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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 391/87

Transfar Application No: --

DATE OF DECISION: 10-1-95

Shri Vidhya Datta Sharma

Petitioner

Mr.D.V.Gangal

Advocate for the Petitioners

Versus

The General Manager, O.F. Varangaon

Respondent

Mr.S.S.Karkera

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman

The Hon'ble Shri M.R.Kolhatkar, Member(A)

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M.R.Kolhatkar

(M.R.KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.391/87

Shri Vidhya Datta Sharma,
21-C-III Type Quarter,
Ordnance Factory Estate,
Varangaon,
Tal.Bhusawal,
Dist. Jalgaon. .. Applicant

-versus-

The General Manager,
Ordnance Factory,
Varangaon. .. Respondent

Coram: Hon'ble Shri Justice M.S.Deshpande
Vice-Chairman

Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.D.V.Gangal
Counsel for the
Applicant.

2. Mr.S.S.Karkera
Counsel for the
Respondent.

JUDGMENT: Date: 10-1-95
(Per M.R.Kolhatkar,Member(A))

In this application u/s.19 of the A.T.Act the facts are as below :

The applicant who is working as Supervisor technical in the respondent's factory since 1981 and who is a workman within the meaning of Section 2(n) of the Workmen's Compensation Act,met with an accident on 4-6-1985 while going home after duty as a pillion rider on the scboter of a colleague. According to the applicant the accident occurred on the campus of the Ordnance Factory which entiled hospitalisation of the applicant for which he required to take 183 days of sick leave. He claims to have

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lost 30% of the earning capacity. The applicant was initially granted disablement leave vide order dt. 10-1-1986 at Ex.'B' from 4-6-85 to 13-12-85. However, subsequently vide impugned order dtd.8-1-87 vide Ex.'C' it has been held that the applicant is not entitled to disablement leave and he has been informed that the leave salary dues on leave without pay for 183 days amounting to Rs.8,136.40 are to be recovered from his salary. The applicant amended the application to claim compensation for injury under Workmen's Compensation Act of about Rs.48,035/- and also has prayed for quashing and setting aside the impugned order dt. 8-1-87 ordering recovery of the since disallowed disablement leave. It is the claim of the applicant that he is entitled to compensation in terms of Section 3(1) of the Workmen's Compensation Act which reads"If a personal injury is caused to a workman by accident arising out of and in the course of his employment,his employer shall be liable to pay compensation in accordance with provisions of this chapter." The applicant also claims that he is entitled to disablement leave in terms of Rule 45 of the CCS leave rules relating to special disability leave for accidental injury which reads as below:

> "45.Special disability leave for accidental injury.
>
> (1)The provisions of Rule 44 shall apply also to a government servant whether permanent or temporary, who is disabled by injury accidentally incurred in, or in consequence of, the due performance of his official duties or in consequence of his

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official position, or by illness incurred in the performance of any particular duty, which has the effect of increasing his liability to illness or injury beyond the ordinary risk attaching to the civil post which he holds.

(2)The grant of special disability leave in such case shall be subject to the further conditions :-

(i)that the disability, if due to disease, much be certified by an Authorised Medical Attendant to be directly due to the performance of the particular duty;

(ii)that, if the Government servant has contracted such disability during service otherwise than with a military force it must be, in the opinion of the authority competent to sanction leave, exceptional in character and

(iii)that the period of absence recommended by an Authorised Medical Attendant may be covered in part, by leave under this rule and in part by any other kind of leave, and that the amount of special disability leave granted on leave salary equal to that admissible on earned leave shall not exceed 120 days. "

2. The issue involved therefore is whether the injury caused by the accident to the workman in question while returning home from the factory is one arising out of and in the course of employment and whether on this ground he is entitled to compensation as well as special disability leave.

3. The circumstances under which this Tribunal is considering the claim for compensation under Workmen's Compensation Act as well as the

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claim of the applicant for grant of disability leave are seen from the order sheets dt. 24-8-92 and 20-10-92. On 24-8-92 the applicant was given a month's time to make up his mind whether he would like to prosecute this application or prosecute Workmen's Compensation case before the Labour Court at Jalgaon. Subsequently, however, in the order dt. 20-10-92 the court observed as below :

> "During the course of arguments it transpired that in this application, the applicant has not really claimed any compensation payable to him under the workmen compensation act. It appears that the applicant has withdrawn his claim before the Workmen Compensation Commissioner, on account of an order passed by this tribunal. We feel that serious injustice will be caused to the applicant if an opportunity has not been given to him to claim compensation before this Tribunal. We therefore permit ~~to~~ him to make an application seeking amendment of this application."

Accordingly amendment was made and was allowed on 27-1-93. It is thus that we are required to consider these claims.

4. The contention of the learned counsel for the applicant is that the Tribunal has to consider that there is a notional extension of the time and place of employment as referred to in Section 3 of the Workmen's Compensation Act and this has been well settled by a series of judgments of the High Courts and the Supreme Court in India which in their turn have relied on English law. In this connection the applicant relies on the judgment

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of the Supreme Court in Saurashtra Salt Manufacturing Co., vs. Bai Valu Raja and Others, AIR 1958 SC 881 and General Manager, B.E.S.T. Undertaking, Bombay v. Mrs.Agnes AIR 1964 SC 193. The latter judgment was a subsequent judgment in which there is a dissenting judgment by Raghubar Dayal.J. In that judgment ~~though~~ it was stated with reference to the notional extension as below: (para 12)

> "Under S.3(1) the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion."

5. The court extended the definition of a factory to the whole network of city bus transport service with reference to death caused in an accident to a driver going home in a BEST bus as below: (para 14)

> "While in a case of a factory, the premises of the employer which gives ingress or egress to the factory is a limited one, in the case of a city transport service, by analogy, the entire fleet of buses forming the service would be the "premises". When a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment."

6. As observed above, there was a dissenting judgment of Justice Raghubar Dayal though the reasons for dissent need not detain us. What is necessary for consideration is whether in the facts of the particular case the injury caused to the applicant can be said to have been covered by Section 3(1); in other words whether it can be said to be arising out of as well as in the course of employment. The applicant also refers to the judgment in Saurashtra Salt Manufacturing Co. and in particular para-7 of the judgment it is stated:

> "(7) As a rule, the employment of workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's

> premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension. "

What the applicant contends is that he was at the particular site of the accident in the course of employment. If it were not for the duty in the factory he would not have been at the particular site. Moreover the accident occurred within the factory estate which is closed to the public. In this connection the applicant has enclosed a map which shows that the accident occurred at a quadrangle. So far as the four segments are concerned there are houses in the two upper segments. There is open space in the lower left hand segment. There is a bus stand on the lower right hand segment. According to the applicant all these are is in the security zone. The applicant had necessarily to pass and repass the particular quadrangle for reaching his house or factory and therefore the place of the accident is squarely covered by the notional extension of the place of duty.

7. Respondents on the other hand have contended that the bus stand is open to the

public and the applicant was in the particular spot like any other member of the public and in any case he was not at that particular spot in the course of his duty.

8. It is well settled that the terms "accident arising out of" and "accident in the course of" employment are required to be read conjunctively and not disjunctively. In other words both the conditions must be fulfilled i.e. accident must not only arise out of employment but it must also arise in the course of employment. So far as the case law quoted by the applicant is concerned, Saurashtra Salt Manufacturing Co.'s case deals with the situation of notional extension of place of employment where accident arose out of employment and on the facts of that particular case the Supreme Court held that the notional extension did not apply. No doubt the applicant was required to pass the particular accident spot on his way to home and therefore by notional extension of place of work it can be said that the accident arose out of employment but can it be said that the accident arose in the course of employment ? These terms have also received judicial interpretation. Lord Romer in the case of Weaver v. Tredegar Iron and Coal Co.Ltd., quoted in the BEST Undertaking case observed that (p.197) "In all cases, therefore, where a workman, on going to, or on leaving his work, suffers an accident on the way, the first question to be determined is whether the workman was at the place where the accident occurred in virtue of his status as a workman or in virtue of his status as a member of the public."

We have no doubt that the applicant was at particular place not as a workman but as a member of the public. This is further made clear by the observation of the learned Lord Porter in the BEST case at p.197 quoted who observed, "so long as he is in a place in which persons other than those so engaged would have no right to be, and indeed, in which he himself would have no right to be but for the work on which he is employed, he would normally still be in the course of his employment." This position is made clearer in the dissenting judgment of the Raghubar Dayal in the following words:

> "(26)In AIR 1958 SC 881 this Court laid down the following propositions in connection with the construction of the expression'in the course of employment." They are:(i) as a rule the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment; (ii)as a rule the journey to and from the place of employment is not included within the expression 'in the course of employment'; (iii)the aforesaid two propositions are subject to the theory of notional extension of the employers' premises so as to include the area which the workman passes and re-passes in the going to and in leaving the actual place of work;there may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employers' premises; (iv)the facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose within and

and in the course of employment of a workman keeping in view at all times the theory of notional extension.

(27)On the basis of the first two propositions, the deceased cannot be said to have received the injuries in an accident arising out of and in the course of his employment. The third proposition does not cover the present case as I have indicated above. The expression 'an area which the workan passes and repasses in going to and in leaving the actual place of work' in proposition 3, does not, in view of what is said in proposition No.2, mean the route covered necessarily in his trip from his house to the place of employment or on his way back from the place of employment to the house. This expression means such areas which the employee had to pass as a matter of necessity and only in his capacity as employee. Such areas would be areas lying between the place of employment and the public place or the public road up to which any member of the public can reach or use at any time he likes. Such areas then would be areas which the employee had as a matter of necessity, to pass and re-pass on his way to and from the place of employment, and will either be areas belonging to the employer or areas belonging to third persons from whom the employer had obtained permission for the use of that area by his employees. The passing and re-passing over such areas is a matter of necessity as it is presumed, in this context, that without passing over such land or such area, the employee could not have reached the place of his employment. It is in that context that the area of the place of employment is extended to include such areas over which the

employee had, as a matter of necessity, to pass and re-pass."

In our view the second element for determination whether the injury is caused by an accident is entitled for compensation is missing in this particular case viz. "in course of employment."

9. We are therefore of the view that the claim of the applicant for compensation must fail, if the injury was not caused by an accident arising out of and in the course of employment and the claim of the applicant for disability leave must also fail. Therefore the respondents have rightly rejected the claim of the applicant for grant of 183days as disability leave. We, therefore dispose of the O.A. by passing the following order :

O R D E R

O.A. is dismissed.

No order as to costs.

(M.R.KOLHATKAR)
Member(A)

(M.S.DESHPANDE)
Vice-Chairman

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