

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 551/2008

Dated this the 21st day of August, 2009.

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

E. Radhakrishnan S/o Kannankutty Nair
Retd. Chief Travelling Ticket Examiner
Southern Railway, Coimbatore
residing at 2/306, Rema Sadan
Old Kalpathy, Palghat-678 003.

.. Applicant

By Advocate M/s T.C. Govindaswamy, D. Heera, R.R. Rejitha and Shyam Raj G.

Vs

- 1 Union of India represented by
the General Manager
Southern Railway, Park Town PO
Chennai-3
- 2 The Sr. Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.
- 3 The Divisional Accounts Officer
Southern Railway, Palghat Division
Palghat.
- 4 The Divisional Railway Manager
Southern Railway Palghat Division
Palghat.
- 5 The Chief Personnel Officer
Southern Railway, Hqrs office,
Park Town PO, Chennai-3

.Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

The application having been heard on 31.7.2009 the Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a physically handicapped and son of a deceased railway pensioner, challenges Annexure A-6 and A-11 orders rejecting his request for family pension.

2 The applicant is the son of late A Kannankutty Nair, a retired railway employee. During 1991, the applicant was struck by Paralysis as a result of which both his limbs became immovable requiring prolonged treatment. Thus, he being a physically handicapped person with 75% disability, is incapable of earning a livelihood of his own. He was solely depending on his father. His mother had died on 9.7.1996. The applicant's father submitted an application for grant of family pension in favour of the applicant (A1). On repeated representation, applicant's father received a communication asking the applicant to get medically examined for ascertaining the percentage of disability (A-4). Before receipt of the above letter, his father passed away on 2.11.2004 due to heart attack. However, the applicant managed to appear for the medical examination at Railway Hospital itself and sent another representation (A-5). To the shock of the applicant he received Annexure A-6 reply stating that the medical authority observed that "though you are physically handicapped both upper limbs and mental functions are normal and hence you can still earn your livelihood." The applicant submitted appeal (A-8) and repeated representations and appeared before the DRM. He received Annexure A-11 letter rejecting his claim stating that he was paralysed after the age of 25 years, therefore he could not be granted family pension. He appeared before the Disability Assessment Board of District Hospital, Palakkad who assessed the disability to be 75% belonging to severe category. He submitted a mercy petition to the Railway Minister which was



followed by a number of reminders which were not responded. Hence he filed this O.A. mainly on the ground that in terms of Rule 75(6) of the Railway Servants (Pension) Rules, 1993 he is entitled to be granted family pension. He has also relied on the decision of the Tribunal in a similar case in O.A. 693/05 and submitted that there is no provision in the rules enabling the medical authorities to decide whether ward of a railway servant physically or mentally handicapped is capable of earning a livelihood or not.

3 The respondents in their reply statement submitted that according to the statutory rules in force, married sons and daughters suffering from any disorder or disability of mind including mentally retardation or physical handicap or disability shall not be eligible for family pension. In the case of the applicant he is married, the disability occurred after the age of 25 years hence, he is not eligible for family pension. They also denied that he is similarly situated like the applicant in O.A. 693/05.

4 Applicant filed rejoinder contending that the impugned orders are issued without authority, arbitrary, illegal and unsustainable stating that the applicant was fully dependent on the deceased railway pensioner since 1991. He also disputed the opinion of the Chief Medical Superintendent, Palghat that the applicant can still earn his livelihood and produced Annexure A-16 certificate from the Disability Assessment Board, District Hospital, Palakkad in support of his argument that he is 75% disabled.

5 The respondents have filed additional reply to the rejoinder reiterating their stand in the reply statement and Annexure R-2.

6 We have heard learned counsel for the parties at length and perused the documents produced before us.



7 According to the rules in force, grant of family pension is permissible to son/daughter of a Railway servant suffering from any disorder or disability of mind or physically crippled or disabled before attaining the age of 25 years because of which he/she was incapable of earning his/her livelihood and he/she continue to suffer even after attaining the age of 25 years and the disability renders him/her incapable of earning his/her livelihood. The sanctioning authority shall satisfy that the handicap is such as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Divisional Medical Officer setting out as far as possible the exact mental or physical condition of the child.

8 There is no dispute that the applicant was over 25 years of age, was employed in Dubai and in March, 1991 he was immobilized due to paralysis of both lower limbs from hip onwards. It is also seen that the applicant was depending on his father, a pensioner of the Railways, after paralysis. There is no dispute that nobody in the family of the deceased railway pensioner is receiving any family pension. It is also a fact that the Railway Authorities wanted to ascertain the disability of the applicant in good faith under the impression that he is eligible for consideration of family pension. According to the Railway Chief Medical Superintendent, Palghat, the applicant can still earn his livelihood. The applicant has disputed the opinion of the Railway Doctor by producing the medical certificate from the Disability Assessment Board, District Hospital, Palakkad according to which "the applicant has Orthopedics, handicapped-Motor neurone disease with weakness of all four limbs and with permanent disability of 75% belongs to severe category".

9 The respondents have also relied on Annexure R-2 clarification issued by the Railway Board on 10.8.2005 that married sons and daughters who are suffering from any disorder or disability of mind, including daughters

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who are suffering from any disorder or disability of mind including mentally retarded or physically crippled or disabled shall not be eligible for family pension.

10 The respondents by their direction to the applicant to undergo a medical check up to ascertain the disability has sowed a seed of reasonable expectation in the mind of the applicant that he is entitled to receive the family pension but the only dispute was whether he was able to earn a livelihood with his disability. It was never brought to the knowledge of the applicant that having crossed the age of 25 years and being married he was not eligible for family pension in accordance with the rules in force.

11 The applicant relied on the order of this Tribunal in O.A. 693/2005 which was also for grant of family pension to the son of a Railway family pensioner. The case of the applicant in that O.A. who was also aged over 50, was that though he was assessed to be 60% disabled, his request for family pension was rejected by the respondents on the ground that the Doctor who examined him remarked that "he can still earn a livelihood for himself as he is able to walk with a stick and both his upper limbs and mental function are normal". In that case too, the respondents have raised the very same contention that "married sons and daughters who are suffering from disorder or disability of mind including mentally retarded or physically crippled or disabled shall not be eligible for any family pension and that the applicant is a married person. In that O.A. the Tribunal allowed the O.A. declaring that the applicant is entitled to family pension in accordance with provisions of sub rule 6 of Rule 75 of the Railway Service Pension Rules and in terms of provision (b) thereof. The case of the applicant is similar to the applicant in O.A.693/2005. The applicant in O.A. 693/05 was married and over 25 years when he sought family pension. The applicant is also married and over 25 years when the application for family pension was submitted. The applicant in

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that case was handicapped by an accident whereas the applicant in the case on hand was handicapped due to paralysis. In both the cases, the applicants have no income of their own and were depending on the pensioners.

12 The case of the applicant is also more serious one. He was depending on the pension of his father. Now there is no other means of income to support him and his family. His mother died prior to the death of his father. Nobody in the family is receiving family pension. He was given a reasonable expectation that he is entitled to be granted family pension on the basis of a medical certificate obtained from a Medical Officer not below the rank of a Divisional Medical Officer. We do not agree with the opinion of the Railway Doctor that the applicant is able to earn a livelihood at this age with the present disability. In the present scenario, in Kerala, where employment looms large, even educated healthy youth are driven to seek jobs in other States in India and abroad to earn a livelihood to support themselves and their families. The applicant is above 50 years and cannot move around without the help of others. According to the learned counsel for the applicant, he had to be carried by other people, to get his medical examination done. Therefore, being disabled and overaged, it is against all odds for the applicant to secure a job to look after himself and his family. Therefore, he is entitled to be granted family pension under sub clause 6(ii)(b) of Rule 75.

13 In view of the above discussion, we follow the decision of the Tribunal in O.A. 693/2005 and allow the O.A. and quash Annexures A-6 and A-11. The applicant is declared to be entitled to family pension in accordance with provisions of sub rule 6(ii)(b) of Rule 75 of the Railway Service Pension rules and the respondents are therefore directed to consider grant of family pension to the applicant w.e.f. 2.11.2004. The arrears shall be paid as early as possible, at any rate, within three months from the date of receipt of a copy of this order. However, we make it clear that this order is passed in the

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facts and circumstances of the case and shall not be quoted as a precedent for grant of family pension. No costs.

Dated 21st August, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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