

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 225 OF 2007

Dated the 5th November, 2007

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE SRI GEORGE PARACKEN, JUDICIAL MEMBER

K Padmanabhan,
S/o Kunjan Pillai,
Peon,
Station Manager's Office,
Trivandrum Central Railway Station,
Residing at Ambadi,
Kudappanakunnu, PO,
Thiruvananthapuram-695 043.

.. Applicant

[By Advocate: Mr MP Varkey)

-Versus-

1. Union of India,
Represented by General Manager,
Southern Railway,
Chennai-600 003.
2. Senior Divisional Operations Manager,
Southern Railway,
Trivandrum-695 014.
3. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014.

... Respondents

[By Advocates: Mr. KM Anthru)

✓ This application having been heard on 5th November, 2007
the Tribunal on the same day delivered the following -

ORDER

(Smt. Sathi Nair, Vice Chairman):

The applicant herein is aggrieved by the impugned order dated 30.11.2006 passed by the 2nd respondent refusing to regularize the period of his absence from 5.12.02 to 17.1.03 despite the directions of this Tribunal and the provisions contained in the Rules.

2] Briefly stated, the case of the applicant is that the applicant was initially appointed as a Box Boy at Trivandrum Central and due to sickness the applicant took leave from 1.7.2002 to 5.12.2002 and having found that the treatment at the Railway Hospital is not improving his health, he took Ayurveda treatment from 1.11.2002 at Bhavani Aroganikethanam at Nalanchira. The applicant produced Private Medical Certificates issued by the Ayurvedic Doctor for the period from 5.12.2002 to 4.1.2003 followed by continuation Medical certificates dated 5.1.2003 and so on. The applicant met with an accident on 17.1.2003 and underwent surgery for fracture of the right shoulder, which ultimately resulted in a permanent disability. After examining him at Railway Hospitals at Trivandrum and Perambur, the applicant was medically de-categorised and declared fit for a sedentary job only as per medical certificate dated 14.1.2005. In spite of all these happenings, the respondents initiated disciplinary proceedings against the applicant for unauthorized absence from 5.12.2002. Being aggrieved by the action of the respondents, the applicant

—

filed OA No. 841/2005 before this Tribunal which was disposed of by Annexure-A/3 order declaring that the applicant is entitled to lawful wages from 14.1.2005, the date from which he was certified as suitable for a sedentary job and the respondents were directed to pay the wages for the above period. As regards the period from 31.10.2002 to 17.1.2003, the respondents were directed to consider the case as per the Rules. The order of the Tribunal was implemented only after a contempt petition was filed before this Tribunal. The respondents have now refused to regularise the period from 5.12.02 to 17.1.03. Hence, this application.

3] Per contra, the respondents in their reply statement have contended that the direction at Annexure-A/3 order was only to consider the matter in accordance with the Rules and the Medical Certificate produced at Annexure-A/2 (a) and (b) are not in accordance with the guidelines prescribed in para 535(4) of the Indian Railway Medical Manual, 1971. These Medical certificates nowhere mentioned about the unfitness of the applicant to perform his duty and/or he was bed ridden or admitted in Hospital. As the medical certificates were not in the prescribed form it cannot be accepted for regularisation of his service.

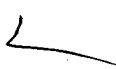
4] Rejoinder has been filed by the applicant contending that the statements made in the reply statement are after thoughts and earlier the leave applications were rejected on other grounds for not having any leave to his credit etc. and the reasons now given are different. In the Additional Reply

statement, the respondents contended that the applicant is an active member of the trade union and he was having the habit of attending various activities in the society and not attending to his duties regularly and that the applicant does not have anything to prove that the treatment taken from the Private Doctor was permitted by the Railway Doctors.

4] We have heard Mr. MP Varkey, counsel for the applicant and Mr. KM Anthru, counsel for the respondents.

During the course of the arguments, the learned counsel for the applicant in support of his contention has produced a copy of the order dated 28.3.2000 passed by this Tribunal in OA No.1119/97 in a similar case. It is a fact that the applicant on earlier occasion approached this Tribunal by filing OA No.841/05 seeking declaration for entitlement of his wages during the period he was under treatment as a result of having acquired disability. While considering the issue, inter alia, it was directed that the respondents should consider regularisation of leave applied by the applicant during the period from 31.10.2002 to 17.1.2003 in accordance with the Rules. It is seen from the impugned order that pursuant to this direction, the respondents have granted him sick leave from 31.10.02 to 12.11.02 and Extra Ordinary Leave from 13.11.02 to 4.12.02, except for the period from 5.12.2002 to 17.1.2003. The Respondents in the impugned order dated 30.11.2006 have stated that the unauthorised absence for the period from 5.12.2002 to 17.1.2003 is not regularised but treated as 'absent' only. It is not clear what it means. The respondents have not specifically stated whether

this period will be treated as *dies-non* or break in service. The reasons now given for non regularisation of this period in the impugned order is only that the long absence without being admitted in a hospital for any serious ill health cannot be taken as genuine. However, in the reply, now it is stated that the medical certificates produced by the applicant are not acceptable as per guide line prescribed in paragraph 535 (4) of the Indian Railway Medical Manual, 1971. If the medical certificate is to be refused, the Rule position has been made very clear. Sub Rule (4) of Rule 535 of the Indian Railway Medical Manual says that "the competent authority may, at its discretion, accept the certificate or, in cases where it has reasons to suspect the *bona fide*, refer the case to the Divisional Medical Officer for advice or investigation". The medical certificate from registered private practitioners produced by Railway employees in support of their applications 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. It appears that no such step has been taken by the respondents to verify the medical certificates produced by the applicant and they have only raised this plea to contest the averments made by the applicant in his application. In the impugned order it has been stated that the applicant was absent without being admitted in a hospital and, therefore, the medical certificates cannot be accepted. The applicant has contended that these are continuation certificates and they have



to be considered alongwith the first certificate furnished by him at Annexure-A/7. The provisions regarding continuation certificates are made in Rule 535 (a) of the Indian Railway Medical Manual and the format~~is~~ also been prescribed for the same. The Medical certificate, which has been produced, states that his condition requires further treatment and also complete rest and strict dietary restrictions. The rule provides for furnishing such continuation certificate and the respondents cannot raise any objection that it does not contain full details, which are available in the original certificate. Another aspect to consider is that the Respondents themselves have granted extra ordinary leave to the applicant for the same period covered by the Annexure-A/7 Certificate and now are only objecting to the part of the period, which is covered by the continuation certificates. This is clearly untenable.

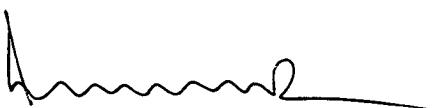
5] We have also perused the order dated 28.3.2000 passed by this Tribunal in OA no.1119/97 in a similar case, where this Tribunal set aside the penalty imposed on the applicant therein and directed the respondents to consider the medical certificates and issue orders regularising the period of absence in accordance with law keeping in view the relevant provisions of the Indian Railway Medical Manual on finding that the respondents had not followed the procedure prescribed for rejecting the private medical certificate. Same position holds good here too.

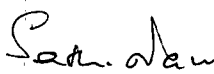
6] In view of the above discussions, in the instant case also we have to reject the objections raised by the respondents

as superfluous and without any basis. No plausible reason has been given for having singled out a short period of absence for refusal, when a major portion of the absence has been regularised by granting sick leave and extra ordinary leave. The respondents can very well regularise this short period of absence by granting him extra ordinary leave as the major portion of the absence has already been regularised by granting extra ordinary leave. Annexure-A/4 order dated 30.11.06 is quashed and the Respondents are directed to consider regularisation of the period of absence of the applicant from 5.12.2002 to 17.1.2003 by granting Extra Ordinary Leave on the basis of the Certificate in Annexure-A/2(a) and (b) read with Annexure-A/7. The respondents are directed to pass orders within a period of one month from the date of receipt of a copy of this order.

7] The OA is accordingly disposed of. No order as to costs.

[Dated the 5th November, 2007]


(GEORGE PARACKEN)
JUDICIAL MEMBER


(Smt. Sathi Nair)
VICE CHAIRMAN