

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 699 OF 2014

Dated this Monday, the 27th day of November, 2017

CORAM: HON'BLE SHRI ARVIND JAYRAM ROHEE, MEMBER (JUDICIAL)

1. Smt. Surekha Raju Gadappa,
Res. At : 49, Gawali Wada,
Khadki, Pune 411 003.

2. Smt. Jayashree Laxman Gadappa,
Res. at : 49, Gawali Wada,
Khadki, Pune 411 003.

... Applicants

VERSUS

1. Union of India,
Through : The Secretary,
Department of Defence Production,
South Block, New Delhi 110 011.

2. The Chairman,
Ordnance Factory Board,
10-A, S.K. Bose Road,
Kolkata 700 001.

3. The General Manager,
Ammunition Factory,
Khadki, Pune 411 003.

... Respondents

Appearances :

Shri R.C.Ravlani, learned Advocate for the applicants.

Shri V.S.Masurkar assisted by Shri D.A.Dube, learned Advocates for the respondents.

O R D E R

OA filed on 17.10.2014

Order reserved on 06.11.2017

Order delivered on 27.11.2017

The applicants, who are the married daughters of deceased employee Smt. Anusuya Vithal Pangudwale approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 (for short '**AT Act**'), seeking the following reliefs :-

“8.1. declare that the death of Smt. Anusuya Pangudwale, Ex. T.No.CW/126/AFK, as an “Accident”, on duty, i.e. in the course of her employment, and, is incidental to her employment.

8.2. may be pleased to direct the Respondents to treat the death as an “Accident, while on duty, “during the course of her employment, and, incidental

to her employment,

8.3. direct the Respondents to grant the compensation of Rs. Ten Lakhs (Rs.10,00,000) as per OFB Order at A-4, Ith interest @ 12% from 07.08.2008 till date of payment.

8.4. direct the respondents to pay the interest @ 12% p.a. for the period of delay, on the terminal benefits, amounts paid vide letter Dt. 05.09.2013 (Annex. A-8) from 07.08.2008 to 05.09.2013.

8.5. The Hon'ble Tribunal may be pleased to pass any other orders, in the interest of justice."

2. The applicant's deceased mother was serving as Labour SSK with the respondent No.3 in Ammunition Factory, Khadki, Pune. While on duty, on 07.08.2017, in the Factory premises, while was during tea break, suffered a bite from a snake or some other reptile creature. She was immediately taken to the Factories Hospital. However, she was declared dead. Thereafter, Board of enquiry was set up to investigate cause of death. The Board submitted a report on 18.02.2014 (Annexure A-2) stating that

the probable cause of death may be due to bite by poisonous snake. Subsequently, Sub Divisional Magistrate Pune City after considering the Medical Officers report statement of family members during Police enquiry declared the death as accidental death vide Annexure A-7A.

3. Subsequently, the applicant sought information by taking recourse to the provisions of Right to Information Act regarding the cause of death then submitted a representation dated 19.10.2013 (Annexure A-9) to the respondent No.3 seeking compensation of Rs.10,00,000/- on account of accidental death of their mother while on duty and in the factory premises. However, this representation was rejected by the impugned order dated 16.11.2013 (Annexure A-1) on the ground that the case does not fall under the purview of factory

accident.

4. This led the applicant to serve a legal notice dated 13.01.2014 (Annexure A-10) on the respondents. The same was replied on 18.02.2014 by respondent No.3 only vide Annexure A-2 denying the claim for compensation on the same ground stated in the previous reply. It is stated that the respondents have sanctioned Rs.25,000/- only as ex-gratia compensation for the death which they accepted under protest and without prejudice to their right to claim compensation of Rs.10,00,000/-.

5. The reliefs sought in OA are based on the following grounds as mentioned in paragraph No.5 of the OA. The same are reproduced here for ready reference :-

“5.1. The death of Smt. Anusuya, the employee has occurred while on duty, within

the premises of the working place, due to the bite by snake / some reptile. (Ref. A-2) (A-7A).

5.2. The death, under the above circumstances is to be treated as an Accident. (Ref.:A-5), incidental to and in the course of her employment,

5.3. The Compensation payable in case of death due to such Accident is fixed at Rs.10,00,000/- (Rs. Ten Lakhs only) by Govt. / OFB Resp. No.2 (Ref.:A-4).

5.4. The Terminal benefits are paid after delay of about 5 years, and, compensation payment is still not made.

5.5. The applicant relies on the following case laws.

1. A. Padmavalley & Ors. Vs. CPWD. (1990) 14 ATC 914 : FB at C.A.T. Hyderabad.

2. The applicants pray for permission to rely upon such other case Laws, as may be necessary in the interest of justice.”.

6. On notice, the respondents resisted the OA by a common reply dated 20.04.2015 and denied all the adverse averments, contentions and grounds raised therein. A preliminary objection was raised regarding jurisdiction of this Tribunal to entertain the claim, since it does not relate to service matter and

that the Commissioner under Workmen Compensation Act, 1923 (for short '**WC Act**') is the Competent Authority to deal with the matter. Further, the case is barred by limitation since cause of action to approach this Tribunal arose on the date of death of the applicants mother. Since the OA is filed after a period of 7 years, therefrom, the same is barred by limitation.

7. It is stated that even otherwise on merits also, the applicants are not entitled to any relief, since investigation revealed that on the date of the death about 04:00 P.M., the applicant's deceased mother was relaxing in a tea room and was not actually performing the duty when she suffered from a bite. As such on merit also, it cannot be said that the death occurred during the course of employment or while

she was performing the duty assigned to her. For the above reasons, the applicants are not entitled to any relief.

8. It is also stated that considering the fact that the applicants are the legal representatives of the deceased employee, the monetary benefits such as amount of gratuity, General Provident Fund, C.G.E.G.I.S., leave encashment, pay commission arrears etc were paid to them in addition to ex-gratia compensation of Rs.25,000/-. It is stated that the applicants are wrongly claiming amount of Rs.10,00,000/- as compensation by referring the provisions of relief. Ministry of Defence vide Ordnance Factory Board letter dated 17.05.2010 by which the amount of ex-gratia compensation was initially raised from Rs.25,000/- to Rs.5,00,000/- and

thereafter, on implementation of VI Pay Commission recommendation, it was further modified to the extent of Rs.10,00,000/-. However, this is payable only when it is established that the employee died in the performance of *bona fide* official duty under various circumstances. It is also stated that this power can be exercised by Commissioner under Workmen Compensation Act and not by this Tribunal.

9. On the above grounds, it is stated that the OA is liable to be dismissed, firstly on the ground of jurisdiction, then on limitation and lastly on merit also, in case first two issues are answered in favour of applicant.

10. The parties then filed further pleadings by way of rejoinder and sur-

rejoinder reiterating the claim and the defence raised in OA and its reply.

11. On 06.11.2017, when the matter was called out for final hearing, I have heard the oral submissions of Shri R.C.Ravlani, learned Advocate for the applicant and the reply arguments of Shri V.S.Masurkar assisted by Shri D.A.Dube, learned Advocates for the respondents.

12. I have carefully gone through the entire case record including the documents produced by the parties in support of their rival contentions.

13. I have also considered various citations relied upon by the applicants in support of their claim and also the relevant provisions of the Workmen Compensation Act, 1923.

FINDINGS

14. The controversy involved for resolution of this Tribunal in the present OA is threefold. Firstly, it is to be considered if this Tribunal has jurisdiction to entertain the present OA since admittedly compensation for accidental death at work place while on duty is claimed by the applicants as the only legal representatives of the deceased employee, who was admittedly at the relevant time working with the respondents. In case, this Tribunal finds that it has jurisdiction to entertain the claim then the question for consideration will be whether the claim is barred by limitation and if this hurdle is also successfully crossed by the applicant then finally it is to be considered if claim is tenable on merit and the applicant's are entitled to the reliefs sought.

15. Turning to the issue of jurisdiction although there is relationship of employer and employee between the respondents and the applicant's deceased mother, still when the employee / workman dies while on duty at work place and if such death is accidental one then only the employer will be liable to pay compensation for such death, by virtue of the jural relationship between them. It is not disputed that the applicant's deceased mother was on duty on a fateful day and died of snake like bite or other reptile. The WC Act is enacted by the Parliament to grant compensation when the Workman / employee dies while on duty due to accident, although indirectly in such cases, the employer cannot be said to be responsible for causing the death.

16. Section 3 of the WC Act

prescribes the provisions for employer's liability for compensation when personal injury is caused to a workman by an accident arising out of and in the course of his employment. Certain guidelines are prescribed by the said Section when such compensation can be granted. It is obvious that under the provisions of the WC Act, the Workmen of Private Establishments, Factories, shops etc are also covered. Under Section 20 of the WC Act, the Commissioner is the authority appointed by the Government to deal with such cases. Obviously, the applicants have not approached the said authority and instead filed the present OA by invoking the provisions of Section 19 of the AT Act.

17. It is needless to say that although the applicant's deceased mother was the Central Government employee, it

is to be considered if the present OA can lie under the provisions of AT Act. This is so because as per the preamble of the said Act, it has been enacted to provide for the adjudication or trial by the Administrative Tribunals or disputes or complaints with respect to recruitment conditions of service of persons appointed to public services or posts in connection with the affairs of the Union or any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation or Society owned or controlled by the Government.

18. Further, certain employees are exempted, since they are not governed under the AT Act as mentioned in Section 2 thereof.

19. The term "*service matters*" is also

defined in Section 3(q) of the said Act.

It reads as under :-

“3(q). “service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any Corporation [or Society] owned or controlled by the Government, as respects-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;”

20. Although a residuary clause *“in any other matter whatsoever”* is prescribed under Section 3(q) (V) as stated above, it cannot be said that for the accidental death of employee, the employer is

directly or indirectly responsible or it amounts to service matter. As such, although there is relationship of employer and employee, it cannot be said that when accidental death occurred while on duty at work place, it is covered under service matter, to be adjudicated by this Tribunal.

21. As again this, during the course of the arguments, the learned Advocate for the applicant placed reliance on the decision of the Hon'ble High Court of Gujarat in *Smt. Jiviben Chana and others Vs. Shah Karsan Lakha, (1983) 1 GLR 134* decided on 11.10.1982 and submitted that this Tribunal can invoke the power of judicial review vested in it to adjudicate the dispute and it is not necessary to go to the Commissioner under WC Act. However, the case relied upon refers to the proceeding under WC Act and it was not by

way of Writ Petition against the order passed by the CAT Ahmedabad Bench. As such, the above decision cannot be relied upon.

22. The learned Advocate for the applicant further placed reliance on the decision rendered by the CAT Hyderabad Bench in *A. Padmavalley & Ors. Vs. CPWD (1990) 14 Administrative Tribunals Cases 914, OA No.576 of 1986 decided on 30.10.1990.* In that case, the provisions of Sections 2, 3(q), 3(r), 14, 20(1), 27 and 28 of the AT Act. The issue regarding jurisdiction of the Tribunal and other matters covered by the Industrial Disputes Act, 1947 was also considered. It has been held that Tribunals are not to be substituted for the authorities constituted under the aforesaid Act of 1947 and, therefore, there is no concurrence of jurisdiction. It is also held that this is because the

Tribunal mainly exercises the jurisdiction and the power of superintendence under Article 226 and 227 of the Constitution, whereas the adjudicatory bodies under the Act of 1947 are required to follow the detailed procedure prescribed in the said Act, which are designed to maintain industrial peace and harmony. It is further held that contrary view will lead to absurd abstract and anomalous result and employee, who is covered by the AT Act and the act of 1947 should, therefore, ordinarily exhaust legal remedies available under 1947 Act first. It is also held that, however, the Tribunal can exercise the power analogues to Article 226 to entertain the matter directly depending on the fact and the circumstances of the case. It is also held that this requirement flows from the fact that there is an alternative remedy

and not from Section 20(1) of the AT Act.

23. The applicants therein were Casual Workmen belonging to the Telecommunication and Central Public Works Department. Their grievance was against their termination, which they alleged to be in violation of Section 25 of the Industrial Disputes Act.

24. In the present case, the legal representatives of the deceased employee seek compensation by invoking the power of judicial review vested in this Tribunal, although they have remedy to approach the Commissioner under WC Act for necessary redress. Relying on the ratio laid down in the aforementioned decision by Hyderabad Bench of CAT, the applicants should have approached the said authority i.e. Commissioner under WC Act first. However, as stated earlier,

this Tribunal can exercise the power of judicial review directly without their being any order from the sub-ordinate authority but in exceptional cases. In the present case, since it is already held by this Tribunal that the claim raised by the applicant cannot be termed as service matter, there is no question of exercising the power of judicial review vested in this Tribunal. The appropriate remedy, therefore, for the applicants will be to approach the Commissioner under WC Act and in case their grievance is not favourably sorted out, they can take further steps in accordance with law by approaching the appropriate forum.

25. From the above discussion, it is obvious that this Tribunal does not have jurisdiction to entertain the present OA, especially when it is not established by

the applicant that this case falls under exception on the peculiar facts of the case to exercise such power, assuming for a moment that the disputes involved relates to service matter. In any case, it will be beyond the jurisdiction of this Tribunal to entertain the present OA.

26. In view of the fact that this Tribunal has come to the conclusion that it has no jurisdiction to adjudicate upon the claim raised by the applicant's and the appropriate remedy lies with the Commissioner under WC Act, the OA is liable to be dismissed for want of jurisdiction. The applicant will, however, be at liberty to approach the Commissioner under WC Act for redressal of their grievance, subject to the law of limitation.

27. Since this Tribunal has no jurisdiction to entertain the present OA, there is no question of considering if the same is barred by limitation i.e. filed beyond the prescribed period of limitation or if it is not tenable on merit. These issues will be kept open for being agitated before and adjudicated by the appropriate authority by the applicants, if they so desire.

28. The OA, therefore, stands dismissed for want of jurisdiction. The parties are directed to bear their respective costs of this OA.

Place : Mumbai ***(Arvind J. Rohee)***
Date : 16th November, 2017 ***Member (Judicial)***

*kmg**