

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH



O.A. No. 060/1539/2017
 MAs No. 060/01965/2017 &
 060/847/2020

(Order reserved on 05.02.2021)

Chandigarh, this the 12th day of February, 2021

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

1. Manmohan Singh Bhatia S/o Late Sh. Jagdish Singh, aged about 60 years, O/o Deputy Chief Quality Manager, Rail Coach Factory, Kapurthala (Punjab)
2. Manjit Singh Bhatia S/o Late Sh. Jagdish Singh, aged about 62 years.

Both are R/o 342-B, Type-3, Rail Coach Factory, Kapurthala.

.....Applicants

By Advocate: Mr. Rakesh Sobti and Mr. Pritish Malik

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior Personnel Officer-II, Rail Coach Factory, Kapurthala (Punjab).
3. Chief Works Manager, Loco Workshop, Charbagh, Lucknow (UP).
4. Chief Medical Officer, LLR Hospital, Rail Coach Factory, Kapurthala (Punjab).
5. Pardeep Kumar S/o Sh. Sukhvir Dutt, Office Superintendent (Medical), LLR Hospital, Rail Coach Factory, Kapurthala (Punjab).

.....Respondents

By Advocate: Mr. L.B. Singh for respondents No. 1,2,4 & 5

Mr. Yogesh Putney for respondent No. 3

ORDER



AJANTA DAYALAN, Member (A):

1. The applicants Manmohan Singh Bhatia and his brother Manjit Singh Bhatia have filed this OA seeking quashing of order dated 14.06.2017 (Annexure A-16) whereby request for inclusion of name of Manjit Singh (applicant No. 2) as a dependent relative brother of Manmohan Singh Bhatia (applicant No. 1) has been withdrawn. The applicants have also sought directions to the respondents to include the name of Manjit Singh Bhatia as a dependent relative brother of Manmohan Singh Bhatia.
2. Earlier, the applicants had also sought release of family pension to Manjit Singh Bhatia in the same OA. However, due to multiple reliefs not admissible in the same OA, the counsel for the applicants withdrew his relief regarding family pension with liberty to file a separate case for the same. This plea was granted vide order dated 27.01.2021. As such, the only relief to be considered in the present OA is regarding inclusion of name of applicant No. 2 in the medical card of the applicant No. 1 that is Manmohan Singh Bhatia for medical facilities.
3. The father of the applicants Jagdish Singh was working in the respondent department and had retired as Fitter Grade I in October 1986. The father Jagdish Singh had two sons who are the applicants before us. Applicant No. 1 that is Manmohan Singh Bhatia is also working in the respondent



department. The applicant No. 2 that is Manjit Singh Bhatia is physically disabled to the extent of 70%. A copy of his disability certificate dated 29.10.2010 showing 70% disability is attached as Annexure A-1. Manjit Singh Bhatia was shown as dependent on Jagdish Singh along with Kuljeet Kaur, wife of Jagdish Singh. Dependent certificate in support of this is attached as Annexure A-2.

4. Jagdish Singh passed away on 09.04.1999. After his death, Kuljeet Kaur was drawing family pension and Manjit Singh Bhatia was wholly dependent on her. On 30.11.2011, Kuljeet Kaur, mother of the applicants also died. After her death, Manmohan Singh Bhatia applied for inclusion of name of his brother as a dependent relative in his medical card vide his application dated 31.07.2012/01.08.2012. However, the case was not processed further. The applicants have alleged that this was due to malafide on part of Pardeep Kumar who was Office Superintendent (Medical).

5. A complaint was thereafter lodged by Manmohan Singh Bhatia against Pardeep Kumar. An inquiry was conducted. Vide letter dated 09.02.2016 (Annexure A-9), Deputy Chief Vigilance Officer, RCF held Pardeep Kumar guilty of not informing in writing to the applicant about the status of his application and for not putting up the case to competent authority for more than fifteen months. A minor penalty was also recommended. It was also recommended that Manjit Singh Bhatia be added in the medical card of Manmohan Singh Bhatia as per Railway Board letter dated 05.09.2000. Thereafter, on 11.07.2016 (Annexure



A-10) Manmohan Singh Bhatia was advised to submit fresh application for inclusion of name of his brother.

6. On 11.04.2017, Manmohan Singh Bhatia was asked to bring his brother for medical examination. Manjit Singh Bhatia was examined by a Committee of two doctors on 12.04.2017. It was thereafter certified that Manjit Singh Bhatia is disabled to the extent of 70% and the disability is of permanent nature and as such, he is invalid brother of Manmohan Singh Bhatia and is entitled to be included as a dependent relative of Manmohan Singh Bhatia. An office note to this effect is attached as Annexure A-12. On 20.04.2017, Manmohan Singh Bhatia was also informed that his brother's name had been included in his dependent relative list (Annexure A-13).

7. Thereafter, CMO, RCF, Kapurthala was requested to issue invalid certificate in favour of Manjit Singh Bhatia as per instructions dated 05.09.2000. In response, a certificate was issued. However, this was not in accordance with the instructions contained in Railway Servant (Pass) Rules, 1986 and Railway Board letter dated 05.09.2000. Letter dated 16.05.2017 (Annexure A-14) is relevant in this regard.

8. On receipt of this letter, Manjit Singh Bhatia was again called and re-examined by a Committee of two doctors and certificate dated 07.06.2017 (Annexure A-15) was issued by them. However, as this certificate indicated that Manjit Singh Bhatia is not invalid.



9. On receipt of this certificate, Office note dated 18.04.2017 was treated as withdrawn vide letter dated 14.06.2017 (Annexure A-16). The applicants are before this Tribunal for quashing of this order and for inclusion of name of Manjit Singh Bhatia as dependent brother of Manmohan Singh Bhatia in his medical card.

10. The case of the applicants is that applicant No. 1 is the sole breadwinner of his family. He has three unmarried children and wife to look after. Besides, his brother Manjit Singh Bhatia is 70% disabled and is wholly dependent on him. As such, non-inclusion of his name as dependent relative in the medical card of Manmohan Singh Bhatia is not at all justified.

11. The applicants also plead that when Manjit Singh Bhatia was a dependent relative of their father Jagdish Singh and had been obtaining medical facilities right upto the death of their mother in 2011, how can he be declared not invalid now when he is much older in age. The applicants have further pleaded that Manjit Singh Bhatia is not able to earn his livelihood and hence, the impugned order is illegal and not justified.

12. The applicants have also relied upon Railway Board letter dated 05.09.2000 and stated that their case is covered under these instructions. They have also relied on a judgement pronounced by the Supreme Court in the matter of **R.D. Shetty Vs. The International Airport Authority of India and Ors.** reported as AIR 1979 SC 1628 and some other judgements to show that State action has to ensure fairness and equity of treatment.



13. The respondents have contested the claim of the applicants. Respondent No. 3 has pleaded that the father of the applicants died in 1986. Applicant No. 2 is over 62 years of age. The medical certificate of disability now placed on record is dated 29.10.2010 (Annexure A-1). Medical certificate shows that physical impairment was visual that is ABM Lateral to (R) eye. However, medical certificate dated 07.06.2017 (Annexure A-15) shows case of amputation of (Left) leg below knee with 70% disability of permanent nature. Annexure A-1 does not state that the applicant was invalid while certificate of 2017 specifically states that he was not invalid. This conclusion is based on medical certificate dated 15.09.2015 issued by Medical Officer, J.B.M.M. Hospital, Amritsar. This is not on record. Further, disability was never intimated to Head of office at any time as required under rules. It is also not the case that applicant No. 2 was under care of any guardian. His marital status has also not been mentioned with oblique motive of defraud and mislead this Tribunal. This leads to the only conclusion that he must be having his own family.

14. It is also stated that medical certificate dated 29.10.2010 was issued at Lucknow whereas certificate dated 15.09.2017 is issued at Amritsar. Applicant No. 1 is posted at Kapurthala. Therefore, it is a wrong averment on the part of the applicants that after death of their mother on 30.11.2011, Manjit Singh Bhatia (applicant No. 2) was living with and was dependent on applicant No. 1 since 2011.



15. The respondents have also stated that in the application for 3rd Beneficiary Family Pension, applicant No. 2 has clearly stated that he was dependent on his deceased parents. He has also given his address at Lucknow; also that he was handicapped and mentally retarded to the extent of 70%. According to the respondent No. 3, these statements of facts wholly demolish his claim.

16. The respondent No. 3 has also pleaded that the OA is hopelessly time-barred as cause of action, if any, arose to applicant No. 2 on 01.12.2011 after the mother of the applicants expired. There is no explanation for delay nor has any application for condonation of delay been filed.

17. Respondents No. 2 and 4 have averred that applicant No. 1 has retired on 31.12.2017. Since applicant No. 2 is not a Railway Servant, he is not entitled to maintain the present OA. They have also clarified that on filing of the application dated 01.08.2012 by applicant No. 1, Pardeep Kumar marked the file to the Senior Divisional Medical Officer on the same day. It was returned with instructions to Pardeep Kumar to inform applicant No. 1 to report back to the office with a copy of the Pension Payment Order of his deceased father. Pardeep Kumar informed applicant No. 1 accordingly. However, on the next day, applicant No. 1 reported that he was unable to supply a copy of PPO. Thereafter, for next two years, he did not contact respondent No. 5 or Senior Divisional Medical Officer in this regard.



18. After complaint by applicant No. 1 against respondent No. 5 Pardeep Kumar, the same was investigated and found to be false and baseless. Applicant No. 1 was charge sheeted for leveling false allegations against respondent No. 5 and giving false information during vigilance inquiry. He was also imposed penalty of withdrawal of one set of privilege pass. The Deputy Chief Vigilance Officer, RCF, recommended minor penalty against respondent No. 5 for not intimating applicant No. 1 in writing about further formalities to be completed. Respondent No. 5 was censured by Chief Medical Officer for this lapse.

19. The respondents have also stated that doctors at Railway Coach Factory, Kapurthala certified on 12.04.2017 that applicant No. 2 is a case of amputation of left leg below the knee and a permanent disability of 70%. They did not conclude that he is an invalid and has lost his earning capacity totally as required in the definition of 'Invalid' under the Railway Servant Pass Rules, 1986.

20. The respondents have further averred that on 16.05.2017, it was pointed out that applicant No. 2 can be included in the medical card of applicant No. 1 only after Railway doctors issue an Invalid Certificate in terms of Railway Servant Pass Rules and Railway Board Circular dated 05.09.2000. The certificate dated 13.04.2017 issued by the doctors was not in accordance with the above Rules and circular. Accordingly, the matter was referred to the Committee of Doctors. On the basis of their re-examination on 07.06.2017 and medical certificate



dated 15.09.2015, they confirmed the disability but stated that applicant No. 2 was not invalid. Mere physical disability of 70% does not result in a total loss of earning capacity.

21. The respondents have also denied all the allegations against the Committee of examining medical doctors. They have also stated that such allegations cannot be made without impleading them as a party.

22. Finally, the respondents have concluded that there are no legal grounds in support of applicants' claim. The applicant No. 2 has rightly been declared as not invalid. Allegations of malafide and colorable exercise of power are also denied. The respondents have acted rightly as per law and the case of the applicants has also been dealt with fairly.

23. I have heard the counsel of the opposing sides and have also gone through the pleadings of the case. I have also given my thoughtful consideration to the matter.

24. First of all, I note that the applicants' mother expired in November 2011. Till then, the applicant No. 2 was availing the medical facilities along with his mother on the medical card attached at Annexure A-2. It was only thereafter that these facilities were denied to him. As such, the cause of action, if any, arose right back in December 2011. However, the OA has been filed only in December 2017 - that is over six years after the original cause of action. Besides, there is no application for condonation of delay. Hence, the OA is clearly barred by limitation. In terms of Section 21 of Administrative Tribunals Act, 1985, no application can be admitted beyond the time line



prescribed unless the Tribunal is satisfied that the application has sufficient cause for not making the application within the stipulated time. In the instant case, there is not even an application for condonation of delay – what to talk of explaining the cause for delay to the satisfaction of the Tribunal. Hence, the OA deserves to be dismissed solely on this ground. However, in the interest of justice, I have also gone into the merits of the case.

25. I observe that the applicants have alleged malafide on part of Pardeep Kumar, the then Office Superintendent. However, after going through the pleadings in this regard in detail, I note that the charge has already been investigated by the Vigilance Department. The lapse that is proved against Pardeep Kumar was limited to his not intimating the applicant No. 1 in writing about further formalities to be completed with regard to his application and not putting up the case to competent authority for more than fifteen months. As such, respondent No. 5 was censured by Chief Medical Officer for this lapse. On the other hand, it was found that the complaint made by applicant No. 1 was found false and baseless. Applicant No. 1 was charge sheeted on this account and was also imposed a penalty of withholding of one set of privilege pass. Hence, I do not find any need for further deliberating or discussing this issue. The charge of malafide is not made out as far as this OA is concerned. The charge has already been investigated by the departmental authorities and a penalty of censure has been imposed on respondent No. 5.



26. Coming to the main issue on whether applicant No. 2 is invalid or not and whether he has earning capacity or not, I note that three medical certificates have been attached in the OA. The first one is dated 29.10.2010 (Annexure A-1). It shows disability of 70% of permanent nature, but it does not indicate whether the applicant No. 2 is invalid or not and whether he has earning capacity or not. In any case, this certificate is quite old now and may not be relied upon especially in view of later certificates already available. The next certificate is of April 2017. This certificate itself has not been placed on record. However, it is referred to in Annexure A-12 which is in form of a note dated 18.04.2017. It is stated therein that nominated Committee of Railway doctors have examined Manjit Singh Bhatia and have certified his disability being 70% and being of permanent nature. As such, they have stated that Manjit Singh Bhatia is invalid brother of Manmohan Singh Bhatia and is entitled to be included in the list of his dependent relatives in terms of Railway Board letter dated 05.09.2000. Confirmation of inclusion of name of Manjit Singh Bhatia in the dependent list was also sent on 20.04.2017 (Annexure A-13). However, soon thereafter, it was noticed that this certificate is not in accordance with the instructions dated 05.09.2000. Also, it was stated that an invalid person becomes eligible to be included in the family of Railway servant only on the basis of appropriate certification by Railway Medical Officer. As such, requisite certificate was called for (Annexure A-14). Consequent to this, a third certificate dated 07.06.2017 (Annexure A-15) was issued. This is the latest



certificate and has been filed by two doctors of RCF Kapurthala. This certificate clearly states that disability is 70% and is of permanent nature. But, it also states that the applicant is 'not invalid'. Accordingly, earlier office note dated 18.04.2017 for including the name of Manjit Singh in the list of dependent relatives was treated as withdrawn vide note dated 14.06.2017 (Annexure A-16).

27. I observe that the certificate dated 07.06.2017 is by a nominated Committee of doctors of RCF Kapurthala. This certificate clearly states the disability which tallies with the previous certificates. But, it does state that the applicant is 'not invalid'. I also observe that the earlier certificate of 2010 while specifying the same disability, did not give any specific finding about his being invalid or not. Hence, to this extent, this certificate is not inconsistent with the earlier certificate of 2010. Also, there is no case for malafide against the doctors giving the certificate as they have not been impleaded as parties in this OA. I also note that the certificate given is by experts in the field and this Tribunal is not going to sit on judgement on this issue of whether the applicant is invalid or not. It will like to go by the certificate issued by the nominated Committee consisting of experts in the field.

28. I also observe that the respondents have later given another medical certificate dated 07.08.2020 (Annexure R-2) from three medical doctors of RCF Kapurthala. This certificate specifies the same disability. But, this certificate also states that the applicant is not invalid and can earn his livelihood. I also



observe that even this last certificate is not inconsistent with the earlier certificate given in 2017. However, it only amplifies further that the respondent No. 2 is capable of earning his livelihood. In fact, it confirms other findings of earlier certificates. Besides, this certificate now issued is by three experts in the field.

29. In view of the above discussion, I am of clear view that as per expert opinion give by nominated Committee on various occasions, the applicant No. 2 does have disability of 70% and is of permanent nature, but he is not invalid and can earn his livelihood.

30. Besides, I also find that the instructions dated 05.09.2000 (Annexure A-7) define the family members. These include only consort, sons, daughters, step sons, step daughters and one adopted child. Hence, brother is not covered under the definition of family members.

31. Besides, these instructions also define dependent relatives. This reads as follows:-

"(6) "Dependent relatives" for these rules, will include all such persons as are eligible for passes under the Pass Rules and will thus include:

- (a) mother/step-mother; if a widow;
- (b) unmarried or widowed sisters or step-sisters if father is not alive;
- (c) brothers /step-brothers under 21 years of age, if father is not alive;

Provided that the above are wholly dependent on and reside with the Railway employee. The words "wholly dependent" mean a person who does not have independent income of more than 15% of the emoluments of the Railway servant concerned or Rs.1500/- plus dearness relief thereon, whichever is more.



NOTE: (i) The age limit prescribed in the case of brothers/step-brothers will not apply to bona fide students of recognized educational institutions and to invalids on appropriate certification by Railway Medical Officer.

(ii) Mother includes adoptive mother only in cases in which the mother has legally adopted the Railway employee as a child and has, since adoption, always been recognized as the mother. A railway employee may not obtain free medical attention for his real mother as well as for an adoptive mother."

It is thus clear that applicant No. 2 Manjit Singh Bhatia will be entitled to be included as dependent relative only if there is appropriate certificate of invalidity by Railway Medical Officer.

32. As such a certificate is not there in the case of applicant No. 2 and the Railway authorities have clearly certified him to be 'not invalid' and capable of earning his livelihood, no case is made out for his being considered as a dependent relative of applicant No. 1. Hence, this OA deserves to be dismissed on merits as well.

33. In view of all above, the OA is dismissed, both on the ground of limitation as well as on merits.

34. Pending MAs No. 1965 of 2017 for joint filing of OA and No. 847 of 2020 for placing on record medical examination report are allowed.

35. There shall be no order as to costs.

**(Ajanta Dayalan)
Member (A)**

Place: Chandigarh
Dated: February 12th, 2021
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