

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.No.060/00731/2014

Orders pronounced on: 2.12.2015
(Orders reserved on: 24.11.2015)CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Rachhpal Singh son of Faqir Singh
 resident of Village Kothey Mukaddam
 PO Hariana, Tehsil and Dist. Hoshiarpur.

Applicant

Versus

1. Union of India through
 Secretary,
 Ministry of Railway,
 Government of India,
 New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. Chief Commercial Manager, Northern Railway, Baroda House, New Delhi.
4. Divisional Railway Manager, Northern Railway, Ferozpur Cantt.
5. Senior Divisional Personnel Officer, Northern Railway, Ferozepur Cantt. Ferozepur.

Respondents

Present: Mr. Balram Singh, counsel for the applicant.
 Mr. Lakhinder Singh, counsel for the Respondents.

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The challenge in this Original Application is to order dated 2.11.2011 11.7.2014 (A-1) vide which the request of the applicant for grant of disability pension has been rejected and he has been allowed invalid pension and for issuance of direction to the respondents to grant him disability pension as well as attendance allowance under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
2. The facts which led to filing of the instant Original Application are that the applicant joined respondent Railways on 24.10.1978 in Diesel Loco Shed Ludhiana. In the year 1980, he was promoted as Diesel Cleaner (Electrical) and then as Technician Grade-III on 27.6.1981. He was promoted as Technician Grade-II on 1.1.1984. He was promoted as Technician Grade I on 13.7.1990. In 2001-02, the applicant working as Officiating Junior Engineer. Due to nature of job performed by him, he got problems in the eyes and ultimately he was examined by the Railway Medical Board and declared permanent unfit vide letter dated 8.6.2005 (A-2). AS per this certificate applicant got 100% blindness out of service and was invalidated which took place during the course of employment and amounts to disability and as such he was entitled to disability pension.

3. Due to his blindness, the applicant could not pursue his matter in proper manner and came back to his village. The son of the applicant was offered appointment on compassionate ground as Apprentice in Technical Mechanical, DMU Car Shed, Jalandhar City on 1.4.2006. However, he died on 30.7.2011 an accident. The applicant also got 75% disability as there is amputation on right lower leg. The applicant submitted a representation to the respondent for grant of attendance allowance @ Rs.3000/- as permissible as per letter No. F(E)(III) 208/PN-1/13 dated 15.9.2008. However, the claim of the applicant has been rejected on the ground that he is in receipt of invalid pension and not disability pension. The applicant filed O.A.No. 789/PB/2012 in this Tribunal which was disposed of on 30.7.2013 directing the applicant to make a comprehensive representation to the respondents which was to be decided by the authorities. However, vide letter / order dated 11.7.2014 his claim has been rejected without application of mind, hence the Original Application.

4. The respondents have opposed the Original Application by filing a detailed reply. They submit that applicant on being declared medically unfit was allowed to retire on medical grounds w.e.f. 23.7.2005 and granted Invalid Pension under rule 55 of Railway Services Pension Rules, 1993. He was allowed pension, GIS, DCRG and Pension Commutation. His son was also appointed as

Apprentice in Technical / Mechanical DMU Car Shed Jalandhar on compassionate grounds. Unfortunately, he died on 30.7.2011 after 6 years of service. The applicant claimed Attendance Allowance which was rejected on 2.3.2012. He was neither entitled nor granted Disability Pension under Disability Pension under the Railway Services (Extra Ordinary Pension) Rules, 1993 and Railway Board Circular RBE 39/2000 which is granted under specific conditions and not as a matter of routine.

5. I have heard learned counsel for the parties at length and given my thoughtful consideration to the entire matter and perused the material on the file.
6. It is not in dispute that the applicant was declared permanently unfit due to problem in his eyes and was allowed to retire from service. Rule 55 of the Railway Services Pension Rules, 1993 deals with grant of invalid pension which is reproduced as under :-

"55. Invalid Pension- (1) Invalid pension may be granted to a railway servant who retires from service on account of any bodily or mental infirmity, which permanently incapacitates him for the service.

(2) A railway servant applying for an invalid pension shall submit a medical certificate, from a duly constituted medical authority, of his permanent incapacity for service due to bodily or mental infirmity.

(3) Where the medical authority referred to in sub-rule (2) has declared a railway servant fit for further service of less laborious character than that which he had been doing he should, provided he is willing to be so employed, be employed on a lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(4) A railway servant may, if he considers that he is not in a fit state of health to discharge his duties, apply to the appropriate authority for retirement on invalid gratuity or pension."

7. In pursuance of aforesaid rules, the applicant had applied for grant of invalid pension and was granted the same after bodily infirmity which made him permanently incapacitated for the service.

8. In pursuance of the The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the Government has issued R.B.E. No. 8/2000 dated 18.1.2000 providing that "in cases where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he may be allowed to opt for retirement. In such cases request for appointment on compassionate ground to an eligible ward may be considered". In pursuance of such decision and on request of the applicant he was allowed to retire and his son was also

given appointment as Apprentice. It is a different matter that after few years of service, he died in an accident.

9. The claim of Disability Pension is governed by Railway Services (Extra Ordinary Pension) Rules, 1993 and the O.M. dated 3.2.2000 (Annexure R-2) issued by the Railway Board under which disability pension is granted under categories B to E where "Disability is attributable to the nature of his duties i.e. caused or aggravated by the nature of his job. It is provided that Disability pension is not admissible where medical incapacity is due to natural causes not attributable to Railway Service. The Attendant Allowance of Rs.3000/- is also permissible if the Disability Pension is 100% and retiree is completely dependent on someone else for day to day functions. In this case the applicant had been given invalid pension in 2005 as his medical disability for Railway Service was not 100% and that it was attributable to the nature of his duties i.e. caused or aggravated by the nature of his job. The court agrees with the plea of the respondents that the applicant continued drawing Invalid Pension which does not carry with it attendant allowance, for 7 years from 2005 to 2012 without any protest and has now filed a claim in this Tribunal. The 75% disability due to amputation of lower limb gives no indication as to when the applicant suffered this disability.

circumstances i.e. where disability is attributable to the nature of one's duties caused or aggravated by the nature of his job. It is not admissible where medical incapacity is due to natural causes not attributable to Railway Service. In this case, the court has not been shown any material to indicate that the incapacity suffered by the applicant was caused or aggravated on account of nature of job performed by the applicant in the respondent Railways. Thus, he cannot be allowed any benefit.

10. The Reliance placed by the applicant upon decisions of **Geetaben Ratilal Patel Vs. District Primary Education Officer** (SC), 2013 (4) SCT 180; decision of Chhattisgarh High Court in **R.P. Mishra Vs. UOI etc.** 2007 (5) MPHT (C.G)77, and our own High Court in **Roshni Devi vs. HVPN** (P&H), 2012 (1) CLR 889, is misconceived considering the specific facts of this case.
11. Considering the sequence of events of this case and the act and conduct of the applicant and the position as exists under the rules, I do not find any grounds made out to interfere with the impugned order and as such Original Application is found to be devoid of any merit and is dismissed accordingly, leaving the parties to bear their own costs.


(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.
Dated: 2.12.2015
HC*