

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application NO. 224/2007

Dated the 15th January, 2008

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

K. Ibrahim Kutty,
s/o Kochunni Kunju,
Retd Sr.Gate Keeper,
Southern Railway, Mavelikkara
Residing at Kaleelil Veedu,
Venga PO, Sasthamkotta, Kollam District.

Applicant

By Advocate : M/s. TC Govindaswamy, D Heera,
Mr. PN Pankajakshan Pillai, PV Abdul Samad, KC Sarala
& RR Rejitha.

-Vs-

1. The Union of India,
represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town PO, Chennai.
2. The Chief Medical Director,
Southern Railway, Headquarters Office,
Medical Branch, Moore Market Complex,
4th Floor, Chennai-3.
3. The Chief Medical Superintendent,
Southern Railway Hospital, Pettah,
Thiruvananthapuram.
4. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Thiruvananthapuram-14.

...Respondents

By Advocate: Mr. Varghese for Mr. T.M. Nellimoottil

This application having been heard on 15th January, 2008, the Tribunal
delivered the following -

ORDER

The applicant is a retired senior gatekeeper of the civil Engineering Department of Southern railway, Trivandrum Division. He superannuated on 31.10.2005, while working in Mavelikkara. The applicant is aggrieved by the denial of leave encashment on his superannuation for a substantial period which the respondents have converted to leave on average pay on the grounds of sickness. Following are the reliefs prayed for:

- (1) Call for the records leading to the issue of Annexure A1 and quash the same to the extent it grants leave encashment only for a period of 99 days as against the applicant's entitlement for a period of 300 days.
- (2) Declare that the respondents are bound to treat the period from 29.5.03 to 4.11.2004 as duty with all consequential benefits arising therefrom and direct the respondents accordingly;
- (3) Direct the respondents to grant and pay the applicant leave encashment for a period of 300 days, less the amount of leave encashment already made in terms of Annexure A1 forthwith;
- (4) Direct the respondents to grant the applicant all consequential benefits arising out of the treatment of period between 29.5.03 and 4.11.2004 as duty within a time limit as found just, fit and proper by this Hon Tribunal; Direct the respondents to grant interest at the rate of 9% per annum on the arrears of leave encashment payable in the light of the declaration in para 8(ii) above to be calculated with effect from 1.11.2005 up to the date of full and final settlement of

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the same;

- (5) Award costs of and incidental to the application;
- (6) Pass such other orders or directions as may be found just and proper by this Hon Tribunal.

2] According to the facts narrated by the applicant, he belonged to the cadre of Gangman for which a medical classification of Be-one alone is sufficient. Only Gangmen who are fit in medical classification Aye-three can discharge the duties of Gate keepers. There is no separate cadre of Gatekeepers. The applicant had been working as a Gatekeeper for quite some time and therefore had to undergo periodical medical examinations as applicable to Aye-one, Aye-two and Aye-three medical categories as provided for in para 514 of the Indian Railway Medical Manual (2000 Edition) as per relevant extracts given below:-

'514 (1) In order to ensure the continuous ability of railway employees in class A1, A2, A3, B1 and B2 to discharge their duties with safety, they will be required to appear for reexamination at the following stated intervals throughout their service..

A Category A1, A2 and A3:-

- (i) 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 then thereafter annually until the conclusion of their service."

3] The applicant who was 58 years old at the material time was sent for medical examination on 29.5.03. After subjecting the

applicant to various tests and directing the applicant to the Railway hospital at Perambur, it was finally decided that the applicant was fit for duties with effect from 4.11.2004. The applicant rejoined duties on 4.11.2004 and finally superannuated on 31.10.2005.

The question thus arising in this OA for a decision is whether the above period can be treated as duty and if so whether the action of the respondents in treating this period from 29.5.2003 to 4.11.2004 as Leave on average pay was arbitrary and illegal.

4] Para 524 of the Indian Railway Medical Manual states that the period of absence of a Railway employee sent for medical examination is to be treated as duty. According to this rule, 'the period for which an employee is absent from duty for periodical medical 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 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.'

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5] The respondents in their reply statement do not deny the facts as stated by the applicant regarding his appearance for periodical medical examinations. However they have stated that the medical examination conducted on 29.5.2003 found the applicant fit for six months only and therefore he was sent for Periodical medical examination again on 29.1.2004. The period from 29.5.2003 to 4.6 2003 has been treated as duty. The applicant had availed of the following Leaves after 4.6.2003.

Leave on half average pay From 6.6.2003 to
19.6.2003;

Leave on average pay on Private Medical Certificate
from 6.7.2003 to 10.7.2003

Leave on half average pay on medical grounds from
14.1.2004 to 16.1.2004.

After reference for the medical examination on 29.1.2004, he was taken on sick list for immature cataract as found by the Railway Doctor. However no operation was done even after detailed evaluation of the applicant's case by the Railway hospital and he was referred again to the same hospital which prescribed glasses according to then visual standard and was issued with the fitness certificate on 4.11.2004. The respondents have therefore contended that in the above circumstances the applicant's prolonged stay on medical advice was on account of his sickness and not administrative delay and the applicant was not on Periodical medical examination (PME) from 29.1.2004 to 3.11.2004.

6] The applicant on the other hand has contended that the he being kept under observation or treatment are matters not within the control of the applicant and alleged that he was being shifted to Palakkad, Trivandrum, Perambur and back and forth without any material purpose and finally without any operation , he was declared fit and allowed to join duties.

7] From the narration of facts and the pleadings , I am inclined to agree with the applicant's plea that the respondents have not followed the procedures clearly laid down in The IRMM para 514 and that not only they could not conclude the Medical Examination within the prescribed time, but took more than 10 months to conduct various tests etc. and kept the employee on tenterhooks without taking a decision. Pra 524 is very clear that the time taken for medical examination and up to the announcement of the decision are to be treated as duty. The respondents have not produced any record to show that a decision advising cataract operation had been given and thereafter the applicant had prevaricated on the issue. They could have as well declared the applicant unfit till he undergoes the operation , in which case, the employee would have had a further chance to appeal to the CMD. Hence I hold that the long delay that had occurred in arriving at a decision as to the medical fitness of the applicant from 29.1.2004 the date on which admittedly he was sent for PME to the date of the decision of fitness given on 4.11.2004 is not attributable to the applicant and it was only

administrative delay and negligence. Therefore the applicant cannot be put to loss on this account. I reject this contention of the respondents.

8] However to confirm the position regarding the grant of leave, the applicant's leave record was called for and verified by me. It was also perused by the counsel for the applicant. The leave account tells a different story. The period from 6.6.2003 to 19.6.2003 is shown as LAP not on Half average pay as contended by the respondents. And there is an entry in the margin as PME which I understand stands for Periodical medical examination. Again from 30.1.2004 to 28.9.2004 debits have been shown against LAP and periods from 6.7.2003 to 10.7.2003, 14.1.04 to 16.1.2004 and 29.9.2004 to 4.10.04 as HAP and 5.10.2004 and 6.10.2004 to 3.11.2004 as other kind of leave. The respondents have not produced any orders sanctioning such leaves or any proof of the employee having applied for leave during such spells. Hence I am constrained to conclude that the respondents have unilaterally adjusted the entire period from 4.6.2003 to 4.11.2004 towards the various kinds of leave due to the employee in complete contravention of the relevant Rule 524 of the IRMM. The counsel for the applicant during the arguments after perusing the leave account stated that even conceding the position regarding grant of LAP for the period 6.6.2003 to 19.6.2003, as borne out by the leave record, the applicant had 228 days of Earned leave to his credit at the end of the second half year of

2003. The respondents admit that he was sent on for medical examination on 29.1.2004. hence the period from 29.1.2004 to 4.11.2004 the date on which fitness certificate was given should be treated as duty. I agree with this position.

9] For the reasons stated above and in accordance with the Rule position, the applicant is entitled to count this period as duty. Therefore I declare that the respondents are bound to treat the period between 29.1.2004 to 4.11.2004 as duty with all consequential benefits and direct the respondents to grant and pay the applicant the leave encashment dues after reworking his entitlement less the amounts already paid. I am not allowing the prayer for payment of interest. OA is allowed to the extent indicated above. No order as to costs.

Sathi Nair
(Sathi Nair)
VICE CHAIRMAN