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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 308 of 1995

Cuttack this the 5th day of August, 1996

Smt. Indumati Mohapatra ... Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of *no* the Central Administrative Tribunal or not ?

N. Sahu

(N. SAHU)

MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 308 of 1995

Cuttack this the day of August, 1996

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

...

Smt. Indumati Mohapatra, W/o. Late
Baidyanath Mohapatra, Vill: Dakshina
Munda Muhan, P.O. Janla, Dist: Puri

... Applicant

By the Advocate:

M/s. S.K. Pattanaik
U.C. Mohanty

Versus

1. Union of India represented through
Director General (Posts)
Dak Bhawan, New Delhi
2. Chief Post Master General,
Orissa Circle, Orissa,
At/PO: Bhubaneswar, Dist: Khurda
3. Director, Postal Services
O/o. the Chief Post Master General
Orissa, Bhubaneswar
4. Senior Superintendent,
Railway Mail Service (North) Division
Cuttack

... Respondents

By the Advocate:

Mr. Ashok Mishra,
Standing Counsel

....

[Signature]

O R D E R

MR.N. SAHU, MEMBER (ADMINISTRATIVE): This application under Section 19 of the Administrative Tribunals Act, 1985, is filed against the order No.AP/6-14/84 Chapter-II dated 17.12.1993, passed by the Assistant Director (Accounts) for Chief Post Master General, Orissa, dated 17.12.1993, dealing with the subject of commutation of pension of Late B.N.Mohapatra, Ex-L.S.G. Sorting Assistant, R.M.S. 'N' Division, Cuttack. The Chief Post Master General intimated to the applicant that her husband was not medically examined by the Medical Board for getting the amount of commuted value of pension and hence she became ineligible for the same.

2. I have gone through the averments made in this petition and also the counter-affidavit filed by the Respondents. There is no dispute on facts. The counter affidavit virtually repeats the facts made in the application which are in a short compass. The late husband of the applicant served as L.S.G. Sorting Assistant in R.M.S. 'N' Division, Cuttack. He applied for a voluntary retirement on health grounds as per Rule 38(3) of the CCS Pension (Rules) 1972. He was accordingly examined by the Chief District Medical Officer, Puri, who issued a medical certificate dated 20.6.1991 holding that the late husband of the applicant suffered from Schizophrenia and as such he was declared unfit for further service. This was issued in the appropriate Form 23. On consideration of this report the applicant was retired on the ground

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of invalidation with effect from 30.6.1991. He, therefore, became an eligible candidate to commute a fraction of his pension subject to the limit specified in Rule 5, viz., not exceeding 1/3rd of his pension. After he has been declared unfit by the appropriate medical authority, the late Mr. Mohapatra applied for commutation to the Superintendent of Post Offices (North) Division, Cuttack on 30.9.1991. He gave the option to be medically examined at Cuttack. The Superintendent of Post Offices directed the medical examination of the applicant at Puri instead of Cuttack and accordingly sent a requisition to the C.D.M.O., Puri. He was examined by the CDMO, Puri on 18.12.1991 by different Specialists of Puri hospital. The complete report was submitted by the C.D.M.O. to the Superintendent of Post Offices, R.M.S. (N) Division, Cuttack, along with attested photographs. Accordingly his papers for commutation of pension were forwarded to the Accounts Officer (Pension). Even at this stage the only objection raised by the Accounts Officer was relating to attestation of photographs which was duly rectified and complied with by the C.D.M.O., Puri. At this stage, the applicant died on 25.1.1992 because of Cerebral Malaria which had nothing to do with Schizophrenia for which Mr. Mohapatra was allowed to take voluntary retirement. Respondent 4, the Senior Superintendent, R.M.S. (North) Division, resubmitted the pension papers to the Director of Postal Services, Bhubaneswar, office of the C.P.M.G., with a

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recommendation for finalisation of commutation of pension. There was a representation dated 11.12.1992 submitted to Respondent 2 which is Annexure-7, stating the facts mentioned above. There was no immediate response to this representation. The applicant's ^{husband} retired from Government service on invalidation on 30.6.1991 and his normal date of retirement was 3.8.1991. The material facts narrated above are endorsed in the counter. On the above facts the applicant requires that the respondents be directed to pay commuted value of pension with interest at the rate of 12 per cent. It is clear from Annexure-8, the letter addressed by the Deputy Director of Accounts to the Assistant Director General (Pensions) Office of the D.G. Posts, dated 24.12.1992 that "due to the procedural lapse committed by the head of the office, the amount of commutation which the widow would have been entitled to could not be authorised in the absence of a valid medical report by a medical board as required under the rules."

3. According to Rule 20 of Appendix-1, Commutation of Pension (Swamy's Pension Compilation) the Head of Office on receipt of Form-II from the Accounts Officer shall address the Chief Administrative Authority of the State for making necessary arrangement for the medical examination by a medical board at the nearest available station indicated by the applicant. The fault lay with S.S.R.M. (N) Division, Cuttack, who instead

of referring the case to a Medical Board, addressed to the C.D.M.O., Puri to conduct the medical examination of the pensioner. Thus this is an admitted procedural lapse of getting the applicant's husband examined by the C.D.M.O., Puri instead of a Medical Board.

4. I have heard in this regard the learned counsel for the petitioner Shri S.K. Patnaik and learned Senior Counsel Shri Ashok Mishra for the Union of India. The husband of the applicant had given his option to be medically examined at Cuttack. This should have been easy also for the applicant, but he was referred to CDMO, Puri. The CDMO, Puri is a recognised authority under the CCS Commutation of Pension (Rules) 1981 as well as CCS Pension (Rules) 1972. The learned counsel for the applicant argued in my view, very rightly that the object of medical examination before the grant of commutation of pension is to get a certificate of normal life expectancy for the period for which the pension is commuted. Rule 22 of the CCS Commutation of Pension Rules reads as under :

"Medical Authority

- (1) Save as otherwise provided in sub-rule (2), the medical authority shall be a Medical Board, where an applicant for commutation of pension -
 - (a) seeks commutation of invalid pension, or
 - (b) seeks commutation of pension other than invalid pension but the amount of pension to be commuted together with the amount or amounts previously commuted exceeds one hundred rupees per mensem, or

(c) has been refused commutation on medical grounds or if he having once declined to accept commutation on the basis of addition of years to his actual age recommended by the medical authority, applied for a second medical examination in accordance with the provisions of Rule 26 and Rule 27.

(2) In any other cases not covered by sub-rule (1) the medical authority shall be a Medical Officer not lower in status than that of a Civil Surgeon or a District Medical Officer.

Rule 23 states that the applicant shall pay for medical examination such fee as specified and if the applicant after receipt of communication fails to appear without reasonable grounds then his application for commutation shall be treated as withdrawn.

Under Rule 17, the applicant is eligible to commute a fraction of his pension because he was retired on invalid pension under Section 38 of the Pension Rules. He applied for commutation of pension to the Head of Office in Form-II. The Head of Office, did not comply with 21(b) i.e. submitting Form II to Accounts Officer, who will supply certain basic details and complete Part-IV along with the form and transmit the same to the Head Of Office. The Head of Office has to address a letter to the Chief Administrative Medical Authority of the State. Under Rule 21 of the Chief District Medical Officer shall arrange for medical examination of the applicant by the medical authority at the nearest available station indicated by the applicant in Form-II. Under Rule 21(11) it is clearly mentioned that in

fixing the date of medical examination it shall be ensured that the medical examination is held as far as possible before the date of applicant's next birthday. It is here Rule 22 comes into play which says that the medical authority shall be a medical board. There is no failure of compliance on the part of the applicant's late husband before the medical authority. The examination having been conducted and the report of fitness having been granted, it is inappropriate on the part of the respondents not to grant her commutation of pension. There is no definition of the term "Medical Board" in the C.C.S. Commutation of Pension Rules. Suffice it to state that medical board is a Group of Medical experts nominated for the purpose of examining a person for a stated purpose. The examination should be comprehensive and shall authoritatively state an opinion of the state of health of the applicant. The certificate granted by the C.D.M.O., Puri, has not been accepted for the purpose of grant of commutation of pension as per Rule 22 (1) of the 1981 Rules. This is a narrow, technical stand and therefore defeats justice though I do not accept the proposition canvassed by the applicant's counsel that Rule 22 (2) permits ignoring a medical board and approach any other medical authority for the purpose. The averments state which are not denied in the counter-affidavit that the C.D.M.O., Puri, has granted the certificate after getting the applicant's husband examined by other Specialists in the Hospital who have achieved a recognised proficiency in their respective disciplines. I agree with the contention that the object behind Rule 22 has been

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substantially complied with inasmuch the applicant's late husband had been examined by competent experts. Discretion should have been exercised under Rule 33 of the CCS Commutation of Pension Rules 1981 by the appropriate authority to relax the operation of Rule 22(1) and permit the medical report as acceptable. The impugned order Annexure-9 states that the Department of Pension & Pensioners Welfare had been consulted. On the technical ground of non-examination by the board, there was no justification to refuse commutation of pension. Admittedly the error lay in the respondents in not directing to the applicant's ^{late} husband to appear before the appropriate medical authority, viz., Medical Board. Because even when Accounts Officer returned the medical certificate to the CDMO, Puri on the point of attestation, they could have pointed out that the appropriate authority was not the CDMO, but a duly constituted Medical Board. That defect was never pointed out. Admittedly the applicant's late husband died of a cause different from that for which he was invalidated. The respondents have delayed the matter for such a long time. The applicant's husband was not at fault at any stage. He complied with all the rules, requirements and directions of the respondents. As the intention behind the commutation of pension and examination by the Medical Board was to obtain a fitness certificate about normal life expectancy and as this was complied by a group of

has not

Specialists under the C.D.M.O., Puri, the applicant must be held to have qualified himself to the right of having a portion of his pension commuted on 18.12.1991 when CDMO, Puri certified that the applicant was "in good bodily health and has the prospect of an average duration of life." In the facts and circumstances this should be treated as the necessary medical report. The respondents are therefore directed to dispose of the application for commutation of pension by the applicant's late husband in accordance with the procedure prescribed in law within a period of three months from the date of receipt of this order and award the same to the applicant. A copy of the commutation sheet as to how the commutation is worked out shall be exhibited along with the order. In the facts and circumstances of the case I do not think this to be a fit case for grant of interest. The application is disposed of as above. Parties to bear their own costs.

Narasimhaiah
(N. SAHU) 5/8/96.
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//