

ORAL

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

This the 16th day of March, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member(J)

O. A. No. 330/01412/2013

Ishaque Khan s/o late Ishahaque Khan, Ex-Loco Pilot (Goods) Now Drafted Running Supervisor r/o Railway Quarter No. 485C at East Loco Colony, Gaya, District-Gaya.

..... Applicant

By Advocate: Sri Vinod Kumar

Versus

1. Union of India, through General Manager, East Central Railway, Hazipur (Bihar).
2. Divisional Railway Manager, East Central Railway, Mughalsarai.
3. Senior Divisional Personnel Officer, East Central Railway, Mughalsarai.
4. Senior Divisional Electrical Engineer (Operative) East Central Railway, Mughalsarai.
5. Chief Medical Officer, Divisional Railway Hospital, East Central Railway, Mughalsarai.
6. Senior Divisional Medical Officer, East Central Railway, Sub Divisional Railway Hospital, Gaya.
7. Chief Crew Controller, East Central Railway at Gaya.

..... Respondents

By Advocate : Sri Shruti Malviya

O R D E R

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The Applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- i) To issue an order or direction in the suitable nature quashing the impugned order dated 15.5.2013 passed by

the Senior Divisional Electrical Engineer (Operative) East Central Railway, Mughalsarai i.e. respondent No. 4 (Annexure No. 1 to this O.A.)

- ii) To issue an order or direction in the suitable nature directing the respondents authorities to treat the period from 24.9.2013 to 1.3.2013 as spent on duty/leave on administrative ground and amount to leave debited for the period may be restored to the credit of the applicant.
- iii) To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- iv) To award the cost of the application to the applicant.

2. The brief facts emerging from the O.A. are that the applicant while working as Loco Pilot (Goods) under Chief Crew Controller, ECR, Gaya in Mughalsarai Division was directed to report in Sub Divisional Railway Hospital at Gaya on 17.9.2012 in order to attend periodical Medical Examination.

2.1 Senior Divisional Medical Officer, ECR at Gaya has examined the applicant but could not come to any conclusion and referred him to the Medical Board. Therefore, applicant was examined by the Senior Divisional Medical Officer, Dhanbad, Patna who further referred the applicant to Senior Divisional Medical Officer (Cardiology) at Railway Hospital, Preumbur at Chennai on 30.9.2012 and Senior Divisional Medical Officer examined

the applicant thoroughly and applicant returned back to Senior Divisional Medical Officer, Gaya on 22.10.2012 and handed over the sealed cover envelop containing the medical report as instructed by doctor concerned from Perumbur Railway Hospital at Chennai.

2.2 On receipt of report from the Senior Divisional Medical Officer (Cardiology) Preumbur at Chennai , the applicant was sent to Chief Medical Superintendent, Divisional Hospital at Mughalsari with necessary letter and papers on 25.10.2012.

2.3 The applicant was again undergone some medical test during the period from 25.10.2012 to 3.1.2013. Thereafter, the applicant was kept on waiting by Chief Medical Superintendent, ECR, Mughalsari.

2.4 Thereafter, applicant preferred a representation dated 13.12.2012 followed by reminder dated 31.12.2012 to DRM, ECR, Mughalsarai/ CMS, ECR, Mughalsara but no consideration has been made and no order has been passed on the same.

2.5 Thereafter, applicant was advised vide letter dated 29.1.2013 to appear before Standing Medical Board on 8.2.2013 at Divisional Railway Hospital, Mughalsarai.

2.6 Thereafter, the Senior Divisional Medical Officer, Gaya issued letter dated 1.3.2013 which is based on Medical report issued by the Standing Medical Board whereby the

applicant was declared not fit for train running and passing duty.

2.7 The period from 17.9.2012 to 1.3.2013 was spent by the applicant in periodical medical examination on the instructions of Railway Administration which is legally liable to be treated as spent on duty as per rules.

2.8 In gross disregard of rule, the Medical Officer of Sub Divisional Medical Hospital, Gaya treated the period from 24.9.2012 to 1.3.2013 spent by the applicant on sick without authority. As a result, a good amount of leave about 159 days was unnecessarily debited from the leave account of the applicant which is illegal.

2.9 Applicant preferred a representation dated 26.3.2013 followed by reminder dated 6.5.2013 praying for to treat the aforesaid period in question as spent on duty as per leave and the amount of leave debited be restored to applicant's credit.

2.10 The Senior Divisional Electrical Engineer (Operating) Mughalsari issued unreasoned order dated 15.5.2013 whereby disallowing the claim of the applicant which is cryptic in nature and appears to be non-application of mind.

2.11 Applicant has no any efficacious remedy but to approach this Tribunal. Accordingly he has filed the present O.A.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that applicant was directed to report periodical medical examination at Railway Hospital, Gaya on 7.9.2012. The applicant was referred to Dhanbad on 17.9.2012 for ECG and was again referred on 20.9.2012 to Chennai. It is further mentioned that Chief Medical Superintendent vide letter dated 29.1.2013 intimated the applicant for appearing before Standing Medical Board on 8.2.2010. The applicant remained under PME from 17.9.2012 to 1.3.2013 and the entire period of EME has been debited from his earn leave and the applicant is not found fit for duty as Loco Pilot in Medical Category Aye One (A-1). Further, he has been posted as Drafted Running Supervisor/Gaya vide order dated 12.9.2013.

4. Heard the learned counsel for applicant Sri Vinod Kumar and learned counsel for respondents Sri Shruti Malviya and perused the pleadings available on record.

5. Counsel for applicant has reiterated the facts as stated by him in the Original Application and further stated that the applicant who was a Loco Pilot (Good) was supposed to go for periodical medical check up as he is carrying the duty of sensitive post. The applicant was sent for periodical medical check up and during medical check up, doctor found some problem relating to heart ailment in respect of the applicant. The applicant was sent on various

hospitals on various dates and applicant returned back from Railway Hospital Preumbur at Chennai and handed over the sealed cover envelop containing medical report to Senior Divisional Medical Officer, Gaya. Thereafter, respondents did not take any action. The applicant repeatedly sent letters and reminders to the respondents to take action on sealed cover envelop and it was only 1.3.2013 Medical Board constituted by the respondents found that applicant is not fit to function as Loco Pilot and declared the applicant unfit for the post of Loco Pilot and applicant was given suitable alternative job. Since then the applicant approaching the respondents to treat the period spent on periodical medical check up from 24.9.2012 to 1.3.2013 as period spent on duty and in case any leave is deducted from his leave account, the same shall be adjusted accordingly. Respondents have not taken any decision and when the applicant came to know that his case was rejected vide letter dated 15.5.2013, he immediately filed this O.A. with relief to treat the period as spent on duty. He further submitted that respondents have already taken decisions in such type of other cases and treated the leave as spent on duty. The counsel also relied upon Rule 524 of IREM Volume I which is in respect of treatment of offices of Railway employee sent for periodical medical check up and submitted that according to this Rule the entire period required for the doctors to come to a

conclusion of periodical medical check up shall be treated as duty. However, the respondents have not taken any decision in respect of the applicant till today.

6. Counsel for respondents submitted that so far as question of order dated 15.5.2013 is concerned, that is not an order and it is simply a communication between the higher officers and there is no question of quashing the same. So far as period spent on periodical medical check up is concerned, the respondents have not taken any decision as yet. However, rule provides that if the applicant declared unfit and he appeals to the Chief Medical Director against the medical test decision, and in case medical director confirms and proves the previous medical report then the period spent on periodical medical check up shall be deducted from leave account of the applicant and on the other hand in case decision of the CMS over ruled, then period spent on medical check up shall be treated as period spent on duty. Counsel further submitted that since the respondents is under process to consider the case of the applicant but the applicant hurriedly filed this O.A. and after filing of the O.A. respondents cannot take any decision due to pendency of this O.A.

7. From perusal of pleadings and arguments raised by both the parties, it is clear that applicant who was working on the post of Loco Pilot which is a sensitive post was required for periodical medical check up and was directed

to report to Divisional Railway Hospital, Gaya on 17.9.2012. Since there was some confusion regarding heart condition of the applicant, the applicant was sent to Dhanbad thereafter Patna and then Chennai and from Chennai he returned back on 22.10.2012 and handed over a sealed envelop containing medical report as instructed by doctor concerned from Perumbur Railway Hospital, Chennai and on the basis of that report, respondents have not taken any decision and applicant submitted reminders to take decision on the report. It was only on 1.3.2013, a decision was taken by medical board and declared the applicant unfit for the post of Loco Pilot and offered the appointment to the applicant on alternative post on which applicant is working.

8. From the pleadings, it is clear that applicant has challenged a letter 15.5.2013 which is not an order and is only a communication between two higher officers and was not addressed to the applicant. As such as for as relief (i) is concerned, the applicant is not entitled to get such relief for quashing the order/letter dated 15.5.2013.

9. So far as grant of relief (2) is concerned, it is clear that applicant has sent so many reminders but the respondents have not taken any action in time and after declaration of applicant as unfit offered him alternative job but not taken any decision on the period spend for periodical medical check up from 24.9.2012 to 1.3.2013.

Though according to the applicant, in other cases, respondents have taken decision and treated the period of that employees as period spent on duty on administrative ground. Since the respondents have not taken any decision in the case of applicant in time, therefore, the matter is remitted back to the competent authority to take a decision in the case of applicant for period spent on periodical medical check up and the competent authority will take a decision in accordance with rules and regulations and the decision taken by the respondents in the similarly situated persons as expeditious as possible preferably within a period of three months from the date of receipt of certified copy of this order. Since, Court is only remitting the matter back to the competent authority to take a decision, I am not entering into the merit of the case.

10. In view of the above, O.A. is partly allowed. No order as to costs.

**(Justice Dinesh Gupta)
Member (J)**

HLS/-

