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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.233 of 1995

DATE OF ORDER:26.6.96

BETWEEN:

T.JEEVARATNAM

.. Applicant

and

1. The General Manager,
South Central Railway,
Secunderabad,
2. The Chief Personnel Officer,
Personnel Branch, O/o the G.M,
S.C.Railway, Secunderabad,
3. The Divisional Railway Manager,
S.C.Railway, Hubli Divn,
Hubli.

.. Respondents

COUNSEL FOR THE APPLICANTS: Shri S.RAMAKRISHNA RAO

COUNSEL FOR THE RESPONDENTS: SHRI V.RAJESWAR RAO, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE)

JUDGEMENT

None for the applicant. Heard Shri V.Rajeswara Rao, learned standing counsel for the respondents.

2. The applicant is presently working as Office Superintendent Grade-II in the Station Superintendent Office, South Central Railway, Miraj in Hubli Division. While he was working as Clerk at Miraj station, he was asked to attend to official duty at Hubli on 10.8.84. While he was proceeding to attend to work at Hubli on that day by Train No.204 Express, it is stated that the hook of

the shoulder belt of his air bag gave up and had hit in his right eye. He attended office on the same day and he was admitted in the Railway Hospital on 11.8.84 and was under medical treatment upto 12.12.84. It is further stated that the Station Superintendent, Miraj has issued a certificate regarding his injury. He filed a number of representations starting from 15.9.88 for granting him compensation under Workmen Compensation Act for the injuries sustained by him and also for treating the period from 11.8.84 to 12.12.84 as hospital leave as he was in sick-list during the above period. R-3 replied him vide letter No.H/P.723/II/TJ dated 3.9.92 (Annexure X at page 18 of the OA) stating that he being a ministerial staff cannot claim hospital leave. Further he was informed that the hospital leave cannot be sanctioned to the staff who are not governed by the Workman's Compensation Act. As the applicant is not covered by Workman's Compensation Act, he is not entitled for hospital leave. He kept on representing his case quoting the relevant rule position and he addressed a representation dated 20.2.93 to the Minister for P&PW, Govt. of India. That representation addressed to the Minister for P&PW dated 20.2.93 was replied by the impugned letter No.P(T)/500/T&C/DOP/Rep/93/TJ dated 20.9.93 (Annexure I). In this letter, the applicant was informed that he is not governed by the Workmen's Compensation Act as he is a Clerk and hence he is not entitled for the reliefs claimed by him.

3. Aggrieved by the above, he has filed this OA praying for two reliefs viz,

(i) to treat the entire period (sick) from 11.8.84 to 12.12.84 as Workmen's Compensation Allowance Sick list

and hospital leave and

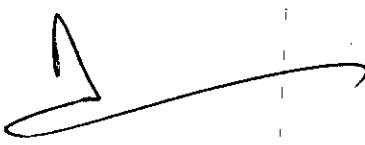
(ii) to pay compensation since the injury was caused during the course of official duty with all consequential benefits.

4. The prayer (ii) of the applicant for paying him compensation was rejected by the order dated 16.2.95 in M.A.NO.16/95 in OASR No.3385/94. Hence the present OA survives only in regard to his prayer No.(i) for granting him hospital leave.

5. The main contention of the respondents in not granting him the hospital leave is of two fold:

(i) This application is barred by limitation as the reported injury took place on 10.8.84 whereas he had filed this OA only on 20.12.94 i.e, after a lapse of 10 years. The records in this connection cannot be traced as the records pertaining to the period 1984 are not available now in SS/O/MRJ in connection with the injury case as can be seen from the letter No.H/T 5/P-2/Misc/92 dated 10.7.95 of DSO/UBL. Hence the OA should be dismissed because of limitation.

6. The second contention is that the injury had not occurred during the course of employment. It had happened because of the negligence on the part of the employee. In view of the above, his case cannot be allowed even on the merits.



7. Before the case is analysed, the rule position in regard to the grant of hospital leave is to be seen. Para 554 of Indian Railway Establishment Code Volume-I, 1985 Edition, annexed as R-1 indicates the rule in regard to the grant of hospital leave. As per this, "hospital leave shall be granted on production of medical certificate from an authorised medical attendant, if the injury is strictly due to risks incurred in the course of official duties". This rule does not say that a Clerk in the Operating Branch is not entitled for hospital leave. This rule also does not indicate that an official governed by the Workmen's Compensation Act is only eligible to get the hospital leave. In view of the above rule position, the applicant who is a Clerk is not debarred from getting the hospital leave if he produces the medical certificate from an authorised medical attendant and the injury occurred is due to the risks incurred in the course of official duties.

8. The next point for consideration is whether this OA is barred by limitation. No doubt the injury had occurred in the year 1984. The applicant kept on representing his case right from 1988. A reply was given to him only on 3.9.1992 (Annexure X) rejecting his request for hospital leave. Even this reply does not indicate the rule by which his case was rejected. The letter dated 3.9.92 rejects his case on the ground that he is a clerical staff and not governed by the Workmen's Compensation Act. But the rule position as incorporated in IREM as referred



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to earlier does not prescribe a Clerk not governed by Workmen's Compensation Act is ineligible to get the hospital leave. Hence I am of the opinion that the reply dated 3.9.92 had been given without analysing the rule position and without applying the mind. Hence this letter has to be rejected as of no consequence. Even after that letter, the applicant went on pursuing his case until the appeal to the Minister for P&PW was replied on 20.9.93 (Annexure I) which is impugned in this OA. In this letter also, there appears to be no application of mind and his case was rejected without giving any proper reasons. From the above analysis, it is clear that the respondents had made no attempt to analyse his case properly. When he filed this case in 1994, the respondents took plea that the case is barred by limitation. Had they applied their mind properly earlier and scrutinised the records which were available in late of 80s, the case could have been decided one way or the other on the basis of the facts and the material available on record which the respondents failed to do. In view of the above, it is not proper if they now contend that this OA is barred by limitation. Hence this contention has to fail and a denovo analysis of the case has to be done to see whether the applicant can ^{Uphold} get the ^{period of} ~~required~~ hospital leave now. Further if the hospital leave is granted, then this will be credited to his leave account which can be encashed at the time of his superannuation. Hence adding of the hospital leave even at this stage will be beneficial to the applicant at a later date and hence his prayer for grant of hospital leave now cannot be



rejected.

9. The second contention of the respondents is that he was not injured on duty while travelling by 204 express train. But they have not adduced any reason for coming to this conclusion. They only submit that this had happened because of the negligence on the part of the applicant resulting in eye injury. Even this submission that he was negligent has not been substantiated by the respondents by providing necessary proof in this connection. Hence mere assertion that he was not injured while on duty cannot be accepted on the face of it. It requires further inquiry and on the basis of the inquiry a firm decision has to be taken in this ^{connection} ~~case~~ also.

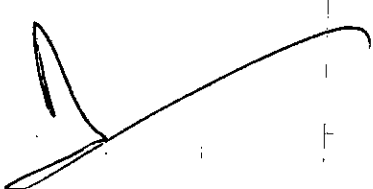
10. The official respondent viz, DSO in his letter dated 10.7.95 cited supra had stated that the records in the SS/O/UBL are not available in this connection. But he ^{not} has ~~not~~ stated that the records of the medical department are also not available. The applicant has stated in para 5(1) of the OA (Grounds for relief with legal provisions) that one Shri G.Balasubramanian, Goods Guard, Miraj and Shri Shetty, Guard 'A' Spl, Pune were witnesses to the injury sustained by him. Hence some evidence can be obtained from them if these two officials were called and inquired into. In view of the fact that the official respondents are not able to successfully prove that the injury had not taken place during the course of his duties and also because of the fact that some evidences are available, it is essential



that a fact finding inquiry even at this stage can be conducted and on the basis of the inquiry a final decision in regard to the eligibility of the applicant for hospital leave can be taken. It is needless to say that the applicant has to be associated with the fact finding inquiry to come to the conclusion. The applicant may also be permitted to produce his evidences, if any, in this connection in additon to calling S/Shri G.Balasubramanian and Shetty, the two officials quoted by the applicant in this OA.

11. In the result, the following direction is given:-

R-3 should conduct a denovo fact finding inquiry now by associating the applicant in regard to the incident of injury sustained by the applicant on 10.8.84. The two officials viz, S/Shri G.Balasubramanian and Shetty who were reported to be the eye witnesses to this incident should be called for the fact finding inquiry in addition to the other witnesses, if any, the applicant may produce. The hospital records in regard to the medical treatment given to the applicant should also be verified if they are available. R-3 should take a firm decision in regard to the admissibility of the claim of the applicant for hospital leave on the basis of the above fact finding inquiry.



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12. Time for complaine is four months from the date of receipt of a copy of this order.

13. The OA is ordered accordingly. No costs.



(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 26th June, 1996
Open court dictation.

vsn

Handwritten signature
DY. Registrar (Judf)

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Copy to:-

1. The General Manager, South Central Railway, Secunderabad.
2. The Chief Personnel Officer, Personnel Branch, O/O the G.M. South Central Railway, Secunderabad.
3. The Divisional Railway Manager, S.C.Railway, Hubli Division Hubli.
4. One copy to Sri. S.Ramakrishna Rao, advocate, CAT, Hyd.
5. One copy to Sri. V.Rajeshwara Rao, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

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COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 26/6/96

~~ORDER/JUDGEMENT~~

~~O.A. NO. / R.F. / C.P. No.~~

O.A. NO. 233/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

DISMISSED

DISMISSED AS WITHDRAWN

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS.~~

YLKR

II COURT

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