
(1977) 07 AHC CK 0010
In the Allahabad High Court
Case No : F.A.F.O. No. 57 of 1975

Abdul Latif Khan

APPELLANT

Vs

North Eastern Railway

RESPONDENT

Date of Decision : 15-07-1977

Acts Referred:

Railway Protection Force Act, 1957 — Section 10, 3(7)

Railways Act, 1890 — Section 148(1), 3, 3(7)

Workmens Compensation Act, 1923 — Section 10, 2, 2(1), 22

Citation : (1977) ACJ 397

Hon'ble Judges : R.B. Misra, J;J.M.L. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

J.M. L. Sinha, J.—This is a First Appeal from order dated 30th December, 1974, passed by the Workmen's Compensation Commissioner, Basti.

2. The facts giving rise to this appeal can briefly be stated as under:

3. Abdul Latif Khan (hereinafter to be called the Appellant was initially recruited - as Y. Cadet in the Special Armed Constabulary. In due course he was appointed as Company Commander in the P.A.C. with effect from 13th July, 1965. The Appellant was appointed on deputation as B. Company Commander under Assistant Security Officer of the Railway Protection Force. According to the Appellant, he was paid a monthly salary of Rs. 423.00 in his capacity as Company Commander. It was the duty of the Appellant, inter alia, to check and inspect the railway protection force posted at different stations of the North Eastern Railway in Gorakhpur Range which included Maghar railway station. On 10th of November, 1967, at about 3.20 a.m. when the Appellant was crossing railway lines at Maghar railway station, stop ballast under his leg slipped and he fell down as a result of which he sustained a slipped fracture of the calcaneum of the right foot. According to the Appellant, he was permanently partially disabled on account of the injury received by him and was granted leave preparatory to

retirement with effect from 8-8-1968. He drew his last salary for the period ending on 15th March, 1969 and thereafter was retired. According to the Appellant, if he had not been disabled, he would have continued in service till 25th of January, 1979. The Appellant, made certain representations to the General Manager, North Eastern Railway for obtaining compensation for the injury suffered by him. That having proved futile, he filed a petition u/s 22 of the Workmen's Compensation Act, 1923.

4. The application was opposed by the North Eastern Railway on a number of grounds. It was, inter alia, alleged that the loss of working capacity had not been proved by the Appellant; that the Appellant was neither permanently disabled to perform his duties on account of the alleged injuries nor was he retired from service on account of the same; that the Appellant's deputation with the North Eastern Railway expired on 13th of July, 1968 and he was therefore, returned to the parent department in the U.P.P.A.C. from where he himself sought his retirement; that the Appellant was not a workman within the meaning of Section 2(n) of the Workmen's Compensation Act; that no notice, as required by Section 10 of the Workmen's Compensation Act, had been served by the Appellant and the claim petition was therefore, not maintainable; and that the compensation claimed was, in any case, excessive and beyond the scope of Schedules I and II of the Workmen's Compensation Act.

5. According to the Compensation Commissioner, the following points were involved for determination in the case.

1. Whether the Appellant was a workman under Workmen's Compensation Act ?
2. Whether the accident took place during the employment and in the discharge of the Appellant's duty?
3. Whether the compensation claimed or any part thereof was payable to the Appellant ?
4. Whether the earning capacity of the Appellant was permanently impaired on account of the injury sustained by him in the accident that took place at Maghar railway station ?

5. Whether the Respondent was liable to pay any compensation?

6. While addressing himself on point No. 1, the Compensation Commissioner accepted that the Appellant was a workman within the meaning of Section 3(7) of the Indian Railways Act read with Section 10 of Railways Protection Force Act. The learned Compensation Commissioner, however, proceeded to say that, since the Appellant was earning a salary of more than Rs. 500/-p.m on the date of the accident, he was not a workman within the meaning of Section 2 (n) of the Workmen's Compensation Act. The Compensation Commissioner accordingly dismissed the petition without giving any finding on the other points formulated by him for determination. Feeling aggrieved against the finding recorded by the Compensation Commissioner, the Appellant has come up in appeal before this

Court.

7. The only question involved for consideration in the present appeal is whether the Appellant was a workman within the meaning of Section 2 (n) of the Workmen's Compensation Act.

8. The fact that the Appellant was a railway servant on the date on which the accident giving rise to the claim petition took place has already been accepted by the Compensation Commissioner. In order to reach that conclusion the Compensation Commissioner has placed reliance on Section 3(7) of the Indian Railways Act and Section 10 of the Railway Protection Force Act. Section 3(7) of the Indian Railways Act reads as follows:

"Railway Servant" means any person employed by a railway administration in connection with the service of a rail way.

Section 10 of the Railway Protection Force Act reads as follows:

The Inspector General and every other superior officer and every member of the Force shall for all purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890, other than Chapter VI-A exercise the powers conferred on railway servants by or under that Act.

It was not controverted before the Compensation Commissioner, nor was it controverted before us, that the Appellant was working as member of the Railway Protection Force (Armed Branch) on the North Eastern Railway in the Gorakhpur Range since 13th of July, 1965. In other words the fact that he was a member of the railway Protection Force during the period the occurrence took place was not controverted at any stage. According to Section 10 of the Railway Protection Force Act, every member of the Force is, for all purposes, other than Chapter VI-A of the Railways Act, to be regarded as railway servant. Needless to say that Chapter VI-A of the Railways Act is not relevant for our purpose in this case. The Appellant would, therefore, be a railway servant in view of the provision contained in Section 10 of the Railway Protection Force Act.

9. Again, according to the statement on oath made by the Appellant, he was a member of the Railway Protection Force on the date when the accident took place and in his capacity as such it was his duty to check and inspect the members of the force posted on duty at various places within his range. It was further his duty to prevent the commission of crimes in the railways. He was therefore, a person employed by the railway administration in connection with the service of the railway. He would, therefore, also be a railway servant in view of the provision contained in Section 3(7) of the Indian Railways Act. The conclusion reached by the Compensation Commissioner that the Appellant was a railway servant on the date on which the accident took place does not, therefore, call for any interference whatsoever.

10. This takes us to the point whether the Appellant was a workman within the meaning of Section 2 (n) of the Workmen's Compensation Act when the accident

took place. According to that provision, a person would be a workman;

(i) If he is railway servant as defined in Section 3 of the Indian Railways Act and is not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II. or

(ii) If he is a person employed on monthly wages not exceeding five hundred rupees, in any such capacity as is specified in Schedule II.

11. If a person falls within any of the aforesaid two clauses, he would be a workman within the meaning of Section 2 (n) of the Workmen's Compensation Act.

12. We have already accepted earlier the conclusion reached by the learned Compensation Commissioner that the Appellant on the date of the accident was a railway servant as defined in Section 3 of the Indian Railways Act. It was not the Respondent's case at any stage that the Appellant was permanently employed in any administrative, district or sub-divisional office of a railway. Reference has at one stage been made by the learned Compensation Commissioner in his judgment to Item (xii) of Schedule II of the Workmen's Compensation Act which makes it appear that the Compensation Commissioner probably believed that the Appellant did not fall within the first clause of Section 2 (n) because he was employed in one of the capacities specified in Schedule II, item (xii) of Schedule II however, reads as follows:

employed upon a railway as defined in Clause (4) of Section 3, and Sub-section (1) of Section 148 of the Indian Railways Act, 1890, either directly or through a sub-contractor, by a person fulfilling a contract with the railway "administration".

13. There can be no doubt that if Item (xii) of Schedule II applied to the Appellant, he could not be a workman falling-under the first clause of Section 2 (n). A close examination of Item (xii) of Schedule II, however, would show that it will apply only to those persons who are employed upon a railway by a person fulfilling a contract with the railway administration, directly or through a sub-contractor. Now, in the instant case, there is no evidence to show that the Appellant was employed upon the North Eastern Railway by any person fulfilling a contract with the Railway Administration, directly or through any subcontractor. Item (xii) of Schedule (II) could not, therefore, apply to him.

14. It is further worthy of notice that in order that Clause (i) of Section 2fn) may not apply to a railway servant, two things are necessary:

(i) that a person is not permanently employed in any administrative, district or sub-divisional office of a railway, and

(ii) that the employment is not any of the capacities as defined in Schedule II.

Therefore, even if we were to accept that Item (xii) of Schedule II of the Workmen's Compensation Act did apply to the Appellant, it was further

necessary for the Respondent to prove that the Appellant was not permanently employed in any administrative, district or sub-divisional office of a railway. As already stated earlier, this has not been done.

15. Therefore, looked at from any angle, the disqualification referred to in the latter part of Section 2 (n) did not apply to the Appellant and consequently he was a workman under the aforesaid clause.

16. Once it is accepted that the Appellant was a workman falling under Clause (i) of Section 2(1)(n) of the Act, Clause (ii) thereof becomes irrelevant. Further, Clause (ii) could apply only if the Appellant was employed in any of the capacities specified in Schedule II. We have already held earlier, that Item (xii) of Schedule II referred to by the Compensation Commissioner, did not apply. We have not been referred to any other item occurring in Schedule II which could apply to the Appellant. Consequently, the fact whether the Appellant was drawing wages less or more than Rs. 500/- p.m. could have no bearing on the point as to whether the Appellant was a workman on the date on which the accident took place. The Compensation Commissioner has erred in relying on clause Hi) of Section 2(1)(n) in order to hold that the Appellant was not a workman.

17. Besides the point whether the Appellant was or was not a workman within the meaning of Section 2(1)(n) of the Work-men's Compensation Act, there were a number of other points involved for determination. The Compensation Commission himself formulated as many as five points for determination in the case. He however, did not give any finding on the points except point No. 1. It is, therefore, necessary that the case should be remanded to the Compensation Commissioner for determination on the remaining points formulated by him in his judgment. The Respondent raised a specific plea in the written statement that the claim petition was barred by Section 10 of the Workmen's Compensation Act. That will also be one of the point for determination in the case.

18. In the result, therefore, this appeal is allowed. The finding of the Compensation Commissioner that the Appellant was not a workman on the date on which the accident took place is reversed and the case is remanded to the Compensation Commissioner with a direction that he will decide the case afresh after determining the other points formulated by him in his judgment and also the point whether the claim was barred by Section 10 of the Workmen's Compensation Act.

19. The cost in the appeal shall abide the result of the case.