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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00152 of 2014
Cuttack, this the 15th day of June, 2015

Lakhari @ Lakharai

Versus


Union of India & Ors.

..... Applicant

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No
2. Whether it be referred to PB for circulation? No


(R.C.MISRA)
Member (Admn.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. 260/00152 of 2014
Cuttack, this the 15th day of June, 2015

CORAM
HON'BLE SHRI R.C.MISRA, MEMBER (ADMN.)

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Lakhari @ Lakharai,
aged about 67 years,
Son of Late Aintha,
Retired Gang Man under I.W.I./Con./
S.E.Railway/Kharagpur/West Bengal,
At present C/o. Amarendra Nayak,
Nayak Enterprises, At-Ranibandhi,
PO-Chandikhole, Dist- Jajpur, Odisha.

...Applicant

(Advocates: M/s. J.Pradhan, N.R.Routray, T.K.Choudhury, S.K.Mohanty)

VERSUS

Union of India Represented through

1. General Manager,
South Eastern Railway,
Garden Reach,
Kolkata-43, West Bengal.
2. Deputy Chief Engineer (Con.),
South Eastern Railway,
At/PO- Kharagpur,
Dist- West Medinapur, West Bengal.
3. Senior Divisional Financial Manager/
South Eastern Railway,
Kharagpur Division, At/PO/Town- Kharagpur,
Dist- West Medinapur, West Bengal.
4. Director of Accounts Postal,
Orissa Circle, At/PO- Mahanadi Vihar,
Town/Dist- Cuttack.
5. Sub- Post Master,
Haridaspur Post Office,
At/PO- Haridaspur, Dist.-Jajpur.

... Respondents

Advocate(s)..... Mr. L. Jena, Mr. S.K.Ojha.

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ORDER

R.C.MISRA, MEMBER (ADMN.) :

The applicant in this O.A. has approached the Tribunal U/s 19 of the Administrative Tribunals Act, 1985 with a prayer that the order of rejection dated 12.2.2013 issued by Respondent authorities may be quashed, and the Respondents be directed to pay him Fixed Medical Allowance (in short FMA) w.e.f. April, 2005 to December, 2005 at the rate of Rs. 100/- per month and Rs. 300/- w.e.f. 2006 onwards with 12% interest for the delayed period of payment.


2. The short facts of the case are that the applicant was working as a Gangman in the Railways. After his retirement he was not paid his dues; therefore, he approached this Tribunal by filing O.A. No. 945/2009 which was disposed of on 23.10.2009, by issuing a direction to Respondents to dispose of the representation of the applicant. The Respondents in their letter dated 18.07.2011 sent to the applicant intimated about payment of arrear pension, commuted value of pension and monthly pension w.e.f. 01.07.2011. There was no order about fixed medical allowance, even though at the time of submission of pension papers, the applicant had applied for grant of fixed medical allowance. As per RBE No. 22/2008, pensioners who reside beyond 2.5 Kms from Railway hospitals, irrespective of the fact whether they are members or not of Retired Employees Liberalised Health Scheme (RELHS) are entitled for Fixed Medical Allowance of Rs. 300/- per month. After receiving the order dated 18.07.2011, applicant submitted a representation to Respondent No.2 making a prayer for grant of Fixed Medical Allowance and release of the arrears. Applicant in the representation categorically mentioned that he had submitted option for payment of medical allowance as his residence is more than 60 Kms from the nearest railway hospital. As per the



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Railway Circular, the applicant claimed his entitlement for medical allowance of Rs. 100/- from 01.04.2005 to December, 2005 and Rs. 300/- from 01.01.2006 onwards. This representation was not disposed of by the Respondents, and therefore, applicant being deprived of departmental remedy approached this Tribunal by filing O.A. No. 946/12 U/s 19 of the AT Act, 1985. The Tribunal vide order dated 20.12.2012 disposed of the O.A. at the stage of admission and directed the Respondents to consider the representation. In compliance of this order the Respondents disposed of the representation by issuing a speaking order dated 12.02.2013 in which they rejected the claim of the applicant on the ground that the applicant did not have 20 years of qualifying service and thus was not eligible for grant of fixed medical allowance. Challenging this order, applicant filed the present O.A.

3. In the O.A., the grounds taken by the applicant are that non-payment of fixed medical allowance to a retired employee in spite of his option after a lapse of several years is against the policy of the Railway Board. The applicant being a leprosy patient badly needs the fixed medical allowance. Further, it is pleaded that in terms of Railway Board's letter dated 23.10.1997, twenty years of qualifying service is required for an employee to be a member of RELHS, but not for grant of fixed medical allowance. Therefore, Respondent No.2 has wrongly rejected the prayer of the applicant.


4. The Respondents in this case have filed their counter affidavit. The only substantial point raised in the counter affidavit is that the circular relied upon by the applicant, i.e. RBE No. 22/08 is in addition to the conditions enumerated in Railway Board's letter dated 23.10.1997 circulated under S.E.Railway Sl. No. 165/1997, which clarifies that a person will be eligible to come under the RELHS



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Scheme only on completion of 20 years of qualifying service in the Railways. Even though, it is not mandatory to be an actual member to the scheme, it is necessary on the part of the employee to complete the eligibility criteria of 20 years of qualifying service making him eligible for granting the benefit of the scheme. RBE No. 22/2008 was issued as a clarification and does not supersede the Board's instructions dated 23.10.1997.

5. The Ld. Counsel for the applicant in his rejoinder has on the other hand contended that RBE No. 22/2008 is not the subsequent clarification to Railway Board's instructions dated 23.10.1997. It is an independent instruction regarding grant of fixed medical allowance. A pensioner/family pensioner is eligible to get fixed medical allowance and for the grant of said benefit no specific qualifying service is required. The Ld. Counsel has filed his written notes in which he has reiterated that he is eligible for grant of fixed medical allowance. He has further pleaded that his case should be treated as a special case, since he is a leprosy patient, and free medical treatment should be provided to him on humanitarian grounds. Ld. Counsel for the Respondents in his written notes has re-emphasized his arguments made in the counter affidavit.

6. Having heard Ld. Counsels from both sides, I have also perused the records. The speaking order dated 12.02.2013 mentions that in terms of RBE No. 22/2008, Fixed Medical Allowance is granted to only those Railway pensioners/family pensioners who reside beyond 2.5 Kms from Railway Hospitals/Health Units, irrespective of the fact whether they are members or not, of RELHS, but the pensioner is required to be eligible for being enrolled under a health scheme, in terms of Board's letter No. 97/H/28/1 dated 23.10.1997 and actual enrolment under the scheme is not compulsory. The speaking order goes on



to mention that in terms of letter No. 97/H/28/1 dated 23.10.1997 the eligibility criteria for the RELHS Scheme, i.e. minimum of 20 years of qualifying service in the Railway will be necessary for joining the scheme. Thereafter, in this order it is mentioned that as per the PPO, the applicant has not completed 20 years of qualifying service. His total length of qualifying service has been calculated as 13 years and 10 months.

7. The applicant claims his benefit under RBE No. 22/2008. The relevant portion of this RBE is quoted below.

“.....Fixed Medical Allowance is granted to only those Railway pensioners/Family pensioners who reside beyond 2.5 Kms from Railway Hospital/Health Units, irrespective of the fact whether they are members or not, of RELHS. It is reiterated that the pensioner is, however, required to be eligible for being enrolled under a health scheme, in terms of Board's letter No. 97/H/28/1, dated 23.10.1997 and actual enrolment under the scheme, is not compulsory. As regards the distance limit, it is clarified that the distance limit of 2.5 Kms, has been imposed by Hon'ble CAT/Ernakulam and subsequently, upheld by the Hon'ble Supreme Court. As such, altering this limit, or eliminating the same, is beyond the competence of the department. Railways are requested to dispose of cases pertaining to Fixed Medical Allowance, on the above lines.”

Railway Board's letter No. 97/H/28/1 dated 23.10.1997 addressed to General Managers of all Indian Railways and others stipulates that retired Railway employees covered under the Retired Employees Liberalised Health Scheme (RELHS) will be provided with full medical facilities as admissible to serving employees under the Railway medical Attendance Rules. The new scheme will be called RELHS-1997. The following eligibility is laid down.


“Minimum 20 years of qualifying service in the Railways will be necessary for joining the scheme and the following categories of persons will be eligible to join the same.



- i) All serving Railway employees desirous of joining the scheme will be eligible to join it in accordance with the procedure laid down herein under Mode of Joining.
- ii) All retired Railway employees who are presently members of the existing RELHS will automatically be included in RELHS-1997.
- iii) Spouse of the Railway employee who dies in harness."

8. It is, therefore, clear that the RBE which the applicant is relying upon stipulates that for payment of Fixed Medical Allowance, actual enrolment in the RELHS is not compulsory. However, the retired employee must meet the eligibility criteria for enrolment under a health scheme in terms of Board's letter No. 97/H/28/1 dated 23.10.1997. It is also the admitted position that the applicant had not completed 20 years of qualifying service in order to be eligible for the health scheme. It cannot, therefore, be said that the speaking order suffers from any defect on that score. The applicant has also made a prayer for grant of Fixed Medical Allowance on humanitarian grounds. But the Tribunal has to see the RBE No 22/2008 basing on which the claim has been made, and adjudge whether Respondents have correctly applied the guidelines to the disposal of the representation of the applicant. Having found that there was ^{no} ~~not~~ apparent bias, ^{no} prejudice or illegality in such application, I do not find it necessary to interfere with the order dated 12.02.2013 passed by the Respondent authorities.

9. The O.A. is resultantly dismissed, being devoid of merit. No costs.


(R.C.MISRA)
MEMBER (Admn.)