

**Reserved**  
(On 10.08.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH ALLAHABAD**

Dated: This the 20<sup>th</sup> day of August 2018

**Hon'ble Mr. Gokul Chandra Pati, Member (A)**

**Original Application Number. 330/01327 of 2013**

Phuleshwar S/o Late SheoChand (Ex.G/Man/PWI/Bux), R/o Village – Deokali via Karhia, Pargana and Tehsil – Zamania, District Ghazipur.

.....Applicant.

By Adv: Shri Kamleshwar Singh

**VE R S U S**

1. The Union of India through its General Manager, Hajipur, East Central Railway, Bihar.
2. The Divisional Railway Manager Danapur, East Central Railway, Danapur Bihar.
3. The Senior Divisional Personnel Officer Danapur, East Central Railway, Danapur Bihar.
4. The Senior Divisional Finance Manager, East Central Railway, Danapur Bihar.

.....Respondents

By Adv: Shri Kamlesh Sharma

**O R D E R**

The applicant in the instant OA has prayed for the following reliefs:-

- i. To, issue a writ order or direction in the nature of certiorari quashing the impugned order dated 30/31.05.2006 passed by Sr. Divisional Personnel Officer Danapur (respondent no. 3) and order dated 01.06.2006 passed by the Sr. Divisional Finance Manager East Central Railway, Danapur (respondent No. 4),*
- ii. To, issue a writ order or direction in the nature of mandamus not to give effect the impugned orders or direct to respondents authority not to stop the family pension during the pendency of the present Original Application.*
- iii. To, issue any other writ order or direction s this Hon'ble Court may deem fit and proper.*
- iv. Award cost of the petition to the applicant."*

2. The facts of the case are that the applicant, being 100% blind and physically disabled, was getting the family pension as per the rules after death of his father on 25.03.1994, while in service of the

Railways. His elder brother was allowed appointment on compassionate ground and his younger brothers were allowed family pension till they became 25 years. Then the applicant being 100% blind as per the certificate of the Chief Medical Officer, Ghazipur (Annexure A-5), applied for family pension on the ground of physical disability. The same was considered by the respondents and it was sanctioned vide order dated 23.12.2005 (Annexure A-8) and it was disbursed to the applicant.

3. Thereafter, vide the impugned order dated 30/31.05.2006 (Annexure A-2 to the OA), the respondents cancelled the sanction order for family pension in view of the Railway Board letter dated 10.8.2005 and vide the order dated 1.6.2006 (Annexure A-1) instructed the bank to stop disbursement of family pension to the applicant and seize the balance amount of family pension available in the applicant's account. Both the orders have been impugned in this OA mainly on the following grounds as per the pleadings of the applicant:-

- The respondents had sanctioned the family pension in his favour, which was subsequently withdrawn by the impugned order.
- Under the Sub-rule 6 of the rule 375 of Railway Service (Extraordinary Pension) Rules, 1993, the applicant is entitled for the family pension even when he is married.
- The impugned order to cancel the family pension sanctioned in favour of the applicant violates the rule 375 sub rule 6 of the above rules.
- No opportunity of hearing was given before passing the impugned order.

4. The respondents have filed the Counter Reply, opposing the OA mainly on the following grounds:-

- The applicant failed to approach this Tribunal within limitation period as per the provisions of the Administrative Tribunals Act, 1985 and the OA is badly delayed, as it has been filed in 2013 to challenge the orders passed on 30/31.5.2006 and 1.6.2006.

- The issue was examined by the Railway Board in consultation with the Department of Pension and Pensioners' Welfare and it was clarified that the married sons and daughters are not entitled for family pension. As the applicant is married, he is not entitled for family pension.

5. In the Rejoinder, the applicant has referred to the Railway Board letter dated 15.01.2010 to state that as per this letter, the cases which were pending will be decided by excluding the married son or daughter on the ground of physical disability and since his case had already been decided, the said letter of Railway Board will not apply to his case.

6. Learned counsel for the applicant and the respondents were heard. The pleadings are carefully perused by me. It is seen that both the parties have not enclosed the copy of the circulars or the rules which have been referred by them in the pleadings. The respondents have stated in the pleadings and in the impugned order dated 30/31.05.2006 that as per the Railway Board letter dated 10.08.2005, by which the married sons and daughters suffering from disorder or disability are not entitled for family pension.

7. For the eligible railway servants, the family pension is sanctioned in accordance with the rule 75 of the Railway Services (Pension) Rules, 1993 and the said sub-rule 6 of the rule 75 states as under:-

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

***(i) subject to first proviso, in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;***

***(ii) subject to second proviso, in the case of an unmarried son, until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood, whichever is the earliest;***

***(iii) subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier;***

***(iv) subject to sub-rule (10 A), in the case of parents, who were wholly dependent on the railway servant immediately before the death of the railway servant, for life;***

**(v) subject to sub-rule (10 B) and the fourth proviso, in the case of disabled siblings (i.e. brother and sister) who were dependent on the railway servant immediately before the death of railway servant, for life:**

*Provided that family pension shall continue to be payable to a childless widow on re-marriage, if her income from all other sources is less than the amount of minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon:*

*Provided further that if the son or daughter of a railway servant is suffering from any disorder or disability of mind including the 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) if such son or daughter is one among two or more children of the railway servant, the family pension shall be initially payable to the minor children (mentioned in clause (ii) or clause (iii) of this sub-rule) in the order set out in clause (iii) of sub-rule (8) of this rule until the last child attains the age of twenty-five years and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind, including the mentally retarded, or who is physically crippled or disabled and shall be payable to him or her, for life;*

*(b) if there are more than one such children suffering from disorder or disability of mind including the mentally retarded or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them shall get the family pension only after the elder next above him or her ceases to be eligible:*

*Provided that where the family pension is payable to such twin children it shall be paid in the manner set out in clause (iv) of sub-rule (7) of this rule;*

*(c) the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor except in the case of the physically crippled son or daughter who has attained the age of majority;*

*(d) before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature so 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 Board comprising of a Medical Director or a Chief Medical Superintendent or incharge of a Zonal Hospital or Division or his nominee as Chairperson and two other members, out of which at least one shall be a specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child;*

*(e) the person receiving the family pension as guardian of such son or daughter or such son or daughter not receiving the family pension through a guardian shall produce a certificate, from a Medical Board comprising of a Medical Director or a Chief Medical Superintendent or incharge of a Zonal Hospital or Division or his nominee as Chairperson and two other members, out of which at least one shall be a specialist in the particular area of mental or physical disability including mental retardation, once, if the disability is permanent and if the disability is temporary, once in every five years to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled;*

**(f) in the case of a 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 lifetime, to the person nominated by the spouse of such railway servant or family pensioner, as the case may be, later on and the guardianship certificate issued under section 14 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 (44 of 1999), by a local level Committee, shall also be accepted for nomination or appointment of guardian for grant of family pension in respect of person(s) suffering from autism, cerebral palsy, mental retardation and multiple disabilities as specified in the said Act:**

**Provided that the grant or continuance of family pension to an unmarried or widowed or divorced daughter beyond the age of twenty-five years or until she gets married or re-married or until she starts earning her livelihood, whichever is the earliest, shall be subject to the following conditions, namely:-**

**(a) the family pension shall be initially payable to the minor children (mentioned in clause (ii) or clause (iii) of this sub-rule) in the order set out in clause (iii) of sub-rule (8) of this rule until the last minor child attains the age of twenty-five years; and**

**(b) there is no disabled child eligible to receive family pension in accordance with the second proviso of this sub-rule:**

**Provided that such disabled siblings shall be eligible for family pension for life in the same manner and following the same disability criteria, as laid down in this rule in the case of son or daughter of the railway employees or pensioners suffering from any disorder or disability of mind (including mentally retarded) or 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.**

**Explanation 1.- An unmarried son or an unmarried or widowed or divorced daughter, except a disabled son or daughter become ineligible for family pension under this sub-rule from the date he or she gets married or remarried.**

**Explanation 2.- The family pension payable to such a son or a daughter or parents or siblings shall be stopped if he or she or they start earning his or her or their livelihood.**

**Explanation 3.- It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that, (i) he or she has not started earning his or her livelihood, and (ii) he or she has not yet married or remarried and a similar certificate shall be furnished by a childless widow after her re-marriage or by the disabled son or daughter or parents to the Treasury or Bank, as the case may be, once in a year that she or he or they have not started earning her or his or their livelihood.**

**Explanation 4 .- For the purpose of this sub-rule, a member of the family shall be deemed to be earning his or her livelihood if his or her income from other sources is equal to or more than the minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon.**

**Explanation 5 .- Parent shall be deemed to be dependent on the railway servant if their combined income is less than the minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon.**

**Explanation 6.- Disabled sibling shall be deemed to be dependent on the railway servant if their income is less than the minimum family pension admissible under sub-rule (2) of this rule and dearness relief thereon.**

***Explanation 7 . - Family pension payable to a childless widow shall be stopped if, after re-marriage, her income from all other sources becomes equal to or exceeds the amount of minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon.***

***(Authority: Railway Board's letter No. 2011/F (E) III/1(1)9dated 23.09.13)"***

***(emphasis supplied)***

The sub-rule 6 of the rule 75 as extracted above, provides that the physically disabled son or daughter will be entitled for family pension as specified in the second proviso with the conditions, which imply that if such physically disabled child is unable to earn his/her livelihood, then he/she may be allowed family pension for life and the conditions do not stipulate that the married son or daughter with physical disability or mental disorder will not be eligible if they are incapable of earning their livelihood as per the report of the medical board specified in the condition (d) of the second proviso of the rule 75(6).

8. The Explanation 1 of the sub-rule 6 of the rule 75 as extracted above, states "An unmarried son or an unmarried or widowed or divorced daughter, except a disabled son or daughter become ineligible for family pension under this sub-rule from the date he or she gets married or remarried." This means that general rule that the unmarried son and unmarried daughter will be eligible for family pension till he/she gets married, is subject to exception for a disabled son or daughter who will be eligible even after marriage. Further, as stated under the said sub-rule, it is as per the Railway Board letter dated 23.09.2013, which will have the overriding effect over the Railway Board letter dated 10.08.2005 referred in the impugned order dated 30/31.05.2006. As stated earlier, the respondents have failed to enclose a copy of the Railway Board letter dated 10.08.2005 to examine if the said letter will have overriding effect on the provisions of the sub-rule 6 of the rule 75 of the Railway Services (Pension) Rules, 1993 as discussed above. In absence of specific details in the pleadings, it has to be presumed that the sub-rule 6 of the rule 75 will prevail, which will permit even the married son or married daughter to be eligible for family pension on the ground of disorder or disability subject to the conditions specified in the aforesaid rules 75.

9. It is noted that a similar controversy in respect of a deceased railway servant with a disabled and married son, was decided by

Ernakulam Bench of this Tribunal which was upheld by Hon'ble Kerala High Court in the case of Union Of India vs. K. Dhanarathinam in WP (C) No. 5441/2007 (S) ([indiankanoon.org/doc/1867626](http://indiankanoon.org/doc/1867626)) vide order dated 19.02.2007 and it was held as under:-

*"This writ petition is filed against an order passed by the Central Administrative Tribunal by which claim of the respondent for family pension as physically handicapped son of a deceased Railway Pensioner was allowed. The ground taken is that as the son is married, he is not a member of the family though he is handicapped. 'Family' is defined under Sub Rule 19(b) of Rule 75 of the Railway Services (Pension) Rules and son who has not attained the age of 25 years is a member of the family. Only unmarried daughters who have not attained the age of 25 years are included in the category of 'family'. With regard to the son, he will not lose the benefit merely because he is married and there is no such bar. As far as physical condition of the respondent was concerned, he has to walk with the help of two elbow crutches.*

*.....*  
*Even the Medical Board opined that he is not able to do any hard manual work. In the case of family pension matters of disabled dependents, of course, one has to look into the matter with compassion and sympathy. But, at the same time, rules cannot be violated. Central Administrative Tribunal found that the respondent is entitled to pension as per the Rules. We are in perfect agreement with the Tribunal.*

*State should not waste time and money in contesting such matters compelling the disabled dependents to contest in various courts. In any event, there is no patent illegality or perverse finding in the order of the Tribunal and this is not a fit case for attracting Article 227 of the Constitution of India."*

10. In another case of Indra Kumar Tiwari vs. Union of India in OA No. 387/2012 ([indiankanoon.org/doc/137376506](http://indiankanoon.org/doc/137376506)), decided by Jabalpur Bench of this Tribunal, it was held as under:-

*"6. It is not in dispute that after the death of the father of the applicant, applicant's mother and the widow of the deceased employee was getting family pension and she died in the year 2012 (Annexure A-3). Rule 54 of the CCS (Pension) Rules, 1972 deals with family pension. In terms of Proviso to Rule 54 (6) of the Pension Rules, sons or daughters of the government servant, suffering from any disorder or disability of any kind including mentally retarded or physically crippled or disabled, so as to render him or her unable to earn a living even after attaining the age of 25 years, is entitled for family pension.*

*7. The respondents by reference to the decision No.27 (GI) Railway Boards letter No. F(E) 3/2003/PNI/43, dated 10.08.2005 under Rule 54 of the CCS (Pension) Rules, have argued that the Government of India has clarified that the married sons and daughters, who are suffering from any disorder or disability of mind (including mentally retarded) or physically crippled or disabled would not be eligible for family pension. However, the Government of India set at rest the above dispute vide its office memorandum dated 16.01.2013, produced by the respondents themselves and taken on record, whereby it has been decided to allow continuous of family pension to mentally/physically disabled children, who drew, are drawing or may draw family pension even after their marriage. In order to implement these decision, explanation Nos. 1 to 3 of Sub Rule 6 of Rule 54 of the Pension Rules have been suitably amended vide notification dated 27.12.2012.*

*8. In view of the above facts, we are of the opinion that the applicant, who is indisputably son of the deceased employee and is 100% disabled and not able to earn his livelihood, is also entitled for family pension even though he is married."*

As may be seen from above, in the OA No. 387/2012 before Jabalpur Bench, the married son of a deceased railway servant was not allowed family pension by citing the Railway Board letter dated 10.08.2005, which has been overruled on subsequent letter dated 16.01.2013, by which, married sons and daughters suffering from any disorder or disability or physically crippled or disabled will be eligible for family pension.

11. In the instant OA, the respondents have also cited the Railway Board letter dated 10.08.2005 to withdraw/cancel the family pension which was sanctioned in favour of the applicant. The facts of the OA No. 387/2012 before Jabalpur Bench squarely covers the instant OA as the issue was eligibility of married son / daughter having disability or disorder. As noted in the order extracted above, the Railway Board letter dated 10.08.2005 has been overruled by the letter dated 16.01.2013 as well as by the provisions of the sub-rule 6 of the rule 75 of the Railway Services (Pension) Rules, 1993. Hence, the impugned order dated 1.06.2006 (Annexure A-1) and order dated 30/31.05.2006 (Annexure A-2) are not accordance of the rule 75 (6) of the Railway Services (Pension) Rules, 1993.

12. For the reasons discussed above, the impugned order dated 1.6.2006 and 30/31.05.2006 are set aside and quashed and the matter is remitted to the respondents / competent authority to restore the family pension sanctioned in favour of the applicant earlier subject to fulfilment of the conditions stipulated in the rule 75 of the Railway Services (Pension) Rules, 1993. The respondents are further directed to comply this order within three months from the date of receipt of a certified copy of this order. The OA is allowed accordingly. There will be no order as to costs.

**(Gokul Chandra Pati)  
Member (A)**

/pc/