

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 28.2.1990

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.444/89

D.Kornalyose - Applicant

Versus

1. Union of India rep.
by its Secretary,
Ministry of Railways,
New Delhi.

2. Divisional Manager,
Railway Division,
Southern Railway,
Trivandrum - Respondents

M/s A Ramaprabhu &
CP Ravikumar - Counsel for applicant

Smt.Sumathi Dandapani - Counsel for respondents

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

The applicant, a Sanitary Maistry of the Trivandrum Central Railway Station was taken ill and was referred by the Railway Medical Authorities for treatment to the Medical College Hospital, Trivandrum. The Medical College authorities diagnosed the ailment as Bronchiectasis, gave treatment and issued a certificate of fitness certifying that he was fit to join duty on 31.3.1989. When he reported for duty on 31.3.1989, the second respondent did not allow

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him to join duty. So he filed a representation before the second respondent on 20.4.1989, for allowing him to join duty. As the representation was not disposed of, the applicant filed O.A.319/89 before this Tribunal on 12.6.1989. After hearing both sides, ^{this Tribunal} /disposed of the application directing the second respondent to dispose of the representation made by the applicant on 20.4.1989 within a month from that date. Since the second respondent did not dispose of this representation within a period of one month, and as the applicant was not permitted to rejoin the duty, he filed this application for a direction to the second respondent to take the applicant back to duty as Sanitary Maistry with effect from 31.3.1989 and to pay him salary with arrears from 31.3.1989.

2. The application is resisted by the respondents. It has been contended by the respondents in the reply affidavit that the applicant is suffering from Tuberculosis, that the C T scan conducted confirmed the right lung Pathology, that he refused to attend hospital for specialised examination, that he made himself scarce from 1.6.1989, that the Divisional Medical Officer ^{and} reviewed his case on 6.6.1989, /decided that he would not be taken back duty unless he sought chest specialists' ^{since} opinion, that /as Sanitary Maistry he has to

mingling with co-workers and also to move in the platform, unless he is cured of his disease, he would be a potential danger to the health of the co-workers and passengers, that when the applicant appeared before the Assistant Divisional Medical Officer on 17.8.1989, he was issued with a certificate that he was likely to be unfit to perform duties for 15 days, that as the applicant did not report after 19.9.1989 he could not be sent for consultation to the specialist in chest disease, and that as the applicant is not fit to resume duty, he is not entitled to the relief claimed.

3. The applicant on 23rd Oct. 1989 filed an affidavit stating that, though he reported before the Assistant Divisional Medical Officer on 23.9.1989 as directed by this Tribunal by order dated 18.9.1989, the Assistant Divisional Medical Officer refused to attend to him and asked him to go and report to Divisional Medical Officer, who also did not care to attend to the applicant or to issue a certificate as to his fitness, and that the applicant was being unnecessarily harassed by the concerned authorities. When the application came up for hearing before us on 17.11.1989, the learned counsel for the applicant submitted that the Professor and Head of Department of Cardio Thoracic Surgery, Medical College, Trivandrum has issued a certificate on 16.10.1989 stating that he is fit to join duty, that

he is not suffering from Tuberculosis that the Railway Medical staff are prejudiced against him, and that there is no justification in the respondents objecting to his rejoining the duty. After perusal of the certificate of fitness issued by Prof. Dr.G.Rajasekharan Nair, Professor & Head of the Department of Thoracic and Cardiovascular Surgery, Medical College Hospital, Trivandrum issued on 16.10.1989 and/report issued by him ~~xxxxxxxxxxxxxxxxxxxx~~ dated 17.10.1989 and hearing the argument of the counsel on either side, we felt that in the interest of justice a further reference had to be made to Dr.R.Rajasekharan Nair for examining the applicant and giving his findings on

- a) whether the applicant is suffering from Tuberculosis,
- b) whether he is fit to join duty as Sanitary Maistry, and
- c) whether he will be a health hazard to those to whom he may come into contact in discharging his official duties as Sanitary Maistry.

We directed the applicant to report to Dr.R.Rajasekharan Nair on 27.11.1989 and we also ordered that the respondents also would at liberty to be present along with all necessary papers to facilitate medical examination of the applicant by Dr.R.Rajasekharan Nair. As directed by us, Dr.G.Rajasekharan Nair, Prof. & Head of the Department of Thoracic and Cardiovascular Surgery, Hospital, Medical College/ Trivandrum, examined the applicant

on 27.11.1989 ✓ and furnished a report dated 1.12.1989 to this Tribunal. Relevant portion of the report runs as follows:

"I have examined Mr.Kornalyose on 27.11.1989 and reviewed the investigation reports of my department and also the reports of investigations and treatment the patient had in the Railway Hospital, Trivandrum. X

It is seen that Mr.Kornalyose was given anti-tuberculous drugs from the Railway Hospital, Trivandrum for over one and a half years without any initial proof that he was suffering from that disease. It is also seen that no proper evaluation by the concerned doctors was done during the course of the treatment, despite that his general condition was deteriorating with the treatment. Moreover, these drugs can produce serious complications of nervous system, liver etc. and I could not find any rationale of continuing the anti TB drugs for such a long time without any clinical or therapeutic proof of tuberculosis.

Investigations in our department showed that he is suffering from bronchiectasis of whole of right lung with secondary non specific bacterial infection. He is not suffering from tuberculosis of the lung or there is any evidence of old healed tuberculosis.

He was treated conservatively and his present general condition and pulmonary status are satisfactory. His Sputum is free of any microbial organism. He is not at all a health hazard to those to whom he may come into contact while discharging his official duties.

Since the nature of work of Sanitary Maistry is having supervisory nature (as I understand from enquiry) and does not involve any strenuous physical work, he is fit to rejoin duty in the present post.

His right lung is completely destroyed due to inordinate delay in detection of the lung pathology and instituting appropriate

treatment. He is advised to have regular follow-ups in the thoracic surgery department every three months to prevent further deterioration. He may need surgery at a later date for removal of the right lung to improve his functional status."

4. After this report reached this Tribunal, the learned counsel for the respondents wanted to file a statement regarding the certificate issued by Dr.R. Rajasekharan Nair. The request having been allowed a statement was filed by the Medical Superintendent, Southern Railway, Trivandrum on behalf of the respondents stating that the Railway cannot act upon the certificate issued by Dr.R.Rajasekharan Nair that the Railway can rely only on a certificate issued by a T.B. Specialist who in terms of Rule 803(2) Note(i) (a), (b) and (c) of Indian Railway Medical Manual should have a standing of at least eight years of practice mainly confined to this speciality or in the case of Professors and Teachers of medicine who have had special training or who have had a large practice, i.e. 50% of the total practice being on Tuberculosis work and that it is not known whether Dr.Nair has had his standing as specified in the above rules. It is also averred in the statement that Dr.Jayaraj was deputed to be present with Dr.Nair to examine the applicant on 27.11.1989, that Dr.Jayaraj waited till 3.45 pm on that date; that he did not see the applicant being examined by Dr. Nair, and that it was difficult whether Dr.Nair had examined ^{the applicant} on 27.11.89.

~~at~~ at all. The applicant filed an affidavit stating that he was examined by Dr.Nair at 4.00 pm on 27.11.1989.

5. We have heard the argument of the counsel on either side and have carefully perused the records produced.

6. Although the respondents have in the various statments filed in this case, strongly contended that the applicant is suffering from tuberculosis curiously enough in the record of treatment pertaining to the applicant produced for our perusal by the learned Railway counsel, there is nothing to indicate that on clinical or pathological examination, the applicant was found to be suffering from tuberculosis. In one letter dated 29.11.1989 written by the Medical Superintendent to the Medical Officer, Sanitorium for Chest Diseases, Trivandrum, it is seen stated as follows:

"It is understood that the above Railway employee has been treated as an inpatient in T.B.Hospital, Pulayanarkotta from 22.6.88 to 12.7.88 as a case of Plural thickening of Rt. lung with Tuberculosis aetiology. Kindly advise the details of diagnosis and treatment given to him during the above period for my perusal please."

The file also contains a copy of a letter on 15.9 .89 written by Medical Superintendent, Trivandrum to the Head of Department, Department of Cardio Thoracic

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surgery, Medical College Hospital, Trivandrum asking for the details of the case regarding the treatment of D.Kornalyose. This file also contains the case sheet regarding Kornalyose from 13.9.1989 to 28.9.99. This also does not show[✓] that there was a finding that Shri Kornalyose, the applicant, was infected with T.B. Case sheets from July, 1988 onwards is seen in the bundle. But ⁱⁿ none of these records there is a finding that the ailment of the applicant was pulmonary T.B. In the case sheet dated 13.5.1988, Sputum tested for AFB was found to be negative. There is evidence to show that he was suffering from some ailment of the lung. But there is absolutely nothing to show that he was suffering from T.B, though it is seen that he was treated in the T.B.Hospital, Pulayanar Kotta for sometime. It is admitted and it is evident from the records that the Railway authorities themselves had referred the applicant for treatment to the Medical College Hospital, Trivandrum. After treatment on 31.3.1989 Dr.P.Balachandran Nair, Assistant Professor, Department of Thoracic and Cardiovascular Surgery, Medical College Hospital, Trivandrum, issued a certificate of fitness to the applicant. A copy of this is available at Annexure-I. The certificate runs as follows:

This is to certify that Mr.Kornalyone, 48 years, is suffering from Bronchiectasis Right Lung with consolidation of

lung. He is advised to undergo conservative treatment. He is fully fit to join back for duty. Further investigations like Bronchogram is planned only after a fully course of conservative treatment."

When the applicant reported for duty with this certificate, he was not allowed to join duty on the ground that he has not recovered from his illness, and that he was suffering from contagious disease. It was then that the applicant filed O.A.319/89 before this Tribunal. Though this application was filed, before expiry of six months from the date on which the applicant made his representation, this Tribunal disposed of this application directing the respondents to consider and dispose of his representation within a period of one month from the date of the order, i.e. 12.6.1989. The respondents did not dispose of this application within the time specified in the order of this Tribunal, neither did they approach the Tribunal for extension of time. It was in this background that the present application was filed by the applicant. Dr.G.Rajasekharan Nair, Professor and Head of the Department of Thoracic and Cardiovascular Surgery, Medical College Hospital, Trivandrum had in his report dated 17.10.1989 given a history of the case relating to the applicant. According to this report there was no malignancy or evidence of active or healed T.B. In his certificate dated 16.10.1989, Prof. Dr.G.Rajasekharan Nair has

certified that the applicant was fit to resume duty. In spite of this the respondent did not take back the applicant for duty. It was then that we directed Dr.G.Rajasekharan Nair to examine the applicant once again and to clear our doubt regarding the three points mentioned in our order dated 17.11.1989. The applicant has been examined by Dr.Nair on 27.11.1989 as directed by us and he in his report ~~of the~~ the relevant part of which is extracted ~~from the~~ (Supra) ^{has opined} /that the applicant is not suffering from T.B. of the lung, that there is no evidence of healed T.B., that his sputum is free from any microbial organism, that he is not at all a health hazard to those whom he may come into contact while discharging his official duties, and that he is fit to rejoin duty in the post of Sanitary Maistry. The Medical Superintendent, Southern Railway, Trivandrum who is not a specialist in chest disease had the audacity to attack the finding of Dr.G.Rajasekharan Nair, Professor & Head of Cardio Thoracic Surgery, Medical College Hospital, Trivandrum, and also to state that it is doubtful whether Dr.G.Rajasekharan Nair had examined the applicant on 27.11.1989 at all in his statement dated 8.12.1989. Dr.Rajasekharan Nair is the Head of Department of Thoracic and Cardiovascular Surgery, Medical College Hospital, Trivandrum, which is one of the few referral hospitals in the State of Kerala to which the respondents themselves had referred the

applicant for examination and treatment. We are satisfied that it is perfectly safe to depend on the opinion of Dr. Rajasekharan Nair, and that the applicant is not suffering from T.B, and that there is no evidence of his having suffered pulmonary T.B in the recent past. The attack made by the respondents in the statement of the Medical Superintendent dt.8.12.1989 on the credibility and competency of the certificate of Dr. Rajasekharan Nair has only to be discarded with due contempt. It is regrettable that the Medical Superintendent has stooped down to this level to cast aspersions on a very senior man in the medical profession as Dr. G. Rajasekharan Nair. From the circumstances of the case we are convinced that the respondents are bent upon harassing the applicant and that alone was the reason why he was not put back to duty when he reported for duty on 31.3.1989 with Annexure-I certificate of fitness. The learned counsel for the respondents invited our attention to the order of the Central Administrative Tribunal Hyderabad Bench in A. Sankara Reddy Vs. Chief Medical Officer, S.C. Rly. & Others reported in II (1989) ATLT(CAT)298 wherein it was observed as follows:

"The private Doctors state that Mitral Stenosis will not bar him from active life. It would appear to us that the applicant being fit for active life by itself would not be sufficient for engagement in the Railways if the competent medical officer of the Railways finds that he is not fit."

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Basing on this observation, the learned counsel submitted that unless the Railway Doctor certifies that, a person is fit, he cannot be allowed to ^{join} duty in the Railways. The observation in the ruling ^{is} cited has absolutely no bearing to the facts of this case at all. That was a case in which the Railways refused to appoint the applicant as Artisan, since he was found not fit as he was suffering from "mitral stenosis". Though some private doctors opined that mitral stenosis did not stand in the way of the applicant being employed, the Railway declined to appoint him, since he was not found fit for B-1 category. It was in these circumstances that the Tribunal observed that the applicant being fit for normal life alone would not be sufficient for engagement in Railway if the competent Medical Officer of Railways found him not fit. ^{In} The case before us, the applicant has been serving Railway for many years. He was on medical leave and wanted to rejoin duty after medical leave. If the applicant was fit for duty, the Railway should have permitted him to join duty without delay. The provision regarding fit certificate is contained in Indian Railway Medical Manual at Rule 540, it runs as follows:

"Fit Certificates-(1) A Railway employee who has been on leave on medical certificate shall not be permitted to resume duty till he has produced a fit certificate or a duty certificate in the prescribed form from the competent Railway" doctor."

(2) When a Railway employee, who has been under the treatment of the authorized medical attendant and in whose favour a sick or a charge of air or recuperation certificate has been issued, is after examination found fit to resume duty, the competent Railway doctor will issue the necessary fit certificate in the prescribed form as given in Annexure-VIII.

(3) Where a Railway employee remained on leave on medical grounds, upto and including 3 days duration and reported back for duty with a fitness certificate from a private medical practitioner, he may be allowed to join duty without obtaining a fitness certificate from the Railway Medical Officer subject to the condition that the employee furnished a declaration that he had not suffered during this period from any eye disease. In cases where the duration of the sickness is of more than 3 days, the Railway employee should be put back to duty within 24 hours on his producing a fitness certificate from a private medical practitioner, provided he is found fit also by the competent Railway Medical Officer. However, in case there is any delay beyond 24 hours in obtaining a fitness certificate from the competent Railway Medical Officer, the employee concerned will be deemed to have been put back to duty within 24 hours of his producing the medical certificate from the private medical officer."

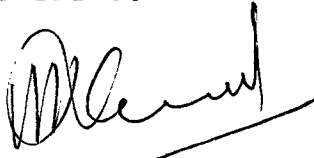
In this case, the applicant reported for duty with the Annexure-I fitness certificate. He was not allowed to join duty and was also not examined and issued with a certificate of fitness or unfitness by the Railway Medical Officer. As per the rule quoted above, if the

employee had produced a fitness certificate from a private medical officer, he should be deemed to have put back to duty within 24 hours of his producing of medical certificate. If there is any delay beyond 24 hours in obtaining the fitness certificate from the competent medical officer, the employee concerned will be deemed to have been put back to duty within 24 hours. In this case Annexure-A1 fitness certificate was issued by the Assistant Professor of Thoracic Surgery, Medical College Hospital, Trivandrum who cannot be said to be a private medical officer because the applicant went to the Medical College Hospital for treatment as directed by the Railway Medical authorities. It was improper on the part of the Railway Medical authorities to have refused to act upon the Annexure-A1 certificate issued by the Assistant Professor of Thoracic Surgery since they themselves have referred the applicant for treatment to him. The action of the Assistant Medical Superintendent directing the applicant to report to the Medical Superintendent and that of the Medical Superintendent not caring to examine the applicant and issue a certificate of fitness or give treatment, if required, show that the respondents were bent upon harassing the applicant. The concern expressed by the Medical Superintendent in the statement that the applicant if allowed to rejoin duty as a Sanitary Maistry would be hazardous to the

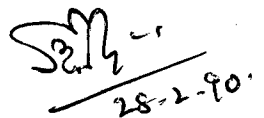
health of people with whom he might come into contact does not to our mind appear to be a bonafide concern.

On a careful consideration of the facts and circumstances of this case, we are convinced that the refusal of the respondents to allow the applicant to rejoin duty on 31.3.1989 is unjustified.

7. In the conspectus of facts and circumstances, we allow the application and direct the second respondent to take back the applicant to duty forthwith and to pay him his full salary from 1.4.1989 onwards, deeming that he had joined duty on 1.4.1989. There will be no order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER


28-2-90

(S.P.MUKERJI)
VICE CHAIRMAN

28-2-1990