

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 588/93

DATE OF DECISION: 26/7/2000

Shri Narayan Vithu Mhatre

Applicant.

Mrs.N.V.Masurkar

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri S.C.Dhawan

Advocate for
Respondents.

CORAM:

Hon'ble Shri A.V.Haridasan, Vice Chairman
Hon'ble Shri Govindan.S.Tampi, Member(A)

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

(GOVINDAN.S.TAMPI)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 288/91

DATE FOR HEARING: 11.11.91

Shri Narayan Vinayak
Applicant

Mrs. H. V. Narsimhan
Respondent

Versus

Union of India & Ors.
Respondent

Shri S. C. Dhanoo
Respondent

CORAM:

Hon'ble Shri A. V. Haridass, Vice Chairman
Hon'ble Shri Govindan. S. Jeyaraj, Member (A)

1. To be referred to the reporter or not.
2. Whether it needs to be considered in
other Bench of the Tribunal.
3. Other.

(HON'BLE S. JAYARAJ)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:588/93
DATED THE 26th DAY OF JULY, 2000

CORAM:HON.SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON.SHRI GOVINDAN.S.TAMPI, MEMBER(A)

Narayan Vithu Mhatre,
(Antem)
Taluka Pen,
Dist.Raigad.

... Applicant

By Advocate Mrs.N.V.Masurkar

v/s.

1. Union of India
Through
The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. Divisional Railway Manager,
Bombay Division,
Bombay VT,
Bombay - 400 001.
3. Divisional Engineer,
Central Railway,
Kalyan.

... Respondents

By Advocate Shri S.C.Dhawan

(ORDER)

Per Shri Govindan.S.Tampi, Member(A)

OA-588/93 has been filed by Narayan Vithu Mhatre against Union of India and Others. The applicant, while working in gang No.121-5-121-7 on 18/4/90, fixing the quarter pin on the railway track was injured by a stone in his right eye, he became unconscious and was removed to private hospital by the supervisor. He remained there till 21/4/90 and was required to attend hospital up to 30/4/90. Thereafter, he was in Railway Health

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CENTRAL ADMINISTRATIVE TRIBUNAL
 MUMBAI BENCH
 ORIGINAL APPLICATION NO: 288/93
 DATED THE 1 DAY OF JULY, 2000

LIAISON SHRI A.V. JHARIJAN, VICE CHAIRMAN
 SHRI GOVINDAN.S. TAMPI, MEMBER(A)

Narayan Vilas Mahadev,
 (Applicant)
 1st Floor,
 1st Building

... Applicant

By Advocate Mr. N.J. Jadhav for

vs.

1. Union of India
 through
 The General Manager,
 Central Railway,
 Bombay V.L.,
 Bombay AND NO.

2. Divisional Railway Manager,
 Mumbai Division,
 Bombay V.L.,
 Bombay AND NO.

3. Divisional Engineer,
 1st Floor,
 Railway

... Respondents

For Respondents Mr. N.J. Jadhav

(ORDER)

For Shri Govindan.S. Tampi, Member(A)

The case has been filed by Narayan Vilas Mahadev against Union of India and others. The applicant while working in gang 1000 on 10/4/93 during the quarter day on the railway track was injured by a stone in his right eye, he became blind and was removed to private hospital by the supervisor. The applicant thereafter filed 2/4/93 and was removed to attend hospital on 10/4/93. Thereafter, he was in Railway Hospital.

Unit Panvel and on being referred to Central Railway Hospital, Byculla reported there on 5/5/90 and ^{was} admitted for 15 days. On discharge, he was not given a fitness certificate and the Medical Board after examination on 22/11/90 de-categorised him to CII. On checking up with superiors, he was informed that the matter was already reported to higher authorities. He was discharged from ^{Service} ~~since~~ but was given alternate appointment on 23/12/93 issued by PWI, Panvel where he joined on 24/12/93. The reliefs sought include hospital leave from 19/4/90 to 20/5/90 as per Rule 554 of I.R.Est.Code, Special Disability Leave from 21/5/90 to 22/5/91 as per Rule 551, 552 and 553 of I.R.Est. Code. Extra Ordinary Leave for a period of six months as per Rule 1304 of I.R.Est.Manual and Lay off from to 23/12/93 under I.D.Act and Rule 304 of the I.R.Est.Code. It is also requested that it be held that the injury had taken place while on duty resulting into loss of sight in one eye and permanent disablement and that all benefits accruing therefrom be extended to him.

2. The respondents contest the application and state that the injury on the basis of which the individual is seeking reliefs is false and ^{LD} ~~was~~ not actually incurred on duty and therefore the benefits sought by him cannot be granted. It is also pointed out that inspite of the fact that it was not absolutely ~~the~~ ^{on the} ~~encumbent~~ ^L part of the respondents to provide an alternate employment, to the discharged employee they have actually done so and therefore the applicant shall have no cause.

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3. Heard Both Counsels. Smt.Masurkar arguing for the applicant invited out attention to Affidavit file both by Shri Sandip Patil, Mukadam (Mate) under whom the applicant was directly working and four of his co-workers, that the applicant was actually injured during the course of his work on 18/4/90 and therefore the benefits actually sought by him should be available. She also pointed out that one Shri Pandurang Sonia who joined on a subsequent date and was junior to applicant was actually given promotion and therefore the applicant should get the benefit of continuous service as well as promotion from the date his junior was promoted. Replying for the respondents, Shri S.C.Dhawan reiterated his plea that the injury had not taken place while on duty and that reliance should not be placed on the Affidavit. Further, he stated that since department has done whatever can be done and had given the individual an alternate job suitable to his category, no further relief of backwage or other things were due to him. In regard to the request for promotion from the date on which the junior Shri Pandurang Sonia was promoted, he indicated that no details have been made available and until and unless they are made known to them, nothing further can be done.

4. We have examined the rival contentions. The fact that the applicant was injured on duty on 18/4/90 as well as that he had to be admitted to a private hospital followed by treatment in Railway Hospital are undisputed facts. The argument by the Counsel for Respondents that reliance should not be placed on the

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Affidavit filed by Shri Sandip Patil and co-workers does not merit acceptance as the Railway has not contested the same by taking any effective steps, ^{if they were wrong}. It therefore follows that the injury in fact taken place on duty and that all the benefits that normally accrue to persons who are injured on duty should be available to the individual as well. Anyhow, the respondents have given an alternate job to the individual though on a later date and the period inbetween the discharge and the re-employment can be regularised as admissible leave and leave not due. As the re-employment has itself been on the same or equivalent post, which the applicant was holding before discharge it can be considered actually as continuous period for the purpose of regularisation, etc on a later date. At the same time, the person cannot claim the benefit of pay and allowance on days when he had not actually worked covered under the period leave not due. The applicant's claim for promotion vis-a-vis Shri Pandurang Sonia who is alleged to be applicant's junior is a very vague one and can be considered only by the Administration on a suitable representation being made at a later date.

5. In view of the above, the application is disposed of with the declaration that the injury to applicant on 18/4/90 was in course of ^{/employment} and that the period of absence should be regularised treating the ^{/same as} medical leave, hospital leave, etc in terms of the relevant rules applicable in the case of a person who has suffered injury on duty. The service shall

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be taken as continuous from the initial date of appointment including the period of absence from duty till the date of re-engagement for the purpose of regularisation, etc. As we are ^{regularised} informed that the applicant has since been in service, We allow the applicant to make a representation to the Competent Authority putting forth his claim for regularisation with effect from the date of regularisation of Shri Pandurang Sonia or any other juniors with the necessary details and direct the respondents to have the representation made, if any, considered in the light of the facts, rules and instructions and disposed of giving a speaking order without undue delay. There is no orders as to costs..


(GOVINDAN.S.TAMPI)
MEMBER(A)

abp.


(A.V.HARIDASAN)
VICE CHAIRMAN