

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 598/2012

Wednesday, this the 31st day of October, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

Raju Grahary, S/o Grahary Antony,
Pointsman-I, Ernakulam Marshalling Yard,
Southern Railway, Trivandrum Division,
Residing at Railway Quarters 2B,
Marshalling Yard, Thammanam.P.O.
Ernakulam.

- Applicant

(By Advocate Mr Margin G Thottan)

v.

1. The Senior Divisional personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.

2. The Senior Divisional Medical Officer,
Railway Dispensary, Southern Railway,
Ernakulam South, Ernakulam-16.

- Respondents

(By Advocate Mr P.Haridas)

This application having been finally heard on 31.10.2012, the Tribunal on the same day delivered the following:

ORDER

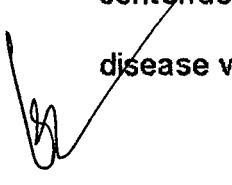
HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, at present working as Pointsman Grade I engaged himself in the rescue operation on 24th of April 2010 when there was a landslide at Mulanthuruthy which caused accident of train No. 6347. In the course of his involvement in the rescue operation, he got injured sustaining fracture of backbone whereby he was under treatment and was kept under sick list as "injured on duty" from 24-09-2010. On 10-03-2011, he was discharged by the

second respondent, and while doing so, the second respondent had relieved the applicant from sick list with retrospective effect from 17-01-2011. Consequently, the applicant moved a representation dated 20-03-2011 to the Chief Medical Superintendent, Trivandrum, vide Annexure A-1 and thereafter, he was examined on 22-03-2011 and was found fit and recommended for light job for a period of three months, vide Annexure A-2. According to the applicant, he was entitled to be treated as 'injured on duty' for the period from 24-09-2010 to 24-03-2011, which entitles him for full pay and allowance during this period and also for transportation allowance. However, on account of the recording by the second respondent as on 10-03-2011 relieving him from the sick list with retrospective effect from 17-01-2011, the benefit of WCA sick list was restricted up to the said date, i.e. 17-01-2011 and the balance period was treated as LAP. Of course, he was made entitled to transportation allowance admissible to such WCA sick list persons. Representations followed by legal notice have not yielded any fruitful results. As such, the applicant has moved this original application praying for the following reliefs:-

- (i) Declare that the action of the respondents in discharging the applicant from WCA sick list with retrospective date is arbitrary, illegal and without any legal sanction.
- (ii) Direct the respondents to treat the entire period from 24.09.2010 to 24.03.2011 as period spent on duty and to grant all consequential benefits including transportation allowance.
- (iii) Direct the respondents to credit back applicant's leave consumed post 17.01.2011 period till he resumed duty on 24.03.2011.

2. Respondents have contested the OA and justified their action. They have contended that the applicant is continued on sick list due to obstructive lung disease which is unrelated to his injury on duty.




3. The applicant has filed his rejoinder in which he has Annexed the medical prescriptions on various dates.

4. Counsel for the applicant submitted that on 17th of January 2011 the medical prescription only recommended for MRI scan report. Annexure A 5(a) at page 3 of rejoinder refers. He was referred to senior DMO/ortho, Railway Hospital, Perambur vide page 4 of the rejoinder. There is no indication therein that the applicant was relieved from WCA on 17 January 2011. It is only on 10th of March 2011 that the second respondent had endorsed "discharged from WCA w.e.f.17/1 as there is no evidence in the X ray." The counsel submitted that by an afterthought, the prescription given to the applicant on 17th of January 2011 was tampered with and certain interpolation relating to his discharge on 17th of January 2011 had been made. The counsel further submitted that the action of the respondents relieving the applicant with retrospective effect is not sustainable as the same had been accentuated by certain extraneous considerations nor supported by any valid rules for such retrospective relief from sick list.


5. Counsel for the respondents reiterated the contentions as contained in the reply.

6. Arguments were heard and documents perused. It is not denied that the applicant was engaging himself in the rescue operation in April 2010. Nor has it been denied that he was kept in the WCA sick list from 24th of September 2010. The applicant had undergone medical checkup at the Railway Hospital at Perambur on the advice of the local Railway Doctor. The prescription annexed to the rejoinder, as of 17th of January 2011 does not indicate that the applicant



was relieved from the sick list on the date. It is only as per prescription of 10th of March 2011 that the applicant stood relieved but with retrospective effect from 17th of January 2011. Evidently certain interpolations have been made in the prescription of 17th of January 2011 which has been surfaced by the applicant by producing the photocopy of the prescription prior to and posterior to such interpolation. Perhaps the respondents would not have imagined that the applicant has been keeping photo copy of each of this medical prescriptions which enabled him to expose the subsequent interpolation as an afterthought. Relieving from retrospective effect from the WCA sick list is something which is unknown in the normal practice. The applicant was ultimately declared fit for duty with effect from 22nd March 2011. Declaring that the continuance of the applicant in the sick list beyond 17th of January 2011 on account of obstructive lung disease unrelated to the injury on duty cannot therefore be accepted.


7. Consequently the **OA is allowed**. It is declared that the action on the part of the respondents in discharging the applicant from 'WCA sick list with retrospective date is arbitrary, illegal and without any legal sanction. It is held that the applicant is entitled to the benefit of WCA sick list for the period from 24-9-2010 to 22nd of March 2011, the day when he was declared fit to resume duties. Consequently the extent of leave debited in the leave account of the applicant is liable to be the reversed and the entire period from 24th of September 2010 to 22nd of March 2011 shall be treated as duty in accordance with the relevant provisions. Respondents are directed to pass suitable orders accordingly and any money due to the applicant by way of salary etc for the aforesaid period being treated as on duty shall also be made available to the applicant. This order shall be executed by the respondents within a period of two months from the date of communication of this order.



8. Though the case deserves costs to be levied as prayed for by the applicant against the respondents, the sober presentation of the case by the counsel for the respondents dissuades us from awarding costs.



K.NOORJEHAN
ADMINISTRATIVE MEMBER



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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