

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice SUJOY PAUL
&
The Hon'ble Justice PARTHA SARATHI SEN

WP.CT 172 OF 2024

MD. NAZRUL ISLAM
-Vs-
UNION OF INDIA & ORS.

For the Petitioner:

Mr. Ujjal Ray, Adv.,
Mr. A. Chakraborty, Adv.

For the Union of India:

Mr. Shyamal Kr. Mukherjee, Sr. Adv.,
Mr. Srikumar Chyakraorty, Adv.

Hearing concluded on:

05.05.2026

Judgment on:

12.05.2026

PARTHA SARATHI SEN, J. :-

1. The subject matter of the instant writ petition as filed under Section 226/227 of the Constitution of India is the order dated 29.08.2023 as passed in OA 350/ 01223/ 2022 by the Central Administrative Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as the 'said Tribunal' in short). By the impugned order the said Tribunal declined to entertain the prayers of the original applicant/ writ petitioner herein for regularizing the medical treatment

period from 14.01.2020 to 18.04.2022 as on duty and for releasing of service benefits for the aforesaid period by the respondent authorities.

2. At the time of hearing, Mr. Ray, learned Advocate appearing on behalf of the original applicant/ writ petitioner at the very outset draws attention of this Court to the copy of the representation dated 17.05.2022 as submitted by the original applicant/ writ petitioner with the respondent no. 4 authority requesting the said authority to treat his sick period from 14.01.2020 to 18.04.2022 as on duty with a further request to disburse payment for the aforementioned period as payable to him. It is submitted that by a communication dated 27.05.2022 the respondent no. 5 authority declined to concede with the request as made by the writ petitioner in absence of any rules for regularization of sick period (RMC) as on duty.
3. It is submitted by Mr. Ray that from the materials as placed before this Court it would reveal that on 14.01.2020 the writ petitioner was admitted at B. R. Singh Hospital, Kolkata for an eye operation and he continued to be in the sick leave from 14.01.2020 to 18.04.2022 and was discharged from the sick leave on 19.04.2022 with a recommendation of the medical board to absorb in a category where visual activities are not required and accordingly, he was posted as 'Office Superintendent' under C&W/MLDT.
4. Drawing attention to page nos. 89 to 91 of the instant writ petition (Annexure P-2) being a copy of "Medical Examination of Candidates for Appointment to the Gazetted Railway Service", it is submitted by Mr. Ray that Clauses 559 and 560 of Section F thereof deal with the types of medical

recommendations and the authority competent to make such recommendations. It is further submitted that Clause 561(A) of Section F deals with recommendation for light duty and Clause 561 (B) deals with certificate of decategorisation or change of occupation. It is further submitted by Mr. Ray that Clause 561(A)(4) postulates that in the event competent authority indicates its inability to provide temporary light duty or change of occupation, the employee should be kept on sick leave till he is fit for duty or is decategorised and the period of waiting should not exceed 6 months.

5. It is further submitted by Mr. Ray that Clause 561(B) further postulates that if after expiry of the period of 6 months granted under the certificate of recommendation of light duty, the employee concerned is considered by the railway doctor medically unfit for the duties of original post but not unfit for service on the other posts, the competent medical officer would issue necessary certificate in the prescribed form for a suitable permanent alternate appointment either in the same medical category or in a lower category.

6. In his next limb of submission, Mr. Ray draws attention of this court to the “Indian Railway Establishment Manual, Volume 1 (revised edition, 1989)”. It is submitted by Mr. Ray that on perusal of Chapter XIII of the said Manual it would reveal that a railway servant who fails in a vision test or otherwise by virtue of a disability acquired during service becomes 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. It is further argued that Clause 1302 of Chapter III

of the said Manual further postulates that railway servants acquiring disability during service and declared medically unfit have been divided into two groups namely, (i) completely disabled and (ii) 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 corresponding to this lower medical category.

7. Drawing attention to Clause 1303 of Chapter III of the said Manual it is further argued by Mr. Ray that said clause further postulates that 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 employee was working on. It is further submitted by Mr. Ray that sufficient materials have been placed before this Court as well as before the said Tribunal that the original applicant/ writ petitioner was admitted in B.R. Singh Hospital on 14.01.2020 for operation of cataract and even after such operation his vision was not improved and thus, his treatment continued till 18.04.2022 and during the said period he was treated in various railway hospitals including AIIMS/ Delhi.

8. Drawing attention to page no. 55 of the instant writ petition being a copy of the memo dated 19.04.2022 as issued by the Medical Department, Eastern Railway, Malda, it is submitted by Mr. Ray that from the said letter dated 19.04.2022, it would reveal that the writ petitioner was included in RMC's sick list with effect from 14.01.2020 and he was released from sick list with effect from 19.04.2022 (AN) with an advice to report at his concerned department. It

is submitted by Mr. Ray that the issuance of the aforementioned letter dated 19.04.2022 thereby releasing the writ petitioner from the sick list is contrary to Clause 561(A)(4) of the “Medical Examination of Candidates for Appointment to the Gazetted Railway Service” inasmuch as it has been specifically mentioned therein that the period of waiting in sick list should not exceed 6 months.

9. It is further submitted by Mr. Ray that since the railway authority on account of their own failure and/or negligence did not release the writ petitioner from the sick list within 6 months from 14.01.2020 thereby depriving the writ petitioner from joining to a suitable permanent alternate appointment or in a special supernumerary post, the railway authority is not at all justified in not regularizing the sick period of the original applicant/writ petitioner that is from 14.01.2020 to 18.04.2022 as on duty. It is further submitted by Mr. Ray that while passing the impugned order the said Tribunal has failed to visualize the true implications of the relevant clauses of “Medical Examination of Candidates for Appointment to the Gazetted Railway Service” as well as the said Manual. It is further submitted by Mr. Ray that the said Tribunal has miserably failed to consider that due to the non-action and/or inaction on the part of the railway authority the original applicant/ writ petitioner had to remain in sick period (RMC) for a period from 14.01.2020 to 18.04.2022 that is much more than the prescribed period of 6 months and thus, for such non-action and/or inaction of the respondent authorities, the Tribunal ought to have granted the reliefs as prayed for by the writ petitioner in the original

application that is for regularizing the period of treatment from 14.01.2020 to 18.04.2022 as on duty.

10. Per contra, Mr. Mukherjee , learned Counsel appearing on behalf of the railway administration submits before this Court that from the affidavit-in-reply as filed by the railway administration in the said original application before the said Tribunal it would reveal that it is the specific case of the respondent authorities that since the writ petitioner had not worked for the period from 14.01.2020 to 18.04.2022 and since the writ petitioner has no leave to his credit, the said period of absence from duty cannot be regularized and for the said period the original applicant/ writ petitioner is not entitled to any relief(s) as prayed for. It is further submitted that in the impugned judgment the said Tribunal duly considered such fact and thus rightly negated the contention of the original applicant/ writ petitioner.

11. We have meticulously gone through the entire materials as placed before us. We have given our due consideration over the submissions of the learned Advocates for the contending parties.

12. For effective adjudication of the instant writ petition we at the very outset propose to look to Clause 561 of Medical Examination of Candidates for Appointment to the Gazetted Railway Service which reads as under:

“561. (A) Recommendation for light duty- (1) Such recommendations are to be made by a Railway doctor in favour of an employee when, in his opinion, the Railway employee who had been under treatment for serious illness or injury is fit to resume duty in his original post but not fit to perform all the duties connected with that post.

(2)

(3)

(4) *If the competent authority indicates its inability to provide temporary light duty or change of occupation, the employee should be kept on sick list till he is fit for duty or is de-categorised. The period of waiting should not exceed six months.*

(B) Certificate of Decategorisation or Change of occupation: *(1) If after the expiry of the period of six months granted under the certificate of recommendation of light duty, the employee is considered by the Railway doctor medically unfit for the duties of his original post, but not unfit for service on the other posts, the competent Medical Officer will issue the necessary certificate in the prescribed form as given in the annexure XX to this chapter, for a suitable permanent alternate appointment either in the same medical category or in a lower category.*

Note:-(i)

(ii)

(iii).....

(iv)"

13. Since reliance was placed on Clauses 1301 to 1303 of the said Manual, we also propose to look to the said Clauses which are quoted hereinbelow in verbatim:

“Absorption of disabled/medically decategorised staff in Alternative Employment.

1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes 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.”

14. On conjoint perusal of the aforementioned clauses of the said Manual of the Medical Examination of Candidates for Appointment to the Gazetted Railway Service, it appears that the said Clauses of the aforementioned two guidelines take care of the railway servants who have been declared medically unfit. We have noticed that the term ‘medically unfit’ is divided into two groups namely, (i) those completely disabled for further service in any post in the railway 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 post corresponding to this lower medical category.

15. At this juncture, if we look to page no. 56 of the instant writ petition being a copy of the memo dated 20.04.2022 regarding alternative appointment of the original applicant/ writ petitioner, it would reveal that the respondent authorities had approved the redeployment of the original applicant/ writ petitioner considering the medical recommendation of the competent authority. For better appreciation of the said memo dated 20.04.2022 we propose to quote herein the medical recommendation by the competent authority as well as the remarks made by the respondent no. 5 authority which are quoted hereinbelow in verbatim:

Fit for Med. Catg.	Remarks
<p><i>After careful clinical examination and reviewing all reports the members of Medical Board are of unanimous Opinion that Md. Nazrul Islam, Desig. OS/C&W/MLDT has glaucomatous optic atrophy with ashakia and choroidal scicrosis in right eye and near total cupping with loss of inferior rim and very advanced glaucomatous in left eye and thus his vision is unlikely to improve in any further with medical and surgical mode of treatment. Considering his present visual status he is unfit in Aye, Bee or Cey categories as per IRMM 512(1)(b). however considering physical status of the employee he may be accommodated in any other categories not requiring visual activities.</i></p>	<p><i>As per PCMD/ER/KKK's letter dated 13.04.2022 & CMS/MLDT's letter dt. 19.04.2022, as per present visual status, employee is Unfit in Aye, Bee & Cey Categories as per IRMM 512(1) (b), but as per physical status, he may be accommodated in any other categories, not requiring visual activities. Accordingly, the Committee have considered the case in toto & after careful consideration hereby recommends that he may be continued in the same post Office Superintendent, GP 4200/- subject to the condition that he will not be entrusted any Desk work, Computer Work or Ministerial work that tantamount to visual display etc except the physical work.</i></p>

16. It is pertinent to mention herein that immediately preceding to the said date of issuance of order for alternative appointment of the original applicant/writ petitioner that is on 19.04.2022 the writ petitioner was released from sick list with effect from the said very date that is on 19.04.2022.
17. Admittedly, the writ petitioner was not released from sick list and/or period of waiting within 6 months from 14.01.2020 however, such alleged inaction and/or non-action on the part of the respondent authorities is found to be not much detrimental to the writ petitioner since the writ petitioner after expiry of 6 months from 14.01.2020 was found to be not fit even in the 'C' medical category and thus unable to perform his duty by retaining in service in post corresponding to such lower medical category. For the sake of argument and keeping in mind the provisions of Clauses 1302 and 1303 of the said Manual even if the writ petitioner was kept in any suitable alternative post or in a special supernumerary post after 6 months from 14.01.2020, even then the writ petitioner was not able to perform any duty because of his complete disability at the relevant time.
18. In our considered view, the said Tribunal in the impugned order has rightly noticed that since the original applicant/writ petitioner did not have adequate leave in his credit during the aforementioned period of his absence from duty, his absence cannot be regularized by grant of any extraordinary leave. In course of his submission despite repeated asking by this Court, Mr. Ray has failed to show any enabling provision of the Leave Rules under which

the writ petitioner was guided to substantiate that the said period of absence of the writ petitioner can be regularized by grant of any special and/or extraordinary leave even in absence of any leave in his credit. Mr. Ray also could not show any enabling provision that the period undergone for treatment by the writ petitioner may be treated as the period spent on duty.

19. In view of such, it thus appears to us that the view taken by the said Tribunal is quite plausible and in absence of any material illegality and/or irregularity and/or non-consideration of material records, we find a little scope to interfere with the order impugned.

20. Consequently, the instant writ petition fails and is hereby dismissed.

21. With the dismissal of the instant writ petition all pending interlocutory applications, if there be any, are hereby dismissed. Interim order, if there be any, stands hereby vacated.

22. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, C.J.)

(PARTHA SARATHI SEN, J.)