

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/500/2019**Jabalpur, this Tuesday, the 03rd day of August, 2021**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBERMukesh Kumar Vyas, S/o Late Shri Jagdish Chandra Vyas, aged about 44 years, Occupatoin – Unemployed, R/o 240-Kh, Subhash Ward, Shridham Colony, Kareli, Tehsil : Kareli, District : Narsinghpur (M.P.) Pin Code 487221, Mobile No.9424304047
-Applicant**(By Advocate – Shri Utkarsh Agrawal)****V e r s u s**

1. Union of India through its General Manager, West Central Railway, Opposite Indira Market, Jabalpur, District : Jabalpur (M.P.) Pin Code 482001.

2. Divisional Railway Manager (Personnel), West Central Railway (WCR), Opposite the Old District Court building, Jabalpur, District : Jabalpur (M.P.) Pin Code 482001
-Respondents**(By Advocate – Shri Praveen Namdeo)***(Date of reserving order : 29.07.2021)***O R D E R****By Naini Jayaseelan, AM.**

The present Original Application has been filed against the letters dated 08.09.2017 (Annexure A-13), 20.12.2017 (Annexure A-16) and 01.02.2018 (Annexure A-17), whereby the claim of the applicant for grant of family pension has been rejected.

2. The applicant has sought for the following reliefs:

“8.1 To summon entire relevant record from the respondents with regard services of the father of the applicant for its perusal.

8.2 To quash impugned communication dated 08.09.2017 (Annexure A-13), 20.12.2017 (Annexure A-16) and 01.02.2018 (Annexure A-17) in the interest of justice.

8.3 To quash impugned report dated 28/07/2017 (Annexure A-12) in the interest of justice.

8.4 To declare and hold that communication dated 08/09/2017 (Annexure A-13), 20/12/2017 (Annexure A-16) and 01/02/2018 (Annexure A-17) is in violation of Rule-75(6) of the Pension rules.

8.5 To declare and hold that impugned report dated 28/07/2017 (Annexure A-12) is unreasonable, baseless, vague, discriminatory, arbitrary and is against Article-14 of the Constitution of India and in complete violation of Rule-75(6) of the Pension Rules.

8.6 To declare and hold that applicant is entitled for grant of family pension in terms of rule-75(6) of the Pension rules on account of his disability in the interest of justice.

8.7 To direct the respondent's authority to grant the benefit of family pension to applicant from the date of his entitlement i.e. from 04/08/2016 i.e. immediately after the death of his father in terms of rule-75(6) of the Pension rules in the interest of justice.

8.8 To direct the respondents to grant all consequential benefit to applicant with interest including the cost of the instant litigation in the interest of justice.

8.9 Any other direction, order which the Hon'ble Tribunal deems fit in the interest of justice.”

3. The applicant's father was working as Station Superintendent with the respondent department and he superannuated on 31.03.1997. Thereafter, the



father of the applicant died on 26.04.2013 (Annexure A-4) and mother of the applicant also died on 20.06.2017 (Annexure A-5). During his lifetime, father of the applicant had given an affidavit (Annexure A-3) that the applicant is 90% disabled and the applicant was made the nominee to receive the family pension after his death. The applicant made a representation dated 26.08.2016 (Annexure A-6) for grant of family pension to him. The applicant had also submitted a Disability Certificate issued by the District Medical Board, Narsingpur (M.P.). Subsequently, in view of letter dated 22.12.2016 (Annexure A-8) issued by the respondent department, he obtained the necessary Disability Certificate from VMMC & Safdarjung Hospital, New Delhi, which mentions that the applicant is 94% disabled and the disability is non progressive and also not likely to improve. The said Hospital is notified for issuance of Disability Certificate as per Government of India, Ministry of Health and Family Welfare letter dated 15.06.2010 (Annexure A-9). However, despite this, the respondents have referred his case to the Medical Director, Central Hospital, West Central Railway, Jabalpur vide letter dated 13.07.2017 (Annexure A-11) and the Medical Board in its report dated 28.07.2017 (Annexure A-12) have



declared that the applicant is likely to earn his livelihood at his own and, therefore, his case for family pension was rejected.

4. In their reply, the respondents have submitted that a Medical Board consisting of five doctors was duly constituted and the Medical Board issued a certificate (Annexure A-12) since the applicant is “likely to earn his livelihood at his own”. As per Rule 75(6) of Railway Services (Pension) Rules, 1993, if the person is found capable to earn his livelihood, he will not be entitled for family pension. Although the applicant has produced Disability Certificate issued by the Safdarjang Hospital, New Delhi, the applicant was sent to Railway Hospital for examination before a Medical Board to decide whether he is capable to earn his livelihood on his own and based on such recommendation, the applicant has been declared not suitable for grant of family pension.

5. We have heard both the parties.

6. As per Ministry of Health and Family Welfare notification dated 15.06.2010 (Annexure A-9), which has been issued in pursuance of the provisions of sub-clause (p) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995,



the VMMC & Safdarjung Hospital, New Delhi has been notified for issuing the Locomotor & Leprosy cured disability certificate. Accordingly, the applicant obtained the necessary Disability Certificate for Locomotor Disability from Medical Superintendent, VMMC & Safdarjung, Hospital, New Delhi. The certificate indicates that the applicant has a permanent physical impairment/disability of 94% and the **above condition is non progressive and not likely to improve**. The certificate further mentions that **reassessment of disability is not necessary**.



7. Learned counsel for the applicant reiterated that once the Disability Certificate has been obtained from VMMC & Safdarjung Hospital, New Delhi, there was no need of any fresh assessment of disability of the applicant by the respondent department. Learned counsel for the applicant argued that Para 4 of the Office Memorandum dated 30.09.2014 issued by the DoP&T (page 13 with the reply), clearly provides that the authority competent to issue disability certificate would be as specified in the guidelines issued by the Ministry of Health & Family Welfare dated 15.06.2010 (Annexure A-9). Learned counsel for the respondents confirmed that the Office Memorandum dated 30.09.2014 issued by the DoP&T shall apply mutatis mutandis on the Railways and Rule 54(6) of the CCS

(Pension) Rules, 1972 corresponds to Rule 75(6) of the Railway Services (Pension) Rules, 1993.

8. Rule 54(6) of the CCS (Pension) Rules, 1972 reads as under:

“54(6) *The period for which family pension is payable shall be as follows:-*

xxx

xxx

xxx

Provided further that if the son or daughter of a Government servant is suffering from any disorder or disability of mind including the mentally retarded or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-five years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely :-

xxx

xxx

xxx

(iv) before allowing the family pension for life to any such son or daughter, 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 Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman 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 exact mental or physical condition of the child;”

9. It is not clear whether the constitution of the Medical Board by the respondents was as per the provisions under Rule 54(6) of the CCS (Pension) Rules, 1965. In-fact, it is not even known whether any specialist was inducted in the Medical Board. Accordingly, we quash Annexure A-12 issued by the



respondent department/hospital and remand the case back to the respondents to duly constitute the Medical Board as per the provisions of Rule 54(6) of the CCS (Pension) Rules, 1965 and refer the case of the applicant to the said Board, within a period of eight weeks from the date of receipt of a certified copy of this order. Thereafter the competent authority shall take a final view with regard to the grant of family pension to the applicant.

10. Accordingly, the Original Application is partly allowed. No order as to costs.

(Naini Jayaseelan)
Administrative Member
am/-

(Ramesh Singh Thakur)
Judicial Member

