

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of order : 24.03.2000

O.A. No. 339/95

Pavan Kumar Khatri son of Shri Chhagan Lalji Khatri, Senior Clerk,
Northern Railway Mechanical Workshop, resident of Purani Ginani
Mataji Temple Road, Bikaner (Rajasthan).

... Applicant.

v e r s u s

1. Union of India through the General Manager, Northern Railway,
Headquarters Baroda House, New Delhi.
2. The Deputy Chief Mechanical Engineer (Workshop), Northern
Railway Mechanical Workshop (Lalgarh), Bikaner.
3. Works Manager, Northern Railway Workshop (Lalgarh), Bikaner.
4. Assistant Personnel Officer (Workshop), Northern Railway
(Lalgarh), Bikaner.

... Respondents.

Mr. Bharat Singh, Counsel for the applicant.

Mr. R.K. Soni, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

Heard the learned counsel for the parties.

2. This application is filed for treating the period from
16.9.94 to 30.11.94 as disability leave.

3. In the application, it is stated that the applicant at the
relevant time was working as a Clerk and while he was coming to
Railway Workshop for performing his Railway duties, he was injured
in an accident caused by slipping his Motorcycle which he was
driving. He stated that this accident occurred on 16.9.94 at about
7.25 hours due to sudden appearance of a dog before his vehicle and
as such, he sustained injuries. He applied for disability leave

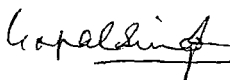


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for the period from 16.9.94 to 30.11.94 which was sanctioned , but later on the said leave was adjusted out of his earned leave. He stated that this action of the respondents in adjusting the leave for the period from 16.9.94 to 30.11.94 out of his earned leave is illegal and without jurisdiction. On a representation being made by the applicant, the department issued an endorsement vide Annexure A/1 dated 14.6.95 stating that the Rules 2122 and 2223 of Railway Fundamental Rules-Service Conditions, Pay and Deputation under Chapter XXII of Indian Railway Establishment Code (Vol-II, Fifth Edition) do not apply to his case and consequently rejected his representation. The learned counsel for the applicant submits that the said rules are applicable to him and is entitled to disability leave for the period he has prayed for.

4. We have gone through the said Rules 2122 and 2123. From the reading of Rule 2122, it is clear that whenever a Railway servant is disabled by injury intentionally inflicted or caused in or in consequence of, the due performance of his official duties or in consequence of his official position, he would be entitled to leave as disabled Railway servant. But from the facts narrated by the applicant, it is clear that he sustained an injury when he was going in his Motorcycle on road and as such, the injury is not in consequence of or in performance of his official duties or in consequence of his official position. Moreover, there is no evidence on record to show that on what date and in what manner he sustained injuries. This is a matter of evidence and in absence of this, the applicant is not entitled to any relief. In this view of the matter, we are of the opinion that the endorsement in order Annexure A/1 dated 14.6.95 that the applicant is not entitled to the benefit of Rule 2122 is in accordance with the provisions of the rules and the Rule 2123 does not apply to the facts of the case at all. Therefore, neither any illegality nor any irregularity has been committed by the respondents in treating the period with effect from 16.09.94 to 30.11.94 as earned leave. In this view of the matter, we pass following orders:-

The O.A. is dismissed. In the circumstances, no order as to costs.


(GOPAL SINGH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

cvr.

