

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.146/04

Tuesday this the 14th day of September 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

K.Dhanarathinam,
S/o.K.Chamy,
residing at Kayal Veedu,
P.O. Akalur, (Via) Ottapalam,
Palakkad - 679 302.

Applicant

(By Advocate Mr.V.Chitambaresh)

Versus

1. Union of India represented by
the Secretary to Government,
Ministry of Railways, New Delhi.

2. The Divisional Railway Manager
Southern Railways,
Railway Division Office,
Palakkad.

3. The Divisional Personnel Officer,
Southern Railway,
Divisional Office,
Personnel Branch, Palakkad.

Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 14th September 2004
the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN


The applicant is son of late K.Chamy who while working as Cabin Man, Lakkidi retired on superannuation on 3.3.1976 and expired on 21.6.1997. On the death of Chamy family pension was being received by his mother who also died on 20.12.1997. The applicant claiming to be a physically handicapped person entitled to receive family pension submitted a request for grant of family pension. After examining the applicant Senior Divisional Medical Officer issued a certificate Annexure A-4, the last part of which reads thus :

a

Patient is permanently physically handicapped, but he can still earn a livelihood for himself as he is able to walk with a stick & as his both upper limbs and mental function are normal. So patient is not eligible for family pension.

2. On the basis of this certificate the 3rd respondent issued Annexure A-5 order rejecting the claim of the applicant for family pension on the ground that the applicant was examined by Chief Medical Supdt./Southern Railway, Palakkad on 24.7.2003, that it was opined that though he was physically handicapped his both upper limbs and right lower limbs and mental function are normal he could still earn his livelihood. Aggrieved by that the applicant has filed this application seeking to set aside Annexure A-5 order and for a direction to the respondents to sanction family pension to the applicant on account of the death of father and mother taking into account his physical disability and inability to earn his own livelihood. It is alleged in the application that the applicant is not able to do any work and earn his livelihood and therefore the rejection of the applicant's claim is wholly unjustified and arbitrary.


3. Respondents in their reply statement contend that in terms of Rule 75 of Railway Service Pension Rules, 1993 family pension can be awarded to disabled son or daughter only if the competent authority is satisfied on the basis of certificate obtained from a Medical Officer not below the rank of Divisional Medical Officer certifying that the person is not able to earn a living. Because the Chief Medical Supdt. in its letter Annexure R-1 opined that the applicant is capable of earning a living the action on the part of the respondents in rejecting the claim for family pension is well within the rules and cannot be faulted contend the respondents.



4. I have carefully gone through the entire material placed on record and have heard Shri.V.Chitambaresh learned counsel of the applicant and Shri.Thomas Mathew Nellimoottil, the Standing Counsel appearing for the respondents. A scrutiny of Annexure R-1 shows that the Chief Medical Supdt. Palakkad has not examined the applicant. It is profitable to quote the text of Annexure R-1.

With reference to the above Shri.K.Dhanarathinam, S/o.late Shri.K.Chamy, Ex-C.Man/LDY has been examined by Sr.DMO/Ortho/PGT on 24.7.2003 and opined as "Though he is physically handicapped his both upper limbs and right lower limb and mental function are normal" And hence he can still earn his livelihood. He is therefore not eligible to receive family pension.

5. It is evident from what is quoted above that the applicant was examined by Sr.DMO on 24.7.2003 and not by the Chief Medical Supdt.. A copy of the certificate issued by the doctor who examined the applicant at the Railway Hospital has been produced by the applicant as Annexure A-4. A reading of Annexure A-4 would show that the applicant is able to walk only with a stick on account of crush injury to his lower limbs. In the nature of the disability mentioned in the certificate, the opinion of the Medical Officer who examined the applicant that the applicant could still be able to earn his livelihood does not appear to be reasonable at all. As per sub clause (b) of sub rule (6) of Rule 75 the sanctioning authority has to satisfy that the handicap is of such nature which would prevent the person from earning his livelihood on the basis of the certificate issued by the Medical Officer not below the rank of Divisional Medical Officer setting out as far as possible the exact mental or physical condition of the child or person. The DMO has only to examine and issue certificate setting out the exact mental and physical condition.



Whether under such physical and mental condition a person would be able to earn a living independently has to be arrived at by the sanctioning authority applying its mind. While issuing the Annexure A-5 order solely basing on the Annexure R-1 letter, I am of the view that the 3rd respondent the Divisional Personnel Officer, Southern Railway, Palakkad has not applied his mind to the facts, that the disability noted in Annexure A-4 is such that it had made the individual unable to walk without the aid of a stick and therefore incapable of making a living by doing manual labour especially in the wake of acute unemployment situation in the State. The decision contained in Annexure A-5 to reject the lawful claim for family pension is wholly perverse, arbitrary and unsustainable in law.

6. In the light of what is stated above the application is allowed setting aside the impugned order Annexure A-5 and directing the respondents to grant the family pension to the applicant who is disabled by physical handicap to earn his own living with effect from the date of death of the applicant's mother i.e. 20.12.1997 and to make available to him the family pension with arrears within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(Dated the 14th day of September 2004)



A.V. HARIDASAN
VICE CHAIRMAN

asp