

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI



O.A.NO.2471/2001

Tuesday, this the 19th day of August, 2003

Hon'ble Shri Shanker Raju, Member (J)

Smt. Sunita Yadav
wd/o Lt. Sh. Satish Yadav
r/o WZ-429, Madipur Village
New Delhi-63

..Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the General Manager
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager
Northern Railway Delhi Division
Near New Delhi Rly. Station
New Delhi
3. The Divisional Personnel Officer
Northern Railway Delhi Division
Near New Delhi Rly. Station
New Delhi
4. The Dy.Chief Mechanical Enginner (Diesal)
Northern, Railway Diesal Shed
Shakurbasti, New Delhi

..Respondents

(By Advocates: S/Shri H.K.Gangwani & Rajender Khatter)

O R D E R

Applicant impugns respondents' order dated 14.5.2001 and has sought quashment of the same. Further directions have been sought to grant ex-gratia lump sum compensation of Rs.5 lacs to the applicant along with interest.

2. Uncontraverted facts of the case are that the applicant is the widow of late Shri Satish Yadav, who was working as Fitter in Diesal Shed, Shakurbasti, was deputed to Izzathnagar to deliver Railway materials, for which he was issued the special duty pass.

3. It is also not disputed that the applicant travelled along with one Shri Ashwani Kumar Tech. Grade-III in the train at Kanpur. Post mortem conducted could not ascertain the cause of death.

4. As per Railway Board's circular dated 5.11.1999, in view of Ministry of Personnel, Public Grievances & Pensions Department of Pension & Pensioners Welfare OM dated 11.9.1999, in case of death occurring due to accident in the course of performance of duty, Central Government Civilian Employees are to be paid an ex-gratia lump sum amount of Rs.5 lacs.

5. Feeling aggrieved by the non-consideration for grant of ex-gratia lump sum compensation, the widow of the deceased employee filed OA-168/2001, wherein, by an order dated 22.1.2001, pending representation of the applicant was directed to be disposed of by a detailed and speaking order.

6. In compliance of the above, by an order dated 14.5.2001, the claim of the applicant was rejected by the respondents, as the death had not occurred due to an accident, giving rise to the present OA.

7. Learned counsel of the applicant, Shri Yogesh Sharma contends that the applicant was performing official duties, for which he was issued a railway pass and during the transit to Izzatnagar, railway employee



died as such the widow is entitled for ex-gratia lump sum compensation. According to Shri Sharma, the deceased employee was on official duty.

8. Shri Sharma, by relying upon the decision of the Guwahati High Court in National Insurance Co.Ltd. & others v. Sabita Gope & others, 1999 (3) SLR 555, contends that definition of accident and its common meaning cannot be defined in a formula but depends on by customs and as the accident, i.e., unnatural death of the applicant, had a casual connection with the employment, the widow is entitled for ex-gratia lump sum payment. He further places reliance on the decision of the Division Bench of Mumbai High Court in Dhagubai v. General Manager, Central Railway, V.T., Bombay, AIR 1955 Bombay 105 (Vol.42, C.N.28) to substantiate his plea.

9. Shri Yogesh Sharma also places reliance on a decision of the Apex Court in Madan Singh Shekhawat v. Union of India & others, AIR 1999 SC 3378 contending that disability incurred during travel to home town on casual leave would entitle disability pension.

10. Referring to the evidence of co-passenger, it is stated that the Railway servant died in an accident and as such, his family is entitled for ex-gratia lump sum compensation.

11. On the other hand, learned counsel for respondents S/Shri H.K.Gangwani and Rajender Khatter, despite not denying the jurisdiction of the Tribunal, objected to the jurisdiction of this Court, it is stated

(4)

that being not a condition of service and not a service matter, compensation would have been dealt with in an appropriate forum, as the Tribunal has no provision under the Administrative Tribunals Act, 1985 as to recording of evidence in case of any disputed question of facts. Under Rule 14, this court has no jurisdiction to deal with the issue.

12. On merits, it is stated that although the applicant was deputed to deliver the railway material at Izzatnagar and was to travel through the shortest route, instead followed the circuitous route by travelling in a special train carrying All India Railway Men's Federation Members. The purpose of boarding the train was against the rules and conduct of carrying out duty was not bonafide.

13. Learned counsel further stated that for grant of ex-gratia lump sum payment, relevant consideration would be an accident, as the applicant dies his natural death and has suppressed that he had been suffering from fever before being deputed to Izzatnagar. There is no casual connection between the official duty performed and cause of death, which disentitles the widow for compensation.

14. Referring to the statement recorded from the railway employee's colleague Shri Ashwani Kumar, it is stated that there has been no delay in statement. The negligence imputed against Dr. A.K.Singh was gone into an inquiry and he was acquitted from the criminal charges.

230

In this view of the matter, it is stated that the death was due to natural causes and not in pursuance of an accident.

15. Referring to Section 124A of the Railways Act, it is stated that within the definition of passenger, railway servant on duties also included and any compensation to be paid to the widow should be viewed within the purview of the Railways Act and as per the proviso, any natural cause or disease shall not be covered under the accident.

16. Learned counsel relied upon the decision of the Apex Court in Regional Director, ESI Corporation & another v. Francis de Costa & another, (1996) 6 S 1 to contend that injury caused by accident even when the employee was going to attend official duty has no reasonable relation with the performance of duty and in such an event, he is not entitled to the compensation.

17. In rejoinder, the applicant reiterated her contentions taken in the OA.

18. I have carefully considered the rival contentions of the parties and have perused the material placed on record. Insofar as the question of jurisdiction is concerned, the ex-gratia lump sum compensation to be paid to the Government servant, who dies in harness, has been brought about through an amendment to the Extra-ordinary Pension Rules and as one of the service conditions the

(6)

lump sum payment and compensation is a service matter under Section 14 of the A.T. Act, 1985, the preliminary objection raised is overruled.

19. However, on merits, any compensation paid shall have a bearing on special Act of the concerned Ministry. Railways Act, 1989 and more particularly Section 123 defines accident as an accident referred to in Section 124. According to which, accident can be either on account of collision between trains, derailment or other accident to a train on account of neglect or default on the part of the railway administration.

20. As per Section 124 of the Act *ibid*, compensation is payable on account of an accident but as per proviso clause (e), any injury or death caused due to natural cause would not be an injury in pursuance of an accident. In the explanation attached to the aforesaid passenger included a railway servant on duty.

21. As far as OM dated 11.9.1999 is concerned, in para 5, the ex-gratia lump sum compensation of Rs.5 lacs is to be paid to deaths occurred due to accidents in the course of performance of duties. Vide the aforesaid OM dated 11.9.1999, the conditions have been laid down to govern the payment of ex-gratia lump sum payment including guide-lines and as per illustrative examples of cases included as accident in OM dated 11.9.1999, the death in train accident of personnel undertaking official duty as well as death occurred as a result of an accident while travelling in a public vehicle or otherwise of a group 'D' employee deputed on field duties.

22. The word "accident" as per Judicial Dictionary 13th Edition by Shri K.J. Aiyar has been defined as an event or occurrence unforeseen and with reference to Workmen's Compensation Act, some expected event happening without design. Further, it has been defined as an unexpected event with trace of injury. As per the established law, an injury caused by an accident arising out of employment, it is to be established that accident had occurred on account of the risk which is an incident of an employment and is connected with the employment arising out of it. Moreover, the Guwahati High Court in Sabita Gobe's case (supra), though meticulously deliberated upon the definition of accident in its literal meaning and at last comes to the conclusion that it has to be construed in wide canvass depending on the context, keeping in mind the original and popular sense. In nutshell, an accident is an unexpected event, which has some unexpectedness and cannot be a natural consequence. A death on illness cannot be treated as an accidental death. However, an attempt has been made to contend that the accident has taken place, which caused the death of the railway employee during the course of duty having a casual connection, entitles him for ex-gratia lump sum compensation. The resort to Madan Singh Shekhawat's case (supra) is misconceived, as therein the employee was travelling at his own expenses but the death had occurred on an accident while the petitioner was alighting from train.

23. In the conspectus of the above and in the light of the definition assigned through illustrative cases to an accident, as per OM dated 11.9.1999 death, for the purpose of ex-gratia lump sum compensation, has to occur on account of an accident. The accident, in its literal and grammatical meaning for the purpose of construction, refers to a train accident. Applying the above in the conspectus of the present case, firstly the applicant had gone on a circuitous route and instead of proceeding to Izzatnagar directly, he travelled in a train to Kanpur for onward journey to Izzatnagar. As per the statement of Shri Ashwani Kumar, the person travelling along with the deceased employee, when it was found that the deceased and Shri Ashwani Kumar have arrived at a wrong place, tried to wake him up, was found dead. There is no iota of an accident in the death. It was on account of illness or a natural cause. However, on post mortem, though all the ingredients and components of examination have pointed towards the natural death but the cause of death could not be ascertained. However, the cause of death has not been shown to be on account of an accident. What has been covered in OM dated 11.9.1999 for entitlement of ex-gratia lump sum payment is death due to an accident. As no accident had taken place within the meaning of Railways Act, 1989 and as per the aforesaid OM, the case of the applicant is a case where in performance of official duties, he died a natural death and the death had not taken place due to accident. This may be a misfortune for the applicant but law has to take its own course. Established norms cannot be elongated as to make it redundant. The simple grammatical construction of the provision clearly indicates that the

234

(9)

accident is to be construed in its common and literal meaning which, according to the established definition, is an unexpected event resulting in injury. As circumstances do not exist in the death of the deceased, the claim of the applicant, for ex-gratia lump sum payment cannot be brought within the ambit of OM dated 11.9.1999. As such, the OA is found bereft of merit and is accordingly dismissed.

S. Rajm

(Shanker Raju)
Member (J)

/sunil/