

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 339/99

Wednesday the 13th day of October 1999.

CORAM

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P. Murugesan
S.No.J/M 3872
S/o R.Perumal Aasary
C&W Khalasi under CWS Southern
Railway, Erode.
Door No.43, Arumikkara St.
Kollampalaiyam, Erode.

...Applicant

(By advocate Mr B.Gopakumar)

Versus

1. Union of India represented by the
General Manager, Southern Railway
Madras.
2. The Divisional Railway Manager
Southern Railway
Palghat.
3. The Chief Medical Superintendent
Southern Railway
Palghat.
4. The Divisional Personnel Officer
Divisional Office
Southern Railway
Palghat.

...Respondents.

(By advocate Mr P.A.Mohammed)

The application having been heard on 13th October 1999,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

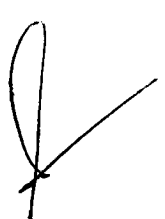
Applicant seeks to direct the respondents to take
up his case to the Grievance Adalat or through Welfare
Department and see that he is got examined by a competent
Medical Officer or Board and grant him invalid pension and
also to declare that Annexure A8 is null and void.

2. Applicant says that he is a C&W Khalasi and was
sick since 22.12.94. He was advised to attend Railway
Hospital and he was on treatment. He learnt that the Railway
Hospital had found him unfit in all classes of employment and
status report had been sent to the Chief Medical Superintendent,

Southern Railway, Palakkad. Since his representation was not considered, he approached this Bench of the Tribunal by filing OA 461/98 and this Bench of the Tribunal permitted him to submit a consolidated representation and directed the second respondent to consider and dispose of the same. Applicant thereafter submitted a representation and the same was disposed of by Annexure A-8 order.

3. Respondents resist the OA contending that the applicant was medically examined by a competent medical officer and declared fit to take up duties as per certificate dated 20th May 1998 produced by the applicant alongwith the OA. The applicant was not found medically unfit for all classes as claimed by him. Applicant was declared fit for duty by the competent medical authority as per proceedings dated 4.2.97. He was directed to report to the Senior Divisional Medical Officer, Erode for medical examination. He was accordingly examined and was found fit for duties as per certificate dated 20th May 1998. The applicant has not turned up for duties till date. He cannot seek a direction for invalid pension since he has not produced any document to the effect that he was medically unfit for all classes of employment.

4. Annexure A8 impugned order has been issued by the Divisional Personnel Officer, Palakkad in compliance with the directions of this Bench of the Tribunal in OA 461/98. Though in A8 it is stated that the applicant was examined by a medical board and declared as fit in the present category for future service as per the proceedings of the medical board dated 4.2.97, the said proceedings of the medical board,



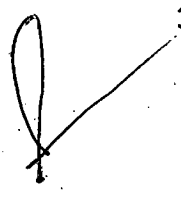
for reasons best known to the respondents, is not produced before us. Learned counsel for the respondents while making submission across the Bar pulled out a few sheets from his file and made visible to us saying that "this is the proceedings of the medical board." We are constrained to say that this is not the way in which a document is to be produced before the Tribunal. The respondents did not have and cannot also claim any exclusive privilege for producing a document to the surprise of the opposite side. It is also pertinent to note that in spite of representations made by the applicant to make available a copy of the said proceedings of the medical board dated 4.2.97, the respondents felt it more happy and convenient to ignore the request of the applicant. If the respondents are relying on the proceedings of the medical board dated 4.2.97, they could have very well made a copy of the same available to the applicant. In the last paragraph of A-8 it is stated that the applicant may report to Sr. DMO/RH/ED immediately for discharging him from sick list and for issuing necessary fit certificate. If a medical board has already found him fit on 4.2.97 it is not known why as per A-8 dated 11.5.98 he was directed to report before the Sr. DMO/RH/ED in order to enable him to issue necessary fit certificate. It may even appear from A-8 that a certificate of fitness by the Sr.DMO is more effective and strong than the finding of the medical board. Usually when a medical certificate is doubted, the ^{case} is referred to a medical board, but the contrary is not the usual practice. It is also interesting to note that though the respondents say that as per A8 on 4.2.97 the applicant was found fit by the medical board, as per A-2 dated 31.7.97 the immediate superior of the applicant had requested Sr. DMO/ED to inform about the applicant's present status. If as per the version

contained in A-8 the applicant was found fit by the medical board on 4.2.97, the applicant's immediate superior, the author of A-2 should have been made aware of it and if he was so made aware of it, there would have been no necessity to issue A-2. There is absolutely no explanation for the respondents as to why the opinion of the medical board was not conveyed to the immediate superior of the applicant. It appears that the respondents are not only giving the copy of the report of the medical board to the applicant but even to their own subordinate, the author of A-2. The conduct of the respondents seems to be something quite strange.

5. The applicant has produced a certificate issued by Senior Medical Officer, Southern Railway, Erode which says that he was under treatment from 22.12.94 to 20.5.98 and is fit to resume duty from 21.5.98. If the applicant was under treatment from 22.12.94 to 20.5.98 it is not known how the medical board could have certified the applicant as fit on 4.2.97. A-8, according to the applicant, was obtained from Sr. DMO, Erode as per the directions contained in A-5 order.

6. According to the applicant, though Sr. DMO has issued a certificate to the effect that from 21.5.98 onwards he is fit to resume duty, he is still undergoing treatment under some private medical practitioner. It is true that there is no evidence in support of this claim produced by the applicant.

7. Applicant has stated in the OA that the Railway Hospital had found him unfit in all classes of employment and status report was sent to the Chief Medical Superintendent, Palakkad by registered post and the same was received as early as on 3.3.97. Apart from this statement, there is no material in



support of the same. It is a case of uncertainty on
the part of the applicant as well as ^{on the part} of the respondents.

The pleadings are far from satisfactory especially that of the respondents. Since the case of the applicant is that he is invalid and is entitled to invalid pension, it is to be ascertained what is his condition. We feel that it will be only just and proper to direct the first respondent to get the applicant examined by a medical board afresh consisting specialists in various branches of medicine.

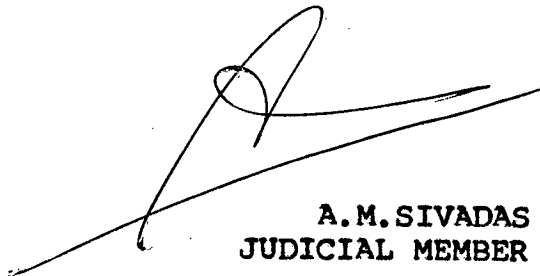
8. Accordingly the first respondent is directed to get the applicant examined by a medical board as stated above within one month from the date of receipt of a copy of this order.

OA is disposed of as above. No costs.

Dated 13th October 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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Annexures referred to in this order:

- A-8: True copy of communication dated 11.5.98 sent to the applicant.
- A-2: True copy of letter of the second respondent to the applicant.
- A-5: True copy of the order in OA 461/98 dated 24.3.98 issued by the Tribunal.