

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 3rd day of Dec 2010.

Original Application No. 510 of 2008
U/s 19, Administrative Tribunal Act 1985

Hon'ble Mr. S.N. Shukla, Member (A)

Mahrani Deen Yadav, aged about 47 years,
S/o Sri Ram Autar Yadav, R/O 234/1 Teliyarganj, Allahabad.

..... Applicant.

By Advocate: Sri K.P. Singh

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Director General of Ordnance Services,
(O.S.-8C) (II) MGO'S Branch Integrated HQ Of MOD (Army), DHQ
P.O., New Delhi-110011.
3. Commandant, COD Chheoki, Allahabad.
4. Personnel Officer (Civ), Ordnance Officer Civilian (A), C.O.D.
Chheoki, Allahabad.

..... Respondents.

By Advocate: Shri V.K. Pandey

ORDER

The facts pleaded are that the applicant was a messenger in the employment of COD Chheoki on 09.12.2006 while returning from work the applicant met with an accident resulting into hospitalization in a private hospital. The applicant informed the Depot authorities and requested for treatment as advised. He was under treatment w.e.f. 09.12.2006 to 28.06.2007. After which he rejoined duty.

2. The applicant requested for grant of hospital leave. After several representations he was informed that his request for hospital leave was

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considered by the Army Headquarters but he was found to be not eligible as per provisions contained in CCS (CCA) Leave Rules (Annexure A-1 and 2).

The hospital leave has been defined as under:-

(1)Entitlement-Hospital Leave is admissible on medical certificate from AMA to Group 'D' staff and such of those Group 'C' staff whose duties involve the handling of dangerous machinery, explosive materials, poisonous drugs and the like, on the performance of hazardous tasks while under treatment in a hospital or otherwise for illness or injury incurred in the course of such duties.

(2)Leave-Hospital Leave may be sanctioned for any period considered necessary by the sanctioning authority. This is not debited to leave account and may be combined with other kinds of leave subject to the total period being limited to 28 months.

(3)Leave Salary- During the first 120 days of hospital leave, leave salary will be paid at the rate of pay drawn before leave and for the remaining period is 50% of pay. The leave salary will be reduced by the amount of compensation, if any, received under Workmen's Compensation Act". Rule 46 of Central Civil Services (Leave) Rules, 1972 reads as under:-

"46.Hospital Leave

(1)The authority competent to grant leave may grant hospital leave to-

(a)Class IV Government servants, and

(b)such Class III Government servants whose duties involve the handling of dangerous machinery, explosive materials, poisonous drugs and the like, or the performance of hazardous tasks, while under medical treatment in a hospital or otherwise, for illness or injury if such illness or injury is directly due to risks incurred in the course of their official duties.

(2)Hospital leave shall be granted on the production of medical certificate from an Authorized Medical Attendant.

(3)Hospital leave may be granted for such period as the authority granting it may consider necessary, on leave salary-

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(i) equal to leave salary while on earned leave, for the first 120 days of any period of such leave; and

(ii) equal to leave salary during half pay leave, for the remaining period of any such leave.

(4) Hospital leave shall not be debited against the leave account and may be combined with any other kind of leave which may be admissible, provided the total period of leave, after such combination, does not exceed 28 months.

(5) (a) In the case of a person to whom the Workmen's Compensation Act, 1993 (8 of 1923), applies, the amount of leave salary payable under this rule shall be reduced by the amount of compensation payable under clause (d) of sub-section (1) of Section 4 of the said Act.

(b) In the case of person to whom the Employees' State Insurance Act, 1948 (34 of 1948), applies, the amount of leave salary payable under this rule shall be reduced by the amount of benefit payable under the said Act for the corresponding period".

It seems some recovery may have been made as indicated in para 4.21 of the OA. This OA seeks the following reliefs:-

"To quash the order dated order No.120178/Estt-NI dated 17th March 2008 and letter No.120178/Estt/Ni dated 9th April 2008 issued by Ordnance Officer Civilian (A), Personnel Officer (Civilian), COD Chheoki, Allahabad".

3. The impugned orders at Annexure-1 and 2 do not specifically indicate any reason as to why the appellants claim for hospital leave during the period of hospitalization has been denied. The applicant, therefore, seeks to rely on certain rulings by different judicial forums in support of his claim for the said leave.

(i) to begin with reliance is placed in the case of *Shakuntala Bai Pandey*

(Smt.) Vs. National Thermal Power Corporation Ltd. read as under:-

"3. Appellant's husband was a workman employed with the respondent. He died in a road accident on March 31, 1989. The appellant requested the respondent, in terms of para 5.8 of the settlement, to employ either the appellant or her son. Para 5.8 is in following terms:

It is agreed that Management will provide employment to one dependent of each workman who is permanently disabled or dies as a result of accident while on duty on compassionate and humanitarian considerations. Dependent for this purpose will mean spouse of the employee, his/her son or daughter or legally adopted son or daughter only.

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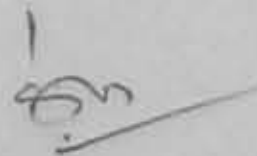
The respondent declined the request and as such the appellant sought a mandamus from the High Court under Article 226 of the Constitution of India. The High Court dismissed the writ petition by the following order.

Shri Namdeo for the petitioner. The petitioner's prayer is for appointment of her son or herself on a civil job in NTPC. She is widow of Shri C.P. Pandey who died while proceeding to join duties. He was an employee in NTPC. In view of the clear provision contained in Clause 5.8 of the memorandum of agreement between the employer and the employee, we are of the opinion that in rejecting the prayer the employer committed no error and we cannot entertain this petition and issue a writ for the relief claimed. All the same, in view of the fact that the deceased Shri Pandey died while he was proceeding to join his duties and in view of that fact that none of the heirs left behind by the deceased is employer anywhere. National Thermal Power Corporation may give a second thought to the matter and exhibit a more sympathetic attitude towards the petitioner and if possible accommodate her. The petition is accordingly disposed of.

4. The short question for our consideration is whether the appellant's husband died "while on duty". The case of the appellant is that her husband, while on way to join the duty, was unfortunately involved in an accident and died. The High Court observed in its order that "she is widow of Shri C.P. Pandey who died while proceeding to join duties" and Shri Pandey died while he was proceeding to join his duties...." In the facts of this case, it cannot be disputed that the appellant's husband died while he was on way to join his duty. Mr. Pai, learned Senior Advocate disputed the fact that the deceased was on his way to join the duty. We do not agree. The respondent never challenged the factual statement made before the High Court by way of review. We are of the view that when a workman becomes permanently disabled or dies in an accident while proceeding to the place of his duty from home or returning from the place of his duty to home, he should be deemed to have died or become disabled while on duty. No other view can be taken of such a situation. We, therefore, direct the respondent to offer employment in terms of para 5.8 either to the appellant or to her son by the end of February 1995. Either of them when appointed may join the service of the respondent-Corporation on March 1, 1995. The appeal is allowed. No Costs".

Reliance is also placed in the judgment and order dated 14.8.1996 in OA No.966 of 1999 *Bajinath Yadav Vs. Union of India and Others*. The relevant part of the order reads as under:-

"10. So far as the provisions of workmen's compensation Act are concerned, they have been incorporated in order to enlarge the scope of duty and for that reason, the word 'employment' has been used in place of duty. The term 'employment' has been given an extended meaning than the restricted meaning of 'work'. It is based on the Doctrine of Notional Extension. For this reason, a workman under Workmen's Compensation Act, remains a workman when he starts from his place of abode to reach the place of work and after the duty is over and he goes back to his place of residence. The Doctrine of Notional Extension was then introduced clearly by using the words



arising out of and in the course of employment.....The respondents, are therefore, directed to consider the application for grant of hospital leave and dispose of the same within 6 weeks from the date of receipt of the copy of the judgment. The O.A. is disposed of accordingly".

Further reliance is place on this Tribunal's decision in OA No.675/1999 dated 03.07.2001 in the case of Vishwa Nath Vs. Union of India and Ors. The relevant extract of the order reproduced as under:-

"4.The main controversy is whether the provisions under CSR 291 are applicable in the present matter or not and more over the provisions have been interpreted by the authorities concern in right prospective. CSR 291 runs as under:-

"291-An Engineer of the Marine Department, an employee in a Government Press, a subordinate employee (including a temporary or extra employee), in an Ordnance or Government Dockyard establishment a sense whether permanent or temporary incharge of a Government stallion, or public servant in a Commissariat establishment may during absence from work on account of injuries received in the course of his duty, be allowed full pay for one month, and thereafter half pay for three months :

Provided that in the case of a person to whom the Workmen's Compensation Act, 1923, applies, the grant of leave under this Article, shall be subject to the condition that the leave allowance payable shall be reduced by the amount of any compensation payable under section 4(1) D of the said Act."

5. A bare perusal of the above provisions and considering the application and the findings in OA 966 of 1990 rendered by this Bench of the Tribunal on 14.8.1996 I do not hesitate to hold that the provision have not only been wrongly applied for, but have also been misinterpreted. The applicant is said to have been sustained the injuries and consequent thereto hospitalized when he was on his way to work place and to report for the duty and, therefore, entitled to get the benefit under head hospital leave".

And finally the applicant's relied on the judgment and order passed in writ petition no.34554 of 2001 before the Hon'ble High Court of Allahabad which affirms this Tribunal's order in the case of Vishwanath and Another with the following findings:-

"The respondent no.1 had filed the Original Application alleging that he had sustained injuries, because of which he could not attend his duties from 9.2.1996 to 10.7.1996 and remained hospitalized during the said period. He was paid salary up to 30.6.1996 and not from 1.7.1996 to 10.7.1996 and instead of making payment of salary for the unpaid period the authorities deducted the salary of the petitioner from 9.2.1996 to 30.6.1996. Aggrieved the petitioner filed Original

Application before the Central Administrative Tribunal, Allahabad. The Original Application was decided in favour of respondent no.1. It is not in dispute that the respondent no.1 was hospitalized due to serious injuries and he was the employee of the petitioner. The dispute is only about payment of salary of about five months. It is not a fit case for exercise of discretion under Article 226 of the Constitution. It is a settled law that writ is a discretionary jurisdiction and we are not inclined to exercise our discretion in this case.

The writ petition is accordingly dismissed".

4. Learned counsel for the respondents on the other hand relied upon para 17 and 20 of the counter reply which reads as under:-

"17. That the contents of para 4.22 of the original application are misconceived and hence are denied. It is further submitted that since the applicant is working in the office of answering respondent in the capacity of a Messenger and the messenger comes under the category of Non-Industrial personnel. Thus the applicant does not handle dangerous machinery, explosive material, poisonous drugs and the like which is directly affecting his health, hence the applicant is not governed by Rules 46 of CCA (Leave) Rules.

20. That the contents of para 4.25 of the original application are misconceived and hence are denied and in reply thereto it is stated that the application in original application No.966/99 was an industrial personnel and was under Workmen Compensation Act and hence the order of this Tribunal in favour of that applicant is justifiable. But in the present case the applicant is not governed by industrial personnel as well as Workmen Compensation Act and hence the claim of the applicant for hospital leave is incorrect and he is not entitled for the same.

The issue for consideration before the Tribunal is as to whether the applicant can be denied the benefit of hospital leave for the reasons, as contended by the respondents that he was not handling of dangerous machinery and was also not an industrial personnel covered under Workmen Compensation Act and hence he does not deserve benefit of decision in OA No.966 of 1999.

5. A perusal of judgment and order of this Tribunal in OA No.675 of 1999 relied upon and contended by the counsel for the applicant is on similar facts as of that of the applicant. In that case also the applicant namely Vishwanath was a Carpenter in the Central Ordnance Depot (Chheoki) to

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that extent the condition of work i.e. the exposure or non exposure to dangerous machinery, explosive materials, poisonous drugs etc. are equally applicable/non applicable to the applicant before this Tribunal in this OA. In the said case the judgment and order of the Tribunal was upheld by the Hon'ble High Court. Similarly the circumstances in that case also identical in as much as the applicant there was on way to his report for duty and did not sustain injury while at work.

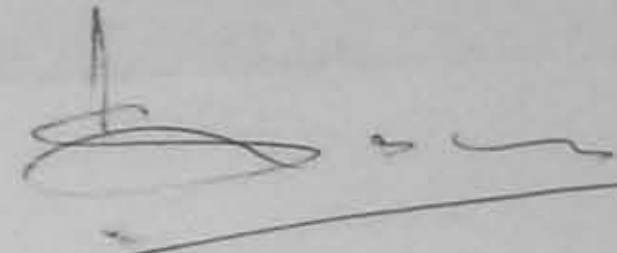
6. The Hon'ble Supreme Court in Shakuntala Bai Pandey's case (Supra) had held that *"when a workman becomes permanently disabled or died in an accident while proceeding to the place of his duty to home, he should be deemed to have died or become disabled while on duty."* No other view can be taken of such situation.

7. Heard counsel for the parties and perused the materials on record. Statement is made by Shri K.P. Singh, learned counsel for the applicant that hospitalization bills for the treatment of the employee was picked up by the employer and, therefore, there is no ^{rationale} ~~reason~~ in denying him the hospital leave. This Tribunal is firmly of the view that in view of the rulings cited above in identical or similar cases before this Tribunal, the Hon'ble High Court and Supreme Court, the applicant has to be treated as having sustained the injuries while on duty. Considering the fact that an employee of the same organization who is also apparently not involved in handling of dangerous material sustained injuries while extended the benefit of hospital leave by this Tribunal and affirmed by Hon'ble High Court of Allahabad and learned counsel for the respondents failing to bring to the notice of this Tribunal any other ruling to the contrary the applicant seems to succeed.

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8. In view of the above discussions, the applicant has successfully made out a case for grant of hospital leave as per rules. The respondent no.3/4 are directed to consider and grant hospital leave as per the rules and refund any deduction which may have been made from his salary within two months from the date of receipt of certified copy of this order.

9. The impugned orders dated Annexure A-1 and 2 are quashed and set aside. OA is allowed. No Costs.



Member-A

/ns/