Central Administrative Tribunal
Principal Bench: New Delhi

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(24)

OA No. 2611/91

New Delhi, this the 20th day of March, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member (A)

Om Chandra Srivastava
s/o late Shri Jugal Kishore Srivastava,
R/o C-273, Sector 9,
New Vijay Nagar,
Ghaziabad (UP) ....Applicant

(By Shri B.B.Raval, Advocate)

Versus

1. Union of India through
   Chairman,
   Railway Board,
   Rail Bhawan,
   New Delhi.

2. The Divisional Railway Manager,
   Northern Railway,
   Allahabad.

3. The Senior Divisional Elec.Engineer(RS)
   Northern Railway,
   Ghaziabad. ...Respondents

(By Shri B.K.Aggarwal, Advocate)

O R D E R

By Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J):--

The petitioner in this case initially joined as Laboratory Khalasi at Diesel Shed, Mugal Sarai in the year 1969 and subsequently posted in the year 1976 to Ghaziabad Electric Loco Shed as Laboratory Assistant. After working there for many years, he has been given the additional duty to maintain the attendance register and order to this effect was issued by the Laboratory Superintendent, Electric Loco Shed, Ghaziabad. On 26.3.1990 at about 4.00 p.m., he is said to have been man-handled by one Niranjan Lal, Electric Khalasi - Tokan No. 240 and the reason for

such incident is stated to be that the petitioner had wrongly marked the said Shri Niranjan Lal as absent in the attendance register.

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2. The said Shri Niranjan Lal is said to have inflicted serious injuries on the petitioner and it was the colleague of the petitioner who lifted him and taken to the Divisional Medical Officer, Ghaziabad wherefrom he was removed to the Central Hospital (Railways), New Delhi and was treated as indoor patient for about a month. After discharge, under advise, he was taking rest but again he was hospitalised in the Central Hospital (Railways) from 22.6.90 to 29.6.1990 and the petitioner states that he continued to be under treatment till finally he was certified to be fit to resume his duty on 11.9.1990. Accordingly, he joined for duty on the said date.

3. According to the petitioner, these facts stated by him, have been verified by the inspection report submitted to the Chief Electrical Engineer, Northern Railway, Baroda House, New Delhi by the Senior Divisional Electrical Engineer alongwith some other superior officers. Para no. 2 of the said report states that the petitioner was man-handled on duty by a Laborataory Khalasi of Electrical Loco Shed, Ghaziabad due to which his left knee was fractured and he was hospitalised in the Central Hospital (Railways), NewDelhi. Senior DEE (RS) Ghaziabd has been requested by the undersigned to take suitable action against the said Laboratory Khalasi so that such type of serious happendings may not occur in future. Reliefwise the petitioner is being provided at Electric Shed, Ghaziabad to cope up with the work.

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4. The short issue to be decided in this case is whether the petitioner is entitled to treat the period of absence between 27.3.1990 to 11.9.1990 as LAP or whether he is entitled to treat the same period as "hurt on duty". It is stated that the respondents have already treated this period of 169 days as LAP instead of "hurt on duty".

5. The respondents in their counter submitted that theperiod cannot be treated as'hurt on duty'because that position will be available to the petitioner only in case there was an accident. Admittedly the incident was not equivalent to a normal type of accident and as such the period cannot be treated as 'hurt on duty'. The contention of the respondents is that the injury that has been suffered by the petitioner was due to a scuffle or a quarrel and no quarrel takes place without contribution from the petitioner himself and as such incident cannot be treated as an accident.

6. In support of the contention the learned counsel for the petitioner stated that the term 'accident' has been defined in section 3 of the Workmen Compensation Act and it is settled law that the expression accident generally means some unexpected event/happening without design. To decide whether a case is an accident, it must be regarded from the point of view of the employee who suffers it and if it is unexpected and without design on his part it might be an accident. Undoubtedly the description given of the incident both by the petitioner as well as in the inspection report is that the attack came from the colleague from behind and he was at the

receiving end all through out. Therefore, the incident once regarded from the point of view of the employee who suffered is undoubtedly an unexpected one and there is no doubt that the description of the event also shows that it was without any design from the part of one who has suffered in the incident. Even though the cause of incident may be right or wrong that the petitioner had wrongly marked the absence of the colleague, who attcked him, has no contribution to the actual incident. We are supported by a similar interpretation given by the Madras High Court in case of Janaki Ammal & Ors. vs. Divl. Engr.Highways reported in 1956(II) LLJ Madras at page 233.

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7. The second aspect that has to be considered here is whether the injury suffered has arisen in the course of as well as out of the employment of the petitioner and while deciding whether the employee was acting within the scope of employment it must be established that the employee was at the time of injury engaged in duty assigned by the employer and in pursuance of that duty he proceeded to act hence suffered the injury. In case it was shown that the employee was not doing something for his own benefits or accommodation or out of the place of employment etc. the injury received at such instances cannot be said to be the one arisen in the course of and out of employment. This issue also has been decided in the above referred case. Justice Sri Ramaswami relied upon the decision of Lord Summer who observed in Lanchashire and Yorkshire Railway vs. Highley (LR (1917) A.C. 372) as follows:

> "Whether in any given case an accident arises on the one hand out of the injured person's employment, although he has conducted himself in it carelessly or improperly, or, on the other hand arises not out of his employment but out of the fact that he

has gone outside the scope of it, or has added to it some extraneous peril of his own making, or has temporarily suspended it while he pursues some excursus of his own, or has quitted it altogether, are susceptible of different answers by different minds and are always questions of some nicety..... I doubt if any universal test can be found.....In the last analysis each casee is decided on its own facts. There is however in my opinion one test which is always at any rate applicable.. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, the accident arose out of his employment. If nay, it did not, because what it was no part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment".

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Similarly in Thom V. Sinclair (LR (1917) AC 127) it was pointed out that the injury must not only arise "in the course of" but also "out of" the employment. Prfoof of the one without the other will not bring a case within the Act. While an accident arising out of an employment almost necessarily occurs in the course of it, the converse does not follow. An injury which occurs in the course of the employment will ordinarily arise out of the employment. But not necessarily so. The expression applies to the employment as such to its nature, its conditions, its obligations and its incidents. It must appear that there is some causative connexion between the injury and comething peculiar to the employment. The nature of the occupation may sometimes supply casuative relation. But it is only as to some employments that this is so. The Court is directed to look at what has happened proximately, and not to search for causes or conditions lying behind as would be the case if negligence on the part of the employer had to be established.

In deciding whether the employee was acting within the scope of employment, the Courts resort to the old rules respecting the time and place of the calamity, temporary stoppage of labour, responding to physical demands, eating, drinking, visiting a latrine or going from the place of employment. To bring his case within the Compensation Act the employee must show, as he was required to establish

or under the Common Law, that he was at the time of the injury engaged in the employer's(?) business, or in furthering that business and was not doing something for hiw own benefit or accommodation."

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8. In the final analyses, it is obvious that the injury suffered by the petitioner has been an injury as an accident as far as the petitioner is concerned who has actually suffered the injury and there was nothing to show that he has contributed to the said incident from his part and it is also obvious that the said injury he suffered was not only during the course of the employement but it was an incident of the employment that by doing his duty one of his colleague got enraged and attacked him from behind. Resulting injury, therefore, is an injury which can be treated for the purpose of considering the type of leave he is entitled. We have no hesitation to hold that the duration of the leave as referred above will have to be treated as 'hurt on duty'. Ordered accordingly. There shall be no order as to costs.

(S.P.Biswas)
Member (A)

(Dr.Jose P. Verghese)
Vice-Chairman(J)

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