

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.8/2010

Dated this the 14th day of January, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

R.K. Unnikrishnan, S/o. Raman Pillai
Station Master Gr. II/Southern Railway
Kanjikode RS & PO, Palghat District
Residing at "Krishna Priya"
Master Villa No. 1, Kallekulangara
Palghat - 9.

..... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Vs

- 1 Union of India
represented by the General Manager
Southern Railway, Headquarters Office
Park Town (P.O), Chennai - 3.
- 2 The Senior Divisional Medical Officer
Southern Railway Hospital,
Palghat.
- 3 Dr. Sreekumar
Senior Divisional Medical Officer
Southern Railway Hospital
Palghat.
- 4 The Senior Divisional Operations Manager
Southern Railway, Palghat Division
Palghat.

..... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the endorsements made on Annexure A-1 certificate by the 2nd respondent, who is not his leave sanctioning authority, to treat the period from 14.6.2009 to 18.6.2009 as unauthorised absence, resulting in denial of salary and allowances.

2 The applicant is a Station Master Gr.II posted at Kanjikkode Railway Station of Palghat Division, Southern Railway. According to him the Station Master requiring Aye Two Medical Classification must undergo periodical medical examination as per Para 514(1)(A)(i) of the Indian Railway Medical Manual every four years until they attain the age of 45 and then every two years until the age of 55 and then thereafter annually. In terms of para 512(ii) an employee in category A-1, A-2 and A-3 when permitted to use spectacles must equip himself with two pairs of appropriate spectacles. The applicant having become due for medical examination as directed by the authorities reported before the Senior Divisional Medical Officer, Railway Hospital, Palghat on 8.6.2009. After initial examination the applicant was directed to report before the Sr. DMO/Ophthal. He appeared on 9.6.2009. On that day he was advised change of spectacles. The applicant accordingly reported on 18.6.2009 with two pairs of spectacles but on that day the Sr. DMO/Ophthalmology was not available. Therefore, he again reported before the SR. DMO/Ophthalmology on 19.6.2009 who in turn certified that the applicant is medically fit. However, in the medical certificate to be given the Sr. DMO made an endorsement on the front side "period from 8.6.2009 to 13.6.2009 to be treated as on duty for purchase of

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spectacles. Period from 14.6.09 to 18.6.09 treated as unauthorised absence." Similarly on the overleaf of the same entry was made with a seal "period from 8/6 to 13/6 is treated as duty as per IRMM para 524 (3)" Below that another entry was made "Rest of the period upto 18/06 treated as unauth. Absence." According to the applicant, in respect of spectacles, the time upto five days spent by employee to equip himself with spectacles for the first time or to change his existing spectacles should be treated as duty and that any case requiring relaxation beyond the period of 5 days may be reviewed at General Manager's level. The grievance of the applicant is that the question whether the intervening period is to be treated as leave due or duty is not to be decided by the Medical authorities. Hence he filed this O.A to quash Annexure A-1 to the extent it reads the period from 14.6.2009 to 18.6.2009 is treated as unauthorised absence and a similar endorsement on the reverse side which reads "rest of the period upto 18.6.2009 treated as unauthorised absence, to quash A-2 and to direct the respondents to treat the period as leave due and to pay the salary and other allowances as provided under the rules.

3 The respondents in the reply statement submitted that the applicant was directed to attend periodical medical examination at Railway Hospital, Palghat and that he attended the hospital on 8.6.2009 on which date he was instructed to attend eye clinic at Railway Hospital on 9.6.2009. After examination he was instructed to change the spectacles on 9.6.2009 and advised to review the corrected spectacles within 5 days (Annexure R-1). However, he attended the hospital only on 19.6.2009 with the new spectacles. The DMO had issued Annexure A-1 certificate dated 29.6.2009 clearly endorsing that the period from

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8.6.09 to 13.6.09 to be treated as duty for purchase of spectacles and the period from 14.6.09 to 18.6.09 to be treated as unauthorised absence. They further stated that when an employee is directed for medical examination he will be under the control of the concerned DMO until a fitness certificate is issued by the DMO stating his attendance. IREM 524(iii) states that time taken by the employee to equip himself with spectacles etc. should be debited to the leave account of the employee. In the case of the applicant the DMO had clearly stated about the absence of the employee from 14.6.09 to 18.6.09. Thus the records clearly show that the applicant had not attended the eye clinic after the expiry of 5 days as stipulated in IREM. They also submitted that the time taken beyond the stipulated period of 5 days can be reviewed by the GMs and that the applicant has not addressed his A-4 representation to the General Manager, Southern Railway in which case the 4th respondent was bound to forward it to the GM with his remarks.

4 I have heard the learned counsel for the parties.

5 The short questions that comes up for consideration is whether the DMO is empowered to mark attendance of the employee who has been directed to undergo medical check up and whether the action of the respondents in treating the period as absence is illegal, arbitrary and discriminatory.

6 Rule 524 is the provision for treatment of the period of absence of Railway employees sent for periodical medical re-examination.

524:-The period for which an employee is absent from duty for periodical medical re-examination may be treated as below:-

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(i) Time spent in journey to and from the actual medical examination may be treated as duty.

(ii) Time taken by the examining medical authority to come to a decision in the matter may be treated as duty. In case where the examining authority is not quite sure of the decision to be taken, he makes a reference to the Chief Medical Director and the first decision in this case is given after reference to the CMD. In such cases, the period upto the announcement of the decision may be treated as duty.

Note: Periodical examination of an employee should invariably be completed in 3 days. If a Railway doctor is not able to come to a conclusion within a period of 3 days, the entire period required for the doctor to come to a conclusion of the PME should be treated as duty. However, it will not include the time taken by the employee to procure spectacles or any willful delay by the employee.

(iii) Time taken by the employee to equip himself with spectacles, trusses, etc. Or with any other equipment without which he/she is not considered fit for duty should be debited to the leave account of the employee concerned. This period will be from the time the examining authority recommends that artificial aid are necessary till the time up to five days spent by employee to equip himself with spectacles for the first time or to change his existing spectacles should be treated as duty. General Managers are empowered to review and consider cases on merit beyond the stipulated period of 5 days.

It is clear from the above that in the case of spectacles, the time upto five days spent by the employee to equip himself with spectacles for the first time or to change his existing spectacles should be treated as duty.

7 In the case on hand the applicant reported for medical examination on 8th June, 2009. The Sr. DMO has endorsed on the certificate that the period from 8.6.09 to 13.6.09 be treated as on duty for purchase of spectacles. That means the maximum 5 days time has been treated as duty. Since the applicant has taken more time without permission from the Sr. DMO, he has treated the period as absence. I do not find any illegality on the action of the Sr. DMO.

8 As regards the contention of the applicant that Sr. DMO is not the competent to make any remark that the employee is on unauthorised absence. The respondents contended that when an employee is directed

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for medical examination he will be under the control of the concerned DMO until a fitness certificate is issued. The Medical Officer who himself is a Railway employee is the right person to certify the time taken for consultation, etc. and if the employee has not come for consultation/test, the Medical Officer is empowered to bring it into the notice of the authority who has directed the employee for medical check up. The competent authority has passed order treating the period as unauthorised absence. I do not find any infirmity with the DMO making a factual remark. However, it would have been apt if the DMO had insisted on his office giving a slip to the employee noting the date when he has to report back and then make remarks about the failure of the employee to turn up on the assigned date and his absence beyond the stipulated 5 days and allow the leave sanctioning authority to treat the period as unauthorised absence.

9 In view of the above, I do not find any merit in the O.A. It is dismissed accordingly.

Dated 14th January, 2011


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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