

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
Original Application No.228/2019.**

**Dated this the 28<sup>th</sup> day of June, 2021.**

**CORAM:**

**Hon'ble Sh. Jayesh V. Bhairavia, Member (J)**

**Hon'ble Sh. Dr. A.K. Dubey, Member (A)**

Shri Batukbhai,  
Son of Shri Haribhai Laxman Jomad,  
Aged: 64 years, Ex. HSK-I of the respondents,  
Residing at: Kolivaas, Road No. 3712,  
Sheri No. 12, Gondal – 360 310.

...Applicant

(By Advocate Mr. M. S. Trivedi)

VS

1. The General Manager,  
Western Railway,  
Churchgate, Mumbai – 400 020.
2. The Divisional Railway Manager,  
O/o. DRM, Western Railway,  
Bhavnagar Division, BVP, Bhavnagar – 364 003.
3. Chief Works Manager,  
O/o. CWM, Western Railway,  
Bhavnagar Division, BVP, Bhavnagar – 364 003.
4. The chief Medical Superintendent,  
O/o. CMS, Bhavnagar Division, Bhavnagar Para,  
Bhavnagar – 364 003.

...Respondents

(By Advocate Mr. M. J. Patel)

**ORDER (ORAL)****PER: Hon'ble Dr.A.K.Dubey, Member (A)**

1. The applicant has filed this OA seeking following relief:

- “(A) That the Hon'ble Tribunal be pleased to allow this petition.  
(B) That the Hon'ble Tribunal further be pleased to hold/declare that the impugned ex-facie, illegal, arbitrary, unjust and unconstitutional action, decision communication No.CWM/E/789/5/5/207/GDL/Temp Case dated 20.11.2018 issued by the respondents regarding rejecting the claim of the applicant for family pension being physically disabled and dependent son of Late Railway employee, is nonest in the eyes of law.  
(C) That, the Hon'ble Tribunal further be pleased to quash and set aside the impugned ex-facie, illegal, arbitrary, unjust and unconstitutional action, decision, communication No.CWM/E/789/5/5/207/GDL/Temp Case dated 20.11.2018 issued by the respondents regarding rejecting the claim of the applicant for family pension being physically disabled and dependent son of Late Railway employee.  
(D) That, the Hon'ble Tribunal further be pleased to direct the respondents to give/grant family pension to the applicant by way of allowing the present petition with costs.  
(E) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.”*

2. Applicant is the son of Shri Haribhai Laxman Jomad who was in the service of respondents and retired on 31.5.1984. The retiree, i.e father of the applicant, was getting pension till his death on 01.12.2012. After his death, mother of the applicant Smt.Laguben was getting family pension as per rules. Mother of the applicant expired on 07.04.2018. Thereafter, the applicant submitted application dated 15.5.2018 to the respondents (Annex.A/2) praying that he was handicapped son of his late parents and was entitled to the grant of family pension as admissible to a handicapped son of a pensioner / family pensioner. The respondents vide their letter dated 20.11.2018 (Annex.A/1), which is impugned here, rejected his

request for family pension for the reason that as per the medical report submitted by CWMS-BVP, he was not eligible for family pension. Prior to this rejection, the respondents had directed the applicant to appear before the Medical Board on 28.6.2018 at the Railway Hospital, Bhavnagar. The certificate for the person with disabilities was issued by the Senior Divisional Medical Officer, Bhavnagar. It has been mentioned that the applicant i.e., the son of Late Haribhai L. Jomad was a case of post traumatic weakness in right lower limb. The medical certificate dated 7.9.2018 (Annex.A/4) also stated that with the above disability he was able to carry out his average daily life activities independently and therefore, his name could not be included in the family pension. Hence the applicant has approached this Tribunal.

3. The respondents have filed their reply. In the reply, they have contended that the order of pension sanctioning authority rejecting his claim for family pension was in accordance with the policy laid down by the Railway Board. The reply also averred that policy and procedure laid down in the Railway Servants (Pension) Rules, 1993 had been followed in the case of the applicant; Rule 75(5)(b) of Railway Servants (Pension) Rules, 1993 subsequently provided the ground for sanctioning family pension to disabled ward of the Railway employee or the pensioner, which reads as under:-

*“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 shall be evident by 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 child.”*

The respondents also argued that the decision of the pensioning authority was based on the observation/recommendation of the Medical Board.

4. The applicant has filed his rejoinder in which, apart from reiterating the contentions in the OA, the applicant has averred that the respondent No.3, Chief Works Manager, Bhavnagar from whose office the impugned letter dated 20.11.2018 (Annex.A/1) was issued, was not the competent authority to sanction pension. He pleaded that merely accepting the Medical Certificate in a mechanical manner was not sufficient to reject his request and the authority should have seen and checked whether the applicant was actually earning anything or not.
5. The matter was finally heard on 28.06.2021. The counsel for the applicant contended that the rejection for family pension by the respondents was inhuman. The disability due to which the applicant has not been able to secure any job for himself was not appreciated in its right context.
6. Per contra, the counsel for the applicant argued that at all stages, the instructions as per extant rules were scrupulously followed. The applicant's main plea to claim family pension is on the basis of his handicap. The respondents had subjected the applicant to examination by Medical Board and the Medical Board's conclusion and recommendations are self explanatory. Certificate No.22 dated 07.09.2018 from the Medical Board comprising three doctors refers (Annex.A/4). This was the medical certificate given by the medical

Board which was not in question, and the procedure itself was duly mandated, whereunder the respondents concluded that the applicant was not found eligible for family pension in this case.

7. Heard the parties and perused the materials on record.
8. We find no procedural omission or infirmity in the conduct of the respondents in examining and processing the request of the applicant. In this case, respondents have gone through the medical certificate issued by the Medical Board and their decision to reject the application for family pension is based on this very certificate. We find no reason to intervene in this matter. OA is dismissed.

**(A.K.Dubey)**  
**Administrative Member**

**(Jayesh V.Bhairavia)**  
**Judicial Member**

SKV/PA