

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION No. 523/2018

Order reserved on : 20.01.2020

Date of order: 27.02.2020

Coram:

Hon'ble Mr. Suresh Kumar Monga, Judicial Member

Sh. Harvinder Singh S/o Late Sh. Sawan Singh Age about 48 year, (Group-D) R/o=Guru Nanak Colony, Near BSNL Tower, Ramgarh (Rajasthan) Pin Code-301026. Distt-Alwar.



...Applicant.

(By Adv.: Shri Manjeet Singh Reen with Shri Charanjeet Singh)

VERSUS

1. The Secretary, Government of India, Ministry of Mines, Shastri Bhawan, New Delhi-110001.
2. The Director General, Geological Survey of India, Head Office, 27, Jawahar Lal Nehru Road, Kolkata, West Bengal-70016.
3. The Additional Director General & HOD, Western Region, Geological Survey of India, 15-16, Jhalna Doongri, Jaipur-302004.

...Respondents.

(By Adv.: Shri Rajendra Vaish)

ORDER (ORAL)

Per: Suresh Kumar Monga, Judicial Member

The factual matrix of the case is that the applicant's father had retired from the services of the respondents on 31.01.1987.

Unfortunately, he expired on 17.09.2007. He had been drawing pension upto the date of his death. The applicant, who had been suffering from physical disability up to the extent of 60%, was issued a disability certificate on 02.05.2013 by the medical board. Thereafter, the applicant submitted a representation dated 19.03.2014 and requested the respondents to sanction family pension in his favour as he does not have any source of income because of his physical disability. It has been averred that pursuant to said representation, the respondents issued a letter dated 23.05.2014 to provide them certain documents for settlement of the applicant's family pension case. The respondents issued another letter dated 24.11.2014 directing the applicant to furnish two copies of pan card, bank details, mobile number and guardianship certificate. Thereafter, the applicant's elder brother Shri Harpal Singh filed a petition before the District Judge Alawar seeking the applicant's guardianship under the provisions of Guardianship And Wards Act, 1890. It has further been averred that the respondents issued one more letter dated 13.04.2015 directing the applicant to refurbish the disability certificate. The petition filed by the applicant's brother seeking his guardianship was also allowed by the court of District Judge, Alwar on 30.07.2016. The respondents still wrote a letter dated 20.03.2017, requesting the competent authority to confirm from the hospital whether the extent of disability has rendered the applicant incapable to earn his livelihood. Thereafter, on



17.04.2017, the applicant was again directed to obtain the disability certificate from a medical board of Rajeev Gandhi Hospital, Alwar depicting therein that he is not able to earn his livelihood. Consequent thereto, the applicant appeared before the said medical board and the requisite certificate was issued in his favour on 04.05.2017. Still the applicant's claim for family pension was rejected by the respondents vide order dated 21.08.2018 (Annexure-A/1). Aggrieved by the said order, the applicant has preferred the present Original Application under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents by way of filing a joint reply have joined the defence and opposed the applicant's claim for family pension primarily on the ground that the certificate of disability was produced by the applicant after a period of seven years from the death of his father and, therefore, on the basis of O.M. dated 27.01.2016, his claim for family pension can not be considered. It has further been pointed out that the applicant's father late Shri Sawan Singh did not mention/intimate the respondents' office about the applicant's disability prior to his death. The fact that the applicant was dependent upon his father has been denied because he has attained the age of 39 years and he could manage his livelihood for a period of seven years after the death of his father. It has further been averred that the fact with regard to the applicant's disability is not revealed from service record of



his father and no certificate of disability was produced with regard to his disability.

3. Apart from the aforesaid assertions made in the written statement, the respondents have raised a preliminary objection to the effect that the Original Application is barred by limitation as the applicant's father expired in the year 2007 and since then no claim was raised by him.

4. The respondents have thus prayed for dismissal of the Original Application.

5. Heard learned counsels for the parties.

6. Learned counsel for the applicant contended that the applicant's claim for family pension cannot be defeated as he has suffered a physical disability to the extent of 60% and the disability certificate depicting the said fact has also been issued by a medical board from a Govt. Hospital. He further submitted that on a specific query raised by the respondents, the medical board again issued a certificate depicting therein that the applicant is not capable to earn his livelihood. Learned counsel for the applicant thus submitted that in view of the said certificate the respondents have no reason to decline the applicant's claim for family pension. Learned counsel for the applicant further submitted that the order dated 21.08.2018 declining the family pension to applicant cannot be sustained being contrary to the provisions of the Office Memorandums dated 01.07.2013 and



27.01.2016. In order to strengthen his argument further, the learned counsel has placed reliance upon a judgement rendered by the Hon'ble High Court of Delhi in the case of Om Prakash Vs. The Ministry of Indian Railway 149 (2008) DLT 559. Learned counsel for the applicant further submitted that the Original Application cannot be termed to be barred by limitation as the right to get family pension accrues every month and it is a recurring cause of action.

7. Per contra, Shri Rajendra Vaish, learned counsel for the respondents submitted that since the applicant's father could not apprise the respondents during his lifetime about disability of the applicant and, therefore, the respondents are within their right to decline the family pension to applicant. Shri Rajendra Vaish further submitted that the applicant's claim for family pension is highly delayed as applicant's father expired on 17.09.2007 and he submitted representation claiming family pension on 19.03.2014.

8. Considered the rival contentions of learned counsels for the parties and perused the record.

9. The fact with regard to receipt of pension after retirement by the applicant's father upto the date of his date i.e. 17.09.2007 is not in dispute. The applicant who has been suffering from permanent disability upto the extent of 60% is also not in dispute. After issuance of the disability certificate, the applicant submitted a representation dated 19.03.2014 before the





respondents requesting therein to release family pension in his favour as he is not able to earn his livelihood. The said representation was processed by the respondents and a letter dated 23.05.2014 was issued to the applicant directing him to submit various documents including specimen signatures and latest photographs. The respondents still issued one more letter dated 24.11.2014 directing the applicant therein to furnish self-attested copies of his PAN card, his bank details, mobile number and the guardianship certificate. After receipt of said letter, the applicant's elder brother filed a petition under Guardianship And Wards Act, 1890 before the District Judge, Alwar which was allowed on 30.07.2016 and the applicant's brother was appointed his guardian. The respondents still not satisfied issued a letter dated 20.03.2017 directing the competent authority that before processing the applicant's family pension case, it may also be ascertained from the medical board as to whether the disability suffered by him has rendered him incapable to earn his livelihood. Consequent thereto, a letter dated 17.04.2017 was issued to the applicant directing him to get a medical certificate from the medical board constituted by the Rajeev Gandhi Hospital, Alwar. Following the said dictate, the applicant appeared before the said medical board and a certificate of disability was issued in his favour on 04.05.2017 in which apart from certifying his physical disability up to the extent of 60%, it was also certified that the said disability has rendered him incapable to earn his livelihood.

After issuance of the said medical certificate which was exactly in consonance with the letter dated 20.03.2017, there was no reason with the respondents to decline his claim for family pension. However, the respondents still chose to decline the applicant's claim simply by observing that during his father's service tenure, the fact with regard to applicant's disability was not disclosed in his father's service record and even in the pension papers no such description was found.

10. In my considered view, such an order being arbitrary cannot be sustained in the eye of law.

11. In Om Prakash (supra), the Hon'ble High Court of Delhi has ruled that the payment of family pension shall continue during the lifetime of a disabled son who is unable to earn his livelihood. The relevant paragraphs of the said rulling are reproduced here as under:-

"16. The Apex Court in Smt. Bhagwanti v. Union of India while considering the question whether the post retirement spouse and children are entitled to family pension and whether the provision contained in the Pension Rules denying such family pension is constitutionally valid, had held that such provision denying the family pension is ultra vires Article 14 of the Constitution of India and cannot be sustained. The Apex Court had further held that the purpose for which the family pension is provided, is frustrated if children born after retirement are excluded from the benefit of the family pension and in the event of death of the





Government servant such minor children would go without support. In another judgment 1995 supp (1) SCC 145, Bhagwanti Mamtani v. Union of India, the Apex Court had held that the benefit of the provision of the rule to a mentally disabled person cannot be denied on the ground of making such claim belatedly. The Apex Court had also held that any nomination made contrary to the statute denying the claim of the rightful person to get the family pension will not disentitle such person from family pension under the Pension Rules in, G.L.Bhatia v. Union of India. Following the principles laid down by the Apex Court; it is therefore, evident that the pension being payable on consideration of the past services rendered by the Government servant and the avowed purpose of the pension rules being to provide sustenance in old age and some solace that in the event of his/her death, children will get some support in the form of family pension, such pension cannot be deprived to a disabled child surely on the ground that no declaration was made by the Government servant, while in service or at the time of retirement, as in that event the very purpose granting family pension would be defeated.

17. The Rules 75(6) of the Railways family Pension Scheme for Railway Service, 1964 categorically contemplates the period for which the family pension shall be payable, under which the family pension is payable to a son until he attains the age of 25 years and even to such a son who has attained the age of 25 years provided he is suffering from a disability which has rendered him unable to earn a living even after attaining the age of 25 years. Consequently, according

to the rules of the respondents, even though the petitioner has attained the age of 25 years but on account of his 55% disability of limbs has rendered him unable to earn his living, he shall be entitled for the family pension during his life time. The plea of the respondent that the disability was not acquired by the petitioner before the retirement of the Railway servant in terms of explanation to Rule 75 (6) is based on the misconception of the respondents that the explanation No. 1 to Rule 6 still persists though by notification No. F(E) III/94/PN-1/31 dated 3rd February, 1995 the explanation 1 stipulating that the disability must have been manifested before retirement or death of the railway servant while in service, was deleted.



18. If after the demise of the retired Railway servant who was entitled to pension, the pension continues to the widow up to the date of death or remarriage and if in case of a son after the death of a retired employee the pension continues to his son till he attains the age of 25 years, then by virtue of the proviso to Rule 75 (b) in case of a disable son who is unable to earn his livelihood, after the demise of the retired Railway servant, the pension shall continue during the lifetime of disabled son who is unable to earn his livelihood."

12. So far as the argument of learned counsel for the respondents that the Original Application is barred by limitation is concerned; I do not find any substance in the said argument as well. In Ex Sep Chain Singh Vs. Union of India & Ors. (CIVIL

APPEAL No(s). /2017 (ARISING OUT OF CIVIL APPEAL Diary No(s). 30073/2017 decided on 11.12.2017) the Hon'ble Supreme Court has held that the claim with regard to pension is a recurring cause. However, while taking the said view, the Hon'ble Supreme Court restricted the arrears of pension for a period of three years preceding the date of filing the Original Application before the Tribunal. The operative portion of the judgment is reproduced here as under:



"After hearing the arguments of the parties, we are of the opinion that the aforesaid approach of the Tribunal is clearly erroneous. It was a matter of pension, that too disability pension, which was claimed by the appellant and in a case like this it would be a continuous cause of action simply because of the reason that if pension is due and payable to the appellant, the appellant would be entitled to receive the same every month. At the most, the appellant could be denied the benefit of past pension beyond the period of three years. Even otherwise, in cases of pension the Tribunal should not have taken a such hyper technical view. However, we have gone through the merits of the case. We find that the law is in favour of the appellant and his case is squarely covered by a decision of this Court in "Ex.Gnr. Laxman Ram Poonia (D) through Lrs. vs. Union of India & Ors.", (2017) 4 SCC 697. We, accordingly, set aside the judgment of the Armed Forces Tribunal and allow this appeal and hold that the appellant shall be entitled to disability pension. His pension shall be calculated within a period of three months and arrears shall be paid to him. However, the

arrears would be limited to the period of three years from the date when the Original Application was filed. The appeal is accordingly disposed of."

13. In view of the law laid down by the Hon'ble Supreme Court, in Ex Sep Chain Singh (supra), the present Original Application cannot be termed to be barred by limitation. However, the arrears of family pension can be restricted for a period of three years preceding the date of filing the present Original Application before this Tribunal.

14. In the conspectus of discussions made hereinabove, the order dated 21.08.2018 (Annexure-A/1) cannot be sustained and the same deserves to be set aside.

15. Accordingly, the Original Application is allowed. The order dated 21.08.2018 (Annexure-A/1) is hereby quashed and set aside and the respondents are directed to process the applicant's case for grant of family pension and release the same with arrears within a period of two months from the date of receipt of a certified copy of this order. However, the arrears of family pension shall be restricted to a period of three years preceding the date of filing the present Original Application i.e. 15.10.2018.

16. There shall be no order as to costs.

(Suresh Kumar Monga)
Judicial Member

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