

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

OA/310/01232/2019Dated Friday ,the 13th day of March, 2020

PRESENT

Hon'ble Mr.T.Jacob , Member(A)

Shri K.Vasu,
Old No.1/60-New No.2/372,
Harichandrapuram Road,
Chinnammapettai Village,
Tiruttani Taluk,
Tiruvelllore Dt- 631 210.

....Applicant

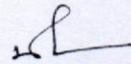
(By Advocate M/S Ratio Legis)

Vs

Union of India rep by
The Senior Divisional Personnel Officer,
Chennai Division, Southern Railway,
Park Town, Chennai – 600 003.

....Respondent

(By Advocate M/S A.Abdul Ajees)



OR D E R

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"i. To call for the records related to the impugned order No.M/P3/500/TCK/78-79/424 dated 28.02.2019 and to quash the same and further to direct the respondents to extend the benefit of Family pension with admissible interest in terms of Rule 75 of the Pension Rules. And pass such further or other orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case and thus render justice ."

2. Capsulated facts of the case with terse sufficiency as submitted by the applicant are as follows:

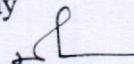
The applicant is the physically challenged son of late T.C.Krishnaswamy, who retired on 31.08.1978 and died on 11.06.1987, consequent to which applicant's mother was extended with the statutory family pension till her death on 12.08.1995.

The applicant has represented for the due pensionary benefits and since there was no response, the Original Application No.1470 of 2016 was preferred which was disposed of at the admission stage with a direction. Pursuant to the directions, the respondent made an order dated 16.06.2017 communicating the decision to assess the applicant's percentage of disability. Later the applicant's disablement was assessed to be 100% and there was no loss of earning capacity and, thereby, the respondent has made the impugned order No.M/P3/500/TCK/78-79/424 dated 28.02.2019. Since



there is no efficacious remedy other than to prefer this O.A, he preferred this OA seeking the above relief, inter-alia, on the following grounds:-

- i. The denial of appropriate pension is contrary to the statutory provisions and an act coupled with colourable exercise of authority which is non-est in law.
- ii. The denial of appropriate pension to the applicant who had been declared as 100% hearing disabled on the pretext of no loss in earning capacity is inconsistent with Rule 75 (6) of the Railway services pension Rules, 1993.
- iii. In as much as appropriate pension to the disable son could not be denied except on the availability of son/daughters less than twenty-five years in terms of the proviso to Rule 75(6) of the Railway Services Pension Rules, 1993 and in the instant case there is no other eligible members other than the applicant with hearing impairment is left with, the impugned order rejecting appropriate pension on the pretext of no loss in earning capacity is impermissible in law and hence the impugned order is liable to be quashed.
- iv. Assuming but conceding that earning capacity is to be applied in determining the eligibility for pension under Rule 75 of the Pension Rules, 1993, in the absence of a tangible proof to show that the applicant was earning his livelihood, the impugned order dated 28.02.2019 is liable to be quashed.
- v. In as much as the disability certificate has been issued holding that the applicant was 100% permanent hearing impaired which is non-progressive and not likely to improve the impugned order dated 28.02.2019 denying the appropriate pension is contrary to Rule 75 (6) (d) and therefore untenable in law.
- vi. In as much as the Pension Rules and consequential Railway



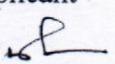
Board orders stipulate for family pension to the disabled children until death, the act of the respondents in rejecting the claim for family pension by the applicant on fulfilling all the requisite conditions is contrary to the legal principle and therefore unsustainable in law.

vii. In as much as the Pension Rules and consequential Railway Board orders stipulate for family pension to the disabled children until death the act of the respondents in rejecting the claim for family pension by the applicant by the impugned order dated 28.02.2019 is liable to be set at naught.

viii. The demand for family pension was made with reference to the mandatory provisions made under Rule 123 of the Indian Railways Establishment Code issued under Proviso to Art. 309 of the Indian Constitution the impugned rejection is liable to be set aside.

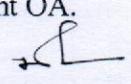
3. The learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court of India in Civil Appeal No: 5623 of 2006 dated 01-02-2007 National Insurance Co. Ltd Vs Mubasir Ahmed & Anr.

4. The respondents have filed reply statement. As per their version, Shri T C Krishnaswamy, TCM/TLD/MAS retired on 31.07.1978 i.e. 41 years back and subsequently died on 11.06.1987. After his death, his wife was drawing family pension and she died on 12.08.1995. The applicant herein claiming to be the son of late Shri T C Krishnaswamy, filed OA NO.1470/2016 claiming disability family pension in accordance with the second proviso to Rule 75 (6) (v) of Railway Service (Pension) Rules 1993 read with Railway board letter NO.F(E)III/2005/PN1/32 dated 29.04.2009. In pursuance of the directions of the Tribunal, even though the applicant



had not made any representation, the respondent would submit that his earlier representation which was available in the Original Application was considered and disposed of. The Respondent would submit that the disability family pension is payable in terms of Rule 75 [6] [c] 2nd proviso of the Railway Services Pension Rules read with Board's letter dated 29.04.2009. The Rule 75 (6) of the Railway Services pension Rules, 1993 prescribed to assess the percentage of disablement by referring the applicant to the Medical Board. Before allowing family pension for life to any son or daughter, the appointing authority shall satisfy that the handicap is of a nature so as to prevent him/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 extract mental or physical condition of the child. Accordingly the applicant was referred to the Railway Hospital / Perambur.

5. The Respondent would further submit that the Railway Medical Board examined the applicant on 16.03.2018 and he was found to have 100% hearing disability. However it is certified that the applicant had no loss of earning capacity and he could earn his livelihood by working in a job meant for the hearing disabled. The same was communicated vide impugned order No. M/P3/500/TCK/78-79/424 dated 28.02.2019. It is against this order that the applicant has filed the present OA.



The respondent would further submit that 100% permanent hearing impairment does not mean that the applicant could not eke out or earn his livelihood. 100% of Hearing impairment does not result in the 100% loss in earning capacity. Rule 75(6)(d) does not contemplate the grant of family pension irrespective of the earning capacity. Hence the respondent prays for dismissal of the OA.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

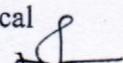
7. Admittedly this is the second round of litigation. The applicant filed OA No.1470/2016 which was disposed by this Hon'ble Tribunal by order dated 24.03.2017 directing the applicant to submit a fresh representation within a period of three weeks and, thereafter, the respondents were directed to consider the said representation and pass a reasoned and speaking order within a period of 8 weeks. The Respondent submits that the applicant did not make any representation in this regard. However, his earlier representation available in the Original Application was considered and disposed of. Hence this OA.

8. The disability family pension is payable in terms of rule 75(6) [v] 2nd proviso of the Railway Services Pension Rules read with Board's letter dated 29.4.2009.

Relevant rule is extracted hereunder for better appreciation of the matter:-

“75. Family Pension Scheme for Railway servants, 1964

d. Before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such, prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical

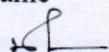


officer not below the rank of a Divisional Medical Officer setting out, as far as possible, the exact mental or physical condition of the child.

e. the person receiving the family pension as a guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of Divisional Medical Officer to the effect that the son or daughter continues to suffer from disorder or disability of mind including mentally retarded or continues to be physically crippled or disabled.

EXPLANATION:

- i. Only that disability which manifests itself before the retirement or death of the railway servant while in service shall be taken into account for the purpose of grant of family pension under this sub-rule.
9. The Respondent would submit that the Rule 75 (6) of the Railway Services pension Rules, 1993 prescribed to assess the percentage of disablement by referring the applicant to the Medical Board. Before allowing family pension for life to any son or daughter, the appointing authority shall satisfy that the handicap is of a nature so as to prevent him/her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical board. Accordingly, the applicant was referred to the Railway Hospital / Perambur. The Railway Medical Board examined the applicant on 16.03.2018 and he was found to have 100% hearing disability. However, it certified that the applicant had no loss of earning capacity and he could earn his livelihood by working in a job meant for the hearing disabled. The medical certificate from the medical board cannot be doubted and therefore this fact that the petitioner is able to earn his livelihood cannot be denied by the applicant. The same



was communicated vide impugned order No. M/P3/500/TCK/78-79/424 dated 28.02.2019.

10. The applicant is around 50 years and survived more than 50 years and he has been earning all along and the Railway Medical Board also assessed that he does not have any loss of earning capacity. The welfare measures like family pension for disabled are meant for those who satisfy the conditions for such grant of family pension. The applicant does not satisfy the conditions for such grant of family pension. The respondents were perfectly right when they contended that 100% permanent hearing impairment does not mean that the applicant could not eke out or earn his livelihood. Hearing impairment does not result in 100% loss of earning capacity. Rule 75(6)(d) does not contemplate the grant of family pension irrespective of the earning capacity. Reservation of physically challenged persons to the extent of 3% for Locomotor, visual and hearing impairment is meant to afford them job opportunity. The applicant has not produced any authority which shows that the family pension ought to be granted despite the absence of loss of earning capacity. The applicant's mother expired as early as in 1995 and the attempt of the applicant to apply for disabled family pension is in 2016 only. Thus, the applicant has not raised his voice and only in 2016 he has approached this Tribunal in the first round of litigation and his silence throughout the long period is a clear indication of his earning capacity. The Medical Board had also certified as to his earning capacity. The action of the respondents is in accordance with the Rule 123 of IREC and rule 75(6)



(d) of the Railway Service Pension Rules. The facts of the case cited by the Learned counsel for the applicant are distinguishable from the facts of the present case.

11. In the conspectus of the above facts and circumstances of the case and the discussions hereinabove, I see no grounds to interfere with the impugned order of rejection of the claim of the applicant for granting family pension.

12. In the circumstances, the OA is liable to be dismissed and is accordingly dismissed. There shall be no order as to costs.