

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.100/3741/2014

New Delhi this the 8th day of December, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. P. K. Basu, Member (A)

Shri Bhole Ram
S/o SHri Risal Singh,
Loc Pilot (Goods)
Under Chief Crew Controller,
Northern Railway,
Ghaziabad.
R/o Vill.Bhelpur Gautam Budh
Nagar, NOIDA. Applicant

(Argued by:Shri H.K. Bajpai, Advocate)

VERSUS

Union of India : Through

1. Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
Northern Railway, Baroda House,
New Delhi.
3. Divisional Railway Manager
Northern Railway,
State Entry Road,
New Delhi.
4. Chief Crew Controller,
Northern Railway,
Ghaziabad.
5. Sr. Divisional Electrical Engineer
DRM Office,
Northern Railway,
State Entry Road, Delhi. Respondents

(By Advocate:Ms. Vandana Sharma)

ORDER (ORAL)**Justice M. S. Sullar, Member (J)**

The challenge in this Original Application (O.A), preferred by the applicant, Shri Bole Ram, is to the impugned order dated 14.07.2014 (Annexure A-1), whereby his request for treating the period w.e.f. 21.01.2013 to 22.10.2013, as Medical Hurt on Duty (for brevity "HOD"), was declined by the competent authority.

2. The pith and substance of facts & material, which are essential to decide the sole controversy involved in the instant OA, as claimed by the applicant, and exposted from the record, is that, he was working as a Driver at the relevant time, under the Chief Crew Controller (for short "CCC") of Railways, Ghaziabad. Since no official residence was allotted, so he used to attend his duties from his village on Scooty, as and when CCC called him telephonically, and similarly he used to return to his residence by the same Scooty, after finishing his duty.

3. According to the applicant that on 19.01.2013 (Saturday), the CCC telephonically called him immediately for duty on goods train, which was scheduled to leave at 22.30 PM on that day. In compliance thereof, applicant left his residence at 21.15 PM by his Scooty. As soon as he reached near the Railway Station, Ghaziabad, as his luck would have it, in the mean time, he was knocked down by a heavy motor vehicle at about 22.05 PM and its driver fled away, after causing the accident from the place of occurrence. Applicant suffered fracture of his Right Shoulder and unbearable pain. However, he was removed in the injured

condition, from there by villagers to Tripathi Nursing Home, where the doctor gave him first aid. Thereafter, he remained under the constant treatment of Dr. Rakesh Taneja, Patel Nagar, Ghaziabad, as per medical certificate (Annexure A-2). His Shoulder was plastered on 20.01.2013, as per medical prescription (Annexure A-3).

4. The case set-up, by the applicant, in brief, insofar relevant, is that, immediately after the accident, he had telephonically informed in this regard and the message was duly recorded in the diary maintained in the office of CCC. Thereafter, on 21.01.2013, he reported sick to the Railway Divisional Medical Officer, and was placed in the sick list. After remaining under the sick list for 9 long months. He was stated to have also received the treatment from Railway Dispensary, Ghaziabad and also Central Railway Hospital, New Delhi, from where he was referred to by DMO, Ghaziabad on 30.03.2013. He repeatedly had been attending Central Railway Hospital, New Delhi for his treatment from 30.03.2013 to 19.06.2013 as per medical records (Annexures A-4 to A-8). Ultimately, he was declared fit for duty on 22.10.2013, by the Railway Divisional Medical Officer, vide certificate (Annexure A-9) and subsequently fitness certificate dated 09.07.2014 (Annexure A-10) issued by the Medical Officer of the Railways. The same were deposited in the office of CCC. Consequently, he reported and joined his duty.

5. The case of the applicant further proceeds, that although he was declared fit and he joined his duty, but no wages were

paid to him w.e.f. 22.01.2013 to 22.10.2013 by the Railways. Although he was allowed to join his duty on 11.07.2014, when he started his normal working of driving goods train and respondents started paying his monthly salary, but his wages for pointed period of his treatment was not paid by the Railways. He submitted his representation in the month of July, 2014 (Annexure A-11), but in vain.

6. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicant claimed that although he sustained fracture and severe pain, during the course of employment, and remained under continuous treatment at Tripathi Nursing Home, Ghaziabad, Railway Dispensary, Ghaziabad, Central Railway Hospital, New Delhi and remained in the sick list of the Railways, but the wages for the period w.e.f. 21.10.2013 to 22.10.2013 were not paid to him by the Railways. The representation (Annexure A-11), filed by the applicant was stated to have been dismissed by a very brief impugned order dated 14.07.2014 (Annexure A-1).

7. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned order and claimed wages of the pointed period on the following grounds:-

A) That the impugned Termination Order dated 31.03.2015 had suffered from non-application of mind on the part of the respondent no. m3; failed to consider the earlier verification reports on the genuineness of the licence of the applicant received from RTO Mathura during the time of his appointment, confirmation as well during 15.03.2013 when Special Commissioner Transport, GNCT of Delhi vide his forwarding letter declared a list of 162 drivers black fake.

B) That, this had been passed completely brushing aside the settled position of law. Since number of time Driving License of applicant was verified and found genuine as certified by the RTO Mathura. As such,

issuance of said impugned order of a confirmed employee without holding any enquiry is arbitrary and illegal.

C) That, the action of the respondent by issuing the major punishment of Termination from service is completely violative of principles of natural justice since respondent no. 3, DA cum DM never applied his mind while issued such a cryptic order of proposed punishment against the applicant twice.

D) That, the license of the applicant was renewed by the STA Mathura, UP time to time and in the last it was renewed till 02.04.2009. Had the same been faked, it would not have been issued by the MLO Mathura.

E) That, the said license was endorsed by the DL-0819990060027 valid till 19.04.2015 besides issuing him a driver Badge number P-081000402 valid up to 19.04.2015. Had the same been faked, it would not have been done by the STA Delhi.

F) That the genuineness of the license of the applicant was verified from the license issuing authority, RTO Mathura, number of time even such illegal SCN proposing the termination of services of the applicant was issued by the DA which shows his arbitrariness and biased attitude.

G) That, the impugned SCN was issued without issuance of any charge-sheet or conducting enquiries etc. violating the principles of natural justice.

H) That, Cl. 9-B of Executive Instructions on Procedure Regarding Disciplinary Action & Appeals, 1955' is not applicable in the present case in hand which violate the constitutional mandate.

I) That, law is well settled on the ground that every employer must ensure that before terminating the employment of any employee permanent or temporary must act according to the rules/regulations/orders of his department."

8. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned order, in the manner indicated hereinabove.

9. The respondents have vaguely refuted the claim of the applicant, and filed the reply, wherein it was admitted that the applicant informed the Crew Lobby, Ghaziabad, that somebody had hit his vehicle due to that he had sustained serious injuries and was not in a position to report for duty. All possible assistance was provided to him, for his proper treatment in the injury sustained in the accident on a public road on his way to report for duty. Although in para 8 of the reply, the respondents have admitted that "the applicant had met with an accident when he

was on public road while on his way to report for duty at Crew Lobby, Ghaziabad”, but was contrary pleaded, that he is not entitled for relief demanded by him.

10. According to the respondents, the representation (Annexure A-11), submitted by the applicant was considered and was rejected on the ground that he was not on duty at the time of accident, his plea of Hurt on Duty, i.e., HOD could not be accepted and his claim was rightly rejected, vide impugned order dated 14.07.2014 (Annexure A-1) by the competent authority. Virtually acknowledging the factual matrix and reiterating the validity of the impugned order, the respondents have casually denied all other allegations & grounds contained in the O.A, and prayed for its dismissal.

11. Having heard the learned counsel for the parties, having gone through the record with their valuable help, and after considering the entire matter, we are of the firm view, that the instant OA deserves to be accepted, in the manner and for the reasons mentioned hereinbelow.

12. What cannot possibly be disputed here, is that, in the wake of immediate telephonic call from CCC, Ghaziabad to join his duty, the applicant was on his way to perform his duty on goods train on the relevant date. During the course of his journey to join his duty, as luck would have been, he met with an accident in question, in which he suffered injuries, fracture of Shoulder and severe pain. It is not a matter of dispute that he remained under the constant treatment of Dr. Rakesh Taneja at

Tripathi Nursing Home, Ghaziabad, at the first instance. Thereafter, in Railway Dispensary, Ghaziabad and Central Railway Hospital, New Delhi, as per medical treatment records (Annexures A-4 to A-8). He remained on sick list (Annexure A-9) of the Railways. Having received his treatment, applicant was declared fit for duty, vide Certificate dated 09.07.2014 (Annexure A-10) by the Medical Department of the Railways. Thereafter, he joined his duty.

13. Not only that, the respondents have clearly admitted in para 5 of the reply that *“all possible assistance was provided to the applicant by the respondents for his proper treatment for the injuries sustained in the accident on a public road on his way for duty”*. Sequel, in para 8 of the reply, it has been specifically admitted that *“the applicant had met the accident when he was on public road while on his way to report for duty at Crew Lobby, Ghaziabad”*.

14. Thus, it would be seen that on the one hand, even the respondents have duly acknowledged the claim of the applicant in this regard, but surprisingly enough, they have withheld the wages of the applicant during the relevant period of his treatment, for the reasons best known to them.

15. This is not the end of the matter. The applicant has moved a representation (Annexure A-11) for redressal of his claim in this regard, but his claim was rejected by passing a very brief impugned order dated 14.07.2014 (Annexure A-1) by the competent authority, which in substance, is as under:-

"On examination of the representation dated 17.04.2014 by the Senior Divisional Electrical Engineer it has been found that on 19.1.2013 you were going from Greater Noida to Ghaziabad on duty and then you met with an accident on road, and you were injured. From technical point of view, you had not signed 'On duty'; accordingly on the said date on 19.1.2013 you had not reported on duty till the accident. On the above facts, your request that the above accident should be treated as H.O.D. cannot be accepted."

16. A perusal of the impugned order would reveal, that the main ground which appears to have been weighed with the competent authority to negate the claim of the applicant, was that, he had not signed on duty register on 19.01.2013. The reason assigned in the impugned order appears to be speculative and untenable. Keeping in view the nature of the fracture of Shoulder and severe pain, it was not possible for the applicant to sign the duty register on 19.01.2013, when he met with an accident and remained under constant treatment for a long time. On the contrary, the pleaded case of the respondents is that he met with an accident on public road on his way to join his duty.

17. Meaning thereby, on the one side the respondents have admitted that applicant sustained injury in the accident in question on public road, while on way to his duty, on the fateful day, at the same time they are denying the wages of relevant period to the applicant, without assigning any cogent reason. Hence, the respondents cannot legally be permitted to blow hot and cold in the same breath and the impugned order is self-contradictory in this regard, which is not legally permissible. Moreover, every public authority is expected to act fairly and promptly to redress the grievance of the employees in a Social Democratic Welfare State.

18. Therefore, it is held that applicant has sustained the fracture/injuries in the accident in question while on his way to his duty and he is entitled to the wages of interregnum period of his treatment as no person acquire any injury by choice.

19. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

20. In the light of the aforesaid reasons, the instant OA is hereby accepted. The impugned order dated 14.07.2014 (Annexure A-1) is hereby set aside. At the same time, the respondents-Railways are directed to treat the interregnum period as HOD and to release the wages w.ef.. 21.01.2013 to 22.10.2013 to the applicant, within a period of 3 months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

(P.K. Basu)
Member (A)

(Justice M.S. Sullar)
Member (J)
08.12.2016

Rakesh