IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1524/94 198
~~T.A. No.~~

30

DATE OF DECISION 24/02/98

Sh. Laxmian Das Applicant (s)

Sh. B. S. Mainee Advocate for the Applicant (s)

Versus

UNION OF INDIA & Others Respondent (s)

Mrs. B. Sunita Rao Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. R.K. AHOOJA, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ~~Yes~~/No
2. To be referred to the Reporter or not ? Yes.

(R.K. Ahooja)
Member (A)

Central Administrative Tribunal
Principal Bench

O.A.No.1524/94

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 4th day of February, 1998

Shri Laxman Das
Ex-Electric Chargeman
under Sr. Divl. Electrical Engineer (TRS)
Locoshed, Tughlakabad. ... Applicant

(By Shri B.S.Mainee, Advocate)

Vs.

Union of India through

1. The General Manager
Western Railway
Bombay.

2. The Divl. Rly. Manager
Western Railway
Kota.

3. The Sr. Divl. Electrical Engineer (TRS)
Electric Locoshed
Tughlakabad. ... Respondents

(By Mrs. B.Sunita Rao , Advocate)

O R D E R

The case of the applicant is that while posted as an Electric Chargeman (P) in Electric Locoshed, Tughlakabad he met with an accident on 30.1.1991, while proceeding to duty, on account of which he suffered serious injuries and was shifted to Northern Railway Hospital, Queens Road, Delhi. An accident report was also submitted by the Sr. Divisional Electrical Engineer under Workmen Compensation Act, 1923. On recovery from serious injuries the applicant was sent for medical examination and was medically decategorised. He remained on sick list w.e.f. 30.1.1991 to 30.10.1992 and was paid full pay from the date of his accident to February, 1993. He was, however, retired w.e.f. 6.4.1993 vide Annexure-A4. He is aggrieved that the respondents issued an order dated 18.1.1993 for treating the sick period of the applicant as 120 days on full average pay, 306 days on half pay and 152 days on leave due. The applicant submitted a

representation against the aforesaid order on 6.4.1993 and another on 24.5.1993. In the latter, he also sought the consideration of his case in terms of Railway Board's instructions dated 28.11.1991 whereby the General Manager is competent to allow payment of salary beyond 120 days on full average pay. The applicant says that instead of considering his representations the respondents have recovered a sum of Rs.11,339/- from his Gratuity on account of so called over payments. He has come before this Tribunal praying that the above mentioned amount be refunded to him with 18% interest, that he should be granted his due increments in December, 1991 and December, 1992 and he should be given 20% benefit as a result of the PPD suffered by him.

2. The respondents in reply have stated that the applicant had suffered a Scooter accident in Sadar Bazar at about 7.25 A.M. while his duty hours began at 8.00 A.M.. The respondents say that there is no nexus between the injury and the discharge of his duties and therefore he was not entitled to the benefits claimed by him. His case of regularisation of sick leave was dealt with under the Rules. As over payments had been made, the recovery was effected from his Gratuity.

3. I have heard the counsel on both sides. Shri B.S.Mainee, learned counsel for the applicant has urged in main two points in favour of the applicant. Firstly, he says that since the applicant was on his way to duty, when he suffered the accident, he has to be treated as 'hurt on duty' on the basis of notional extention of the work place. Secondly, the learned counsel has urged, that the recovery of the amount was made without giving him a notice. On both counts, however, I find little to commend the case of the applicant.

4. In support of his argument, regarding notional extension, at the work place, Shri B.S.Mainee cited the judgment of the Supreme Court in **S.S.Manufacturing Co.** Vs. **Bai Valu Raja**, **AIR 1958 SC 881**. I have gone through the aforesaid order of the Supreme Court and I find that the ratio of the same does not help the case of the applicant. In the aforesaid case the workers of the Petitioner Company had been drowned while crossing a creek in a public ferry boat on their away back from the working place. In its order the Hon'ble Supreme Court observed as follows:

"As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension."

In the facts and circumstances of the case the Supreme Court held that the employer could not be made liable for the loss. In the present case also I find on facts that injury suffered at a place far away from the place of work, when it was not even clearly established that the applicant was on his way to his place of work, cannot be treated on the doctrine of notional extension of work place.

5. The learned counsel also cited a number of judgments to establish that the recovery of the so called over payments without affording an opportunity to show cause is bad in law. I find however from the facts of the case that the order to treat the period the applicant was in hospital as sick leave was issued prior to his date of retirement from service. The applicant also filed a representation against that order. The subsequent

representation was also submitted requesting that the General Manager, Railways should exercise his special powers in favour of the applicant. The recovery from the Gratuity of the applicant was a natural corollary to the action of the respondents in treating the period of hospitilisation as sick leave and not treating it as a case of 'hurt on duty'. The recovery of the over payments from the Gratuity of the applicant therefore cannot be considered as a recovery without notice. The applicant had ample opportunities to represent in the matter and he did in fact avail of those opportunities not only once but twice. The ratio of the various judgments cited by the learned counsel therefore do not apply in the facts and circumstances of the case.

6. In the light of the above discussion, I find no merit in the OA, which is accordingly dismissed. There shall be no order as to costs.

(R.K.AHOOJA)
MEMBER(A)

/rao/