

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 15569 of 2013 (U)

PETITIONER:

**BOSE T., AGED 60 YEARS
S/O.K.THANKAPPAN, RESIDING AT PARIPALLY PURAYIDOM
NO.57, KADAPPAKKADA NAGAR, KADAPPAKKADA P.O.
KOLLAM-691 008.**

**BY ADVS.SRI.O.V.MANIPRASAD
SRI.SAJU J PANICKER**

RESPONDENTS:

- 1. UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT
MINISTRY OF RAILWAY, NEW DELHI-110 001.**
- 2. GENERAL MANAGER,
SOUTHERN RAILWAY, CHENNAI-600 003.**
- 3. ADDITIONAL GENERAL MANAGER,
SOUTHERN RAILWAY, CHENNAI-600 008.**
- 4. CHEF MEDICAL DIRECTOR,
SOUTHERN RAILWAY, CHENNAI-600 008.**
- 5. CHIEF MEDICAL SUPERINTENDENT,
SOUTHERN RAILWAY, PETTAH, THIRUVANANTHAPURAM-21.**
- 6. DIVISIONAL SECURITY COMMISSIONER,
RAILWAY PROTECTION FORCE, THIRUVANANTHAPURAM-21.**
- 7. DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, THIRUVANANTHAPURAM-21.**

**BY SRI.N. NAGARESH , ASG OF INDIA
BY SRI.V.K.MOHAMMED YOUSUF
BY SRI. C.S. DIAS, SC, RAILWAYS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 : COPY OF THE REPORT GIVEN BY THE DIVISIONAL MEDICAL OFFICER, SOUTHERN RAILWAY, THIRUVANANTHAPURAM DATED 03.06.2008.
- EXHIBIT P2 : COPY OF THE OPD SLIP DATED 09.06.2008 ISSUED FROM RAILWAY HOSPITAL, PERAMBUR.
- EXHIBIT P3 : COPY OF THE RECORDS ISSUED TO THE PETITIONER FROM RAILWAY HOSPITAL, PERAMBUR.
- EXHIBIT P4 : COPY OF THE MEDICAL UNFITNESS CERTIFICATE DATED 20.01.2009 ISSUED TO THE PETITIONER.
- EXHIBIT P5 : COPY OF THE DISCHARGE CERTIFICATE DATED 20.01.2009 ISSUED BY DIVISIONAL MEDICAL OFFICER, SOUTHERN RAILWAY, THIRUVANANTHAPURAM.
- EXHIBIT P6 : COPY OF THE MEMORANDUM DATED 08.05.2009.
- EXHIBIT P7 : COPY OF THE RULES 524(I)(II) & (IV) OF INDIAN RAILWAY MEDICAL MANUAL.
- EXHIBIT P8 : COPY OF THE REPRESENTATION DATED 27.07.2012
- EXHIBIT P9 : COPY OF THE REPLY DATED 24.08.2012.
- EXHIBIT P10 : COPY OF THE DECISION TAKEN IN THE CASE OF SRI.JOHNYY AN EMPLOYEE OF RAILWAY POLICE FORCE.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.15569 of 2013

Dated this the 17th day of November, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner has not been considered as, remaining on duty from 30.05.2008 to 20.01.2009, on which dates he had been undergoing medical examination before the various authorities. The petitioner contends, on the basis of Ext.P7 that when medical examination is done, the time spent for such examination has to be treated as duty.

2. The brief facts to be noticed are that the petitioner in preparation of attending a four-week refresher course, was examined by the Senior Divisional Medical Officer of the Health Unit at Kottayam on 25.07.2008 and was directed to be examined by the DMO, Trivandrum. The petitioner was examined by the DMO, Trivandrum of the Southern Railway on 30.05.2008 and by 03.06.2008 it was opined that he has to be examined

further and was referred to the Railway Hospital at Perambur. The petitioner contends that he appeared at the Railway Hospital on 09.06.2008 as is disclosed from Ext.P2. But the petitioner was advised surgery and in preparation medicines. On 24.06.2008, he was admitted to the Southern Railway Headquarters Hospital, Perambur, but the petitioner's physical condition not being conducive for a surgery, the petitioner was discharged and referred to the Medical Board. The petitioner then appeared before the Medical Board on 15.12.2008 and after examination, the petitioner was found to be medically unfit and was de-categorised to hold a sedentary post, which is by Ext.P4 dated 20.01.2009.

3. The petitioner was discharged from the sick-list vide Ext.P5 on 20.01.2009. The petitioner was put in a sedentary post and continued therein till his retirement on 30.04.2013. The petitioner's period spent on medical examination was treated as leave, which the petitioner wants to be treated as duty on the basis of Ext.P7 Norms.

4. The specific reliance is placed on paragraph 524 of Indian Railway Medical Manual, which mandates that an employee

absent from duty for periodical medical re-examination may be treated as continuing in duty, for the time spent in journey to and from the place where the actual medical examination is carried and for the time taken by the examining medical authority to come to a decision. In the present case it is to be noticed that the petitioner was not undergoing any periodical medical re-examination. The periodical medical re-examination could only be a routine medical examination contemplated by the Rules of the Force and any time spent for the same can be considered as duty. This is only reckoning the possibility of deployment in remote areas where there would be no facility to conduct medical examination. An employee would also be obliged to subject himself to the periodic-routine medical examinations to assess his physical condition; which again would be a normal incidence of service. No employee could be asked to subject himself to a mandatory medical examination by taking leave.

5. Herein, the petitioner was obviously unwell and unable to continue on duty in his designated post. On a routine medical examination the petitioner was found to be physically unfit and suffering from serious ailments. The petitioner hence was sent for

medical examination first to the DMO at Trivandrum and then to the Railway Medical Hospital at Perambur. The petitioner was also advised surgery, which could not be carried on, because of the other health problems of the petitioner. The petitioner was then referred to the Medical Board and he was de-categorised to a sedentary post. It cannot be said that the medical examination carried on was a periodical medical re-examination. It was on account of the specific health problems of the petitioner, which required him to be kept out duty and that could only be considered as leave.

6. Further, it is to be noticed that the petitioner, while continuing in service after the de-categorisation, on the supernumerary post, never raised a claim for consideration of the leave period as duty till Ext.P8 dated 27.07.2012, almost after three years. The petitioner's claim was rejected at Ext.P9, which cannot at all be considered to be arbitrary or illegal. Ext.P9 has to be upheld.

7. The Counter Affidavit indicates that the petitioner is entitled to have the period from the date of the Medical Board, ie. 15.12.2008 to the date of issue of Medical Certificate, ie.

20.01.2009, a period of 37 days to be treated as duty. In such circumstance, if the same has not been treated as duty; on the petitioner making a representation for the same, the emoluments due thereunder shall be paid expeditiously.

The writ petition hence would stand dismissed with the above reservation as to the period between 15.12.2008 to 20.01.2009. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

sp/19/11/15