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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.784 OF 2013
Cuttack this the 4th day of December, 2013

CORAM
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

R.Sanyasi Sai Rai
Aged about 43 years
S/o. late R.Bisanatham
At-Baikuntha Nagar
5th Lane, P.S.B.N.Pur
New Bus Stand Road
Berhampur-760 001
Dist-Ganjam

...Applicant
By the Advocate(s)-M/s.S.Ku.Rath
P.K.Rath

-VERSUS-

Union of India represented through

1. The Secretary
Department of Posts
Govt. of India
Dak Bhawan
New Delhi-11
2. The Chief Post Master General
Odisha Circle
Bhubaneswar,
Dist-Khurda
Odisha
3. The Superintendent of Post Offices
Berhampur Division
Head Post Office
At/PO-Berhampur
Dist-Ganjam
PIN-759 001
4. Additional Director General(Pension)
Department of Posts
Dak Bhawan
New Delhi-11

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...Respondents

By the Advocate(s)-Mr.R.C.Behera

ORDER

A.K.PATNAIK, MEMBER(J)

In this Original Application, the applicant has prayed for direction to be issued to Respondents to release family pension in his favour w.e.f. 20.05.2010 at the rate admissible as per rule with interest @ 9% per annum.

2. The brief background of the matter is that applicant's father was a postal employee and after his retirement, he was in receipt of pension till 19.05.2010 when he passed away. Applicant's mother being pre-deceased to his father, no family pension was granted. The applicant being born-blind he laid his claim to family pension, which having not been considered, he moved this Tribunal in O.A.No.487 of 2013 , which was disposed of on 31.7.2013 with direction to Respondent Nos. 3 and 4 to consider the representations made by the applicant and communicate the result thereof by way of a well-reasoned order. In compliance with the above direction, Respondents have communicated their decision vide order dated 30.8.2013(Annexure-A/15) rejecting the claim of the applicant for family pension. Hence, this Original Application.

3. Before considering the matter, it would be pertinent to quote the relevant portion of the order dated 30.8.2013 hereunder.

"...as per proviso to Rule-54(6) of CCS9Pension) Rules, 1972 family pension for life is admissible to such son or daughter of a Govt. servant suffering from any disorder or disability of mind or is physically crippled so as to render him or her unable to earn a livelihood even after attaining the age of 25 years .(Condition (iv) below the said proviso provides that the authority shall satisfy that

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the handicap is of such a nature that it prevents him or her from earning a livelihood and the same shall be evidenced by a medical certificate from the appropriate authority setting out as far as possible, the exact mental or physical condition of the child). Further, in GID(26) below Rule-54 of CCS(Pension) Rules, 1972 the DOP & PW has clarified that the married sons and daughters, who are suffering from any disorder or disabled shall not be eligible for family pension.(Similarly, GID(27) below the said rule also provides that the sanction of family pension to such a dependent blind son or daughter will be subject to the condition that the son or daughter was suffering from the disability or blindness before attaining the age of 25 years because of which he or she was incapable of earning a livelihood and that he or she continues to suffer from the disability even after attaining the age of 25 years and the disability renders him or her incapable of earning his or her livelihood).

The said Sr.Accounts Officer (Pension) returned the pension papers with the observation that copy of medical certificate submitted along with the pension claim papers does not have a mention whether the physical handicap of the claimant is of such a nature which render him unable to earn a livelihood. The applicant has not produced the copy of intimation submitted to the appointing authority by his father as to whether the applicant has been suffering from the disability before he attained the age of 25 years and the handicap rendered him unable to earn a livelihood. Moreover, the applicant has passed + 3 Arts(H) and registered himself with the Employment Exchange as seen from the copy of Employment Exchange Registration Card issued by the Special Employment Exchange for PHP, Bhubaneswar. Further, the applicant is married as per copy of affidavit signed by Smt.R.Sarmila Devi before the Notary, Berhampur(Ganjam).

The above observation was intimated to the applicant on 28.10.2010. In reply to this, the applicant in his representation dated 24.11.2010 stated that he has married in the year 1998 to Smt.R.Sarmila Devi who is also semi blind woman and unable to find out any source of income with request to consider his pension case as such. He also submitted copy of disability certificate dated 22.11.2010 issued by the Asst.Professor, Ophthalmology, M.K.C.G. Medical College Hospital, Berhampur in which it has been certified that the applicant is born blind (100%) and



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unable to earn his livelihood. The representation dated 24.11.2010 along with copy of this medical certificate was sent to the Sr.Accounts Officer, O/o. the Director of Accounts (Postal), Cuttack on 14.12.2010, who thereafter, intimated on 19.01.2011 that **since the claimant, i.e, the applicant passed +3 Arts and registered himself with the Employment Exchange, it cannot be said that the applicant is incapable of earning his livelihood. Moreover, the applicant is married, such being the case, the applicant is not fulfilling the conditions required in Rule-54 of CCS(Pension) Rules, 1972 for sanction of family pension”.**

4. Heard Shri S.Kr.Rath, learned counsel for the applicant and Shri R.C.Behera, learned Addl.Central Govt. Standing Counsel, on whom a copy of the O.A. has been served appearing for the Respondents and perused the records.

5. Perusal of the order dated 30.8.2013, as quoted above, *prima facie*, gives a cue that the Respondent-Department have rejected the claim of the applicant on hypothetical consideration. In view of this, the sole point that arises for consideration is whether the reason of registering his name with the Employment Exchange makes him disqualified for family pension.

6. In this respect, Rule-54 of CCS(Pension) Rules, 1972 in an unequivocal terms lays down that family pension for life is admissible to such son or daughter of a Govt. servant suffering from any disorder or disability of mind or is physically crippled so as to render him or her unable to earn a livelihood even after attaining the age of 25 years .(Condition (iv) below the said proviso provides that the authority shall satisfy that the handicap is of such a nature that it prevents him or her from earning a livelihood and the same shall be evidenced by a medical certificate from the appropriate authority setting out as far as possible, the exact mental or

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physical condition of the child). Similarly, GID(27) below the said rule also provides that the sanction of family pension to such a dependent blind son or daughter will be subject to the condition that the son or daughter was suffering from the disability or blindness before attaining the age of 25 years because of which he or she was incapable of earning a livelihood and that he or she continues to suffer from the disability even after attaining the age of 25 years and the disability renders him or her incapable of earning his or her livelihood. In the above backdrop of the Rules, the authorities, as it appears from order dated 30.8.2013, are quite satisfied with regard to disability of the applicant which renders him incapable of earning his livelihood even after attaining the age of 25 years. But what prompted them to come to an indifferent conclusion is that the applicant having registered his name in the Employment Exchange cannot be considered incapable to earn his livelihood. This opinion, in my considered view, is not only beyond the purview of Rule-54 of CCS(Pension) Rules but a far-fetched inasmuch as while advancing such a proposition negating the claim of the applicant, in their own wisdom and sagacity, they ought to have embodied some authority in support thereof while issuing order dated 30.8.103. Registration of name in the Employment Exchange is an indispensable duty of an educated unemployed. This is too a liberty guaranteed under Article 16 of the Constitution of India. Therefore, mere registration of name in the Employment Exchange by the applicant, who is born blind and incapable to earn livelihood as certified by the Asst.Professor Ophthalmology, M.K.C.G.,Medical College Hospital, Berhampur and also admitted by the Respondent-Department in their



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order dated 30.8.2013 can by no stretch of imagination disqualify him from receiving family pension as has been mandated in Rule-54 of (CCS) Pension Rules. If at all any unforeseen situation takes place when the applicant gets an opportunity of employment, the Respondent-Department are not divested with the powers to take appropriate measures in so far as grant of family pension is concerned. Therefore, they are duty bound to weigh with the matter in the prevailing circumstances and nothing further.

7. In view of the above, the point in issue as raised above, is answered to the extent that reason of registering his name with the Employment Exchange does not make the applicant disqualified for family pension.

8. As regards the clarification issued in GID(26) below Rule-54 of CCS(Pension) Rules, 1972 the DOP & PW clarifying that the married sons and daughters, who are suffering from any disorder or disabled shall not be eligible for family pension, it is to be noted that in a similar matter before this Tribunal in O.A. No. 538 of 2012 decided on 19-8-2013 relying on OM dated 16.1.2013 and also the Notification dated 27.12.2012 amending Rule-54 of CCS(Pension) Rules, 1972, allowed the claim of family pension in favour of the applicant even after his marriage. Therefore, following the ratio as decided by this Tribunal in the said O.A., the applicant is entitled to family pension even after his marriage. Accordingly, order dated 30.8.2013(Annexure-A/15) is quashed.

Ordered accordingly.

In the result the O.A. is allowed to the extent indicated above. No costs.


(A.K.PATNAIK)
MEMBER(J)