

OA No. 291/218/2019

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/218/2019

Order reserved on 11.02.2021

DATE OF ORDER: 16.02.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Mahesh Kumar Sharma S/o Late Baijnath Sharma aged about 52 years, R/o 26, Panchwati Colony, Street No. 7, Near Adarsh Railway Station, Ajmer-305002 (Raj.) seeking family pension. Father of the Applicant was working on the post of Skill Man in the office of DRM Ajmer.

....Applicant

Shri Amit Mathur, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through General Manager, North Western Railway, Headquarter Office, Jagatpura Road, Near Jawahar Circle, Jaipur – 302017 (Raj.).
2. Divisional Railway Manager, North Western Railway, Ajmer – 305002 (Raj.).
3. Chief Medical Superintendent, North Western Railway, Ajmer – 305002 (Raj.).

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"It is therefore prayed that the present original application made by the applicant may kindly be allowed. The respondents may be directed to allow family pension to the applicant from the date her mother has expired. The impugned order Annex-A/1 to A/3 rejecting the case of the applicant may kindly be quashed and set aside.

Any other relief or direction which this learned Tribunal deems fit in the facts and circumstances of the case may also be passed in favour of applicant."

2. The brief facts of the case, as stated by the applicant, are that he is a physically disabled person and is having more than 40% permanent disability as per certificate (Annexure A/4) and is having above knee amputation in right leg. As per Certificate of Disability dated 07.10.2016 (Annexure A/5) issued by Government Hospital, applicant is eligible for various relaxations admissible to physically handicapped person having more than 40% disability. In 1998, applicant met with an accident and his right leg was amputated. His father, late Shri Baijnath was posted as

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skill man with respondents. After the death of his father, family pension was given to his mother, Smt. Jal Devi, who has expired in the year 2016. The applicant was fully dependent on his father and mother. Prior to his accident, the applicant was working as a Truck Driver, but post accident, he is not in a position to drive vehicle or do any other work. After death of his mother, since applicant was not getting family pension, he represented for grant of family pension to the respondents. Thereafter, he was called for medical examination and he appeared before Medical Board, who examined him and submitted their report dated 28.09.2017, (Annexure A/1). In the said report, Medical Board opined that 'the applicant is able to earn his livelihood'. It was also opined that applicant is having more than 40% disability and that its re-assessment is not necessary. Thereafter, applicant received order passed by Medical Board dated 11.10.2017, (Annexure A/2), informing him that the Medical Board has found him competent for earning his livelihood and that he is not entitled for family pension. The applicant further represented pointing out all his difficulties in earning and that he is unable to earn his livelihood. As per Family Pension

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Rules, 1964, if a son or daughter of a Railway Servant is suffering from any disorder or disability of mind including mentally retarded or is physically crippled or disabled so as to render him or her unable to earn living even after attaining the age of 25 years, the family pension shall be payable to such son or daughter for life subject to certain conditions. It is the contention of the applicant that as he is unable to earn his livelihood, the competent authority should re-examine his case. As he filed Appeal, but the same was also rejected vide communication dated 29.01.2019 (Annexure A/3) stating that competent authority has agreed with the findings of the medical committee and as per the same, he is not entitled for any family pension. Feeling aggrieved by denial of family pension, the applicant has filed the present Original Application.

3. After issue of notices, the respondents have filed their reply stating that the applicant has preferred present Original Application without disclosing any illegality in the action of the respondents inasmuch as he has failed to refute the findings of the Committee. Bare perusal of the alleged impugned orders would reveal that a Committee of four doctors was

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constituted under Chief Medical Superintendent and after examination of the applicant, the decision for rejection of family pension was justified. As per Annexure A/1, as the applicant is having more than 40% disability, therefore, reassessment was held not necessary by the respondents. The respondents further stated that in view of the finding of fact recorded by the medical committee cannot be considered in the manner as presumed by the applicant as committee held that he is able to earn his livelihood. Therefore, any submission of the applicant by taking plea of dependence or absence of source of earning after death of his father and mother due to stoppage of family pension is devoid of any substance and deserves to be rejected as the Medical Committee has observed that he is able to earn his livelihood. It was further stated that as per rules, applicant has been held ineligible for family pension. Therefore, the impugned orders in challenge have been rightly passed, as the same are just and proper. Since the applicant is not entitled for any relief, the present Original Application deserves to be dismissed.

4. The applicant has not filed rejoinder denying the contention of the respondents.

5. Heard learned counsels for the parties through Video Conferencing and perused the material available on record.

6. The applicant, besides reiterating the facts, has raised several grounds against denial of family pension. Firstly, applicant raised the ground that Medical Board is not competent to decide whether a person can earn his livelihood or not, as it can decide only upto the extent of disability. Whether disability is such in nature that can deprive him earning is beyond the jurisdiction of the Medical Board. Secondly, Physical Disability Act, 2016 empowers a physically disabled person, the right of equality, right to dignity or respect for his or her integrity equally with others. A disabled person has a right of life to live with dignity and respect. A physically handicapped person with having more than 40% permanent disability cannot earn his livelihood with dignity. Medical Board has failed to show as to how the applicant is able to earn his livelihood as it is not the competent authority to decide the issue. It is the administration/competent authority who has to apply its own mind independently before taking any decision in the matter. Thirdly, the ground raised by the applicant is

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that he was a truck driver and after he met with an accident, his driving license was revoked and in such circumstances, on which reasons can the Medical Board decide that applicant can earn his livelihood. Fourthly, the Medical Board has failed to appreciate that applicant is having more than 40% permanent disability and has lost his one leg and is only 9th Pass and is 51 years old and has no other means of livelihood. Fifthly, the constitution of Medical Board was in violation of Family Pension Rules, 1964 as the rules provide that 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 Chief Medical Superintendent or incharge of a Zonal Hospital or Division or his nominee as the Chairperson and two other members, out of which at least one shall be a specialist in the particular area of disability. Thus, the contention of the applicant is that he is entitled for family pension from the date his mother has expired.

7. The respondents, on the other hand, pointed out that the submission of the applicant is totally

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incorrect. The respondents stated that there is no violation of rules on their part. The Disability Certificate only provides for percentage of disability and nowhere provides about the ability to earn the livelihood. The case of the applicant was considered by the competent administrative authority. Admittedly, as per the report of medical committee, he is having one leg and two arms and that his mental condition is also good. The reduction in earning cannot prove that he is unable to earn. As the applicant is more than 40% disabled but the same does not make him incapacitate to earn his living and that his previous employment is of no relevance. Thus, as there is no illegality in the action of the respondents and neither any violation of rules, the impugned orders need no interference.

8. The only point for consideration in the present case is whether applicant, who is having more than 40% permanent disability, is entitled for family pension but the Medical Certificate, on the other hand, is contrary and states that the applicant is able to earn his livelihood.

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9. The factual matrix of the case is that after the death of applicant's father, who was a Railway employee, family pension was given to his mother. But after the death of the applicant's mother in the year 2016, family pension was refused to the applicant. The case of the applicant is that he was a truck driver and after his accident, his one leg was amputated and since his accident in 1998, he was completely dependent on his parents as he had no other source of living. He is having more than 40% permanent disability as per the Medical Board's Certificate, (Annexure A/4), which is not in dispute. The applicant has made a representation to the respondents pointing out his difficulties stating that he has no means of livelihood as his driving license was revoked after his accident and that he is entitled for family pension in the peculiar circumstances of his case. Thereafter, he was called for medical examination before the Medical Board, who examined him and submitted their report dated 28.09.2017, (Annexure A/1), stating that the applicant is able to earn his livelihood and that its re-assessment of disability is not necessary. The said report was forwarded to him vide letter dated 11.10.2017,

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(Annexure A/2), informing him that the medical board has found him competent for earning his livelihood and that he is not entitled for family pension. As seen, respondents had constituted a Committee of four doctors under Chief Medical Superintendent and after examination of the applicant, the decision for rejection of family pension was taken.

10. As seen from Annexure A/1, the Disability Certificate dated 28.09.2017, reads as under:-

"55/H/OH/All/15/2017

Dated 28.09.2017

[Photograph with seal]

Disability Certificate

This is to certify that we have carefully examined Mahesh Kumar 51 years S/o Late Shri Baij Nath Ex Scale Man / Comm./Ajmer.

DOB :- 04-05-1966, Age:- 51 Yrs., Sex:- Male

Residence :- H. No. 26 Panchwati colony Street No. 07 Near Adarsh Nagar Railway Station/Ajmer (Raj.).

Whose photograph is affixed above and it is certified that he is a case of Right leg above knee amputation. He is able to walk with the help of prosthesis and also with crutches. His higher mental functions are NAD.

Disability :- More than 40% (More than Fort Percent) Reassessment of Disability is not necessary.

After thorough medical examination medical committee is of the opinion that Mr. Mahesh Kumar S/o Late Shri Baij Nath is ABLE TO EARN HIS LIVELIHOOD.

-Sd/- and thumb impression

Signature / LTI of Handicapped

-Sd/-
Dr. R.K. Meena
DMO/Ortho.
NWR/DRH/Ajmer

-Sd/-
Dr. Ramesh Manjhi
Sr. DMO/Physician
NWR/DRH/Ajmer

-Sd/-
Dr. Ajeet Singh
Sr. DMO/Anesth.
NWR/DRH/Ajmer

-Sd/-
Dr. Mukesh Bagri
DMO/Surgeon
NWR/DRH/Ajmer

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-Sd/-
Dr. P.K. Mishra
Chief Med. Supdt.
NWR/DRH/Ajmer"

The Medical Board has taken a decision that the applicant is able to walk with the help of prosthesis and also with crutches and his higher mental conditions are NAD which means that **"he is able to earn his livelihood"**. We are in agreement with the contention of the applicant that the Medical Board is not competent to decide whether a person can earn his living or not as they can only decide the extent of disability or his medical condition and that the competent authority has to take a decision whether a person is entitled for pension or not. In the present case, the competent authority has blindly followed the decision of the Medical Board, who had already formed an opinion that he can earn his livelihood, which they were not supposed to do. They could have verified the extent of disability only but they have extended their jurisdiction and gone beyond to state that he is able to earn his livelihood. As seen from the pleadings, the applicant has no other source of income and after his accident, he was wholly dependent on his parents. The Physical Disability Act 2016 empowers a physically

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disabled person the right of equality, right to dignity or respect for his or her integrity equally with others. A disabled person has a right to lead his life with dignity and respect. He also has a right to earn his living, which is always accompanied with the term 'with dignity'.

11. In our considered view, the Medical Board without giving justified reasons have just drawn a conclusion that as the applicant has one leg and that he can walk with the help of prosthesis and also with crutches, he is able to earn his livelihood. Merely stating that he can earn his living cannot suffice. The competent authority should have applied its mind independently and should have taken into consideration not only report of Medical Board but at the same time, his mental and physical condition should have considered as to whether he is able to earn his livelihood and merely on the basis of Medical Board's report should not have formed an opinion that he can earn his livelihood and, therefore, he is not entitled to family pension. The competent authority has not given any justification as to how the applicant is able to earn his livelihood. It is necessary for every human being to lead a dignified life with respect in Society. The

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impugned annexures in challenge clearly reveal that the competent authority have only relied on the report of Medical Board and drawn its inference on the basis of the said report, but failed to apply its mind. The said act of respondents clearly reveals that the respondents have left the applicant to the mercy of God to earn his living and failed to re-assess his case.

12. In view of the observations made above, the impugned orders, Annexure A/1, Annexure A/2 and Annexure A/3, to the extent of rejecting the case of the applicant, are hereby quashed and set aside and the respondents are directed to allow family pension to the applicant after the death of his mother within three months from the date of receipt of a certified copy of this order.

13. Accordingly, the Original Application is allowed in the above terms. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat