

RESERVED
(On 15.03.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 9th day of May 2018.

Original Application No. 330/01512 of 2015

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

Kumari Poonam Nijhawan, D/o Late B.L. Nijhwan, R/o 1194 Tubewell Road, Khati Baba, District Jhansi.

.....Applicant

By Adv: Shri V.K. Singh

V E R S U S

1. Union of India through Secretary, Department of Railways, Rail Bhawan, New Delhi.
2. General Manager, North Central Railway, Allahabad.
3. Divisional Railway Manger (Personnel), North Central Railway, Jhansi.

.....Respondents.

By Adv : Shri B. Tiwari

ORDER

The father of the applicant of this OA was an employee under the respondents and he retired on 30.04.1985. He was getting pension till his death on 18.12.2007. Then, his wife received family pension till her death on 23.10.2013. After her death, the applicant who is unmarried daughter of the deceased employee and who is living with her parents, has applied for family pension. But the respondents vide the impugned order dated 22.06.2015 (Annexure A-1 to the OA), have rejected the claim of the applicant for family pension. Hence, the applicant has filed this OA with following prayers:-

- "i. To quash the order dated 22.06.2015 passed by Respondent No. 3 denying the claim of family pension of applicant.*
- ii. To direct the respondents no. 3 to release the family pension in favour of applicant.*
- iii. Any other writ or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case.*
- iv. Cost of the application may also be awarded in favour of the applicant."*

2. The facts in brief as stated in the OA, are that the applicant was employed as a teacher in a private school, but she resigned from the school which was accepted by the management on 1.07.2014. After her resignation, the applicant is unemployed and there is no justification on the part of the respondents for rejecting the application for family pension and the order dated 22.06.2015 is illegal. The applicant is facing financial crisis due to non-sanction of family pension.

3. The respondents in their counter reply, stated the following:-

- At the time of death of the mother of the applicant, there was no dependent member of the family.
- On the application for the applicant, the Welfare Inspector inquired and reported that the applicant was engaged as a Teacher in Nirmala Convent School, Jhansi, getting salary of Rs. 10,912/- per month (Annexure CR-1). As per Railway Board instructions dated 11.09.2013 (Annexure CR-2), the dependent of the widow of the employee who is getting less than Rs. 3500/- is entitled for family pension.
- It is also stated that the applicant worked as Adhoc Hindi Teacher from 8.12.2014 to 24.05.2015 with salary of Rs. 17,445/- per month.
- The applicant was not dependent on her late mother. Hence, she is not entitled to family pension.

4. In the Rejoinder reply of the applicant, it is stated that although she was employed as a teacher in a private school, she wanted to give up her job due to illness of her mother, but the school manager did not accept her resignation due to mid-term educational session and her resignation was accepted on 1.7.2014 (Annexure RA-1). It is further stated that her mother was drawing family pension of Rs. 11776/- per month at the time of her death, which is higher than the income of TRs. 10912/- of the applicant. Hence, it is argued that the applicant is entitled for the family pension.

5. Learned counsels for the parties were heard and they reiterated their respective pleadings in the case. The issue to be decided in this case

is whether the applicant is eligible for family pension as per the rules and guidelines of the Railway Board.

6. The respondents in para 7 of their counter reply have relied upon the Railway Board letter dated 26.09.2013 (Annexure No. CR-2 to the counter reply), while deciding the eligibility of the applicant. The said circular in paragraph 3 states as under:-

“4. It is clarified that the family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or his/her spouse. A child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the time of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension.....”

From above provisions, the eligibility of the children as on the date of death of Government servant or his/her spouse is relevant for deciding the eligibility of the children for family pension. In this case, the applicant was not dependent on her mother as on the death of the applicant's mother i.e. 23.10.2013, since she was working as a teacher as on 23.10.2013 getting a salary of Rs. 10912/- at the time of her resignation on 1.07.2014 from the school as per the report of the school copy of which is attached at Annexure No.CR-1 to the counter reply. In the Rejoinder, the applicant stated that she was getting less than the family pension being received by her mother. But as per the letter dated 26,09,2013, if the child of the deceased is earning less than minimum family pension plus dearness relief thereon, then he/she will be considered dependent on the parents. In this case, the minimum family pension is Rs. 3500/- as stated in the counter reply. Hence, the argument that the applicant is entitled for family pension as she was getting salary less than the family pension of her mother is not acceptable. It is not the case of the applicant that she was earning less than the minimum family pension i.e. Rs. 3500/- plus dearness relief as on the date of death of her mother.

7. It is also seen that the Rule 75 of the Railway Services (Pension) Rules, 1993 provides for Family Pension to the family of the deceased railway employees, who were in pensionable establishment. The sub-rule (6) of the rule 75 of the said rules, which provides for the period for which the family pension is payable, 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;

.....”

8. From above, it is clear that as per the rule 75 (6) (iii), the unmarried daughter is entitled for family pension till she is married or until she starts earning her livelihood, whichever is earlier. In this case, admittedly the applicant was earning her livelihood by working as teacher at the time of death of her mother. Hence, she will not be eligible for family pension under the rule 75 (6) of the Railway Services (Pension) Rules, 1993.

9. There is no rules or guidelines of the Railway Board furnished by the applicant to establish her eligibility to get the family pension as per the contentions in the pleadings of the applicant. On the other hand, the respondents have furnished a copy of the Railway Board letter dated 26.09.2013 (Annexure No. CR – 2), under which the applicant is not eligible for the family pension as discussed in para 6 of this order.

10. In view of above discussions, no case has been made out for this Tribunal to interfere in the decision taken by the respondents in the matter. Therefore, the OA is devoid of merit and accordingly, it is dismissed. There is no order as to costs.

(Gokul Chandra Pati)
Member (A)

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