

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.3/2013

Wednesday this the *30th* day of September 2015

C O R A M :

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

V.Radhakrishnan,
S/o.N.Velayudhan Pillai,
Crew Controller, Office of the Chief Crew Controller,
Southern Railway, Kollam.
Residing at R.V.Nivas, K.B.Nagar – 61,
Eravipuram, Kollam – 691 011.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Chief Mechanical Superintendent,
Southern Railway, Divisional Office,
Mechanical Branch, Thiruvananthapuram – 24.
3. The Senior Divisional Personnel Officer,
Southern Railway, Divisional Office,
Thiruvananthapuram – 14.

...Respondents

(By Advocate Mrs.K.Girija)

This application having been heard on 17th September 2015 this Tribunal on *30th* September 2015 delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicant, who is presently working as a Crew Controller, charged against a supernumerary post in PB II + GP Rs.4200/- has filed this O.A aggrieved by the refusal on the part of the respondents to treat as duty,



the time taken by the railway medical authorities to come to a conclusion on the medical fitness of the applicant, during a periodical medical examination, which is mandatory under the Indian Railway Medical Manual. The time taken by the respondents was 84 days between 23.3.2012 and 15.6.2012. According to the Indian Railway Medical Manual, the applicant being a foot-plate staff (Loco Pilot) is expected to be fit in medical classification AI so as to perform his duties as a Loco Pilot. In terms of paragraph 514 of the Medical Manual, Loco Pilots are expected to be subjected to medical examination, "at the termination of every period of four years, calculated from the date of appointment, until they attain the age of 45 years, and then every two years until the age of 55 years and there after annually, until the conclusion of their service." This is a mandatory requirement. As per the Railway Board's orders, one who is not subjected to the medical examination on completion of the prescribed period of 4 1/2 years as the case may be cannot be and will not be assigned duties as a Loco Pilot. In terms of paragraph 524 of the Indian Railway Medical Manual,

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

- (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 up to 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 P.M.E should be treated as duty. However, it will not include the time taken by the employee to procure spectacles or any wilful delay by the employee the period of absence of the railway employee sent for periodical medical examination until the doctor comes to the conclusion would be treated as duty."

2. In accordance with the above rules, the applicant was sent for periodical medical examination on 23.3.2012. The medical authorities under the 2nd respondent subjected the applicant to various forms of tests and finally declared the applicant unfit in Aye and Bye categories. The applicant was certified fit in Cee One and below categories for alternative appointment on medical grounds on 15.6.2012 as per communication from the 2nd respondent vide No.V/MD 84/I/UF dated 15.6.2012. Consequently the applicant was also charged against a supernumerary post pending alternative appointment with effect from 15.6.2012. Going by paragraph 524 of the Indian Railway Medical Manual referred to supra, the entire period from 23.3.2012 to 15.6.2012 when his Cee One fitness was issued ought to have been treated as duty and the applicant granted all the consequential benefits. Instead of treating the period as duty the respondents adjusted the leave on half average pay which was available in the applicant's leave account. Representation dated 9.7.2012 was submitted requesting that the period be treated as duty. But the same has not been responded to so far. The applicant has therefore filed this O.A seeking the following reliefs :

1. Declare that the refusal on the part of the respondents to treat as duty, the period between 23.3.2012 and 15.6.2012 – time taken for the periodical medical examination – is arbitrary, discriminatory, contrary to paragraph 524 of the Indian Railway Medical Manual and hence unconstitutional.



2. Direct the respondents to treat the period between 23.3.2012 and 15.6.2012 as duty for all purposes and direct further to grant all consequential benefits arising therefrom.

3. Award costs and incidental thereto.

4. Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.

3. Respondents in their reply state that the applicant had been kept on sick list during the period in question on finding that he was suffering from some sickness and the treatment given to him was not on observation at the time of periodical medical examination. It is submitted that the applicant is medically decategorized Loco Pilot (Goods) fitted against a Special Supernumerary post, consequent on his medical decategorization from the post of Loco Pilot (Goods). The applicant was not kept on observation when he reported for periodical medical examination and hence, there is nothing to be treated as duty under the Indian (Railway) Medical Manual. It is submitted that the applicant's appointment in Railways was in the Loco Running Cadre and he was working as a Loco Pilot (Goods) for which he was sent for periodical medical examination on 23.3.2012. When the applicant reported for Periodical Medical Examination on 23.3.2012 before the Railway Medical authorities, he was found to have poor vision in left eye. He was taken on sick list and referred to Senior Divisional Medical Officer, Railway Hospital/Palghat where he was diagnosed as a case of macular disease in left eye and vision unlikely to improve. Second opinion was obtained from Senior Divisional Medical Officer/Ophthal/Railway Hospital/Perambur. At the Railway Hospital/Perambur, OCT was done and it was also opined that his vision is unlikely to improve. Hence the case



was referred to Divisional Medical Committee to decide his fitness. The Divisional Medical Committee constituted at Railway Hospital/Trivandrum Pettah on 15.6.2012 recommended for decategorization to medical category Cee One and below. He underwent all these various investigations during the sick period. Thus, the applicant was kept under sick list and decategorized due to his sickness. The applicant was also allowed to go for private treatment.

4. Heard the counsel for the parties and considered the written submissions made. As per Para 524 (ii) of Indian Railway Medical Manual time taken by the examining medical authority to come to a decision may be treated as duty. The period up to the announcement of the decision may be treated as duty. Annexure A-1 letter of Chief Medical Officer declaring applicant unfit in Aye & Bee categories and fit in Cee One is dated 15.6.2012. This is also confirmed by respondent in reply statement at para 5. In para 4 of respondents' reply it is stated that applicant was sent for periodical medical examination on 23.3.2012. Hence Annexure A-1 letter of CMO, TVC and para 4 of respondents' reply cite the dates of deputing the applicant for medical examination ie. 23.3.2012 and the date of issue of medical certificate of CMO ie. 15.6.2012. In terms of para 514 of the Indian Railways Medical Manual, Loco Pilots are expected to be subjected to medical examination, "at the termination of every period of four years, calculated from the date of appointment, until they attain the age of 45 years, and then every two years until the age of 55 years and thereafter annually, until the conclusion of their service." This is the mandatory



requirement and as per the Railway Board's order. The medical authorities under the 2nd respondent subjected the applicant to various forms of test from 23.3.2012 onwards and finally declared the applicant unfit in Aye and Bee categories only on 15.6.2012. In terms of para 524 of the IRMM the period between 23.3.2012 and 15.6.2012 (84 days) ought to have been treated as duty with all consequential benefits arising therefrom. The applicant was not suffering from any ailments nor was he under medical treatment but he was under medical examination. It appears to be a case where respondent department took time to conduct various tests to certify his fitness/lack of fitness. Medical certificate of Divisional Medical Officer dated 15.6.2012 produced as Annexure R-1 by respondents clearly shows the dates 23.3.2012 to 15.6.2012. This certificate has been issued by the Railway Medical Authority and the respondents cannot deny its content. The applicant has also produced it as a document to support his case. As this document completely covers the disputed period, the relief (i) and (ii) in the O.A are admitted.

5. Accordingly, the O.A is allowed. We direct the respondents to treat the period between 23.3.2012 and 15.6.2012 as duty for all purposes and to grant all consequential benefits flowing therefrom. No order as to costs.

(Dated this the 30th day of September 2015)


R.GOPINATH
ADMINISTRATIVE MEMBER


N.K.BALAKRISHNAN
JUDICIAL MEMBER

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