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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 686/91

~~Transfar Application No:~~

DATE OF DECISION: 20.3.95

Dr.(Mrs) Kali Chakraborty Petitioner

Shri S.P. Saxena Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri S.S.Karkera prody
~~Shri P.M.Pradhan~~ Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

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

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

(B.S. Hegde)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 686/91

Dr.(Mrs) Kali Chakraborty ... Applicant.

V/s.

Union of India through
the Secretary,
Ministry of Defence
South Block
New Delhi.

The Secretary
Ordnance Factory Board
10 A, Auckland Road
Calcutta

The General Manager
Ordnance Factory
Dehu Road,
Pune. ... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

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

Appearance:

Shri S.P. Saxena, counsel
for the applicant.

Shri S.S. Karkera proxy
for Shri P.M.Pradhan, counsel
for the respondents.

JUDGEMENT Dated: 30.3.95

(Per Shri B.S. Hegde, Member (J))

The short question for consideration is whether the absence of the applicant from 16.7.90 to 12.8.90 and 2.1.91 to 17.1.91 should be treated as hurt-leave/injury leave with pay for the period of medical treatment/hospitalisation.

2. The facts of the case is that the applicant was working as Assistant Medical Officer under respondents and is presently posted at Ordnance Factory, Dehu Road, since 6.5.80. She was detailed as Duty Medical Officer on 16.7.90 in the hospital run by respondent round the clock duty

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i.e. 24 hours. She was staying in the government quarter in the factory premises, while going back from hospital to her residence in the factory ambulance on 16.7.90, she was sitting next to the driver in the ambulance, and when the driver negotiated a sharp turn on the road, she fell out of the ambulance , as the door of the ambulance, being defective, opened out. She fell out out of vehicle alongwith the seat of the vehicle which was perhaps not properly fastened to the chasis of the ambulance. As a result, she received head-injury and she was rushed to the hospital in Ruby Hall, Pune and she was treated upto 12.8.90 and she was declared fit with effect from 13.8.90 and she resumed for duty.

3. Persuant to this incident respondent No.3 had appointed a Board of Enquiry to ascertain the casue of the accident and as per the report/ findings of the Board, none was responsible for the unfortunate accident though it was observed by the Board that the ambulance was not properly maintained and its locking/bolting system of door was defective. It was categorically stated that the applicant has to be treated as on duty at the time of accident.

4. The only contention of the respondents is that since the applicant was appointed on adhoc basis, she is not entitled to Hurt leave as prayed by her. It is stated that the respondents have granted her 15 days earned leave and balance 30 days Extra Ordinary leave without pay. Though the respondents have granted medical expenses they ~~are~~ have contemplated recovery of Rs. 4228/- from the

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applicant on account of the same, in three instalments from her salary. This has been challenged by the applicant in this O.A. The Tribunal vide its order dated 21.10.91 directed the respondents that the proposed recovery may not be enforced till further orders. Therefore it has submitted that the recovery was not effected so far, persuant to the directions of the Tribunal . Further, the respondents have contended that the appointment has been made on adhoc basis for brief period initially, however, for some reasons though rarely continued beyond the period of 3 years without a break, such adhoc employee may be extended the benefits of all kind of leave as admissible to temporary employee under CCS(Leave) Rules 1972, from the date of their initial appointment. The applicant was not continued in service beyond three years without break, therefore, the applicant is not entitled to any Hurt leave etc.

5. On perusal of the pleadings, we find that the applicant has been working for more than 10 years right from 1980 onwards and her appointment was regularised with effect from 11.6.91 by the respondents on the recommendation of the U.P.S.C. Admittedly the applicant was on duty round the clock, the plea that she was appointed on adhoc basis at the time of accident is not tenable and on that ground grant of Hurt leave cannot be refused. The accident took place while she was on duty and the prayer made in this O.A. is to grant her Hurt leave during the period from 16.7.90 to 12.8.90 and 2.1.91 to 12.1.91

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and the payment already made should not be allowed to recover on the plea of that she was worked on adhoc basis. The prayer made in this O.A. is justified as her appointment was regularised subsequently and she was continued on pay rolls, if that be so prayer in terms of para 8(a) is granted.

> " to direct the respondents to treat her accident of 16.7.90 as having occured while she was on duty and to grant her hurt leave/injury leave with pay for the period of her medical treatment / hospitalisation from 16.7.90 to 12.8.90 and 2.1.91 to 17.1.91."

6. O.A. is allowed. We direct the respondents not to effect any recovery to the payment already made by them for the medical expenses incurred by her while in hospital and if any order issued on this behalf should not be given effect to. Accordingly, we direct the respondents to grant the applicant the Hurt leave from 16.7.90 to 12.8.90 and 2.1.91 to 17.1.91. O.A. is disposed of with the above directions.

(B.S. Hegde)
Member (J)

(Per Shri M.R.Kolhatkar, Member(A))

7. I am inclined to agree with the final outcome of the Judgment of my learned brother, Member(J). However, I would like to make some additional observations.

8. The respondents in their written statement have

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taken an additional ground for refusing the relief to the applicant. Firstly, it is stated vide para 22 that the Board has not found that the applicant is free of responsibility/fault in causation of the accident. The Board found that the applicant has failed to check proper locking of door before commencement of the journey. In para 27, it is stated that it is true, that the accident occurred within the precincts of the factory estate and that the applicant was travelling in government vehicle. However, it is contended that the said travel of the applicant was uncalled for and it was observed that the applicant was travelling unauthorisedly by herself by misusing the powers of her own position. In view of the distance of the residence of the applicant from the hospital also the journey was uncalled for. In this connection, the Respondents have also referred to the Director General Ordnance Factories letter dt. 20.8.1977 (at Annexure R-8) and the opinion of the Law Ministry has been quoted to the effect that the words"arising out of and in the course of employment" occurring under Workmen's Compensation Act have a wider connotation than the words in Article 291 of CSR which refer to' in the course of duty'.

9. The respondents have also relied on the case of V.D.Sharma V/s. General Manager, Ordnance Factory, Varangaon reported at (1995 1 CAT MAT 228). It was a Division Bench Judgment to which one of us (Shri M.R.Kolhatkar, Member(A) was a party. In that Judgment it was held that the terms "accident arising out of" and "accident in the course of employment" are required to be read conjunctively and not disjunctively, and that the applicant who was returning

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from the Factory premises to his home was treated as not being "in the course of employment" and therefore, the relief was refused.

10. I have considered these additional grounds. The applicant has contended that on the date of the accident she was detailed as "Duty Medical Officer". The applicant has pointed out that the Duty Medical Officer is required to be on 24 hours duty and under the continuous practice followed in the Ordnance Factory, such Doctors are allowed to come to the hospital in Ambulance Vehicle from the residence and to go back to the residence from the hospital in the same Van. In view of this, it is contended that the applicant's use of the Ambulance was authorised and that the applicant was in the course of duty. The applicant has contended that this practice of providing Ambulance Vehicle to the Doctors on duty for their coming from and going to hospital still continues.

11. The respondents have not denied that the applicant was on 24 hours' duty and that the practice of providing Ambulance Vehicle to the Doctors for coming to and going back from the Hospital was prevalent. The ratio of V.D.Sharma V/s. General Manager does not apply to this case. In view of the fact of 24 hours duty and in view of the Ambulance Vehicle being a Government vehicle which was not the case in the case of V.D.Sharma.

12. Regarding the contention that the scope of the term "in the course of duty" is more limited, we are not inclined to accept the same in view of the fact that applicant was on 24 hours duty. Even otherwise, we are required to keep in view the general understanding

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that a government servant is expected to be available for duty even if he may be on leave or otherwise.

13. So far as the contention regarding the service of the applicant being ad hoc is concerned the same does not survive consequent on the regularisation of the applicant as pointed out by my learned brother. In view of this position, the respondents' decision not to regularise her absence by grant of injury leave is illegal and is liable to be set aside.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

14. We, therefore, dispose of this O.A. by passing the following order.

15. The O.A. is allowed. The communication dt. 22.2.1991 is hereby quashed and set aside. The respondents are directed to regularise the absence of the applicant for the period 16.7.1990 to 12.8.1990 and 2.1.1991 to 17.1.1991 by grant of injury leave. The Respondents are permanently restrained from recovery of payment made by them on account of medical expenses incurred by her while in the hospital. There will be no orders as to costs.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

B.S. Hegde

(B.S.HEGDE)
MEMBER(J).

B.