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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 10TH DAY OF APRIL, 2002

Original Application No.446 of 1997

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.C.S.CHADHA, MEMBER(A)

Subhash Chandra Gupta, son of
Manik Chandra Gupta, Shahjahanpur
Railway Station, Moradabad Division.

.. Applicant

(By Adv: Shri N.K.Srivastava)

Versus

1. Union of India Ministry of Railways through its Secretary New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. Divisional railway Manager, Northern Railway, Moradabad.

.. Respondents

(By Adv: Shri G.P.Agrawal)

O R D E R (Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this application u/s 19 of A.T.Act 1985 the applicant has prayed for a direction to the respondents to disburse the amount mentioned in pay order No.782285 dated 30.9.1996 amounting to Rs35035.50p to the applicant as compensation. He has also prayed for a direction to the respondents not to deduct the amount of Rs10,691/- from the whole amount of compensation for the awarded amount of Rs46042.50p. He has also prayed for a direction to pay the interest @ 12% per annum for the delayed payment.

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The facts of the case giving rise to this application are that applicant was serving as TTE. On 7.1.1993 he was given duty in coach No. S-2 (Compartment No. 16708) Dn. Kashi Vishwanath Express from new Delhi to Shahjahanpur. While on duty in coach no. S-2, and the Kashi Vishwanath Express reached in between Moradabad to Dolpatpur railway station a powerful bomb blast occurred at about 17.30 on 7.1.1993 in which applicant suffered serious injuries and he lost his left eye and left ear. He was admitted in railway hospital Moradabad. Thereafter he was shifted to Central Hospital, Northern Railway Basant Lane, new Delhi where he remained under treatment upto 2.2.1993. Thereafter he was relieved for complete rest. On 19.5.1993 applicant was given fitness certificate by railway doctors and he joined duty on 20.5.1993. The applicant claimed compensation for the injuries he suffered in the aforesaid bomb blast.

The respondents considered the case of the applicant and a medical board consisting four senior doctors examined the applicant on 12.4.1994 and they recommended 40% loss to left eye and 10% loss to left ear i.e. total loss to the extent of 50%. After the applicant made several representations respondent no. 3 Divisional Railway manager ordered for the payment of compensation Rs 46,042.50p. ^{That} He also ordered ~~Rs 10,691/-~~ shall be deducted from the compensation amount, a true copy of the order has been filed as (Annexure 10). A copy of the payment order has been filed as (Annexure 11).

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The grievance of the applicant is that the aforesaid amount has not been paid to the applicant. Shri N.K.Srivastava learned counsel for the applicant has submitted that as the amount was assessed under the Workmen Compensation Act without the interception of the Prescribed Authority, the applicant was entitled to receive the amount which has been illegally withheld. It is also submitted that the applicant was a workman under the Workmen Compensation Act 1923 and was entitled to receive compensation as he was injured while discharging the duty during the course of employment.

Shri S.D.Kapoor and Shri G.P.Agrawal learned counsel for the respondents, on the other hand, submitted that the applicant was not workman and he is not entitled for any compensation under the act. It has also been submitted that the authorities under a bonafide belief that applicant comes under the definition of workman assessed the amount of representations made by the applicant. When the authorities were apprised of the ~~true~~ legal position, they refused to pay the amount, as it would have been contrary to the legal position.

We have carefully considered the submissions made by the counsel for the parties. On behalf of the respondents counter affidavit has been filed. There is hardly any dispute about facts of the case. At page 5 of the counter reply the respondents have concluded their objection as under:-

"Accordingly, after completion of certain formalities a pay order No.782285 dated 30.9.1996

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amounting to Rs35351.50p for payment of compensation as a result of accident taken place on 7.1.1993 in 50% assessment of PPD in favour of the applicant was sent to Sr.Divisional Accounts Officer/N.Rly, Moradabad vide letter No.729 E/ET-1/TTE/SCG/95 dated 8.10.1996 for audit and early payment alongwith a statement of his average pay. The authority of the accounts thoroughly examined and considered the entire matter in the light of extent rules and as well as the provisions of workmen's Compensation Act 1923, and recorded their objection, which runs as;

As per schedule II of WCA-1923
TTE's staff are not covered by the list of person under the definition of workmen. As such the category of workman as defined in Schedule II which covers the TTE category may be placed on record for better appreciation of the proposal."

The amount was refused to be disbursed to the applicant for the aforesaid objection. In our opinion, even if the applicant was not a workman under the Workmen Compensation Act, as he was employee of the Railways he could be entitled for compensation under general law for the injury sustained during the course of employment as TTE. The compensation was determined independently of the provisions contained in the Workmen Compensation Act. In case the respondents authorities had ^{not} accepted the request of the applicant and determined the amount of compensation, he could have filed a suit for payment of compensation from employer, being employee and suffered injuries

during the course of employment but after Administrative Tribunals Act came into force for all service matters an employee could approach this Tribunal as provided u/s 14 which says:

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts(except the Supreme Court in relation to service matters and pertaining to service of such member). It cannot be disputed that the compensation claimed by the applicant was pertaining to service as he suffered during the course of employment.

Thus even without the aid of the provisions of Workmen Compensation Act the applicant can claim compensation.

Shri G.P.Agrawal also submitted that u/s 125 of the Railways Act 1989 applicant can approach the Claims Tribunal and this application is not maintainable. However, we do not find any force in this submission as Chapter XIII under which section 125 falls contains provision only for liability to Railway Administration for death and injury to passengers due to accident. As the applicant was not a passenger. he could not approach Claims Tribunal. In the circumstances, in our opinion applicant is entitled for relief.

For the reasons, stated above, this OA is allowed. The respondents are directed to pay the applicant the amount of Rs35,035.50p as calculated by them towards compensation for his injuries. The

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amount shall be paid within two months from the date of communication of this order. However, there will be no order as to costs.

C. G. Gaoche

MEMBER(A)

R. S. S.

VICE CHAIRMAN

Dated: 10th April, 2002

Uv/