

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 274 of 2013

FRIDAY, this the 25th day of July, 2014

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
 Hon'ble Mr. P.K. Pradhan, Administrative Member

A.M. Shaji, aged 54 years, S/o. R. Mani (late),
 (Retired Gate Keeper/Permanent Way/Southern Railway/
 Chalakudy Railway Station/Trivandrum Division),
 Residing at : Arangali House, Muringoor Post,
 (via) Chalakudy, Trichur District, Pin – 680 316.

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Headquarters Office, Park Town P.O.,
 Chennai – 600 003.
2. The Divisional Personnel Officer, Southern Railway,
 Trivandrum Division, Thiruvananthapuram-695 014.
3. The Divisional Finance Manager,
 Southern Railway, Trivandrum Division,
 Thiruvananthapuram – 695 014.
4. The Divisional Railway Manager, Southern Railway,
 Trivandrum Division, Thiruvananthapuram-
 695 014.

..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 03.07.2014, the Tribunal on

25-07-2014 delivered the following:

ORDER

By Hon'ble Mr. U. Sarathchandran, Judicial Member-

The applicant is seeking family pension consequent to the demise of his

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mother who was the original family pensioner after the death of his father Shri R. Mani who retired from Railway service as Gate Keeper under the Chalakudy Railway Station. Shri R. Mani passed away on 25.8.2006. Thereafter applicant's mother was the recipient of family pension. She passed away on 14.6.2010. Applicant states that he is a physically handicapped person with more than 40% disability and is incapable of earning a livelihood of his own. He states that he was depending on his deceased father subsequent to an attack of paralysis occurred during the early 1990's. The applicant's father with his meager pension was meeting the expenses relating to the treatment of applicant. After his death applicant became dependent on his mother who was the family pensioner after father's death. During the life time of the applicant's mother she submitted Annexure A1 representation to the 2nd respondent requesting for including the applicant also as a beneficiary of the family pension. There was no response to Annexure A1 till the death of his mother and thereafter the matter was taken up by the applicant with the help of some of his friends. The applicant submitted Annexures A2 to A7 certificates showing his entitlement for family pension. Annexure A8 is the representation dated 15.11.2010 submitted by the applicant for this purpose. He had obtained Annexure A9 series no objection certificate from his other siblings who are all married and living separately. He had also submitted Annexure A10 certificate to indicate that he is unmarried. Applicant was thereafter called by the respondents vide Annexure A11 communication directing for presenting himself before the Chief Medical Superintendent, Thiruvananthapuram Petta for medical examination. After the medical examination, vide Annexure A12 communication dated 3.12.2012 the



respondent No. 2 informed the applicant that his request was rejected.

Applicant therefore, has come to this Tribunal seeking the following reliefs:-

- "(i) Call for the records leading to the issue of A12 and quash the same;
- (ii) Declare that the applicant is entitled to be granted family pension consequent upon the demise of his mother with effect from 15.6.2010;
- (iii) Direct the respondents to grant the applicant family pension with effect from 15.6.2010;
- (iii) Direct the respondents to grant the applicant family pension with effect from 15.6.2010, with all consequential arrears of pension and dearness relief etc. emanating therefrom;
- (iv) Award costs of and incidental to this Application;
- (v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The respondents filed a reply with the following contentions: The various documents produced by the applicant copies of which are annexed to the OA are not sustainable in the absence of a declaration by the ex-employee in proof of the father and son relationship. The medical certificate issued by the Railway Medical authority is not questionable. The request made by the applicant's mother vide Annexure A1 the same was not allowable as per rules because the family pension would not have been given to a person when the eligible widow-family pensioner was alive. According to the respondents as per Rule 75(6) of the Railway Services (Pension) Rules, 1993 are applicable only in cases of declaration by the employee himself and not in the case of declaration by anybody else including the family pensioner. Respondents pray for rejecting the Original Application.

3. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and the learned counsel for the respondents.

4. Annexure A12 is the impugned order whereby the claim of the applicant was rejected. It reads thus:-

.....

Sub.: Sanctioning of Family Pension.

Ref.: Your representation dt. 15.11.2010.

Your representation dtd. 15.11.2010 has been examined in details the Divisional Medical Committee has examined you and advised that the handicap does not prevent you from earning your livelihood and you are fit for sedentary jobs. Hence, your request for sanction of family pension cannot be considered.

Yours faithfully,

Sd/-

(M. Sunitha)

Assistant Personnel Officer
for Divisional Personnel Officer"

5. The relevant rule governing family pension for disabled dependent is the proviso to Clause (iii) of Sub Rule (6) of Rule 75 of Railway Services (Pension) Rules, 1993. It reads thus:-

"75. Family Pension Scheme for railway servants, 1964: -

(6) The period for which family pension is payable shall be as follows: -

- (i) in the case of a widow or widower, up to the date of death or remarriage, whichever is earlier;
- (ii) in the case of a son, until he attains the age of twenty five years; and
- (iii) in the case of an unmarried daughter, until she attains the age of twenty five years or until she gets married, whichever is earlier:

Provided that if the son or daughter, of a railway servant is suffering from any disorder or disability of mind including mentally retarded or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-five years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely: -

- (a) the family pension shall be paid to such sons or daughters through the guardian as if he or she were a minor on the basis of guardianship certificate or the guardian appointed by a court except in the case of physically crippled son / daughter who has attained the age of majority.

(Note: - Notification vide letter no. F (E) III/94/PN-1/31 (Amendment) dated 3.2.95 SO No. 511)

- (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, prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from Medical Board setting out, as far as possible, the exact mental or physical condition of the child;

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(Note: - Notification vide letter no. F (E) III/2008/PN 1/10 dated 22.10.08)

(c) the person receiving the family pension as a guardian of such son or daughter shall produce, once, if the disability is permanent, and once in every five years, if the disability is temporary, a certificate from a Medical Board to the effect that the son or daughter continues to suffer from disorder or disability of mind including mentally retarded or continues to be physically crippled or disabled.

(Note: - Notification vide letter no. F (E) III/2008/PN 1/10 dated 22.10.08)

(2) A daughter shall become ineligible for family pension under this sub-rule from the date she gets married.

(3) The family pension payable to such a son or daughter shall be stopped if he or she starts earning his or her livelihood.

(4) In such cases it shall be the duty of the guardian to furnish a certificate to the Treasury or Bank, or Post Office (Authorised disbursement units for Railways), as the case may be, every month that (i) he or she has not started earning his or her livelihood; (ii) in case of daughter that she has not yet married;

(d) in the case of mentally retarded son or daughter, the family pension shall be payable to a person nominated by the railway servant or the pensioner, as the case may be, and in case no such nomination has been furnished to the Head of Office by such Railway servant or pensioner during his life time, to the person nominated by the spouse of such Railway servant or family pensioner, as the case may be, later on.

(e) If the sons and unmarried daughters including sons and unmarried daughters suffering from disorder or disability of mind including mentally retarded are alive, the family pension shall be payable in the order of their birth irrespective of the sex of the child and the younger of him shall not be eligible for family pension unless the elder above him or her becomes ineligible for the grant of family pension. In cases, where the family pension is payable to twin children, the same shall be payable to such twin children in equal shares and in the event of any of such children ceasing to be eligible for family pension, his or her share of family pension shall not lapse but shall become payable to the other such child and when both such children become ineligible for family pension, the family pension shall become payable to the next eligible single child or twin, as the case may be."

(words in bold letters are introduced by recent amendments)

6. In the instant case when Annexure A8 representation dated 15.11.2010 was made by the applicant, respondents vide Annexure A11 communication dated 17.9.2012 directed the applicant to be present before the Chief Medical Superintendent, Thiruvananthapuram for the medical examination. Annexure A11 reads as follows:-



.....
 As per the documents submitted by you, it is seen that you are the next eligible member in the family of Late R. Mani, Retd.GK/PW/CKI for grant of family pension. For considering your request for grant of Family Pension, you are requested to present before CMS/TVP for a Medical examination. While attending the medical examination you are requested produce the copy of the proceedings of the Medical Board and two copies of recently taken passport size photograph

The date and venue of medical examination will be advised by CMS/TVP.

Sd/-
 (V.K. Sivakumar)
 Assistant Personnel Officer,
 For Sr. Divisional Personnel Officer

Copy : CMS/TVP is requested to fix a suitable date for examination and advise to Shri A.M. Shaji. After medical examination this office may be advised whether the handicap is of "prevent him from earning his livelihood" of other wise, so that the matter can be examined further."

7. It appears that Annexure A12 impugned order rejecting the applicant's request for family pension was based on the advise of the Divisional Medical Committee that the applicant's handicap does not prevent him from earning livelihood of himself and that he is fit for sedentary jobs. Sub clause (b) of Clause (iii) of Sub Rule (6) of Rule 75 of Railway Services (Pension) Rules, 1993 stipulates that the sanctioning authority shall satisfy that the handicap of a dependent son is such to prevent him or her from earning his or her livelihood. The aforesaid sub clause further states that the same shall be evidenced by a certificate obtained by the Medical Board setting out the mental or physical condition of the person. Thus as per the provisions in sub rule (6) the authority to be satisfied about the earning capacity of disabled family pension is the sanctioning authority himself whereas the Medical authority has the role to issue a certificate setting out, as far as possible the exact mental and physical condition of the said person. In the instant case by Annexure A11 the respondents have directed the Chief Medical Officer.

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Thiruvananthapuram for an advise as to whether the handicap is of "prevent him from earning his livelihood" or otherwise. As stated earlier the Doctors' role is to issue a certificate setting out the exact mental or physical condition of the person seeking family pension, based on his disability. Here, a perusal of Annexure A2 shows that the sanctioning authority of family pension was guided by the Doctors' advice rather than applying his mind on the realities in respect of the applicant's capacity for earning his livelihood.

8. True, in cases where family pension is sought by a handicapped dependent son or daughter, the ability of such persons to earn a livelihood for themselves despite the handicap, is an important criteria to be taken into consideration. In other words the handicap of such person should be coextensive to their inability to earn a livelihood for themselves. In the instant case the applicant, as per the certificate issued by the District Medical Board for the Physically Handicapped, Trichur (Annexure A6), has a permanent disability of 45% on account of "CVA left side hemiplegia". The applicant has stated in the OA that he was totally dependent on his deceased father after acquiring the disability in the early 1990's and after his father's death he was depending on the meager family pension received by his mother. It has been stated by the applicant that he is remaining unmarried because of his disabilities. The Annexure A5 certificate issued by the Tehsildar indicates that the applicant is unemployed.

9. Learned counsel for the applicant relied on a decision of this Tribunal in *K. Dhanarathinam v. Union of India & Ors.* - OA No. 693 of 2005 as a



case with identical situation. The applicant in that case had filed OA No. 146 of 2004 before this Tribunal. While modifying the order of this Tribunal in that case in WP(C) No. 1757 of 2005 Hon'ble High Court observed as under:

"10. We also feel that the matter should be examined with an utmost sympathy and a pure technical approach is not at all expected. As rightly pointed out by the learned counsel for the 1st respondent the provisions and the rules are intended to subserve the interest of persons who are crippled and disabled and the difficulty of even a qualified person to get a job to support himself should not go unnoticed. As the delay in proper consideration of the issue has substantially arisen from the lethargy of the Railway authorities, we also direct that the 1st respondent will be entitled to costs of Rs. 5,000/- (Rupees five thousand only) which is to be paid within one month."

10. Thus, it goes without saying that the case of the applicant in the present OA too requires a sympathetic consideration, rather than employing a pedantic and technical approach.

11. The next contention of the respondents was that the deceased employee – father of the applicant had not made a declaration in proof of the father and son relationship between the ex-employee-pensioner and the applicant. In paragraph 17 of the reply filed by the respondents the said plea has been reiterated stating that the rules in paragraph 75(6) of the Railway Services (Pension) Rules, 1993 are applicable only in cases of declaration by the employee himself and not in the case of declaration by anybody else including the family pensioner. This Tribunal is unable to accept this contention in the light of the observations made by the Hon'ble Supreme Court of India in *Smt. Violet Issac & Ors. v. Union of India* – 1991 (1) SCC 725. In that case the Apex court observed as under:-

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The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The Family Pension Scheme is in the nature of a welfare scheme framed by the Railway Administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his life time for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

5. In Jodh Singh v. Union of India & Anr., this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The Court observed:

"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."

The Court further held:

"[W]hat was not payable during the life time of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition."

(emphasis supplied)

In the above decision the Apex Court has made it clear that the rules do not provide for nomination of any person by the deceased employee during his life time for payment of the family pension because the employee has no control over the family pension which is a welfare scheme to provide relief to the widow and other dependents of the deceased employee. The Court observed that the deceased has no power of disposition over the family

pension.

12. In the circumstance this Tribunal is of the view that the family pension being a welfare scheme incorporated in the Railway Services (Pension) Rules, 1993 conferring monetary benefit on the eligible dependents of the deceased Government employee, it is the look out of the Railway to ascertain the eligibility of such dependents of the deceased Railway employee. This Tribunal takes note that there is a Welfare Department in the Railways. It is the look out of the officials in the Welfare Department to ascertain the eligibility of dependents of deceased Railway employee to receive family pension. On a request from such a claimant eligible to receive family pension being a welfare scheme to provide relief to the dependents of the deceased employee, the Railway shall not shoo away such applicants on the ground that the deceased employee had not made any declarations during his life time regarding the persons entitled to receive family pension. As can be discerned from the *ratio* of *Violet Issac's* case the employee has no control over the family pension since he is not required to make any contribution to it. Since family pension does not form a part of his estate and since it is a welfare measure provided by the Railway itself, it was not obligatory on the part of the deceased employee to make such declarations even though Sub Rule 15 of Rule 75 requires a Railway servant to furnish details of his family in form No. (6). But such declaration can never be treated as a nomination to receive family pension. Eligibility of a dependent to receive Family Pension is governed by Rule 75; not based on the declaration made by the employee.

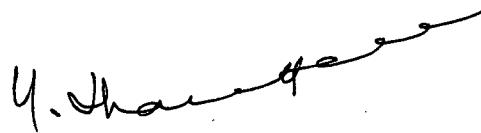
13. In the light of the law laid down by the Apex Court and in the circumstances of this case this Tribunal is of the opinion that Annexure A12 decision requires re-consideration by the competent authority of the respondent Railway. Accordingly, Annexure A12 is hereby quashed and set aside. The respondents are directed to reconsider Annexure A8 request of the applicant in the light of the observations made in this order and also in the light of the records produced by the applicant in this OA. This exercise shall be completed by the respondents within two months from the date of receipt of a copy of this order. The decision so taken shall be communicated to the applicant forthwith.

14. The Original Application is disposed of accordingly. No order as to costs.



(P.K. PRADHAN)
ADMINISTRATIVE MEMBER

“SA”



(U. SARATHCHANDRAN)
JUDICIAL MEMBER