

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 558 of 1998.

Monday this the 6th day of September, 1999.

CORAM:

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

B. Sreejith,
Senior Clerk
Office of the Depot/Store Keeper,
Construction, Southern Railway,
Feroke, residing at:
Meyana House, Post Rayarangoth,
Vadakara, Calicut District. .. Applicant

(By Advocate Shri T.C. Govindaswamy)

Vs.

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras- 3.
2. The Chief Engineer,
(Gauge Conversion), Construction,
Southern Railway, Egmore, Madras-8.
3. The Deputy Chief Engineer,
Construction, Southern Railway,
Calicut. .. Respondents.

(By Advocate Smti Sumathi Dandapani)

The application having been heard on 6th September, 1999,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-12 and to direct the
respondents to treat the period from 21.7.97 to 22.11.97 as
leave due and to grant him consequential arrears of leave
salary with interest at the rate of 12%.

2. The applicant was working in the office of the
Deputy Chief Engineer, Calicut. He says that while so, on
21.7.97, he fell ill and was under the treatment of an Ayurvedic
Physician attached to Government Ayurveda Hospital, Vadakara.
As per A-10, he was directed to report to the nearest Railway

Doctor for further examination immediately. He did not appear before the Railway Medical Doctor for the reason that he was bed ridden. As per A-12 the impugned order, his request for converting private medical leave for that period into LHAP commuted was rejected.

3. Respondents contend that the applicant was directed to work at Ferok with immediate effect as per Annexure R-1. The applicant refused to accept R-1 order when served on 19.7.97. The applicant attended railway premises in Calicut for receiving July 1999 salary, bonus and pay would go to show that his stand that he was suffering from acute Lumbago, is without any iota of bonafides. The intention of the applicant is only to avoid the transfer. An employee cannot be paid for the period of absence unless the competent authority accepts his medical certificate and the medical certificates in this case have not been accepted.

4. As per R-1 dated 19.7.97, the applicant while working in Stores Section of the Deputy Chief Engineer, Calicut was directed to work at Ferok with immediate effect with Headquarters at Ferok. From R-1 it is seen that when the order was sought to be served on the applicant at 13.00 hours on 19.7.97, he refused. Subsequently, it was accepted by the applicant on 22.11.97, with a comment:

"It is really pathetic/astonishing to note that Sr. S.O.(A) has made and endorsement and constituting/ is fabricating two witnesses which is incorrect."

What was the necessity for such a comment, is not known. The endorsement on 19.7.97 is made by Sr. Section Officer (Accounts). There is a presumption that every Official Act is done in a regular way. It is true that it is a rebuttable presumption but the rebutting of the presumption is not by making a comment as done by the applicant.

5. The applicant says that he was sick and he was under the treatment of a Physician attached to the Ayurveda Hospital, Vadakara.

6. The Rule 521 (2) of the Indian Railway Establishment Code, (IREC for short) Volume I says that:

" When a Railway servant residing outside the jurisdiction of a Railway Medical Officer requires leave on medical certificate, he should submit, within 48 hours, a sick certificate from a registered medical practitioner. Such a certificate should be as nearly as possible, in the prescribed form as given in Annexure III, and should state the nature of the illness and the period for which the Railway servant is likely to be unable to perform his duties. The competent authority may, at its discretion accept the certificate or, in cases where it has reasons to suspect the bonafides, refer the case to the Divisional Medical Officer for advice or investigation. The medical certificate from registered private practitioners produced by Railway servant in support of their application for leave may be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications."

7. In this case, the applicant as per A-10 was directed to report to the nearest Railway Medical Officer for further examination immediately. He refused to comply with it. The reason stated is that he was unable to travel. At the same time, it is the admitted case that he went to Calicut during the relevant period for the purpose of receiving certain amount due to him with the help of another person. If he could go to Calicut with the help of another person to receive the payment due to him, he could have very well reported before the Railway Doctor also with the help of someone. He has not done it. There is no medical certificate issued by the Ayurvedic Physician.

who has treated him to the effect that during the relevant period he was advised not to travel. The learned counsel appearing for the applicant submitted that as per A-10, the applicant was not directed to report before the Divisional Medical Officer. This is only an argument advanced across the Bar and in A-8 reply given by him to Annexure A-10, no such stand is taken. That apart, for the purpose of rejection of a certificate issued by a private Medical Practitioner it is not stated in the rule that it may be done only after the Divisional Railway Medical Officer conducts the enquiry and the necessary verifications. What the rule says is that the application for leave can be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications. Here it is a case where the applicant from his own admission could have very well made himself available before the Railway Medical Officer in compliance with A-10 but he felt it very convenient to keep away from the Railway Medical Officer. In such a situation, it cannot be a case that the authorities are left with no remedy. The administration should run smooth. If an employee when directed by the authority competent to appear before the Railway Medical Officer and refuses to do so, for no valid reason, cannot seek shelter under Rule 521(2) of IREC saying that there is no rejection by the competent authority on the basis of the advice tendered by the Railway Medical Officer. When there is a provision to refer the incumbent to the Railway Doctor and the incumbent refuses to comply with the directions to report before the Railway Doctor, he cannot say that his leave has been rejected by the competent authority without the advice of the Railway Medical Officer.

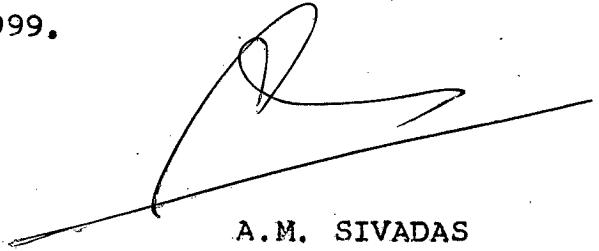
8. From the facts and circumstances of the case, it could only be said that the applicant was terribly afraid of appearing before the Railway Medical Officer. That being the position,

the applicant cannot seek shelter on the ground that the Railway Doctor has not conducted the necessary verifications and given the advice. It is also pertinent to note that when the applicant felt like reporting the duty he immediately complied with the directions to get himself examined by the Divisional Railway Medical Officer. In the same way he could/very well have complied with A-10 also.

9. For the reasons stated above, I do not find any ground to interfere with A-12, and to grant any of the reliefs claimed.

10. Accordingly, Original Application is dismissed. No costs.

Dated the 6th September, 1999.



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred to in the order.

Annexure A-12 : A true copy of letter No.P.483/CN/CLT dated 5.12.97 issued by third respondent.

Annexure A-10 : A true copy of letter No. P.483/CN/CLT dated 28.10.97 issued by third respondent.

Annexure R-1 : Photocopy of Office order No.134/CN/CLT dated 19.7.1997 of the 3rd respondent vide Ref.No.P,676/CN/CLT issued to the applicant.