

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A.No. 258 of 2006**

Date of order : 4th May January, 2012

C O R A M

Hon'ble Mr. A.K.Jain, Member [Administrative]
Hon'ble Ms. Bidisha Banerjee, Member [Judicial]

Sunil Kumar, ~~Son~~ of Late Jagdish Ram, resident of Village – Baraiya, Mohalla – New English, P.O. & P.S. - Baraiya, District – Lakhisarai, Bihar.

By Advocate : Shri R.K.Jha with Shri A.N.Jha..
Vrs.

Applicant

1. Union of India represented through the General Manager, Eastern Railway, Fairlie Place, Kolkata-1.
2. The Chief Personnel Officer, Eastern Railway, Fairlie Place, Kolkata-1.
3. The Divisional Railway Manager, Eastern Railway at and P.O., Malda, District- Malda, West Bengal.
4. The Senior Divisional Personnel Officer, Eastern Railway, D.R.M.'s Office at + PO – Malda, District – Malda.
5. Medical Superintendent, Eastern Railway Hospital, at and PO, Jamalpur, District – Munger.

By Advocate : Shri N.K.Sinha, ASC.

Respondents.

ORDER

Bidisha Banerjee, Member [J]:-

The OA has been filed seeking following reliefs :

- “[a] The rejection of the claim from 30.12.2001 to 11....2003 spent on special Medical exam as on duty substance of which is contained in Annexure-A/8 and the order dated 05.04.2006 of the respondent no.2 may be set aside.
- [b] The respondents may be directed to take action on the representation dated 20/24.06.2003 and dated .10.2004, the substance of which is contained in Annexure-A/12 in order to treat the period from 30.12.2001 to 11.02.2003 spent on the special Medical exam in the Railway Hospitals on the order of the Railway authority as on duty and allow the TA as well when the TA bills are submitted as per rules admissible within the period stipulated by this Tribunal.
- [c] The retirement of the late father of the applicant from 11.2.2003 by the Sr. DPO, E.Rly. Malda, the respondent no.4, the substance of which is

contained in Annexure -A/6 may be quashed/set aside and that the respondents may further be directed to pay off the salary and allowance for the period from 11.02.2003 to 30.06.2004 i.e. for one year, four months and 18 days with interest and the consequential arrear in pension etc. after adjustment of the increment falling in the period."

2. The OA was filed by widow Saroja Devi , and after her death, her son Sunil Kumar was substituted on 07.09.2006 vide MA 256/2006.. The issue is whether the period from 30.12.2001 to 11.02.2003 in the service of applicant, spent on Spl. Medical Exam in Railway Hospital, is to be treated as on duty and salary from 11.02.2003 to 30.06.2004 is payable.

3. The undisputed facts are that the father of the applicant was appointed in 1964 as Traffic Porter, promoted as Station Master in Eastern Railway in 1986 and further promoted in the scale of Rs. 6500-10500 and posted at Masudam Railway Station.

By order dated 30.12.2001 he was sent for special medical exam in Railway Hospital at Jamalpur [Annexure-A/2 and A/3]. He appeared on the same day, but he was detained for medical check up and medical examination for a few days. Later on he was referred to Sealdah Hospital for further check up and observation.

His pay was drawn for the interim period treating him on leave. He represented vide Annexure-A/4 to treat the period as on duty. He was discharged from the hospital on being declared as permanently incapacitated for Railway service on 11.02.2003 vide Annexure-A/5 and by letter dated 4th March, 2003, vide Annexure-A/6, he was retired with effect from 11.02.2003. The DRM, referred the matter to the CPO, to treat the period 30.12.2001 to 11.02.2003 as on duty [Annexure-A./7] but it was refused vide Annexure-A/8, without assigning any reason.

By his letter dated 28.06.2003, he [the employee] represented to the Sr. DPO [Annexure-A/9] and the DRM again referred the matter to the CPO vide Annexure-A/10 to treat the period as on duty. During such correspondences, the employee died on 12.08.2004.

After the death of the employee, his widow, i.e. the mother of the present applicant made representation in October, 2004 vide Annexure-A/12 to the DRM for regularization of the period 30.12.2001 to 11.02.2003. Even the CPO asked for certain clarifications from the Medical Superintendent on 06.05.2003 [Annexure-A/12] but the request was neither acceded to nor expressly denied, aggrieved whereby this OA is filed.

4. The respondents have contested the OA by filing written statement, whereby their stand is as follows :

When the then Sr. DOM, Eastern Railway, Maldah visited and inspected the station then he found that Sri Jagdish Ram Ex.ASM, MSIN, father of the applicant, was not fit for duty assigned to him. The father of the applicant Sri Ram was sent for special medical examination. He appeared before the Medical Superintendent, Jamalpur on 30.12.2001 along with G-37 duly countersigned by Sr. DCM, Eastern Railway, Maldah. He was detained for special Medical Examination by M.S. Jamalpur from 30.12.2001 to 11.02.2003. During the said period of special Medical Examination, the salary of Sri Ram was drawn against his own leave as per para -550 of Indian Railway Medical Manual, 2000. Thereafter Sri Ram applied for regularisation of the aforesaid period of his Special Medical Examination as on duty but his application could not be accepted, as the rules did not permit the same. Again he was examined by standing Medical Board on 26.09.2002 and declared permanently incapacitated for any kind of Railway service. The CMD, Kolkata approved the decision of the standing Medical Board on 16.01.2003. Then the Railway Administration issued an unfit certificate to him under MS/JMP's MDL 34 No.943035/37 dated 11.02.2003 and accordingly he was retired from Railway service with effect from 11.02.2003. After some time he died on 12.08.2004.

5. The respondents have further submitted that the representation, Counter representation by the widow of Late Jagdish Ram, were forwarded to CPO, HQ,

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Kolkata for just decision and the Head Quarter took the decision and conveyed that "the period of absence during special Medical Examination will be regularized from employee's own leave and the same was communicated under CPO/KKK's letter no.E.740/2/7/T&C-L [R]05 dated 05.04.2006".

6. Heard learned counsel, considered rival contentions and perused the documents.

7. The learned counsel for the applicant strenuously argued that a Railway servant is sent for periodical medical examination once in every three years, upto the age of 45 and thereafter yearly. Whereas the applicant was never examined between 27.08.1998 [date of medical examination] till 30.12.2001. His date of birth is 1944. As such, he completed 45 years in 1999. Thus, after 1999, he ought to have been medically examined once in every year. Further, after his special medical examination on 30.12.2001 he had to wait till 11.02.2003 only to be declared medically permanently incapacitated for any kind of Railway service.

8. The applicant's counsel has relied upon IREM paragraph 1018. and ^{the} case of one J.N. Mandal, whose period spent on medical examination was treated as on duty.

9. In a supplementary written statement filed on 26.11.2008, it has been stated that the period of Special Medical Examination of Jagdish Ram Ex. S.M./MIDN has been regularised against his own leave in term of para 550 [II] of IRMM-2000 and therefore, the same cannot be treated as on duty. The respondents further submitted that the Medical treatment was given to the original applicant, ^{i.e. the} father of the present applicant, continuously from 30.12.2001 to 11.02.2003 in which salary from 30.12.2001 to 01.01.2002 had already been given to employee because there is a direction of Railway Board that P.M.E. [Periodical Medical Examination] should be completed within a period of three days. Period from 02.01.2002 to 15.08.2002 were regularized as LAP [Leave on Average Pay] and period from 16.08.2002 to 07.09.2002 as LHAP [Leave on Half Average Pay] and rest period

from 08.09.2002 to 11.02.2003 as LPA Leave without pay] as no leave was at his credit. It is the further contention that on medical invalidation of Sri Jagdish Ram, his one son Sri Anil Kumar has already been appointed as Khalasi in Railway under SSE/Sig/JMP on compassionate ground as per Railway's Rules vide office order no.E/CC/Rectt/Cl.IV/RMLDT/03/402[D]/0131 dated 19.01.2004.

10. That the respondents further contended that the period consumed in Medical treatment of the employee, cannot be treated as on duty as there was no delay on the part of the Railway Administration. The employee was given continuous Medical treatment such as cataract operation, B.P., Diabetes, Laser Photocoagulation and phaco emulsification and IOL both eyes, left side hemiparesis etc. but no improvement was seen in him. Hence, the facts stated above, the delay caused in the instant case, were not on the part of the Railway administration. Therefore, period spent in medical treatment could not be treated as on duty. Ultimately, after final recommendation of the Medical Board, the Medical Superintendent, E.R. Jamalpur, issued unfit certificate in favour of Shri Jagdish Ram, father of the present applicant. So, far Sri J.N. Mandal case is concerned, there was no administrative delay in conducting special medical examination. Therefore, the period in special medical examination of Sri J.M. Mandal has been treated as on duty.

11. Annexure-R/1 to the written statement filed by the respondents, is the RB letter dated 25.05.2000 on "Certificate of invalidation from service -amendment to Para 550 of IRMM, 2000", which envisage as follows :

"The existing Para 550 of IRMM< 2000 regarding issue of certificate of invalidation from service may be corrected to read as under :

"Para 550 : Certificates of invalidation from service :

[i] A Railway employee shall not be invalidated out of service on account of ill-health except on the certificate of a Medical Board. Such a certificate will be issued in the prescribed form as given in Annexure-XV to this Chapter, in triplicate. The certificates should be seriously numbered.

[ii] If the Medical Board is unable to say with certainty that the Railway

Employee will never again be fit for service, the Medical Board will recommend leave not exceeding one year in the first instance. Such leave should not be extended without further reference to Medical Board.

[iii] The employees will be considered invalidation with effect from the date of recommendation of the Medical Board in case the same is accepted by the Chief Medical Director."

It is, thus, apparent that the leave of 1 year which was admissible in the 1st instance could be extended after reference to Medical Board.

A reference is also made to Rule 524 which deals with, and lays down :

"524. Treatment of the period of absence of Railway employees sent for periodical medical re-examination :

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 maybe 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 C.M.D. 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 willful delay by the employee.

[iii] Time taken by the employee to equip himself with spectacles, trusses, etc. or with any other equipment without which he/she is not considered fit for duty should be debited to the leave account of the employee concerned. This period will be from the time the examining authority recommends that artificial aids are necessary till the time the employee obtains such aids and is certified fit for duty by the competent authority. In respect of spectacles, the time up to five days spent by employee to equip himself with spectacles for the first time or to change his existing spectacles should be treated as duty. General Managers are empowered to review and consider cases on merit beyond the stipulated

period of 5 days.

[iv] In the event of his/her being declared unfit, an employee may appeal to the chief Medical Director against the examining authority's decision within a period of seven days from the date of adverse report by the examining authority. If the Chief Medical Director, on appeal, confirms the decision of the first examining authority, the period of waiting from the moment of being declared unfit till the verdict of the D.M.D. Would be debited to the employees leave account. If, on the other hand, the Chief Medical Director over-rules the decision of the first examining authority, as such period of waiting should be treated as duty, provided the employee concerned has preferred an appeal within a week from the time the result of the original medical examination is communicated to him. It is also necessary that the appellate authority should decide the appeal within three weeks from the time the appeal is preferred.

[v] In cases, where the immediate supervisor or an officer is not available to allow an employee with a fit certificate to join his/her duty on return from periodical medical examination the time taken by which administrative delay may be treated as duty.

12. Annexure-R/2 manifests that in December, 2001, Medical report was received. Period from 30.12.2001 to 01.01.2002 was treated as "medical leave". Further, 02.01.2002 to 14.01.2002, 15.01.2002 to 14.04.2002, 15.04.2002 to 14.06.2002, 15.06.2002 to 14.07.2002 was treated as on duty. 15.07.2002 to 14.08.2002 was treated as LAP. 16.08.2002 to 07.09.2002, was treated as LHAP. 08.09.2002 is the date of "Spl. Medical examination" was - treated as "no pay", 09.09.2002 to 14.11.2002, 15.11.2002 to 14.12.2002, 15.12.2002 to 11.02.2003 was treated as 'No Pay.'

13. Annexure-R/4 dated 20.09.2002 is the final recommendation by Medical Board of Sr. DMO, Eye, Sr. DMO, Admn. And CMS [Chairman] dated 16.01.2003.

14. Annexure-R/5 is the proceedings of Medical Board. Annexure-R/6 is the order dated 05.04.2006 stating that period of absence during special medical examination will be regularized from employees' own leave.

15. Annexure-R/7, dated 27.06.2002 is from the Director-II, Railway Board,

PME/ Special Medical Examination

In reference to Board's letter No. 2001/M/JCM/DC dated 14.06.2001 reiterated that the cases sent for PME be disposed of expeditiously. The priority should be given while examining them so that PME time is kept to the barest minimum and it has to be monitored by Senior Officer of Divisional/Zonal level. It was however, further decided that delay on administrative ground will be treated as duty."

Railway Boards letter dated 27.06.2002, does not make any difference between PME/Spl. ME.

16. Annexure-R/9 is the decision in case of J.N.Mandal JE-II whose sick period from 17.10.1999 to 22.10.1999 is treated as LAP

23.10.1999 to 27.10.1999 is treated as LHAP

28.10.1999 to 31.10.1999 is treated as on duty.

04.02.2000 to 07.03.2000 is treated as waiting for duty. The TA claim of the employee was also allowed.

It seems that the only difference between applicant and the J.M.Mandal is that J.M. Mandal got cured whereas the applicant was not.

17. Annexure-R/13 is the proceeding of Medical Board dated 26.09.2002.
18. Annexure-A/14 is the copy of Serial Circular 35/91 which speaks as under :
"Periodical Medical Examination of Employees

It has been brought up to the notice of Ministry of Railways that the Safety categories of Railway Employees sent for periodical medical examination take on week or more to complete the entire process of PME whereas only 3 days time is allowed for this purpose. Ministry of Railways after careful consideration, has decided that periodical medical examination of employees should invariably be completed in 3 days. It has also been decided that 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 PME should be treated as duty. Moreover, it will not include time taken by the employee to procure spectacles or any willful delay by the employee."

19. It is quite clear that after the opinion of Medical Board on 26.09.2002, there was absolutely no reason to keep the employee waiting till 11.12.2003 when he

was declared permanently incapacitated. Such delay obviously cannot be attributed to the employee, but to the railway authorities.

20. It is not the contention of the Railways that the ^{leave for} period ~~30.09.2002~~ to 11.02.2003 was due to delay attributable to the employee. The delay is also not caused by the "time taken by employee to procure spectacles or any willful delay by the employee" as envisaged in Sl. Circular No. 35/91 to forfeit the claim of the applicant to count the period as on duty. It is noticed that J.M.Mandal has been granted full benefit of the period spent under Medical Examination, only because he became fit, whereas the applicant is denied the benefit on the sole ground that he was found unfit. There is no justification or legality in differentiating between same set of employees regarding the period spent on medical examination on the ground that one was declared fit while the other was declared incapacitated. Such macro compartmentalization on a micro distinction as aforesaid has no legal sanction.

21. It is already seen that 30.12.2001 to 07.09.2002 is treated as on duty and rest 08.09.2002 to 11.02.2003 was treated as "no pay" which is neither justified nor supported either by law or by any railway rules.

22. It is noticed that 5.4.2006 order of Sr. P.O. [M&E] based on CPO/KKK Sl. NO. 78/2000 and Railway Board's order dated 25.05.2000, does not say that after the first instance of leave of 1 year it cannot be extended further.

23. The applicant's counsel has relied upon [i] Apex court judgment in **Bhagwan Dass vs. Punjab State Electricity Board** reported in [2008] (4) PLJR 152, and Railway Boards order dated 29.04.1999. In Bhagwan Das, the Hon'ble Apex Court considered Section 47 of Persons with Disabilities [Equal Protection of Rights and full Participation] Act 1995 which lays down :

"47. Non-Discrimination in Government employments. - [1] No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service :

Provided that, if an employee, after acquiring disability is not

suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier."

The Hon'ble Apex Court had taken note of the fact that :

"5. After the Act came into force with effect from December 7, 1996 [vide S.O. 107 [E] dated 7th February, 1996], the Government of Punjab, Department of Personnel and Administrative Reforms, issued a letter dated September 24, 1996 directing all the heads of departments to comply with Section 47 of the Act. The Punjab State Electricity Board too adopted the Government letter under its Circular No. 6/97, dated February 17, 1997."

The Termination of service of the disabled employee was held to be bad.

[ii] The Railway Board's order dated 29.04.1999 which was operating in the field as on the date when the employee was declared permanently incapacitated, reads as follows :

*"**1301** A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service become physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.*

***1302.** Classification of Railway Servants declared medically unfit :*

Railway servants acquiring disability during service and declared medically unfit are divisible into two groups :

[i] Those completely disabled for further service in any post in the railway, i.e. those who cannot be declared fit even in the "C" medical category; and

[ii] Those disabled/incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

1303. The Railway servants both in group [i] and group [ii] of para 1302 above cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway servant concerned to perform the duties in the post beyond that date. If such a Railway Servant cannot be

immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit pending location and service benefits; efforts to locate suitable alternative employment stating immediately. The special supernumerary post so created will stand abolished as soon as the alternative employment is located."

24. It is, thus, quite clear that notwithstanding the disability acquired the Railway was legally bound to continue the employee in service. Here also as in Bhagwan Dass, the employee was not explained the correct position and forced to retire. However, after his death, his son was granted compassionate appointment on 24.01.2004, but that subsequent compassion cannot take away his right to be continued in service. The authorities have not only compelled him to retire but also treated his period spent on special medical examination as "no pay" which is unjust as already discussed hereinable.

25. Viewed from all angles the decision to treat the period from 08.09.2002 to 11.02.2003 was unjust and arbitrary and illegal. Annexure-A/8 is quashed.

26. Since the employee accepted his retirement on medial invalidation and did not file any appeal against the decision of Medial Board, and the Railways have also granted compassionate appointment to his son, the period from 11.02.2003 to his actual date of retirement i.e. 30.06.2004 cannot be claimed by the applicant to be considered for payment of salary. However, the claim for the period 30.12.2001 to 11.02.2003 undergone in special medical examination, to be treated as "on duty" deserves to be allowed.

27. ^{Accordingly BB.} The respondents ^{BB.} are, ~~thus~~, directed to treat the entire period from 30.12.2001 to 11.02.2003 as "on duty" for all purposes. The OA is, thus, partly allowed. No order is passed as to costs.

B. Banerjee
[Bidisha Banerjee]
Member [Judicial]

A.K. Jain
[A.K. Jain]
Member [Administrative]