

Central Administrative Tribunal
Principal Bench: New Delhi

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O.A. No. 1662/99

New Delhi this the 9th day of February, 2001

Hon'ble Mr. Shanker Raju, Member (J)

Shri Sunil Datt
S/o Late Shri Chander Prakash,
House No. 94, Gali Arya Samaj,
Bhoor, Ghaziabad (U.P.).
(By Advocate: Shri B.S. Mainee and Mrs. Meenu Mainee) -Applicant

Versus

Union of India Through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Chief Works Manager,
Signal Workshop,
Northern Railway,
Ghaziabad (U.P.)

(By Advocate: Shri R.L. Dhawan)

-Respondents

O R D E R

The applicant, mentally retarded person and son of deceased Government servant challenges an order passed by the respondents on 20.8.97 whereby his request for grant of family pension till life under the provisions of Rule-75(6) of Railway Services Pension Rules, 1993 has been turned down on the ground that the fact of disability by the applicant has not been manifested before the retirement of Government servant or before his death. It was further stated that the said fact was also not apprise to the respondents by the deceased widow of Government servant at the time of filling up the pension paper. Respondents further stated in this order that as the applicant had attained 25 years of age, his family pension is discontinued.

2. The applicant's father (deceased) was working as a carpenter in the Signal Workshop, Northern

Railway, Ghaziabad and retired from service on 15.11.1982. The family pension was accorded to the widow Smt. Swaroopa Devi. On the death of the widow on 4.1.1987, the family pension was accorded to the applicant who was 16 years of age. The pension was discontinued to the applicant on attaining the age of 25 years as per provisions of Rule-75(6) (ii) ibid. The learned counsel of the applicant contending that the applicant is a mentally retarded person having I.Q. 47 and the relevant certificate has been issued by the Civil Surgeon of RML Hospital at New Delhi. The applicant contends that the natural guardian of the applicant i.e. his brother made a request to the department on 5.12.96 and thereafter several other representations were also made including by the applicant. In one of the replies to the communications of the applicant's brother, it had been stated that no application had been sent by the applicant after his attaining the age of 25 years and he has been asked to present his claim. The applicant has also drawn our attention to Railway Board letter No. F(E)III/86/PNI/22 dated 15.5.90 whereby the following decision have been taken by the President which is as follows:-

"The President is now pleased to decided that the requirement of manifestation of this disability before the retirement/death in harness of a Railway servant as a precondition for the grant of life time family pension, as stipulated in the Board's letter dated 12.12.1977, may be dispensed with. The President is also pleased to decide that the eligible disabled children who were not granted this benefit due to the absence of necessary provision the Family Pension Rules prior to 30.9.1974 or due to the operation of the restriction from 30.9.1977 will also now be eligible for the benefit of life time payment of family pension. This is subject to the condition that they are not already

in receipt of any pension or are eligible, therefore, under any, other Rules of Central Government or a State Government and/or a public Sector Undertaking autonomous body/local fund under the Central or a State Government.

(27)

It is clarified that the benefit referred to in para 3 above will be admissible only to the eligible disabled children whether born before or after retirement, from marriage, that took place before retirement of railway servants and that its grant shall continue to be governed by the other conditions in Board's letter dated 4.4.75, 12.12.77 and 29.5.89 referred to above".

3. In this conspectus the applicant's counsel Shri Maine contended that the requirement of manifestation of disability before the retirement/death of the railway servants as a pre-condition for the grant of a life time family pension is done away. As regards the fact of the medical record, it has been stated that the respondents have not enquired into the case of the applicant and have never asked the applicant to produce the medical record from desired medical authority.

4. The respondents took exception to the contention of the applicant and contended that the fact of disability has not been manifested to the department before the death or retirement of Government servants while resorting to Clause-75-6(C) of the Rules ibid. It has been contended that an explanation requires manifestation as a pre-condition for grant of life time family pension. It has been further contended that the medical record of the applicant is not issued from the medical officer not below the rank of Divisional Medical Officer regarding his mental condition as such the same would not be admissible and on that basis no family pension till life could be accorded to the applicant. It has been further contended that as the certificate of guardianship has not been produced by

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the applicant, he is not entitled for the relief claimed. The respondents further contended that the widow of deceased Government servant had also not filled up the fact of mental disability of his son in the pension papers.

5. The applicant in his rejoinder reiterated the pleas taken by him in his OA and further contended that the applicant was only 10 years of age at the time of his father's death and his condition aggravated later on and he was being looked after by his elder brother who is the natural guardian. According to him, the Circular has referred to by the respondents is not applicable in his case.

6. I have carefully considered the rival contentions and gone through the material on record. The respondents rejected the claim of the applicant by the impugned order dated 20.8.97 solely on the ground that the manifestation regarding mental disability of the applicant has not been brought to them before the death or retirement of Government servant and also not at the time when the pension papers were filled up by the widow. In this regard, we have perused the order of Railway Board Circular dated 15.5.90 which has done away with the requirement of manifestation of disability and after that it would not be an impediment for grant of life time pension to a mental disabled son of a deceased Government servant. The respondents' counsel has failed to show any other provision which has over-ridden the order passed by the President and incorporated in the Board's letter. In view of this, Board's letter and decision of the President, I find that the order passed by the respondents denying life family pension to the applicant is not justifiable and legal.

(29)

7. As regards the other objection of the counsel of respondents Shri R.L. Dhawan regarding non-submission of medical record from the competent authority and the failure of the applicant to produce guardian certificate, I have perused Rule-75-6 (a) which provides that in respect of sons or daughter who have attained the age of majority and shall not be obtained guardianship certificate for the purpose of continuous family pension to be sanctioned or to be paid to them. The aforesaid clause would not apply in the case of the applicant as he had already attained majority and was entitled for life family pension after he became major. As regards the question of submission of medical record by the applicant from RML Hospital, in my view the respondents have not asked the applicant to submit the relevant medical certificate from Divisional Medical Officer regarding the exact mental or physical condition of the applicant. As the applicant has applied for the life family pension attaching the relevant medical record, it was incumbent upon the respondents to have apprise the applicant regarding the requisite requirement and to satisfy themselves regarding the evidence produced for getting the benefit of full family pension on account of mental disability.

8. Apart from this, I feel that the claim of the applicant has been rejected only on the ground that there was no manifestation of disability which is reflected from their order dated 20.8.97 rejected the claim of the applicant. The other conditions and reasons taken by the respondents' counsel to deny the full life family pension to the applicant would not be allowed to be raised by way of filing the counter. Supplementary reason beyond what has been stated in the

impugned order is to be excluded for consideration, in this view of mine, I am fortified by the ratio laid down in the Hon'ble Apex Court in Mohinder Singh Gill & another Vs. Chief Election Commissioner, New Delhi & Others 1978 (1) SCC 405.

9. In the result, I dispose of this OA by setting aside the impugned order at Annexure A-1 and direct the respondents to consider the claim of the applicant for grant of Life Family Pension and to afford him an opportunity to produce the relevant requisite documents. The respondents are further directed to comply with the aforesaid direction within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

cc.