

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DA NO.1626/90

DATE OF DECISION:24.8.90.

GENERAL MANAGER, NORTHERN RAILWAY

APPLICANT

VERSUS

SMT. BHOTI AND OTHERS

RESPONDENTS

SHRI B.K. AGGARWAL

COUNSEL FOR THE APPLICANT

CORAM:

HON'BLE SHRI T.S. OBEROI, MEMBER (J)

HON'BLE SHRI I.K. RASGOTRA, MEMBER (A)

ORDER

DA No.1626/90 has been filed by the General Manager, Northern Railway against the order dated 23.10.1989 passed by the Commissioner, Workmen's Compensation decreeing:

- (a) Compensation of Rs.19,200/-;
- (b) Penalty amounting to Rs.9,600; and
- (c) Interest @ 6% per annum on the amount of the compensation from 27.1.1977 till the date of actual payment to the widow and daughter of late Shri Govardhan, an employee of the Northern Railway who died on 28.1.1977.

2. The case of the applicant is that late Shri Govardhan was working as a casual labour Khalasi at the rate of Rs.9.82, under Permanent Way Inspector, Shakur-basti, Delhi with his place of duty at Rewari. On 21.1.1977, the deceased was sent to Secunderabad, along with Shri Ram Murti Mate, PWI on duty for some official work. Both the officials returned to Shakur-Basti on 26.1.1977, by Punjab Mail, at about 10.30 p.m. Shri Govardhan kept his luggage at the quarter of Shri Ram Murti Mate which was close to the Shakur-basti Station and expressed to his desire to Shri Ram Murti to go/his home near Sampla and to

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come back next morning to collect his duty pass for journey to Rewari. Shri Ram Murti did not permit the deceased to go to his village near Sampla and directed him to attend the office of the PWI for taking his duty pass for onward journey to Rewari. The deceased is said to have left Shakur-basti, in the night itself, to undisclosed destination (possibly for his village). On 27.1.1977 the deceased did not turn up in the office of PWI, Shakur-basti. It later transpired that the deceased had succumbed to his injuries, on 28.1.1977, in Hindu Rao Hospital, due to injuries sustained by him on 27.1.1977, on account of fall from the running train, near COD Signal.

Advocate, Shri B.K. Aggarwal, appearing for the applicant on 16.8.1990 contended that the deceased had deserted his duty, of his own accord, to go to his home town, without permission from his superior and that at the relevant time of the accident, the deceased was in the train coming from his home town, when he was not at all on duty. It was further submitted that 27.1.1977 was the rest day of the deceased and therefore he was not on duty, on 27.1.1977 when he met with the accident. The main plank of the argument of the applicant is that late Shri Govardhan's duty ended after he reached Shakur-basti, from Secunderabad. He voluntarily went away to his own village, even though permission to leave Shakur-basti was denied to him by his superior and that 27.1.1977- the day of the accident was rest day of the deceased. Shri Govardhan was therefore not on duty at the time he sustained injuries on 27.1.1977 and therefore, the order passed by the Commissioner of Workmen's Compensation cannot be sustained in law as his death is not arising from duty.

3. After having heard the learned counsel, we feel that this is a case which can be decided at the admission stage itself. We have, accordingly, gone through the documents

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filed by the applicant as also the order of the Commissioner, Workmen's Compensation, Delhi, carefully. The undisputed facts are that:

- i) late Shri Govardhan had come back to Shakur-basti on 26.1.1977 from Secunderabad;
- ii) his headquarter viz. place of duty was Rewari;
- iii) He was called from Rewari to Shakur-basti and deputed to Secunderabad.
- iv) He reported back at Shakur-basti late in the evening on 26.1.1977 on return from Secunderabad.

The obvious inference from the above facts is that his duty cannot be said to have terminated at Shakur-basti. His journey from Rewari - Shakur-basti - Secunderabad was on duty. Similarly, his return from Secunderabad - Shakur-basti - Rewari would have to be on duty. Shakur-basti was not his headquarter. He was only in transit. He could not proceed to Rewari, as he had to collect railway pass from the PWI - Shakur-basti on 27.1.1977. The duty therefore, did not terminate when he was in transit.

It has been urged by the applicant that late Shri Govardhan went away from Shakur-basti, against the direction of his superior, not to go to his village on 26.1.1977, after return from Secunderabad. Even if 27.1.1977 was a rest day for the deceased in the normal circumstances, the deceased cannot be construed to have availed of the rest day, as, first, he was not permitted by his superior to leave Shakur-basti, and secondly, he was in transit and not at his headquarter Rewari. There is, therefore, no shadow of doubt that the deceased was on duty on 26-27.1.1977. It was on 27.1.1977 that the deceased met with an accident while travelling in the train bringing him to Shakur-basti to attend the office of PWI for taking the duty pass to his headquarter, Rewari. It is not very material whether

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he slept at Shakur-basti station or a few Kms. away therefrom. The Railway Administration - the applicant has further contended that they have been attending to this case with utmost expediency in the court of Commissioner, Workmen's compensation, New Delhi and that the adjournments from time to time were sought by the petitioners themselves. Even as late as on 29.1.1985, the application was amended by the petitioners (respondents in the OA) with the permission of the Court of Commissioner. It is, therefore, averred that there is no case of levy of penalty on the applicant and the direction to pay interest from 1977 till the date of actual payment. The Commissioner, Workmen's Compensation, in his judgement dated 23.10.1989, has dealt with this aspect and observed:-

"In accordance with the provisions of the Workmen's Compensation Act, Section 4, the respondents employers are required to deposit the due compensation as and when it became due and within 30 days of the accident. But in the instant case the respondents have failed to do so and have instead driven and dragged the poor widow of the deceased workman to seek redressal into this court thus far. Therefore, it is a fit case wherein the respondents need to be burdened with the penalty and interest.".

In view of the above, we do not find any merit in the case for reviewing the penalty, and interest awarded by the Commissioner. We are also in agreement with the Commissioner, Workmen's Compensation that the death of late Shri Goverdhan is to be regarded in the course of employment when he was on the way to the office of PWI, Shakur-basti to collect Railway Pass to proceed to his headquarter at Rewari. The judicial pronouncement relied upon by the Commissioner, viz. Mackinnon Mackenzie Vs. M. Issak, AIR 1979 SC 1906, Saurashtra Salt Mfg. Com. Vs. Bai Veli Raju, AIR 1958 SC 881, and BEST

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laid all the strength to the conclusion drawn by him that the death of late Shri Govardhan arises from and was in the course of his employment.

In view of the facts and circumstances of the case, the application is dismissed as being without any merit, warranting judicial-review.

Dalip
(I.K. Rasgutra)

Member (A) 24/8/90

Oberoi 24/8/90
(T.S. Oberoi)
Member (J)