railway Station,

Abi



District – Hooghly,
Pin – 712235.

.... Respondents

For the Applicant : Mr. A. Datta, Counsel
Mr. S. Ray, Counsel

For the Respondents : Mr. K. Sarkar, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

8.1. To consider, admit and allow the appeal dated 08.08.2016 and 14.12.2016 made by the applicant to the respondent No. 2 upon quashing and/or setting aside the impugned order dated 23.9.2013 by which the prayer of the applicant to declare him Hurt-on-Duty as per Clause 553 of the Indian Railway Establishment Manual/code – Volume – I had been rejected;

8.2. To pass a direction or directions upon the Respondent authorities to allow the prayer of the applicant for declaring him Hurt-on-Duty in view of the fact that he had met with the accident during his period of job at the time of performing his office designated duties with all consequential benefits a permissible to him under the law, as mentioned in those representations;

8.3. Show cause in terms of prayer 8.1 and 8.2 and after hearing the cause make the rules absolute;

8.4. A direction as to costs of the proceedings to the applicant;

8.5. Any further order or orders, direction or directions as the Hon'ble Tribunal may deem fit and proper for the ends of justice."

2. Heard rival contentions of both Id. Counsel, examined pleadings and documents on record.

3. The facts, in a narrow compass, are that the applicant, while working as Senior Booking Clerk at Konnagar, Eastern Railway was spared /deputed vide 245/SM/KOG dated 18.9.2004 to collect certain Railway materials from the Stores of Material Manager, Eastern Railway, Howrah Depot. That, the applicant, reportedly on his way to Howrah to collect those materials, met with a fatal accident, and, upon a reference made by the Booking Supervisor at Konnagar Railway Station dated 23.9.2004, the authorities at B.R. Singh Hospital, Eastern Railway at Sealdah, admitted the applicant for

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his treatment. The applicant could not complete his assignment of collection of requisite materials from the store due to his accident. The applicant was admitted in B.R. Singh Hospital on 23.9.2004, was transferred to Howrah Orthopaedic Hospital on 25.9.2004, was further shifted to Central Hospital, Northern Railway, New Delhi on 27.10.2004, and, on 3.11.2014, was moved to All India Institute of Medical Science, New Delhi, wherefrom he was discharged on 11.3.2005. Reportedly, the applicant was once again admitted on 17.3.2005 to the Howrah Railway Orthopaedic Hospital and, thereafter, resumed office upon recovery.

On 23.10.2010, the Chief Health Director of the Railway Orthopaedic Hospital requested for initiation of a process to declare the applicant as a staff "Hurt-on-duty" (HOD) but the authorities on the basis of the report of the Chief Medical Officer of the said Orthopaedic Hospital at Howrah as well as the report of an Investigation Committee set up for this purpose, concluded that the applicant is not entitled to "Hurt-on-duty" or Special Disability Leave.

The applicant was informed on 23.9.2013 that his sick period would not be treated as HOD or Special Disability Leave, upon which he preferred two appeals on 8.8.2016 and 14.12.2016 challenging the decision dated 23.9.2013, but, not having received any response thereon, and, being aggrieved, has approached this Tribunal praying for the above noted relief.

The applicant, inter alia, had advanced the following grounds in support of his claim:

- (i) That, the applicant was rightfully entitled to Special Disability Leave as per provisions of Para 553 and 554 of the IREC Vol. I in view of the fact that he met with an accident on 23.9.2004 while performing his duties during office hours, and, that, such accident culminated in 90% partial disability by way of temporary paralysis.

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- (ii) That, the authorities should have admitted his appeal dated 8.8.2016 and 14.12.2016 to decide on his prayers for setting aside the orders, so impugned, dated 23.9.2013.
- (iii) That, it was not the designated job of the applicant to obtain materials from the Howrah Stores, but, that he had proceeded to carry out the same on the special request of Station Manager, Konnagar.
- (iv) That, the investigation team of the authorities who were conducting investigation on the veracity of the accident were duty bound to collect Police report and other necessary documents as well as evidence of the staff, officers and the medical officer, who were witnesses to this accident and its aftermath.
- (v) That, the authorities are duty bound to declare him as "Hurt on duty" or to grant him disability leave with all consequential benefits.

4. The respondents, per contra, would dispute the claim of the applicant by arguing as follows:-

- (a) That, the Station Manager, Konnagar, while referring the applicant to B.R. Singh Hospital at Sealdah, had issued a G-8 Memo and not a GA-3 Memo, which is mandatory for treatment as "Hurt-on-Duty".
- (b) That, the applicant was admitted in B.R. Singh Hospital on 23.9.2004, and, thereafter, to the Howrah Orthopaedic Hospital on 25.9.2004 for treatment. The period from 25.9.2004 to 28.10.2004 was regularized in favour of the applicant with 14 days' Leave on Average Pay, and, the balance 20 days as Half Leave Average Pay. The applicant was also granted 360 days (on and from 29.10.2004 to 23.10.2005), as Leave Not Due on Half Average Pay Leave based on his appeal. The applicant had no Earned Leave as per his leave records and, consequently, his absence from 24.10.2005 to 31.7.2008 had to be treated as leave without pay.
- (c) The applicant resumed his duties on 1.8.2008.

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(d) In the absence of the necessary information i.e. place, time, cause of accident in any police report it could not be conclusively established that he was hurt during performance of his duties.

(e) In terms of Para 553 of IREC Vol. I (Enclosed as R-3 to the reply), the said period was not treated as "Hurt-on-duty" due to the following reasons:

- (i) Chief Health Director, Howrah had certified that the case is not a HOD case.
- (ii) Joint inspection was held and the said Inspection Report has distinctly clarified that the case was not to be classified as 'HOD'.
- (iii) Whole of the sick period of the applicant i.e. on and from 23.9.2004 upto 31.7.2008 has been treated after issuance of G-8 Memo as Leave on Average Pay, Half Leave Average Pay, Leave Not Due (LND) and Leave Without Pay respectively.

(f) The Chief Health Director, Howrah had certified on 17.9.2007 that the applicant's case did not qualify as "HOD" (R-4 to the reply).

(g) The Joint Inspection Report dated 15.10.2012 (R-5 to the reply) had clarified that the illness/injuries classified for the purpose of HOD are directly due to risk involved in official duties, and, that, if the accident or illness concerned enhances such risk liability, such illness/injury would be considered as HOD. The applicant did not fulfil such requirements.

(h) The applicant's sick period has been regularized after considering the availability of leave as per leave records.

(i) That, although there is no bar to depute a booking clerk (the designation of the applicant during the time of accident), for obtaining store materials, the Station Manager's (Konnagar) letter dated 14.6.2012 reveals that the applicant concerned was on his duty on 23.9.2004 at the booking counter.

Respondents have also relied on Rule 615 of the IREC Vol. I to argue that the applicant was advanced benefits mentioned in the said para, namely, that as a Railway employee injured in duty in addition to treatment ordinarily admissible to others will be

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entitled free of cost to special nursing essential for recovery or prevention of serious deterioration in the condition of the Railway employee.

5. The only issue for adjudication herein is whether the applicant's accident and the entire period of sickness would require to be classified as "Hurt-on-duty" or as Sick Leave.

6.1. Admittedly, the respondents have treated the applicant's Sick Leave as not "Hurt-on-Duty" as communicated vide their letter dated 23.9.2013 (Annexure A-7 to the O.A.).

Ld. Counsel for the applicant would essentially rely on Paras 553 and 554 of the IREC Vol. I, which states as follows:-

" 553. Special disability leave for accidental injury.—(1) The provisions of rule 552 shall apply also to a railway servant, whether permanent or temporary, who is disabled by injury accident incurred in, or in consequence of due performance of his official duties or in consequence of his official position, or by illness incurred in the performance of any particular duty which has the effect of increasing his liability to illness or injury beyond the ordinary risk attaching to the post which he holds.

(2) The grant of special disability leave in such case shall be subject to the further conditions:--

(i) that the disability if due to disease must be certified by the Authorised Medical Attendant of the railway servant concerned to be directly due to the performance of the particular duty;

(ii) that if the Railway servant has contracted such disability during service otherwise than with a military force, it must be in the opinion of the authority competent to sanction leave, exceptional in character; and

(iii) that the period of absence recommended by the Authorised Medical Attendant may be covered in part by leave under this rule and part by any other kind of leave, and that the amount of special disability leave granted on average pay shall not exceed 120 days.

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.

Note.—If the railway servant is one to whom the Workmen's Compensation Act 1923 (18 of 1923) applies the amount of leave-salary payable during Hospital Leave shall be reduced by the amount of compensation payable under Section 4(1)(d) of the said Act. When a disablement regarded at first as temporary, proves to be a permanent disablement and compensation becomes payable under clause (b) or (c) of Section 4(1) of the Workmen's Compensation Act, the hospital leave-salary should be restored to the full amount admissible under the above rule.

President's decision 1.—General Managers are empowered to relax the provisions of this rule in individual cases meriting sanction of Hospital leave beyond a period of 120 days on leave salary equal to leave salary while on leave on average pay. Such cases are to be reviewed by the CMO personally and entered in a register to be maintained by CMO so that at any time the extant of the problem can be checked. Also, such cases are to be put up to the FA & CAO for his concurrence before these are put up to the General Manager for sanction. These powers are to be exercised personally by the General Managers and are not to be delegated further.

President's decision 2.—Divisional Rail Managers (DRMs)/Chief Workshop Engineers (CWEs) are empowered to relax the provisions of Rule 554-R.I, 1985 edition, in individual cases, meriting sanction of Hospital leave beyond a period of 120 days on leave salary equal to leave salary while on leave on average pay, subject to such cases being reviewed by the Medical Superintendents and concurred in by Senior Divisional Accounts Officer/Associate Accounts Officer. Also, a list of such cases should be put up to the General Managers half yearly for their post-facto approval. These powers are to be exercised personally by the DRMs/DWEs and are not to be delegated further. It has also been decided that cases that occurred during the intervening period, i.e. from 1985 onwards, where the Railways have already sanctioned Hospital Leave for periods beyond 120 days on leave salary equal to leave salary while on leave on average pay, need not be reopened.

President's decision 3.—It has been further decided that the Heads of non-divisional units, such as Workshops, Stores, Depots, Zonal training Centres, etc., in the Junior Administrative Grade/Selection Grade are also empowered to sanction Hospital Leave beyond a period of 120 days in relaxation of the provisions of rule 554.R.I, 1985 edition in individual cases meriting sanction of Hospital Leave beyond a period of 120 days on leave salary equal to leave salary while on leave on average pay. Where the heads of such non-divisional units are in lower than JA grade, all cases of grant of Hospital Leave beyond a period of 120 days in relaxation of the provisions quoted above should be put up to the controlling SAG officer for sanction. The grant of Hospital Leave beyond 120 days in relaxation of the rules mentioned above in all cases shall however be subject to such cases being reviewed by the Medical Superintendents and concurred in by Senior Divisional Accounts Officer/Associate Accounts Officer. Further's as already stipulated in Board's letter of even number dated 14-1-93, a list of all such cases should be put up to the General Managers half-yearly for their post facto approval. Papers to General Managers should be routed through the controlling SAG officers. It may also be ensured that payment against Hospital Leave whenever due is made regularly and not allowed to pend.

President decision 4.—It has been decided that such cases of railway servants injured on duty during the intervening period from 1985 to 14-1-93 and where Hospital Leave was not granted beyond 120 days on full average pay may be reviewed by the Railways, and accordingly leave should be regularised, by the General Manager as Hospital Leave beyond 120 days on full average pay in terms of extant orders on the merit of each case for the intervening period from 1985 to 14-1-93.

The old cases will be regularised with the personal sanction of the General Manager with concurrence of the FA & CAO.

(Authority: Railway Board's Letter No. E(P&A)I-96/JCM/DC-1 dated 31-7-96.)"

The respondents (in Para 4 of their reply) have agreed that the applicant's sick

leave was considered under the provisions of Para 553 of IREC Vol. I.

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6.2. Upon a reading of Paras 553 and 554, the following transpires:-

Application of Para 553 is subject to three conditions;

- (i) That the disability is to be certified by the Authorised Medical Attendant as directly related to the performance of the particular duty;
- (ii) If the Railway servant has contracted such disability during service other than with a military force, the opinion of the authority competent to sanction leave is required;
- (iii) The period of absence, as recommended by the Authorised Medical Attendant, may be covered partly by special disability leave and in part by any other kind of leave and, that, such special disability leave granted on leave average pay shall not exceed 120 days.

The respondents have argued that the applicant was not covered by the provisions of Para 553 of IREC Vol. I on account of the following reasons:-

- (i) The Chief Health Director, Howrah had certified that the case is not a HOD case.
- (ii) Joint inspection was held and the said Inspection Report has distinctly clarified that the case was not 'HOD' Case on the ground that there was no risk involved in the assignment delegated to the applicant.
- (iii) The applicant was referred (after the accident) to B.R. Singh Hospital, Sealdah, with a G-8 memo whereas HOD reference requires a G-3 memo.
- (iv) The sick period against the applicant i.e. on and from 23.9.2004 upto 31.7.2008 has been treated as Leave on Average Pay, Half Leave Average Pay, Leave Not Due (LND) and Leave Without Pay respectively as per his leave record.

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Para 553 essentially refers to assignments that involves an element of risk, and, as per Para 553 the special disability leave is applicable wherever the accident/injury/sickness enhances the risk liability of such assignments.

Admittedly, the applicant was working as a Booking Clerk, a designation which has not been classified as a risky assignment.

Although the applicant has claimed that obtaining materials from another office was not part of his duties, the respondents have countered his denial by stating that the services of a Booking Clerk may be used for other duties. Neither parties, however, have established to our satisfaction that the act of obtaining delivery of materials from a store deserves to be classified as a "risky assignment".

6.3. We next study the contents of Para 554 of IREC Vol. I, which basically refers to hospital leave.

We derive from the President's decision 1 wrt Para 554 that General Managers are empowered to relax the provisions in individual cases subject to personal review by CMO and recommendations of the FA & CAO. The "President's decision" 2 also refers to the fact that Divisional Rail Managers (DRMs)/Chief Workshop Engineers (CWEs) are empowered to relax the provisions of Rule 554-R.I, 1985 edition, in individual cases, meriting sanction of Hospital leave beyond a period of 120 days or leave salary.

The applicant had appealed to the Divisional Railway Manager on 8.8.2016 followed by reminder dated 14.12.2016 (Annexure A-8 and A-9 to the O.A.) for reconsideration of the Sr. Divisional Personnel Officer, Howrah 23.9.2013, which has not yet been responded to.

6.4. While the applicant has argued that the investigation team did not collect relevant documents, police report or evidence of witnesses to the accident, the investigation team of the respondent authorities has rejected his case on the ground that the applicant was not deputed to an assignment that ordinarily, would be



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associated with an element of risk liable to be enhanced on account of injury/illness incurred in performance of duties.

7. The applicant's representations remain unanswered. We would hence direct respondent No. 1 in the instant O.A., who is the concerned Divisional Railway Manager, to examine the plea of the applicant dated 8.8.2016 and 14.12.2016 respectively (at Annexure A-8 and A-9 to the O.A.), if received at his end, in accordance with law, and particularly in the context of Paras 553 and 554 (as extant at the material point of time) of the IREC Vol. I. The applicant may be heard in person.

In the course of deciding on such representation, the said respondent authority may obtain advice/approval from competent authorities, if so required, and, decide within a period of 12 weeks from the date of receipt of a copy of this order. The decision arrived at should be conveyed in the form of reasoned and speaking order to the applicant forthwith thereafter.

8. With these directions, the O.A. is disposed of. No costs.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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