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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A. No.350/O 1557 of 2018

SHYAMAL SARKAR, son of Late Jagadish Chandra Sarkar (Ex-Binder, Grade-II, Govt. of India Press), aged about 48 years, by occupation Unemployed, residing at Village and P.O. Mayurhat, Uttarpara (Bagula), P.S. Hanskhali, District : Nadia, Pin-741502.

... APPLICANT

V E R S U S

1. **UNION OF INDIA**, service through the Secretary, Ministry of Urban Development, Directorate of Printing, Nirman Bhawan, Moulana Azad Road, Rajpath Area, Central Secretariat, New Delhi-110001.

2. **SENIOR ACCOUNTS OFFICER**, Pay & Accounts Office (Printing), Ministry of Urban Development, C.G.O. Complex,

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DF Block, Sector-1, Salt Lake City,
Kolkata-700064.

3. **THE MANAGER**, Govt. of India
Press, Santragachi, Howrah, District
Howrah, Pin-711112.

4. **PERSONNEL MANAGER**, Govt. of
India Press, Santragachi, Howrah,
District Howrah, Pin-711112.

... RESPONDENTS

5. **SABITA RANI DAS.**

6. **NIKHIL SARKAR.**

7. **NILIMA BISWAS.**

8. **SIKHA MALLICK.**

9. **ANIMA SARKAR.**

10. **GOBINDA SARKAR.**

All are daughters and sons of Late
Jagadish Chandra Sarkar, residing at
Village and P.O. Mayurhat, Uttarpara
(Bagula), P.S. Hanskhali, District :
Nadia, Pin-741502.

... PROFORMA RESPONDENTS

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

OA/350/1557/2018

Date of Order: 29.01.2021



Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shyamal SarkarApplicant

Vrs.

Union of India & Ors.Respondents

For the Applicant(s) : Mr. B.Chatterjee, Counsel

For the Respondent(s): Mr. B.P.Manna, Counsel

ORDER (ORAL)

Bidisha Banerjee, Member (J):

The applicant, in this O.A., has prayed for the following reliefs:

"8.(a) An Order do issue directing upon the respondent authority to quash and set aside the Speaking Order dated 16.05.2018 passed by the respondent No. 4;

(b) An Order do issue directing the respondent authority to substantiate their primary conclusion regarding the earning capacity of the applicant with corroborating fresh Medical Report;

(c) An order to issue a direction, directing the respondents authority to disburse the Family Pension in favour of the applicant within a very reasonable time along with Arrear and Statutory Interest;

(d) An order do issuing directing upon the respondent authority to quash the order dated 21.11.2016 rejecting the claim of the applicant for family pension being Annexure "A-7";

(e) To direct the respondents to produce before this Hon'ble Tribunal the entire records relating to the instant case;

(f) Costs;

(g) Any other appropriate relief or reliefs as your Lordships may deem fit and proper."



2. The case of the applicant, in a nutshell, is that he is the handicapped son of Late Jagadish Chandra Sarkar, Ex-Binder in the Govt. of India Press, who breathed his last on 25.03.1983. Following his death, his widow, Smt. Usha Rani Sarkar, was drawing family pension, who also expired on 17.11.2011 leaving behind the applicant as the only eligible legal heir for family pension. In view of the fact that the handicapped child of a deceased employee is entitled to family pension, the applicant preferred representations on 06.06.2013 and 04.07.2014 praying before the authorities to relieve him from economic distress.

By an order dated 21.11.2016, the authorities rejected his prayer on the ground that his disability as a Physically Handicapped ^{did not} does not prevent him from earning the livelihood as certified by Dr. Ram Manohar Lohia Hospital, New Delhi.

Aggrieved over the rejection, the applicant has preferred this O.A.

3. At hearing, Ld. Counsel for the applicant would place the following medical certificates in support of his contention that the applicant is 80% disabled and, therefore, unable to earn his livelihood.

(i) A certificate dated 18.12.2014 issued by the Superintendent, Ranaghat Sub Division Hospital, which certifies that the applicant suffers from "Hearing Disability (Bilateral Profound Mixed Hearing Loss)" of 80% and is unable to earn and fulfil his family's need for his disability.

(ii) A certificate dated 16.05.2015 from the Superintendent of the same hospital certifying his disability as "Hearing Disability (Bilateral Profound Mixed Hearing Loss)" of 80% since 2004 and incapable of earning and fulfilling his family's financial needs for his disability.

(iii) A disability certificate issued by the Ranaghat, Sub Division Hospital

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certifying his disability as 80% and it is not likely to respond to any sorts of treatment, i.e. a disability of permanent nature.

(iv) A certificate from Dr. Ram Manohar Lohia Hospital dated 22.12.2015

certifying the disability as 80% hearing disable of a permanent nature.



4. The respondents, on the other hand, would take us to a certificate issued by Dr. Ram Manohar Lohia Hospital, New Delhi, which certifies as under:

" GOVERNMENT OF INDIA
POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH,
DR. RAM MANOHAR LOHIA HOSPITAL, NEW DELHI

No. Addl.MS(P.K.)/GMB-73/2015/RMLH/

*It is certified that **Mr. Shaymal Sarkar** Age 44 years, S/o **Lt. Jagdish Chandra Sarkar** is a certified case of Bilateral profound hearing loss and has 80% permanent hearing disability. The type of work he can perform has to be decided by the appointing authority. This hearing disability may not prevent him from earning his livelihood.*

Sd/-
26.04.2016
Dr. (Prof.) Nishi Sharma
Consultant ENT"

Placing the aforesaid certificate, Ld. Counsel would vociferously oppose the applicant's argument on the ground that despite the disability he is capable of earning his livelihood and, therefore, not eligible to get family pension as a dependant handicapped child. Ld. Counsel would submit that Rule 54(6) of proviso (iv) of the CCS (Pension) Rules require that the appointing authority shall satisfy that the handicap is of such a nature so as to prevent from earning his livelihood and since the medical certificate itself opines that he is capable of earning livelihood, the competent authority rightly rejected his prayer for family pension.

5. We heard Ld. Counsels and perused the records.

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6. The speaking order under challenge reads as under:

G/2/139/CAT/E-I/2017/128

16-05-2018

SPEAKING ORDER

WHEREAS, Shri Shyamal Sarkar a Physically Handicapped having Bilateral profound hearing loss having 80% permanent Hearing Disability had applied on 17-11-2011 for life time Family Pension after expiry of his mother (wife of late Jagadish Chandra Sarkar, Ex-Binder, G.I.Press, Santragachi who expired on 25-03-1983) who was getting Family Pension.

WHEREAS, after perusal of his representation and the Medical Certificate issued by Dr. Raim Manohar Lohia Hospital, New Delhi dated 26-04-2016, the applicant vide Government of India Press, Santragachi's letter dated 21-11-2016 has intimated that his request cannot be acceded due to his disability as mentioned in his Medical Certificate that hearing disability may not prevent him from earning his livelihood.

WHEREAS, Shri Shyamal Sarkar has approached to the Hon'ble CAT, Kolkata Bench, Kolkata vide O.A. No. 350/251/2017 dated. 09-02-2017 praying for issuance of life time Family Pension in his favour.

WHEREAS, the Hon'ble CAT, Kolkata Bench, Kolkata vide its order dated 31-01-2018 (certified on 05-04-2018) directed the respondent that "to consider the case of the applicant in the light of Rule 54 clause (6) of CCS (Pension) Rules, 1972 within a period of 3 months from the date of receipt of the copy of this order and while passing the order the department shall keep in mind Clause (6) of Rule 54 of CCS (Pension) Rules which provides the procedure for payment of Family Pension to handicapped children. The order should be a reasoned and speaking one and the decision arrived at shall be communicated to the applicant forthwith".

WHEREAS, Rule 54 clause (6) of CCS (Pension) Rules, 1972 provides that "if the son or daughter of a Government 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 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" -

(i) If such son or daughter is one among two or more children of the Government Servant, the family pension shall be initially payable to the minor children (mentioned in clause (ii) or clause (iii) of this sub-rule) in the order set out in clause (iii) of sub-rule (8) of this rule until the last child attains the age of twenty-five and thereafter the family pension shall be

resumed in favour of the son or daughter suffering from disorder or disability of mind, including the mentally retarded, or who is physically crippled or disabled and shall be payable to him or her for life.

(ii) If there are more than one such children suffering from disorder or disability of mind including the mentally retarded or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them will get the family pension only after the elder next above him or her ceases to be eligible: Provided that where the family pension is payable to such twin children, it shall be paid in the manner set out in clause (d) of sub-rule (7) of this rule:

(iii) The family pension shall be paid to such son or daughter through the guardian as if he or she were a minor except in the case of the physically crippled son or daughter who has attained the age of majority:

(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 Officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child.

WHEREAS, as per the directions of the Hon'ble CAT, Kolkata Bench, Kolkata, the claim of Shri Shyamal Sarkar for grant of life-time Family Pension has been examined under Rule 54 clause (6) of CCS (Pension) Rules, 1972 and found that the applicant is not entitled for any Family Pension in view of the Rules mentioned above.

WHEREAS, by passing this reasoned and Speaking Order, the claim of the applicant for releasing of life time Family Pension in his favour due to his disability is disposed of.

(A. K. SINGH BISWAS)
P. Manager.



7. We discern the divergent views of the medical authorities as also that of the fact that the authorities in West Bengal have rejected the case of the applicant on the basis of a certificate issued by the Dr. Ram Manohal Lohia Hospital, New Delhi, which does not disclose the reason how the applicant despite his 80% disability would be able to earn his livelihood. As such, we feel it appropriate and, in the interest of justice, to quash the rejection order and remand the matter back to the authorities to get the applicant medically examined from a Government Hospital or any other Sub Divisional Hospital of this State, as the rules provide, within a period of two months and to pass appropriate orders in accordance with rules in due consideration of the certificate issued by the said hospital addressing on the disability of the applicant and his earning capacity given the disability. The certificate to be issued by the medical authorities should also specifically indicate whether the applicant despite his disability is capable of earning his livelihood, as is required under law.

8. The O.A. accordingly stands disposed of. No order as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member(J)

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