

O.A. NO. 295 OF 2008

CORAM:

P.R.Sivadasan
Retired Shunting Master Gr.I
Spouthern Railway, Palghat Division
Residing at Lekha Nivas
Thomas Nagar, Kakkanni
Kallekulangara P.O. Palakkad – 9 ... **Applicant**

versus

1. Union of India represented by the
General Manager, Southern Railway
Headquarters Office, Park Town PO
Chennai - 3
2. The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat
3. The Divisional Railway Manager
Southern Railway, Palghat Division
Palghat
4. The Senior Divisional Finance Manager
Southern Railway, Palghat Division
Palghat

The application having been heard on 12.03.2009 the Tribunal on the same day delivered the following:

ORDER

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

The applicant was serving as a Shunting Master, Plaghat Division in the pay scale of Rs.5000-8000 and his pay prior to 01.09.2007 was Rs.5300/-. As on 14.06.2007 he has attained the age of 55 years and

hence as per provisions of Para 514 of IRMM (Indian Railway Medical Manual), he was to undergo medical check up in respect of medical categorisation, which, for the post of Shunting Master is "A-2". Accordingly, the applicant presented himself before the medical authorities on 14.06.2007. However, according to the applicant, no final decision was communicated by the medical authorities either to the applicant or to the Department,

2. Applicant was due for his annual increment as of 01.09.2007 since he could not attend to his functions without medical categorization certificate. Nevertheless, as per the pay slip he was granted annual increment as of 01.09.2007 and it continued for pay for September, 2001 also. However, subsequently the respondents had withdrawn the annual increment from the pay of the applicant.

3. Meanwhile as on 01.10.2007, the applicant had preferred an application for voluntary retirement with effect from 01.01.2008 for which due notice was given vide Annexure A-3. The said notice reads as under :-

" Sub: Notice for Voluntary Retirement - Regarding

Due to personal and family reasons I am not in a position to continue in service. So myself and family decided to give voluntary retirement So please treat this letter that this is the request for voluntary retirement from service."

4. On the basis of the above request, the applicant was allowed to retire with effect from 01.01.2008 by Annexure A-4. The applicant abided by the conditions of the said Annexure A-4 (vacating of Railway quarters etc).

5. Vide Annexure A-5, the respondents have worked out the terminal benefits to the applicant in which it has been indicated that the pay of the applicant was Rs. 5300 in the pay scale of Rs.5000-8000.

6. The case of the applicant is that as on date of his retirement his pay should have been Rs.5450/- including the annual increment granted to him as of 01.09.2007 as he is entitled to the same. It is the case of the applicant that the period from 14.06.2007 onwards till the date of his retirement should be treated as having been covered under the provisions of Para 524 of IRMM treating the entire period as of duty since the applicant was under medical examination for confirming his categorisation, as per the provisions of Para 514 of IRMM.

7. As the respondents have not favourably acted, this OA has been filed seeking the following reliefs:-

(1) Call for the records leading to the issue of A5 and quash the same to the extent it calculates the applicant's pension and other retirement benefits as if the applicant had drawn only a basic pay of Rs. 5300/- upto the date of his retirement i.e 31.12.2007 ;

(2) Declare that the applicant is entitled to have the period from 14.06.07 to 31.12.07 (both days inclusive) treated as duty, with all consequential benefits arising there from and direct the respondents accordingly;

(3) Declare that the respondents are bound to draw the applicant's annual increment due on 01.09.07 (from Rs.5300/- to Rs.5450/-) in scale Rs.5000-8000 as a matter of course and declare further that the applicant is entitled to have his pay and allowances and also pension and other retirement benefits calculated on that basis ;

(4) Direct the respondents to pay the applicant his pay and allowances as if he was on duty for the period from 14.06.07 to 31.12.07, duly drawing the annual increment due on 01.09.07, with all consequential arrears of pay and allowances arising there from ;



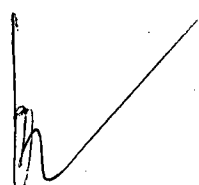
(5) Direct the respondents to recalculate the applicant's pension and other retirement benefits including composite transfer grant on retirement account and direct further to grant the same within a time limit as may be found just and proper by this Hon'ble Tribunal ;

(6) Direct the respondents to pay interest at the rate of 12% per annum on the arrears of pay and allowances, pension etc.. to be calculated for the period from 01.01.2008 till the date of actual payment of the same. "

8. Respondents have contested the OA. According to them, the applicant was directed for periodical medical examination on 14.06.2007. On reporting for periodical medical examination, the applicant was examined and found to be unfit for Aye and Bee categories and fit for Cey one and below due to deafness in both ear. Since he was unwilling for de-categorization and redeployment in lower category, he opted for voluntary retirement. Hence his case was kept under sick list till his voluntary retirement was accepted by competent authority and therefore the period was treated as sick on account of his ailment only and not on account of observation connected with periodical medical examination.

9. As regards increment the respondents have stated vide para 6 as under :-

" The applicant while continuing under sick list, was granted annual increment on 01.09.2007 through salary bill for wage period ending 10.09.2007 duly increasing his basis pay Rs.5300 to Rs.5450/- in scale Rs.5000-8000. In this connection it is humbly submitted that in terms of Para 606 (ii) (a) of IREM, an increment accruing while on leave cannot be drawn during leave and it will be drawn from the date of resumption of duty on return from leave for the reason that an employee on leave draws leave salary and not duty pay. In view of the above provision, the annual increment granted to the applicant on 01.09.2007 duly increasing his pay to Rs.5450/- was not in order. As the increment was erroneously drawn in favour of the applicant, the same was withdrawn by reducing the pay to Rs.5300/-."



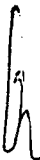
10. To substantiate their case, the respondents have annexed Annexure R-1 letter dated 24.07.2008 issued by the Divisional Office / Medical Branch which reads as under :-

" With reference to the above, Sri P.R.Sivadasan, Ex.SHM/SMR/O/PGT reported at RH/PGT for PME on 14.06.07. He was examined and found to be unfit for Aye and Bee categoriesd and fit for Cey one and below due to deafness in both ear.

Since the employee was unwilling for de categorisation and redeployment on lower category, he opted for voluntary retirement. So his case was kept under sick list till his voluntary retirement accepted by competent authority. Therefore the period from 14.06.2007 to 31.12.2007 cannot be regularised as duty and it can be treated as sick on account of his ailment only."

11. The applicant has filed his rejoinder reiterating his contentions as per the OA.

12. Counsel for applicant argued that para 524 of the IRMM is specific as to how the period of absence during medical examination shall be treated. According to him, the period from 14.06.2007 till 31.12.2007 in respect of the applicant squarely comes under this category and as such, it has to be held as if he was on duty during this period in which event increment as of 01.09.2007 became due and payable. It has also been argued by the counsel that there is no provision for enlisting any Railway employee under "sick list" on the ground that the employee was unwilling for de-categorization, as stated in para 5 of the reply already extracted above. It has also been submitted by the counsel for applicant that the later communication dated 24.07.08 appears to be 'stage managed' and 'after thought' since the medical authorities are not competent to certify whether the applicant's absence be regularised as duty or otherwise as the same



falls under the jurisdiction of personal department and not the medical authorities. Counsel for applicant relied upon the decision in O.A.No.224/07 by this Tribunal in respect of Para 524 of IRMM wherein it has been observed as under :-

"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. Para 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."

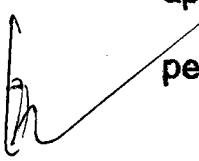
13. Counsel for respondents submitted that the fact remained that the applicant was not functioning on 14.06.2007 till 31.12.2007 and as this period has been treated as leave the applicant is not eligible for annual increment as on 01.09.2007 and as such the applicant is not entitled to any relief.

14. Arguments were heard and documents perused. Para 514 provides for mandatory medical examination in respect of medical categorization. Accordingly the applicant at the instance of the respondents appeared before the authorities on the scheduled date of 14.06.2007, on attaining 55 years of age. Unless a medical certificate certifying him fit for performing the duties of Shunting Master is given, there is no scope at all for the applicant to go and report for duty. It is the responsibility of the medical authorities to conduct the medical check up within the time stipulated as per para 524 and, if need, be refer the matter to the Chief Medical Director. This admittedly has not been done, instead, according to the respondents, the applicant was kept in 'sick list' as he was unwilling to be de-categorized. It is surprising that on the basis of a request from Railway employee he could have been placed in sick list. It is not the case of the respondents that the medical authorities had de-categorized him and communicated the same to the Department as well as the applicant. Under these circumstances,

it is a clear failure on the part of the medical authorities of the Railways in not undertaking the responsibility to conduct medical examination on the applicant as per Para 524 of the IRMM. This is a clear case of negligence as held in the other case in OA 224/07. Attributing the reason for putting the applicant in sick list as applicant's own request is too hard to be believed. As such, for no fault of the applicant, the applicant has been kept out of duties and the same is to be treated as the time taken by the respondents in conducting the medical examination for the purpose of categorization. The applicant cannot in any way be found fault for his absence from duty from 14.06.2007 till 31.12.2007. In fact had the applicant been unwilling for decategorization, in his application for voluntary retirement, he would have been specified the same as the main reason which is not so vide Annexure A-3.

15. Further communication dated 24.07.2008 (Annexure R-1) speaks for itself wherein the medical authorities have opined as to treatment of the period as of duty or otherwise of the applicant in respect of this period. The said communication goes to prove that it is stage managed and it is a clear after thought as is rightly argued by the counsel for applicant.

16. In view of the above, I have no hesitation to hold that respondents are at fault in not conducting on time the medical examination for medical decategorization and it is because of their negligence the applicant was kept out of duty. As such, as per Para 524, the entire period is to be treated only as of duty and as such the applicant does

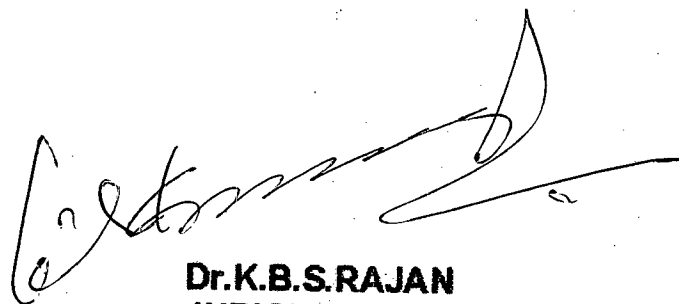


become eligible for grant of annual increment which fell due on 01.09.2007.

17. In view of the discussions **OA succeeds**. Annexure A-5 order dated 24.01.2008 is quashed in so far as it specifies the last pay as Rs.5300/- It is held that the applicant is entitled to grant of increment as of 01.09.2007 and his pay shall be fixed at Rs.5450/- in the scale of pay of Rs.5000-8000 and the applicant is entitled to pay and allowances at that rate for the period from 01.09.2007 till the date of his retirement. The terminal benefits due to the applicant from 01.01.2008 shall be calculated on the basis of his basic pay at Rs.5450/- and all the dues of pay and allowances and other terminal benefits including pension, gratuity, leave encashments etc. shall be worked out and paid to the applicant within two months from the date of receipt of a copy of this order.

18. Under the above circumstances, there shall be no order as to costs.

Dated, the 12th March, 2009.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER