

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O. A No. 350/1326/2019

Smt. Supra Bose,

Daughter of Late Samarendra

Nath Bose, residing at 41,

Kailash Bose Lane, P.O.

Ramkrishnapur, Howrah - 711

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. Applicant

-Versus-

1. Union of India, service through the General Manager, Eastern Railway, Fairlie Place, 17 Netaji Subhas Road, Kolkata - 700 001;

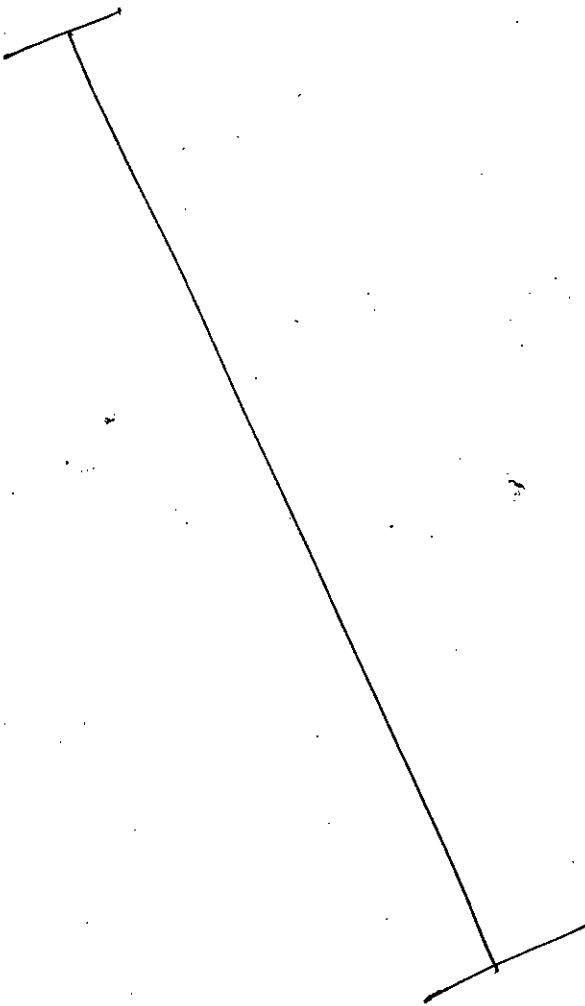
2. The Deputy General Manager (G) & PIO, Eastern Railway, Fairlie Place, 17 Netaji Subhas Road, Kolkata - 700 001;

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3. The Chief Personnel Officer,
Eastern Railway, 17, Netaji
Subhas Road, Kolkata - 700 001;

4. Financial Advisor & Chief
Accounts Officer, Eastern
Railway, 17, Netaji Subhas Road,
Kolkata - 700 001;

...Respondents



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A/350/1326/2019

Date of Order: 20.01.2020



**Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

Supra Bose.....Applicant

Vrs.

Union of India & Ors.....Respondents

For The Applicant(s): Ms. S.Dey Basu, Counsel

For The Respondent(s): Mr. B.P.Manna, Counsel

ORDER (ORAL)

Ms. Bidisha Banerjee, Member (J):

Heard Ld. Counsels for both the parties.

2. The applicant, who is the unmarried daughter of the deceased employee, Samarendra Nath Bose, has preferred this application to seek the following reliefs:

"(i) Direction upon the respondents to accord family pension to the applicant being dependent upon her father's income and being an unmarried daughter in terms of Government Circular under Memo No. 1/6/08-P & PW(E) Ministry of Personnel, P.G. & Pension dated 22nd June, 2010 read with Circular No. E.787/O/PEN/Pt. XXIX dated 17.12.2018 and other relevant circulars."

3. It is evident from the records that the employee had left behind the following members, out of which Shefali Bose, the widow, expired on 27.05.1983.

The rest of the legal heirs were as under:

Sl. No.	Name of the family members (Surviving)	Relationship with ex-Rly Employee	Age	Marital Status	Financial Status
1.	Indranath Bose	Son	64 yrs.	Single	Unemployed
2.	Meghnath Bose	Son	60 yrs.	Single	Retired
3.	Sibnath Bose	Son	55 yrs.	Single	Unemployed
4.	Supra Bose	Daughter	58 yrs.	Unmarried	Unemployed
5.	Gopa Bose	Daughter	57 yrs.	Unmarried	Unemployed
6.	Dipa Ghosh	Daughter	53 yrs.	Married	Housewife

The present applicant as well as her elder brother, namely Sibnath Bose being the disabled son of the deceased, were entitled to get family pension. The disabled son, Sibnath Bose, failed to obtain the certificate of disability despite the fact that the authorities wrote umpteen numbers of letter seeking documents from the family. Gopa Bose, the other unmarried daughter expired on 07.07.2017 and, therefore, the applicant is the sole unmarried daughter to stake a claim towards family pension.

It further transpires that the Sibnath Bose was examined by the Medical Board but has failed to obtain a certificate to prove his disability without which family pension could not be sanctioned in his favour.

4. Ld. Counsel for the respondents has opposed the prayer of the applicant on the ground that the Sibnath Bose, the disabled son, is the rightful claimant. However, Ld. Counsel admitted that in the event the Sibnath Bose failed to obtain the disability certificate to stake his claim as a disabled son, admittedly and inarguably, the sole unmarried daughter of the deceased employee, i.e. the present applicant, is eligible to receive pension in terms of the Railway Rules and would be the sole claimant.

Ld. Counsel would bring to our notice a communication dated 10.01.2020 made to him by the Sr. Personnel Officer (HQ) for Principal Chief Personnel

Officer, which reads as under:

Sub:- OA No.1326 of 2019, CAT/CAL: Supra Bose-Vrs- UOI & Ors.

Ref:-Sr. Law Officer/HQ/E.Rh/Kol's letter no.G.351/13/01/2020/HQ/8/LS/K dated 08.10.2020.

In reference to Sr.LO/HQ's letter quoted above, it is mentioned that the applicant, Miss Supra Bose, unmarried daughter of Lt. Samarendra Nath Bose, Ex-Hd.Clerk/PCOM/Eastern Railway/Kol. had applied for payment of family pension after the death of her parents as per Railway Board's letter no.F(E)III/2007/PN 1/5 dated 18.09.2007(RBE No.116/2007) circulated vide CPO/Eastern Railway's serial No.85/2007 wherein it has been mentioned that unmarried daughters beyond 25 years of age shall also be eligible for family pension at par with the widowed/divorced daughters subject to other conditions being fulfilled. Grant of family pension to unmarried/widowed/divorced daughters shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above her has become ineligible for grant of family pension. It is further clarified that family pension to unmarried /widowed/divorced daughters above the age of 25 years have ceased to be eligible to receive family pension and that there is not disabled child to receive the family pension. This order is effective from 06.09.2007. Applicant's father, Lt. Samarendra Nath Bose died on 14.05.1981. Her mother, Lt. Shefali Bose expired on 27.05.1983.

On receipt of her application, Welfare Inspector of this office had visited the house of the applicant and submitted his report. It is seen from his report that applicant's sister, Miss Gopa Bose and her brother, Sri Shib Nath Bose appeared to be disabled. As per aforesaid rules, priority of the disabled children to receive family pension is first. Accordingly, this office has advised the applicant to submit medical certificates in favour of her sister and brother. But, she has not produced proper medical certificate. Meanwhile, Miss Gopa Bose has died on 07.07.2017 as intimated by the applicant.

Now, Medical Director/B.R.Singh /Hospital/SEALDAH has been advised for Medical examination in favour of Sri Shib Nath Bose, son of Late Samarendra Nath Bose, Ex-Hd.Clerk/COM to determine his disability in connection with payment of family pension vide this office letter of even number dated 12.06.2019 followed by reminder letters dated 17.07.19, 09.09.19, 17.10.19 and 02.12.2019. However, MD/B.R.Singh/SDAH is again being advised for arrangement of Medical Board for examination of Sri Shib Nath Bose immediately.

In view of the above, you are requested to appear before H'onble CAT/KOL on 14.01.2020 and pray for suitable time for completion of Medical examination by MD/B.R.S.H./SDAH followed by completion of other formalities for payment of family pension.

The matter is to be treated as 'Most Urgent.'

(S.K.Chattopadhyay)

Sr. Personnel Officer (HQ)

For Principal Chief Personnel Officer

5. We have gone through the relevant part of Rule 75 of Railway Services (Pension) Rules, 1993, which reads as under (extracted with emphasis for clarity):

"75. Family Pension Scheme for railway servants, 1964:-

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- (6) The period for which family pension is payable shall be as follows:--

(i) subject to first proviso, in the case of a widow or widower, up to the date of death or remarriage, whichever is earlier;

(ii) subject to second proviso, in the case of an unmarried son, until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood, whichever is the earliest;

(iii) subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier;

(iv) subject to sub-rule (10 A), in the case of parents, who were wholly dependent on the railway servant immediately before the death of the railway servant, for life;

(v) subject to sub-rule (10 B) and the fourth proviso, in the case of disabled siblings (i.e. brother and sister) who were dependent on the railway servant immediately before the death of railway servant, for life:

Provided that family pension shall continue to be payable to a childless widow on remarriage, if her income from all other sources is less than the amount of minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon:

Provided further that if the son or daughter of a railway servant is suffering from any disorder or disability of mind including the mentally retarded or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely :-

(a) if such son or daughter is one among two or more children of the railway servant, the family pension shall be initially payable to the minor children (mentioned in clause (ii) or clause (iii) of this sub-rule) in the order set out in clause (iii) of sub-rule (8) of this rule until the last child attains the age of twenty-five years and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind, including the mentally retarded, or who is physically crippled or disabled and shall be payable to him or her, for life;

(b) if there are more than one such children suffering from disorder or disability of mind including the mentally retarded or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them shall get the family pension only after the elder next above him or her ceases to be eligible: Provided that where the family pension is payable to such twin children it shall be paid in the manner set out in clause (iv) of sub-rule (7) of this rule;

(c) the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor except in the case of the physically crippled son or daughter who has attained the age of majority;

(d) before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical Board comprising of a Medical Director or a Chief Medical Superintendent or in charge of a Zonal Hospital or Division or his nominee as Chairperson



and two other members, out of which at least one shall be a specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child;

(e) the person receiving the family pension as guardian of such son or daughter or such son or daughter not receiving the family pension through a guardian shall produce a certificate, from a Medical Board comprising of a Medical Director or a Chief Medical Superintendent or incharge of a Zonal Hospital or Division or his nominee as Chairperson and two other members, out of which at least one shall be a specialist in the particular area of mental or physical disability including mental retardation, once, if the disability is permanent and if the disability is temporary, once in every five years to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled;

(f) in the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the railway servant or the pensioner, as the case may be, and in case no such nomination has been furnished to the Head of Office by such railway servant or pensioner during his lifetime, to the person nominated by the spouse of such railway servant or family pensioner, as the case may be, later on and the guardianship certificate issued under section 14 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 (44 of 1999), by a local level Committee, shall also be accepted for nomination or appointment of guardian for grant of family pension in respect of person(s) suffering from autism, cerebral palsy, mental retardation and multiple disabilities as specified in the said Act: Provided that the grant or continuance of family pension to an unmarried or widowed or divorced daughter beyond the age of twenty-five years or until she gets married or re-married or until she starts earning her livelihood, whichever is the earliest, shall be subject to the following conditions, namely:-

(a) the family pension shall be initially payable to the minor children (mentioned in clause (ii) or clause (iii) of this sub-rule) in the order set out in clause (iii) of sub-rule (8) of this rule until the last minor child attains the age of twenty-five years; and

(b) there is no disabled child eligible to receive family pension in accordance with the second proviso of this sub-rule: Provided that such disabled siblings shall be eligible for family pension for life in the same manner and following the same disability criteria, as laid down in this rule in the case of son or daughter of the railway employees or pensioners suffering from any disorder or disability of mind (including mentally retarded) or physically crippled or disabled, so as to render him or her unable to earn a living even after attaining the age of twenty-five years.

Explanation 1.- An unmarried son or an unmarried or widowed or divorced daughter, except a disabled son or daughter become ineligible for family pension under this sub-rule from the date he or she gets married or remarried.



Explanation 2.- The family pension payable to such a son or a daughter or parents or siblings shall be stopped if he or she or they start earning his or her or their livelihood.

Explanation 3.- It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that, (i) he or she has not started earning his or her livelihood, and (ii) he or she has not yet married or remarried and a similar certificate shall be furnished by a childless widow after her re-marriage or by the disabled son or daughter or parents to the Treasury or Bank, as the case may be, once in a year that she or he or they have not started earning her or his or their livelihood.

Explanation 4 .- For the purpose of this sub-rule, a member of the family shall be deemed to be earning his or her livelihood if his or her income from other sources is equal to or more than the minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon.

Explanation 5 .- Parent shall be deemed to be dependent on the railway servant if their combined income is less than the minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon.

Explanation 6.- Disabled sibling shall be deemed to be dependent on the railway servant if their income is less than the minimum family pension admissible under sub-rule (2) of this rule and dearness relief thereon.

Explanation 7.- Family pension payable to a childless widow shall be stopped if, after remarriage, her income from all other sources becomes equal to or exceeds the amount of minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon."

From the above, we infer that disabled brother would become eligible before the unmarried daughter but such disability has to be certified by appropriate authority/Medical Board and the Disciplinary Authority shall satisfy himself that the disability is of such a nature as to prevent him from earning a livelihood, and not otherwise. Failure to obtain such certificate from Medical Board would render the disabled brother ineligible to pension.

6. In view of the fact that a medical examination of the said Sibnath Bose, the disabled brother, has already been ordered, we direct the authorities to get him medically examined to ascertain his disability for the purpose of grant of family



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pension as a disabled son within three months, failing which to grant family pension to the applicant, if she is otherwise eligible, from the date her eligibility accrued with arrears and to continue payments until the disabled brother is able to satisfy his eligibility. Appropriate orders shall be issued within three months.



7. We note that the failure of the disabled brother of the applicant to obtain a certificate certifying his disability shall not stand in the way for consideration of the applicant as unmarried daughter of the deceased.

8. With the aforesaid observation and directions, the O.A. stands disposed of.

No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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