

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. : 178 OF 1992.

~~TRANSMISSION APPLICATION NUMBER~~

Date of Decision 6.10.95

Shri T. T. Thomas,

Petitioner/~~s~~

Shri V. M. Bendre,

Advocate for  
the Petitioners

Versus

Union Of India & Others,

Respondent/s

Shri R. K. Shetty,

Advocate for  
the Respondents

CORAM :

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

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 ?

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

os\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 178 OF 1992.

Shri T. T. Thomas ... ... Applicant

Versus

Union Of India & Others ... ... Respondents

CORAM :

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

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

APPEARANCE :

1. Shri V. M. Bendre,  
Counsel for the applicant.

2. Shri R. K. Shetty,  
Counsel for the respondents.

JUDGEMENT

DATED : 6.10.95.

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the rejection order passed by the respondents vide dated 24.11.1988 (Annexure A-3) and prayed for the following reliefs :

(i) To declare that the applicant is entitled for compensation under relevant law like Workmen Compensation Act or CCS (Extra Ordinary Pension) rules directing the respondents to pay appropriate compensation to the applicant.

(ii) To direct the respondents to pay all the expenses incurred by the applicant for his recovery on account of accident, full pay leave in accordance with the law and

(iii) To direct the respondents to extend all the benefits which are applicable under law to the handicapped Central Government Servants, etc.

2 . The brief facts of this case are - the applicant was appointed as a Store-man in the year 1968 at Garrison Engineering (Project) at Chabua in the State of Assam. Later on, he came to be transferred to Garrison Engineering (Project), Baleshware, in the State Of Orissa in 1987 and he came to be promoted as Store-Keeper in the year 1987 in the aforesaid office. The applicant was required to attend out-station duties which were connected with the stores. He was deputed on duty to collect steel from AGE B/R Salva. Accordingly, the movement order was issued by the respondents on 01.09.1988 directing the applicant to proceed on duty on 05.09.1988 as the date of commencement of journey and the date of completion of duty on 07.09.1988 for collection of steel purpose either by rail or road and he is allowed to halt three days or on completion of duty. On 06.09.1988 he collected one truck load of steel from AGE B/R Salva and sent the same through the transporter and since there was no residential accomodation at Salva, came to Kalikunda and stayed there. On 07.09.1988 and 08.09.1988 the transporters were not available and there was a transport strike in Orissa, as such, trucks could not reach the destination on those days. On 09.08.1988, both the transporter and the applicant went with transport for collection of remaining quantity of steel but the Stock Holder had gone to Calcutta Command Hospital for hospitalisation of his wife and his return was uncertain. Accordingly, on 10.09.1988, the applicant went to Kalikunda and reported the matter to higher authorities and under the circumstances requested for retention certificate and he was directed to go and meet one Mr. Gosh, who will arrange to issue remaining quantity of steel. Accordingly, they went to Salva. While they were about to reach the Airforce Gate of Salva, they met with

*fb*

scooter accident and his right foot got crush injury and admitted to government hospital and as per Doctor's advice, his right foot has been removed and accordingly, he prayed for the above reliefs which has not been granted by the respondents and thus, the applicant filed this petition.

3. The respondents in their reply denied the contention of the applicant and have raised preliminary objections stating that the applicant was supposed to have travelled by lorry and not by scooter and hence the claim is not tenable. Secondly, since the applicant being a Civilian and is paid from Defence Service Estimates, he does not come under the Rule 2 of CCS (Extra Ordinary Pension) and this rule would not apply to this case and also stated that no provision for compensation under the CSR Article 291 is admissible. Thirdly, the respondents contended that since the accident had occurred in 1988 and the applicant has approached the Tribunal only in 1991, thereby his claim is barred by limitation. They further urged that the applicant is not a "workman" and is therefore not governed by the provisions of the "Workmen's Compensation Act." The further contention of the respondent is that when the accident did not occur during the course of employment and hence the applicant is ceased to be on duty at the time of accident and as regards transport strike, there is no documentary evidence to substantiate the statement of the applicant.

4. In the light of the above, the short point to be seen here is whether the applicant was on duty at the time of the accident. Undoubtedly, there cannot be any doubt that the applicant was on duty and as per the

fb

directions of the higher official and in view of non-availability of the persons from whom the steel was to be collected, both the applicant and the transporter had gone to destination to collect the steel. However, while on the way, the applicant met with an accident by which ultimately, his right foot has been removed. Therefore, in the facts and circumstances of the case, the various contentions of the respondents that the applicant ceased to be on duty and other speculative contentions are not tenable and the same are not based on record. It is nothing but an imaginative and speculative argument on the part of the respondents and having treated him on duty on those days, the respondents ought to have paid the admissible amount to the applicant. It is an admitted fact that both the J.J. Hospital as well as All India Institute of Physically Medicine and Rehabilitation, declared the disability of the applicant to the extent of 40% and recommended that he should be treated as a 'Physically handicapped person'. The applicant incurred the medical expenses to the tune of Rs. 14,160.00 which he states has not been reimbursed. As stated earlier, the accident occurred while carrying out the duty and he was hospitalised from 10.09.1988 to 12.10.1988 and he has given the various receipts of expenditure incurred for recovery of his accident. It is true, that since he is not a workman under Workmen's Compensation Act, he cannot claim any compensation under Workmen's Compensation <sup>are concerned</sup> Act. However, in so far as other reliefs/ such as medical expenditure incurred by the applicant for his recovery on account of accident, grant of full pay and leave ~~present him~~ in accordance with the law. The further question is whether the applicant is entitled to the disability pension. In our view, the applicant being in regular service, there is no reason why he should not be treated as on duty when he met with an accident. We see no justification in denying the

(12)

disability pension to the applicant. The respondents instead of helping their own employee who met with an accident on headed duty, have extended an unsympathetic attitude and wooden approach which is not expected of an benevolent employer. Having treated him on duty, they should have considered all the dues payable to him by this time.

5. In the result, the O.A. is allowed and we pass the following order :-

- (i) That except the claim for compensation under Workmen's Compensation Act, all other claims in terms of para 8 are just and proper and accordingly, we direct the respondents to pay all other claims within a period of three months from the date of receipt of this order. It is understood that the applicant has already furnished the details of medical expenditure incurred by him. In case it is not furnished, the same should be furnished within a period of 15 days from the date of receipt of this order.
- (ii) Failure to make the payment within a period of three months from the date of receipt of the order, the respondents are directed to pay interest @ 12% per annum till the payment is made.
- (iii) The O.A. is disposed of. No order as to costs.

M. R. Kolhatkar  
(M. R. KOLHATKAR)

MEMBER (A).

B. S. Hegde  
(B. S. HEGDE)

MEMBER (J).