

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**
Original Application No.513/2013

Friday this the ~~14th~~ ^{19th} day of February, 2016

C O R A M :

HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE MRS.P.GOPINATH, ADMINISTRATIVE MEMBER

Varghese Thomas
S/o.N.K.Thomas
Crew Controller/Southern Railway/Kollam
Residing at: Nellumoottil Vilayil
Vetticode P.O, Pallickal
Kayamkulam, Pin 690 503
Alleppey District

... Applicant

(By Advocate Mr.T.C.G Swamy)

V e r s u s

1. Union of India represented by the
General Manager, Southern Railway
Head Quarters Office, Park Town P.O
Chennai – 600 003
2. The Chief Medical Director
Southern Railway, Moore Market Complex
Headquarters Office, Chennai – 600 003
3. The Additional Chief Medical Superintendent
Southern Railway, Railway Hospital, Pettah
Trivandrum – 695 024
4. The Sr.Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum – 695 014
5. The Sr.Divisional Electrical Engineer (Operations)
Southern Railway, Trivandrum Division
Trivandrum – 695 014

... Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)




This Original Application having been heard on 27.1.16. this Tribunal on 19.2.16. day delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicant presently working as a Crew Controller in PB-2 + GP Rs.4600/- in the Trivandrum Division of Southern Railway at Kollam, is aggrieved by a certificate of fitness issued by respondent no.3 Additional Chief Medical Superintendent, declaring the applicant fit only for medical classification 'Bee-one' with glasses as against the requirement of fitness in Medical classification 'Aye-one' (with glasses). (A1) certificate of physical fitness bearing No.527293 dated 6.3.2012, issued by the 3rd respondent, is under challenge in this O.A.

2 The applicant submits that the provision of a pace maker is not a disqualification to hold the post of a Loco Pilot nor has it been considered as a disqualification for certifying a person fit in Aye-one medical classification. The applicant submits that medical de-categorisation of the applicant would result in termination of the applicant's appointment as Loco Pilot, with substantial adverse effects. The applicant submits that the only condition based on which the applicant was considered not fit in Aye-one medical classification in terms of A2 and A4 was that the applicant was having a pace maker, though the pace maker was removed in the year 2010 by the very same Doctor who suggested provision of a pace maker as an abundant caution. In the light of the fact that the very impediment no longer exists in the applicant's case, the respondents ought to have considered and found the applicant fit in Aye-one medical classification and restored the applicant's position as Loco Pilot (Passenger) at par with his juniors in the cadre. The applicant submits that the applicant has been treated in a most



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discriminatory way for another reason also. One of the applicant's colleagues Shri.P.Vijayan had undergone bypass surgery for some cardiac problems. However, he has been certified fit in Aye-one medical classification and below in jobs not involving train passing/train running duties. This is as per a certificate bearing No.V/MD/84/1/UF dated 28.2.2013 issued by the 3rd respondent, though he is also adjusted against an ex-cadre post of Crew Controller. He is still being treated as running staff with mileage allowance as if the said Shri.P.Vijayan is holding the post on deputation basis. Shri.Vijayan can now be accommodated as a Loco Inspector also so that he could retire with all the benefits applicable to a running staff.

3 Reliefs sought by applicant is to declare that the respondents are bound to consider the applicant fit in Aye-one medical classification with glasses ignoring the fact that the applicant had a pace maker and to declare that the applicant is entitled to be restored as Loco Pilot (Passenger) with all benefits at par with his erstwhile juniors, including arrears of pay and allowances arising there from.


4 Respondents in their reply statement submit that during the periodical medical examination (PME) at Railway Hospital, Trivandrum on 16.12.2008 he was referred to Sr.DMO/Cardio/RH/PER for evaluation. After assessment by Cardiologist it was mentioned as "not fit to do any duty concerning passenger safety or foot plate duty and found fit for category Aye three and below". Accordingly he was de-categorised to category "Aye Three and below" as per Annexure A-2 certificate and his unfit certificate was also issued as per certificate No.UF.48/08-09 dated 16/26.12.2008. On 29.12.2008, the applicant submitted an appeal through Divisional Personnel Officer, Southern Railway, Trivandrum



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against the above decision. Chief Medical Director Southern Railway, Chennai has communicated approval for referring the above employee to Standing Medical Board at Railway Hospital, Perambur with Sr. DMO/Cardio/RH/PER as Co-opted member. He was de-categorised to Bee one and below by the Medical Board held at Railway Hospital, Perambur on 20.04.2009 and finalized on 12.05.2009 with a diagnosis of Sick Sinus Syndrome with a Permanent Pace Maker implantation (AAI) at Railway Hospital, Perambur in 2002, The Cardiologist in-charge of the Patient performed an electrophysiology study on 03.09.2002 reported as prolonged CSNRT with good AV conduction and implanted AAI Pacemaker. The discharge diagnosis was mentioned as asymptomatic Goods Driver with sinus bradycardia with a rate of 27/min. The diagnosis mentioned by the cardiologist who implanted pacemaker on the pacemaker implantation date sheet was Sick Sinus Syndrome. In view of Sick Sinus Syndrome and AAI pacemaker implantation patient has likelihood of disease progression and or pacemaker failure. The applicant was hence made fit for categories 'Bee One' and below in jobs not involving passenger safety.

5 The applicant visited Dr.Joy Thomas, Cardiologist working with St.Gregorious Cardio-Vascular Centre, Parumala P.O, Pathanamthitta Dist who was a private cardiologist on 06.2.2010. Dr.Joy Thomas in his prescription mentions "Patient wants the pacemaker to be explanted. The patient was admitted for AAI pacemaker removal at St.Gregorius Cardio-Vascular Centre, Parumala P.O, Pathanamthitta Dist., Kerala on 05.03.2010, AAI pacemaker removal done on 6.3.2010 and was discharged on 9.3.2010. Respondents submitted that the applicant underwent pacemaker implantation at RH/PER by a cardiologist who diagnosed sinus node dysfunction and implanted AAI pacemaker. Though the applicant had his pacemaker removal subsequently on



6.3.2010 at private hospital after being examined by the same Cardiologist who implanted the pacemaker at RH/PER, his cardiac ailment as diagnosed previously would obviously remains Sick Sinus Syndrome. In this condition, there is chance of low heart rate and even syncope occurring suddenly in the natural course of disease. These events cannot be predicted even though the patient might be asymptomatic on date.

6 With regard to the contention raised by the applicant regarding Shri.P.Vijayan, Loco Pilot (Mail), CRC/O/QLN, respondents submitted that the same was a case of Coronary Artery Disease and Shri.Vijayan had undergone bypass surgery at Railway Hospital, Perambur on 31.7.2012. After recovery he was assessed by Cardiologist, Railway Hospital, Perambur who advised that in view of post CABG status he may be de-categorised at Local Railway Hospital in duties not involving safety, train passing or train running. He was examined by the Medical Committee at Railway Hospital, Trivandrum on 28.2.2013. Shri.Vijayan was recommended alternative employment on medical (cardiac) Grounds (AEMG) in category Aye One (visual) and below in jobs not involving train running and train passing duties.

7 Heard both sides and perused the records.

8 The applicant underwent pacemaker implantation at Railway Hospital by a cardiologist as a consequence of sinus node dysfunction diagnosis. Subsequent to this medical intervention the Railway Medical Board constituted for considering the appeal of the applicant communicated vide its letter of 18.11.2009 that the applicant was not fit for train running/train passing duties nor duties concerned with passengers safety. Applicant was declared fit for

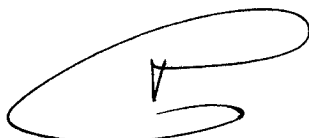


categories Bee One and below only.

9 Subsequently, the applicant on his own volition had his pacemaker removed on 6.3.2010 at a private hospital after being examined by the same cardiologist who implanted the pacemaker in the Railway Hospital. However, the installation or removal of the pacemaker does not change the original diagnosis of his ailment as sinus node dysfunction. In this condition there is a chance of low heart rate and even syncope occurring suddenly in the natural course of the disease. Though applicant is asymptomatic on date, the possibility of occurrence cannot be ruled out. Thus the occurrence of possibility being unpredictable, the applicant as a train driver cannot be allowed to put trains or its passengers at risk or request to be excused for his medical condition.

10 The applicant refers to the case of one Shri.P.Vijayan Loco Pilot who had a Coronary Artery disease. He underwent a bypass surgery at Railway Hospital, Perumbur and after recovery was de-categorised in duties not involving safety, train passing or train running. The applicant, post removal of pacemaker which was done at a private hospital, requested for a special medical examination and such an opportunity was provided to him. The Cardiologist who conducted the special medical examination held that the structural sinus nodal dysfunction persists and hence applicant was unfit for train passing, train running duties or safety categories and could be suitably decategorised at local railway hospital. The Chief Medical Superintendent Trivandrum declared applicant fit in Bee One category. Hence applicant's request for a special medical examination has also already been complied with.

11 Further it is noted that the pacemaker was not removed on medical

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advice. The private cardiologist in his prescription notes that the "patient wants the pacemaker to be explanted". It appears that the applicant may have construed that his original medical category for driving trains may be restored as a result of this reversal medical procedure without realising the original medical condition of structural sinus nodal dysfunction would persist despite this reversal medical procedure.

12 This is a case where the expectation of the applicant cannot be allowed to surpass the larger benefit of safety of trains or passengers traveling in train. When a passenger uses a public transport system, he has a reasonable expectation to expect that the public transport authority complies with the safety norms of such transportation including operating the trains with healthy drivers. The passengers cannot be allowed to be subjected to the risk of having a medically unfit driver, driving the train. Justice lies in ensuring that the benefit accruing to one person cannot be allowed to risk the lives of several persons who are passengers in the public transport system, particularly when the passengers are generally of low and middle class economic category and may be the only earning member of a family. The applicant's expectation for upgrading his medical category and drawing the financial benefits of running staff, cannot be allowed to surpass the larger good of public safety or public expectation of a safe and accident free travel.

13 The Original Application is dismissed.


(MRS.P.GOPINATH)
ADMINISTRATIVE MEMBER


(N.K.BALAKRISHNAN)
JUDICIAL MEMBER