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RESERVED

CENTRAL ADMINISTRATAIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 6 day of 11 2008.

Original Application No. 324 of 2007

Hon'ble Mr. A. K. Gaur, Member (J)

1. Km Afsar Jahan (Blind), D/o late Abdul Rehman, a/a 35 years, R/o House No. 131/259, Begampura, Kahpur.
2. Mohd. Vaseemuir Rehman, S/o late Abdul Rehman, a/a 33 years, Borthor and Guardian of Km Afsar Jahan, Applicant No. 1, R/o 131/259, Begampura, Kanpur.

. . . Applicants

By Adv: Sri S.S. Sharma

V E R S U S

1. Union of India through General Manager, North Central Railway, Headquarters Office, Allahabad.
2. Divisional Railway Manager, North Central Railway, DRM Office, Allahabad.
3. The Chief Medical Superintendent, Divisional Hospital, North Central Railway, Allahabad.

. . . Respondents

By Adv: Sri A.K. Sinha

O R D E R

Through his OA the applicants have prayed for following main reliefs:

"i. That the Hon'ble Tribunal may graciously be pleased to set aside/quash impugned order dated 30.6.2006 and 8.1.2007 issued by the Divisional Railway Manager, N.C. Railway, Allahabad, rejecting request of the applicant for grant of '**Family Pension**' to her for life being visually 100% handicapped and entitled for Family Pension for life as per provision of Rule 75 (6) of the Railway Services (Pension) Rules, 1993, and Railway Board's order dated 14.12.2005 (RBE 214/2005).

ii. That the Hon'ble Tribunal may graciously be pleased to quash/set aside the Medical Report dated 12.6.2006 and 28.9.2006, issued by the Chief Medical Superintendent, N.C. Railway, Allahabad to the extent observing that applicant can earn livelihood as

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visually handicapped person, being not based on any medical ground and without proper application of mind.

iii. That the Hon'ble Tribunal may graciously be pleased to direct the Divisional Railway Manager, North Central Railway, Allahabad to allow/sanction 'Family Pension' for life to the applicant as per Rule 75 (6) of Railway Services (Pension) Rules, 1993 and Railway Board's order dated 14.12.2005, the date of death of her mother Smt. Noor Jahan, widow wife of Late Absul Rehman with payment of arrears since 15.1.2005."

2. The applicant No. 1 (hereinafter referred as Applicant) happened to be an unmarried blind daughter of the Ex-employee, who died on 20.07.1979 during service. After the death of her father the applicant became liability of her mother late Noor Jahan, who was getting family pension since 27.07.1979. The mother of the applicant late Noor Jehan also died on 15.12.2005. After the death of mother, the applicant has become an orphan and has approached the respondents for granting her family pension in accordance with provisions of Rule 75 (6)(iii) of Railway Services (Pension) Rules, 1993. The grievance of the applicant is that she is unable to earn a livelihood even for herself being completely blind by birth. The applicant is totally dependent upon her real younger brother Mohd. Vaseemuir Rehman. Unfortunately, brother of the applicant is not having any regular income and he is working in a small tailoring shop at Kanpur and the applicant is surviving at the mercy of her brother and his family members. In the record of the family pension, earlier issued to the mother of the applicant, and in family pension order dated 05.03.1980 revised order dated April, 2000, the name of the applicant finds place as one of the heirs of Smt. Noor Jahan the deceased

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mother of the applicant. The applicant has been shown as blind even in the public record i.e. Form No. 16 executed by the Railway Administration. The mother of the applicant also gave an affidavit on 12.10.2004 before Divisional Railway Manager, North Central Railway, Allahabad that her daughter is 100% handicapped and unmarried and she is residing with her and also fully dependent upon her. The mother of the applicant also requested Divisional Railway Manager that it would be just and proper to add the name of the applicant as second beneficiary in her Pension Payment Order so that she can be entitled to get pensionary benefits after the death of her mother so the she may be able to support her livelihood being 100% handicapped. A copy of the affidavit of Smt. Noor Jahan, mother of the applicant dated 12.10.2004 alongwith a copy of handicapped certificated dated 25.8.2008 issued by the Chief Medical Officer, Kanpur Nagar are annexed as Annexure A-5 and A-6 to the OA. A perusal of the handicapped Certificate dated 25.08.2004 issued by Chief Medical Officer, Kanpur Nagar clearly indicates that the applicant after being examined by three senior specialist doctors of Orthopedic, ENT and Eyes certified and found the applicant **completely blind and 100% handicapped permanently**. The Chief Medical Officer, Kanpur Nagar is also the competent authority to issue handicapped Certificate. It is also alleged by the applicant that this certificate has never been challenged by any higher competent Medical Authority or any Railway

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Medical Authority. According to the applicant under the provision of Rule 75 (6) of Railway Services (Pension) Rules, 1993, the applicant is entitled for payment of family pension even for life after the death of her mother on 15.12.2005. Copy of Rule 75 (6) of Railway Services (Pension) Rules, 1993 is enclosed as Annexure A-9 to the OA. It is also alleged by the applicant that there is no other family member of the deceased employee for payment of family pension except the applicant who is 100% handicapped being completely blind by birth. The applicant after fulfilling all the formalities vide application dated 17.03.2006 requested the Divisional Railway Manager, North Central Railway, Allahabad to grant family pension to her. He accordingly referred the matter to the Chief Medical Superintendent, North Central Railway, Allahabad to examine the nature of physically handicappedness of the applicant and furnish a clear-cut certificate as to her capacity to earn livelihood (Annexure A-11 to the OA). The applicant was medically examined by the concerned medical officer on 06.06.2006 and thereafter, a medical certificate dated 06.06.2006 was issued certifying her 100% blind. Thereafter, the applicant was examined by Chief Medical Superintendent and Divisional Medical Officer, North Central Railway, Allahabad and a medical certificate was issued by them on 12.06.2006. The applicant was advised by the Divisional Railway Manager, North Central Railway, Allahabad vide letter dated 30.06.2006 that the applicant is not entitled

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for grant of life long family pension as per report of Chief Medical Superintendent, North Central Railway, Allahabad. Copy of the said order dated 12.06.2006 is annexed as Annexure A-1 to the OA). The applicant vide letter dated 10.07.2006 (Annexure A-13 to the OA) made an appeal against the medical report dated 06.06.2006. The appeal of the applicant was forwarded by the Divisional Railway Manager, vide letter dated 24.08.2006 (Annexure A-14 to the OA) to the Chief Medical Superintendent, North Central Railway, Allahabad for necessary action. The applicant in paragraph No. 4.18 of the OA referred to the provision of Rule 75 (6) (iii) (b) of the Railway Services (Pension) Rules, 1993 in order to suggest that the medical report and handicapped certificate dated 25.07.2004 (Annexure A-6 to the OA) issued by the Chief Medical Officer, Kanpur Nagar, who constituted the committee of three specialists had certified the applicant to be 100% handicapped. The said medical authority not only examined the applicant but her physical condition also and declared her 100% handicapped. Railway department has also issued a Railway Concession Certificate to the applicant for traveling by Train as completely blind person dated 12.09.2005 after verifying the medical certificate (Annexure A-14 to the OA). Railway Board vide letter dated 14.12.2005 decided the matter regarding grant of family pension for life for son or daughter suffering from the disability of blindness as under:

"2. The matter has been examined in consultation with the Department of Pension & Pensioners welfare and it is clarified that blindness is a physical disability,

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which is covered by proviso below Rule 75 (b) of these rules. The sanction or family pension to such a dependent blind son or daughter will be subject to fulfillment of all other conditions including the one that the son or daughter was suffering from the disability of blindness before attaining the age of 25 years because of which he or she was incapable of earning his/her livelihood and that he or she continues to suffer from the disability ever after attaining the age of 25 years and the disability renders him/her incapable of earning his/her livelihood as evidence by a certificate obtained from a medical officer not below the rank of a Divisional Medical Officer. The family pension sanctioned on fulfillment of all these conditions will be discontinued if such a son or daughter is cured or improved of the blindness subsequently and he/she becomes capable of earning or starts earning."

3. According to the applicant she fulfills all the conditions for sanction of family pension for life as laid down in Railway Board's order dated 14.12.2005.

4. In the reply filed by the respondents they have submitted that although Chief Medical Officer, Kanpur Nagar issued a certificate of 100% handicappedness but has not specified as to the capacity of the applicant to earn her livelihood. The certificate issued by the medical authorities are perfectly correct in order to judge the visual handicappedness of the applicant. The medical authorities found that her other physical functions are normal and, therefore, she can earn livelihood and therefore an opinion has been expressed that the applicant can earn her livelihood as visually handicapped person. Nothing new has been indicated in the counter affidavit except the interpretation given under Rule 75 (6) (iii) (b) of Railway Services (Pension) Rules, 1993.

5. In the rejoinder reply filed by the applicant it is submitted that according to the Railway Board's

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order dated 14.12.2005 (Annexure A-16 to the OA) the family pension to Blind son/daughter of the deceased employee is permissible. The case of the applicant has not been considered by the respondents as per instructions of the Railway Board. The Railway Board's circular dated 22.01.2002 relates to the grant of life long family pension to physically handicapped/mentally retarded children of the deceased employee and not relevant to the issue involved in the present case. The decision taken by the medical authority in pursuance to the certificate issued by the Chief Medical Officer, Kanpur Nagar dated 25.08.2004 directing the applicant to appear before the Chief Medical Superintendent, North Central Railway, Allahabad for her medical examination as to the nature of physical handicappedness and for furnishing a clear cut certificate as to her capacity to earn her livelihood, is without any application of mind and also contrary to the Railway Board's order dated 14.12.2005.

6. I have heard Shri S.S. Sharma, learned counsel for the applicant and Shri A.K. Sinha, learned counsel for the respondents. It has been contended by the learned counsel for the applicant that the medical report and handicapped certificate dated 25.08.2004 issued by the Chief Medical Officer, Kanpur Nagar in consultation with three specialists i.e. Senior Orthopedic, ENT and Senior Eyes specialist certified the applicant to be 100% handicapped. According to

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Shri Sharma, learned counsel for the applicant, the said medical authorities have not only examined the blindness of the applicant, but also assessed her physical condition and declared 100% handicapped. It is not conceivable as to how a 100% handicapped person (completely blind) can be expected to earn livelihood independently. It is seen from the record that the Railway Department has already issued Railway Concession certificate in favour of the applicant for traveling by Train as complete blind person after verifying medical report by the competent medical authorities. The medical report and handicapped certificate issued by the Chief Medical Officer, Kanpur Nagar dated 25.08.2004 to this effect also gets corroboration from the report submitted by the Railway doctors that the applicant is visually handicapped. It is an admitted fact that the applicant is blind by birth and in these circumstances I do not find any valid justification in the medical opinion of railway doctors that the applicant can earn her livelihood as visually handicapped person. Medical opinion of railway doctors is without proper application of mind and has been passed with extraneous considerations. No logic or reason has been assigned by the Railway Medical Authority as to how the applicant can earn her livelihood independently as handicapped person. There is not an iota of evidence on record to indicate that the Railway Board's letter dated 14.12.2005 has at all been considered while considering the case of the applicant.

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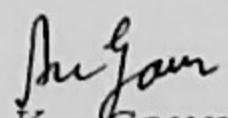
7. Learned counsel for the respondents has vehemently argued that the applicant has sought for plural remedies in one OA. On one hand the applicant has sought for relief of grant of family pension for life on the ground of handicappedness and on the other hand she has prayed for appointment against handicapped quota which is not permissible as per law in single OA. Learned counsel for the respondents has further contended that Rule 75 (6) of Railway Services (Pension) Rules, 1993 does not envisages appointment against any quota and, therefore, the applicant is not entitled to any appointment nor she is entitled for family pension for life as visually handicapped person, in view of the medical report. It is true that the applicant has claimed plural reliefs, but being blind lady it would not be just and proper in the interest of justice to dismiss her case on technical ground. Looking to the facts and circumstances of the case I must take a pragmatic approach in the matter rather a pedantic. In terms of Railway Board's letter dated 14.12.2005 (Annexure A-16 to the OA) family pension can be granted to blind son/daughter of the deceased employee. In my considered view denial of family pension to the applicant by the respondents is in violation of rule 75 (6) (iii) (b) of Railway Services (Pension) Rules, 1993 and also in violation of Railway Board's letter dated 14.12.2005.

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8. In view of my aforesaid observation, I hereby quash and set aside the impugned orders dated 30.06.2006 (Annexure A-1 to the OA) and 08.01.2007 (Annexure A-2 to the OA). Without granting any particular relief, I hereby direct the competent authority, to re-consider the case of the applicant for grant of family pension strictly in accordance with the certificate issued by the Chief Medical Officer, Kanpur Nagar and in view of Railway Board's letter dated 14.12.2005 and pass appropriate reasoned and speaking order, adopting sympathetic and pragmatic approach in the matter within a period of three months from the date of receipt of a copy of this order.

9. With the aforesaid observation the OA is disposed of. No cost.


(A.K. Gaur)
Member-J

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