

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.396 OF 2006

Cuttack this the 12th day of August, 2008

Subash Chandra Sahoo.Applicant

-VERSUS-

Union of India & Ors.Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yc*
2. Whether it be circulated to the Principal Benche of the Central Administrative Tribunal or not ? *Yc*

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(K. THANKAPPAN)
JUDICIAL MEMBER

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ORIGINAL APPLICATION NO.396 OF 2006

Cuttack this the 12th day of August, 2008

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, MEMBER(JUDICIAL)

Subash Chandra Sahoo, aged about 41 years, S/o. Late Kabiram Sahoo, permanent resident of Kudiary, PO & PS-Jatni, Dist-Khurda

... Applicant

By the Advocates-Mr.S.Palit

-VERSUS-

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, PO-Railway Colony, PS-Chandrasekharpur, Munsif-Bhubaneswar, Dist-Khurda
2. Senior Divisional Personal Officer, East Coast Railway, Khurda Division, Khurda Road, PO/PS/Dist-Khurda
3. Divisional Accounts Officer, East Coast Railway, Khurda Division, Khurda, PO/PS & Dist-Khurda

... Respondents

By the Advocates Mr.M.K.Das

ORDER

MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying that the Respondents be directed to sanction family pension in his favour forthwith.

2. The brief facts leading to filing of this O.A. are that his father was working as a Cook in the South Eastern Railway. He retired on superannuation on 31.05.1985. After the death of his father in the year 1999, applicant's mother, who was in receipt of family pension, passed away on 17.11.2000. As per the Pension Rules, only the unmarried daughters and sons who have not attained the age of 25 are entitled to family pension. However, as per Rule 75(6) of Railway Services (Pension) Rules, 1993, a disabled son/daughter is also entitled to family pension, even if he/she has attained the age of 25. Based on this, the applicant filed an application before the Respondent-Department, with all necessary certificates required as per

law, praying therein to allow him family pension. But the said application has been rejected vide Annexure-A/4 dated 5.12.2002, which, according to the applicant, is not in accordance with rules governing the subject. Hence, he has filed the present O.A. with the prayer as mentioned above.

3. When this matter came up for hearing, this Tribunal heard both the learned counsel appearing for the applicant as well as the Respondents.

4. Shri S.Palit, learned counsel for the applicant, relying on Rule 75 of the Railway Services (Pension) Rules, 1993 submitted that if a Medical Certificate issued by a Medical Officer not below the rank of a Divisional Medical Officer proving the physical handicapness is produced by the disabled son of the deceased railway employee, it is the duty of the Railway authorities to sanction family pension in his favour. The learned counsel further contended that the Respondents should not have rejected the claim on the ground that the medical certificate produced by the applicant did not certify regarding handicapness rendering him unable to earn his livelihood even after the age of 25 years. It was the further contention of the learned counsel for the applicant that the railway authorities also should not have referred the matter to the Railway Medical Board for examination, which has recorded that "after careful examination of the applicant he is found deaf and dumb since birth and he is in good physical condition without neurological disability". This, according to learned counsel, is not the purport of the Rules contemplated under Rule 75 of the Railway Services (Pension) Rules, 1993. Once a medical certificate regarding physical disability has been issued by the Chief Medical Officer, District Medical Board, the Respondents ought not to have referred the matter to the Railway Medical Board. Further, the learned counsel contended that even if the certificate of the Medical Board is taken into consideration, it is clear that the applicant is 100% physically handicapped, and if so, the rejection of the application for grant of family pension is not tenable in law.

5. In replying to the above contentions, the learned counsel Shri M.K.Das, appearing for the Railways, relying on the counter affidavit filed on behalf of the Respondents submitted that even if Rule 75(6) of the Railway Services (Pension) Rules, 1993 provides that on the basis of physically handicapped certificate issued by the Divisional Medical Officer, family pension could be allowed to physically handicapped son or daughter of a railway employee, the Medical Board now found that though the applicant has lost his hearing capacity or is a deaf and dumb, he appears to be physically capable of earning his livelihood. If so, according to learned counsel for the Respondents, the rejection of the application is justifiable and sustainable in law. Further, the learned counsel Shri Das submitted that it is not imperative on the part of the Railway Medical Board to accept the physical fitness certificate issued by the Chief Medical Officer and it is left to the discretion of the Railway authorities to refer the matter to the Medical Board. Hence, the referral of the applicant to the Medical Board is within the powers of the Railway Board.

6. The question now to be considered, in the light of the rival contentions advanced by the learned counsel appearing on either side and the rules governing the subject, is whether the applicant is entitled to family pension as per Rule 75(6) of the Railway Services (Pension) Rules, 1993 or not.

7. The factual situations are not disputed. But the dispute centers round the physical capacity of the applicant, as revealed from both the medical certificates issued by the Chief Medical Officer, District Medical Board and the Medical Board of the Railways. Rule 75(6)(b) states that if the son or daughter of a Railway employee is suffering from any disorder or disability and/or is physically crippled or disabled so as to render him or her unable to earn living even after attaining the age of 25, the family pension shall be payable to such son/daughter subject to the following conditions:

“(b) Before allowing the family pension for life to any such son or daughter, the Sanctioning Authority shall satisfy that the handicap is of such, which prevents him or her from earning his or her livelihood and

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the same shall be evidenced by a Certificate obtained from a Medical Officer not below the rank of a Divisional Medical Officer (DMO) setting out, as far as possible, the exact mental or physical condition of the child;

(c) The person receiving the family pension is a guardian of such son or daughter shall produce every 3 years a certificate from a Medical Officer not below the rank of D.M.O. to the effect that the son or daughter continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled;"

8. From the above, it is to be noted that if a son or a daughter is found to have been suffering from any disorder, disability of mind or continues to be physically crippled or disabled, he/she is entitled to family pension. The certificate produced by the applicant vide Annexure-A/5 would show that he is 100% permanent speech and hearing impairment. As per rules, a person who claims family pension after attaining the age of 25 shall produce a certificate to the effect that his/her handicap is such, which prevents him/her from earning his/her livelihood and the same shall be evidenced by a certificate obtained from a Medical Officer not below the rank of Divisional Medical Officer. Further, the Rules say that if a son/daughter of any Railway servant is suffering from any disorder or disability and/or is physically crippled or disabled so as to render him or her unable to earn livelihood even after attaining the age of 25, family pension shall be payable to such son or daughter subject to the conditions as referred to above. These words denote the exact nature of disability to be assessed for allowing family pension. Further, as the Rules speak, physical handicap has a special meaning and feature which is of physically crippled or disabled so as to render him or her unable to earn livelihood even after attaining the age of 25. As per the Chambers Dictionary, the term "Handicap" means – a person having some physical or mental disability or disadvantage in one way or the other. At the same time, Rule 75(6)(b) takes the position that a person suffering from any disorder or disability and/or physically crippled or disabled so as to render him or her unable to earn livelihood. The certificate now given by the Medical Board would show that the applicant is a physically abled person and there is no disorder to

him though he is deaf and dumb and he is having good physical condition without any neurological disability. In view of the above medical opinion, it can only be interpreted that Rule 75(6)(b) contemplates disorder or disability of that kind or physically crippled or disabled so as to render him or her unable to earn his/her livelihood. If so, the applicant being a physically fit person to do any job, he cannot be considered as a physically crippled or disordered man coming within the purview of rule 75(6)(b) of the Rules. In this context, it has to be borne in mind that now a days a person having the understanding capacity is quite capable of doing any physical work, like, typewriting, computer operation or some manual jobs, even without using his ear or tongue. In the above circumstances, we are of the view that the applicant is not entitled to any protection under Rule 75(6)(b) of the Railway Services (Pension) Rules nor is he eligible for family pension as claimed by him in this Original Application.

9. In view of the foregoing discussions, we are of the view that the O.A. is bereft of any merit and accordingly, the same is dismissed, without any order as to costs.

K. Thankappan
(K. THANKAPPAN)

JUDICIAL MEMBER