



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.695/2019

**Reserved on: 19.07.2021
Pronounced on: 24.08.2021**

(Through Video Conferencing)

Hon'ble Mr. Mohd. Jamshed, Member (A)

Sh. Mahesh Kumar Sharma
S/o Late Sh. Hari Chand (Post- Sr, Mali)
(Group -C)
Age 39 years.
R/O B-134, Gali No. – 10,
New Usman Pur,
Delhi – 110053.

...Applicant

(By Advocate: Mr. B.K. Berera)

Versus

1. Union of India,
Through Secretary,
Ministry of Urban Development,
New Delhi – 110002.
2. The Dy. Director,
Hort- III, CPWD, I.P. Bhawan, I.T.O
New Delhi – 110002.
3. Sr. Accounts Officer,
Pay & Accounts Office (NDZ)
Ministry of Urban Development,
I.P Bhawan, I.T.O, New Delhi

...Respondents

(By Advocate: Mr. Hitesh Kumar Bagri)

ORDER



Mohd. Jamshed, Member (A):

The applicant is the son of Late Mr. Hari Chand, Senior Mali. The father of the applicant served in Horticulture Department, Central Public Works Department (CPWD) under Ministry of Urban Development and superannuated from service w.e.f. 31.07.2011. He expired on 23.03.2013. After his demise, the family pension was provided to his wife, who too passed away on 05.04.2014. The applicant, who is a physically disabled son of Late Mr. Hari Chand, Senior Mali applied for inclusion of his name in Pension Payment Order (PPO) as a disabled son and for sanction of family pension in his favour. Despite the application made by him as long back as 17.12.2013 to include his name in the PPO, no action has been taken by the respondents. On his subsequent representations, the applicant was directed for medical examination vide letter dated 18.12.2016. He was examined in Ram Manohar Lohia (RML) Hospital, Delhi by the Medical Board and declared as a case of 'post-polio residual paralysis of both lower limbs'. His permanent physical impairment was declared as 82%. It was mentioned that he can perform only desk job.



2. The applicant submitted a representation on 24.01.2017 indicating that he is using crutches in both hands for walking and it is not possible for him to move outside without the help of an accompanying person. It is also submitted that he is unable to sit in a chair and cannot use public transport/toilet and hence, he is not able to undertake any job in the office. He once again requested that family pension be released to him in terms of various OMs issued by the Government of India dated 01.07.2013, 27.01.2016, 15.05.2020 and 08.02.2021. His case was forwarded by the 2nd respondent to the Pay and Accounts Officer (3rd respondent) for releasing the family pension in his favour vide letter dated 31.01.2017. The Pay and Accounts Officer vide their letter dated 09.02.2017 wrote back that grant of family pension /desk job to the applicant, being an administrative matter is within the control of 2nd respondent and, therefore, the same should be accordingly decided. Despite all these efforts, no action has been taken by the respondents and the applicant is suffering as he has no means of earning.

3. In the OA, the applicant has relied upon the OM dated 01.07.2013 issued by Ministry of Personnel, Public Grievances and Pension, Department of Pension and



Pensioner Welfare wherein it is clearly indicated that on acceptance of such request from permanently disabled children, the Head of Office will immediately issue order for grant of family pension. He has also relied upon the OM dated 27.01.2016. It is also contended that the grant of family pension to the disabled children is in no way equated to compassionate appointment. Compassionate appointment is granted to the persons whose parents passed away while in service. In the case of the applicant, due to his physical disability, it is not possible for him to undertake any job, including a desk job given on compassionate basis and that he is entitled for family pension which is not being extended to him. He contends that various OMs of Government of India in this regard fully support his claim for grant of family pension. He is seeking relief(s) in terms of a direction to the respondents to sanction the grant of family pension to the applicant, who is physically disabled w.e.f. the death of his mother with interest. The applicant has also annexed the letter dated 31.01.2017 written by Deputy Director III, CPWD i.e. Respondent No. 2 to the Pay and Accounts Officer recommending his case for family pension and also the response to the same by the Senior Accounts Officer dated 09.02.2017.



4. The respondents filed a counter affidavit opposing the OA indicating that the Medical Board has examined the applicant and his permanent physical impairment is confirmed as 82% and that he can perform desk job. It is also submitted by the respondents that in view of the Medical Board recommendation, it is assumed that the applicant can earn his livelihood. It is also stated that he was also given an opportunity for applying for compassionate appointment. He, however, did not apply for the same and requested for grant of family pension and on this ground alone his case cannot be considered for grant of family pension.

5. Heard Mr. B. K. Berera, learned counsel for the applicant and Mr. Hitesh Kumar Bagri, learned counsel for the respondents, through video conferencing.

6. The applicant's father was working as Senior Mali with the respondents and superannuated in the year 2011. He passed away on 23.03.2013 and the family pension was granted to the mother of the applicant. Unfortunately, applicant's mother also expired on 05.04.2014. The applicant has also applied to the respondents after death of his parents for inclusion of his name in the PPO, being the disabled son. However, no action was taken by the respondents. Subsequently, after



the death of applicant's mother, the respondent No. 2 forwarded the case of the applicant to the Pay and Accounts Office for grant of family pension vide letter dated 17.04.2015. The Senior Accounts Officer i.e. the 3rd respondent vide his letter dated 24.07.2015 and 21.12.2015 returned the case of the applicant seeking certain documents and clarifications from the 2nd respondent. Subsequently, vide letter dated 20.10.2016, the respondents referred the applicant for medical examination by Medical Board in RML Hospital, Delhi. The Medical Board examined him and certified that his permanent physical impairment is 82% and he can perform only desk job. The applicant contends that his physical disability of 82% severely impacts his ability to walk on his own legs and that he has to use crutches under both arms and it is not possible for him to go outside without the help of an accompanying person. He is unable to sit in a chair and cannot use public transport/toilet etc.

7. During this time, the respondents also advised him to apply for desk job on compassionate grounds. The applicant in view of his disability did not apply for the same and instead reiterated his request for grant of family pension. The respondent No. 2 vide his letter dated



31.01.2017, once again forwarded the case of the applicant to the 3rd respondent i.e. the Pay and Accounts Officer, recommending for grant of family pension to the applicant. It was also mentioned by that the reasons given by the applicant for not being able to do any desk job are practical and that the family pension in his favour may be released. The internal correspondence reveals that the Senior Accounts Officer vide letter dated 09.02.2017 wrote back to respondent No. 2 that the decision of grant of family pension/desk job to the applicant is entirely within the domain of the respondents, being an administrative matter and that the Pay and Accounts Office is only a sanctioning authority for family pension.

8. Evidently there is no disagreement between the applicant and the respondents as far as physical disability of the applicant is concerned. The applicant had initially submitted a permanent disability certificate dated 03.11.2004 issued by the Medical Superintendent, Guru Teg Bahadur Hospital, Shahdara, Govt. of N.C.T. of Delhi, wherein it was indicated that he has 90% permanent locomotor impairment in relation to both lower limbs. Subsequently, the respondents referred him to Medical Board at RML Hospital, Delhi vide their letter



dated 20.10.2016. He was examined in RML Hospital, Delhi by the Medical Board and declared as a case of 'post-polio residual paralysis both lower limbs'. His permanent physical impairment was declared as 82% and it was also declared that he can perform only desk job. Thereafter, the respondent No. 2 vide his letter dated 31.01.2017 wrote to Pay and Accounts Office indicating that he has been examined by the Medical Board and the applicant was also advised to apply for a desk job, which he declined because of his physical disability. The reasons given by the applicant for his inability to undertake the desk job were found to be acceptable and, therefore, the respondent No. 2 recommended the Pay and Accounts Officer again to grant him the family pension. Despite these letters written by the respondents, the Pay and Accounts Officer vide their letter dated 09.02.2017 wrote back indicating that grant of family pension/desk job to the applicant is an administrative matter for which the decision should be taken by the respondents. This is indeed ironical as the case of family pension has already been recommended by the 2nd respondent.

9. This correspondence between the 2nd and 3rd respondent indicates lack of any sensitivity and concern



towards a physically handicapped person. Number of OMs issued by the Government of India that the applicant has relied upon are very clear regarding the payment of family pension to the disabled children. In the instant case, the applicant has not been granted family pension from the time his mother expired in 2014. He had produced the required medical certificate for his physical disability. Despite that he was referred to Medical Board by the respondents wherein once again his physical disability was confirmed. The respondents have, thereafter, based their objections only on the line mentioned in the medical certificate which says 'he can perform only desk job'. The applicant was asked to apply for compassionate appointment for a desk job which he declined in view of various other connected problems of mobility and inability to use of public transport/toilet, etc. At one point, the respondent No. 2 had considered the request of the applicant and recommended his case to the Pay and Accounts Officer. The Pay and Accounts Officer wrote back saying that the decision for grant of family pension has to be taken by respondent No. 2. The net result is that a physically handicapped person, whose parents have expired is being denied the family pension which is due to him as a matter of right in terms of extant rules and regulations. It is evident that in this



case the family pension is being denied to the applicant on account of sheer apathy, inaction and indecision on the part of the respondents.

10. Equating grant of family pension to compassionate appointment is in itself fundamentally wrong. Both are different matters. Grant of family pension is altogether different and is prescribed under certain condition whereas compassionate appointment is given to the wards of those who die while in service. The contention of the respondents that the applicant had once been asked to apply for compassionate appointment, which he has refused and, therefore, he is not eligible for family pension is not supported by rules and is purely arbitrary. Respondent No. 2 who has recommended his case for grant of family pension is the same respondent who submitted the counter affidavit opposing the OA. The stand taken is in itself contradictory. This kind of apathy being shown towards a physically handicapped person by depriving him of his right and to get much needed family pension for his survival for last more than 5 years, without any basis to say the least is injustice.

11. In view of the above mentioned, the OA is allowed. The respondents are directed to grant family pension to the applicant within a period of three months from the



date of issue of this order. It is also made clear that the family pension granted within the period as directed, will be only effective from the date of grant of such family pension without any arrears. However, in case, the respondents fail to grant family pension within three months from the date of issue of this order, they will be liable to pay interest @ 9% for any subsequent delayed payment. There shall be no order as to costs.

**(Mohd. Jamshed)
Member (A)**

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