

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 425 of 2009

Reserved on 7.7.2014
Pronounced on 10 July, 2014

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Abdul Wadood, retired Carriage Fitter, aged about 68 years, Carriage & Waon Depot, N.E. Railway, Lucknow, R/o 180/68 Takia Azambeg, Baroodkhana, Lucknow.

1/1 Smt. Azra Bano, aged about 48 years, W/o late Abdul Wadood, R/o 180/68 Takia Azambeg, Baroodkhana, Lucknow.

.....Applicant
By Advocate : Sri D. Awasthi

Versus.

1. Union of India through its General Manager, N.E. Railway, Gorakhpur.
2. DRM, NE, Railway, Lucknow.
3. Sr. Divisional Mechanical Engineer (Carriage & Wagon), N.E. Railway, Lucknow.

.....Respondents.

By Advocate : Sri N. Nath

O R D E R

By Ms. Jayati Chandra, Member-A

This O.A. has been filed by the applicant under Section 19 of Administrative Tribunals Act seeking following relief(s):-

- “(a) quash the order dated 8/15.5.2009 passed by the Opposite party no.3 which is contained as Annexure no.3 to this Original Application.
- (b) direct the Opposite parties to declare the period from 14.12.1994 to 8.5.1996 as HURT ON DUTY being treated as hospital leave on full average pay as per extent rules.
- (c) To direct the Opposite parties to award cost, compensation and interest at normal rates @ 12% from 14.12.1994 till the payment is made to the applicant.
- (d) Pass any other suitable order or direction which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case in favour of the applicant.

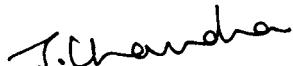
J. Chandra

(e) Allow the present original application of the applicant with costs."

2. During the pendency of Original Application, applicant expired and his place his wife has been substituted.

3. The facts of the case are that the applicant was working as Carriage Fitter Gr.II under Chief Wagon Superintendent, N.E. Railway, Lucknow. He was on leave from 29.11.1994 to 13.12.1994 as he was sick. He assumed his duties on 14.12.1994. He was on duty in the shift between 16.00 hours to 24.00 hours on 14.12.1994. At about 19.30 hours to 20.00 hours of 14.12.1994, while the applicant was setting right the cylinder of 5010 UP train, he met with an accident on account of the sudden start of the train. He sustained serious injuries resulting in the crushing of right leg. The applicant was initially taken to Railway hospital from where, he was referred to KGMC, Lucknow. He was hospitalized from 14.12.1994 to 8.5.1996. He was invalidated from service vide DRM (P), Office order dated 9.5.1996.

4. During the period of hospitalization, no half pay as provided under Section 4(2)(1)(ii) and (iii) of Workmen Compensation Act was paid to him nor HURT ON DUTY memo was issued to him as per relevant rules of the Railways. His wife was forced to apply for sick memo. This was intended to cause an impression that the applicant was not on duty and was injured on his own time to deprive him of all entitlements under Workman Compensation Act. Further, he did not receive any salary during the period of his hospitalization and subsequent retirement. Finally the respondents illegally regularized the service as leave without pay and extra ordinary leave for the purposes of pensionary benefits vide DRM (P) office order dated 28.6.1999 (Annexure no.4). Being aggrieved, he filed an application before the Workmen Compensation Commissioner, Lucknow, who after going through the merits of the case, awarded a compensation of Rs. 1,88585/- in favour of the applicant and payment of Pay & allowances for the period, in question. Thereafter, applicant filed O.A. no. 157 of 2004 seeking to declare the period from 14.2.1994 to 8.5.1996 as HURT ON DUTY being treated as hospital leave on full average pay as per extent rules alongwith 12%. The said O.A. was disposed of vide judgment and order dated 20.3.2009 with a direction to the



respondents to consider and dispose of claim of the applicant within a period of three months. In compliance of the order of this Tribunal, the respondents have passed the impugned order dated 8/15.5.2009 by which the period from 14.2.1994 to 8.5.1996 has not been held to be HURT ON DUTY; hence this O.A.

5. The respondents have filed their Counter Reply stating therein that the applicant was on leave between 29.11.1994 to 13.12.1994 and he was not on duty on 14.12.1994 as he did not sign on the attendance diary dated 14.12.1994 against any of three shifts of the day. While they have admitted that the applicant met with an accident by coming under Train No. 5010 UP at the Lucknow station and that he was taken by the railway staff, who were on the spot initially at railway hospital and thereafter he was referred to KGMC, Lucknow, but the fact that he had joined on 14.12.1994 on the date of accident and that he was actually on duty at the time of occurrence of accident has not been proved by any documents viz. attendance diary or duty roster. It is not in dispute that the compensation has been awarded to him by the Workmen Commissioner, against which the respondents filed F.A.F.O. no. 181 of 1998 before Hon'ble High Court, but no stay has been granted and the same is still pending. The respondents have regularized the period between 14.2.1994 to 8.5.1996 as leave without pay and extra ordinary leave for the purposes of pensionary benefits vide DRM (P) office order dated 28.6.1999. His post retirement benefits have also been paid to him. His son Farid Akhtar has also been appointed on compassionate ground in place of the applicant as Call Man at Gonda vide order dated 13.12.1999.

6. The respondents have also raised two technical objections namely; the instant O.A. has been filed after an inordinate delay of 14 years and secondly the instant O.A. is hit by the principles of res-judicata as the relief claimed in the instant O.A. is the same with that of case no. 39/WCA/95 filed before Workmen Compensation Commissioner, Lucknow. The F.A.F.O. 181 of 1998 filed against the order passed in the above case is pending before Hon'ble High Court.

J. Chaudhary

7. The applicant has filed Rejoinder Reply denying the contentions of the respondents made in their Counter Reply and reiterating the stand taken in the Original Application. A Supplementary Counter Reply has also been filed by the respondents reiterating the stand taken in the Counter Reply.

8. We have heard the learned counsel for the parties and perused the pleadings on record.

9. The main issue for determination in the instant case is that the status of the applicant on the date of 14.12.1994 as to whether he was on duty or on leave. The applicant has not filed any document to show that he was actually on the duty on the alleged date of occurrence. The applicant has not produced any document such as attendance register, duty roster, joining report of the applicant and duty allotment order. No statement of any supervisory staff or colleagues who were on duty with him has been filed to substantiate the version of the applicant that he was on duty. In absence of such evidence, the whole case becomes a matter of conjecture. Be that as it may, it is not denied by either of the parties that compensation awarded by the Labour Commissioner is the subject matter of an F.A.F.O. against the award of Labour Commissioner and the same is still pending before Hon'ble High Court. It is also submitted that the onus lies upon the applicant to substantiate his claim, which he failed to do so in any manner whatsoever. It is well settled view of law that the mere assertion would not suffice to substantiate his claim unless and until it is proved by the documentary evidence, which the applicant failed to produce.

10. In view of the above, the O.A. fails and is accordingly dismissed. No costs.

J.Chandra
(Ms. Jayati Chandra)
Member-A

Navneet Kumar
(Navneet Kumar)
Member-J

Girish/-