
(2022) 01 CAL CK 0078
In the Calcutta High Court
Case No : Writ Petition No. 8620 Of 2021

Ravi Prakash

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 25-01-2022

Acts Referred:

Indian Railway Medical Manual, 2000 — Rule 559, 561, 561(3), 561(4)

Citation : (2022) 01 CAL CK 0078

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Ujjal Roy, Arpa Chakraborty, Kush Prasun Chatterjee, Aveek Biswas

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner was initially appointed as a constable in the Railway Protection Force (RPF) with effect from May 22, 2006. After completion of initial training, he was posted at the Chittaranjan Locomotive Works (CLW), Chittaranjan on and from March 31, 2007. On January 29, 2019, the petitioner was placed in the Sick List of CLW and was referred to the B.R. Singh Hospital, where the petitioner was advised to avoid running/jumping, over-height, fire and electrical hazards and the use of firearms.
2. It is an admitted position that on the basis of the EEG Report dated October 17, 2019 the Controlling Officer was advised to post the petitioner in a place where he could adhere to the above restrictions in terms of medical advice.
3. The petitioner was transferred to Sealdah Division from CLW vide Force Order No. 42/2019 dated April 12, 2019.
4. Subsequently, as per the allegation of the Railway Authorities, a medical board

examined the petitioner and declared him fit to resume duty in his original category of Railway Service as per Para 543(1) of Indian Railway Medical Manual-2000 (in short, IRMM-2000).

5. Learned counsel for the petitioner argues that the petitioner thereafter had to prefer a writ petition bearing W.P.A. No.5912 of 2020 before this

Court, challenging the refusal of the respondent-Authorities to disburse the petitioner's arrear salaries. Ultimately, this Court, vide order dated July

27, 2020, directed the respondent-Authorities to disburse the arrear salaries within one month from the dated of communication of that order to the

respondents and thereafter to go on paying current salary to the petitioner subject to the petitioner joining his new medical category of employment.

Furthermore, the respondent no. 3 therein was directed to issue a certificate of decategorization or change of occupation of the petitioner upon perusal

of the certificate dated April 19, 2019 issued by the concerned Medical Officer of the B.R. Singh Hospital.

6. Despite the said direction, the Railway Authorities constituted a Medical Board subsequently, after about one and a half years had passed

subsequent to the petitioner being put on the Sick List, which examined the petitioner and found that the petitioner was fit to join his original service,

which is, according to the petitioner, contrary to Rules 559 and 561 of the IRMM-2000.

7. The respondent-Authorities, as per the petitioner's allegation, also withheld the subsequent current salary of the petitioner and abstained from

complying with the specific direction of this Court to issue a decategorization certificate to the petitioner.

8. Learned counsel appearing for the respondent-Authorities, by placing reliance on written instructions, argues that Rule 561 of the IRMM-2000 is

not mandatory as far as the provision regarding consideration of the employee by the railway doctor as medically unfit for the duties of his original

post, after expiry of six months of the sick period, is concerned.

9. It is further argued by the Railway Authorities that the petitioner abstained from presenting himself for medical examination before the medical

officer from time to time, due to which he was discharged from the Sick List on April 1, 2020, whereafter his leave was treated as

unauthorised absence and his salary was withheld.

10. After April 1, 2020, it is alleged, the petitioner neither reported before the concerned Medical Officer nor reported at his place of duty.

11. For the entire period, accordingly, the respondent-Authorities withheld the disbursal of the petitioner's salary.

12. Upon hearing learned counsel for the parties, it is seen that the allegations made about the petitioner abstaining from meeting with the Medical

Officer prior to April 1, 2020, are extremely vague. Even after April 1, 2020, there is nothing on record to show that the petitioner failed to report

before the concerned medical office or at his place of duty.

13. Even if it is assumed for the sake of argument that the petitioner had abstained from meeting the Medical Officer subsequent to April 1, 2020, it is

an admitted position that the petitioner was on the Sick List with effect from January 29, 2019. As such, the six months' period as contemplated in

Rule 561 of the IRMM-2000 was over on July 28, 2019 itself. After waiting for a long period of about eight months thereafter, the petitioner was

suddenly declared to be in unauthorised absence and a Medical Board was constituted anew, which allegedly examined the petitioner and declared

him to be fit to join in his original post.

14. It stares at the face that the fresh medical examination of the petitioner and reversion of the petitioner to his original post in his original duty was

patently de hors the provisions of Rules 559 and 561 of the IRMM-2000.

15. As per Rule 561(3), the recommendation for light duty of an employee for serious illness or injury could not exceed a period of three months in the

first instance, after which the case had to be mandatorily reviewed. Under no circumstances, the period could have exceeded six months. In view of

no review having been undertaken by the respondent's Authorities within the said period of six months, expiring on July 28, 2019, sub-Rule (4) of

Rule 561 is attracted, which clearly provides that if the competent authority indicates its inability to provide light duty or change of occupation, the

employee should be kept on sick-list till he is fit for duty or is decategorized, the period of waiting not exceeding six months.

16. In the present case, the constitution of a Medical Board much subsequent to the expiry of even one year after the commencement of sick-listing of

the petitioner was de hors the rules framed by the Railway Authorities themselves.

17. The alleged abstinence of the petitioner from meeting the Medical Officer post-April 1, 2020 is entirely irrelevant in the context in view of more than one year having elapsed after the sick-listing of the petitioner.

18. The respondent-authorities not only failed to issue a certificate of decategorization to the petitioner in terms of Rule 561(4) of the IRMM-2000, in patent violation of the specific direction of this Court in W.P.A. No.5912 of 2020 dated July 27, 2020, but also failed to take any step for assigning the petitioner to temporary light duty or to change the occupation of the petitioner after the expiry of six months from the commencement of the petitioner's sickness.

19. Rule 559 of the IRMM-2000 clearly provides for three categories of medical recommendations that are issued to railway employees by the railway doctors. The recommendation relevant in the present context is covered by Clause (i), which pertains to recommendations for light duty/change of occupation.

20. As per the scheme of Rule 561 and its sub-clauses, the only option left after expiry of six months from the sick-listing of an employee is either to provide temporary light duty or change the occupation of the employee. None of such recourses were resorted to by the respondent-Authorities. The respondent-Authorities, in blatant violation of the specific direction of this Court dated July 27, 2020 passed in W.P.A. No.5912 of 2020, refused to issue any certificate of decategorization or change of occupation to the petitioner.

21. On the contrary, the railway authorities were brash enough to constitute a fresh Medical Board entirely beyond the purview of the authority conferred under the IRMM-2000 and subsequently to declare the petitioner fit to resume duty in the previous category of Railway Service.

22. Hence, the unilateral declaration by the railway authorities of the petitioner being in an unauthorised absence was unwarranted and de hors the law.

23. On such erroneous ground, the respondent-Authorities also withheld the then current salary of the petitioner in unjust manner.

24. The purported Transfer Order of the petitioner dated April 12, 2019 was issued during a period when the petitioner was admittedly on the sick-list.

Hence, it could not have been possible for the petitioner, by any stretch of imagination, to join service in his transferred post; more so, since the

railway authorities have not produced any document to show that such transferee post was lesser in intensity than his original duty.

25. The specific requirement of Rule 561 (4) which mandates the competent authority, if it is unable to provide temporary light duty or change of

occupation, to keep the employee on sick-list or decategorize him, at the most within six months from the commencement of sick-listing, was patently

flouted by the respondent-Authorities without any rhyme or reason.

26. The entire exercise as indicated above, on the part of the respondent-Authorities, was arbitrary and de hors the law and rules.

27. Hence, the allegations levelled by the respondent-Authorities against the petitioner do not stand on sound footing at all.

28. In such view of the matter, the respondent-Authorities acted without jurisdiction and in an ex facie arbitrary manner in withholding the salary of

the petitioner upon declaring the petitioner to be in "unauthorised" absence subsequent to April, 2020.

29. To top it all, the respondent-Authorities refused to comply with the specific direction of this Court by issuing a certificate of decategorization or

change of occupation to the petitioner.

30. Thus, the entire procedure adopted by the respondents was arbitrary and mala fide.

31. Hence, in view of the aforesaid findings, W.P.A. No.8620 of 2021 is allowed, thereby setting aside the decision of the respondent-Authorities to

re-assign the petitioner to his original post and directing the respondent-Authorities to immediately issue a decategorization certificate to the petitioner

in compliance with the previous order of this Court, in the alternative, to issue a certificate of change of occupation to the petitioner and to assign the

petitioner either to a lighter category of service in the railways or with lighter duties in similar category as his original post. Such exercise shall be

completed by the respondent-authorities within three months from date.

32. Till such new assignment is given to the petitioner, the respondent-Authorities shall disburse all arrears of current salary to the petitioner. Such

arrears till December, 2021 shall be disbursed latest within two (02) months from date. Thereafter, the respondent-Authorities will go on paying current

salary from the month of January, 2022 till the petitioner is re-assigned to a post as indicated above. Subject to the petitioner joining such re-assigned

post thereafter, the respondent-Authorities shall continue to disburse all current salaries in favour of the petitioner in accordance with law.

33. There will be no order as to costs.

34. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.