

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00489/2016

Pronounced on : 10.09.2018
(Reserved on : 24.08.2018)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)

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Hukmichand Menaria, aged about 53 years, S/o Shri Onkarlal, Menaria,
R/o Village & Post Kanpur, Tehsil Girwa, District Udaipur (Rajasthan).

...APPLICANT

BY ADVOCATE : Mr. Madan Lal Purohit

VERSUS

1. Union of India, through the General Manager, North Western Railway, Headquarter, Jaipur.
2. Deputy Chief Mechanical Engineer (Carriage) Workshop, North Western Railway, Ajmer (Rajasthan).
3. Senior Division Medical Officer (Orthopedic Specialist), North Western Railway Hospital, Ajmer (Rajasthan).

RESPONDENTS

BY ADVOCATE: Mr. Raj Kamal Soni, for R1 to R3.

ORDER

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HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Central Administrative Tribunal Act, 1985, wherein the applicant is seeking a direction from this Tribunal that the impugned order dated 29.10.2010 (Annexure A2) and dated 24.12.2010 (Annexure A3) rejecting the claim of the applicant for family pension may be declared illegal and same may be quashed. The respondents may also be directed to grant the family pension to the applicant as per rules and allow all consequential benefits including payment of arrears along with interest of market rate.

2. The brief facts of the case as claimed by the applicant are as under:-

i) The applicant is the son of late Shri Onkar Lal Menaria, who was working under RPZ workshop as Welder Grade-I and retired from the said post on 30.04.1984. The mother of the applicant Smt. Khumani Bai, had expired on 30.03.2000 during the life time of the applicant's father. The applicant had applied for sanction of family pension as per rules in the month of August, 2010, though he is 60% physically handicapped and he is suffering from "Post Polio Residual Paralysis of both lower limbs". The applicant states that he has attached the retirement certificate and a copy of PPO alongwith the application for grant of family pension vide his application dated August, 2010 (Annexure A1).

ii) Respondent no.2 i.e. Deputy Chief Mechanical Engineer (Carriage) Workshop, North Western Railway, Ajmer, asked the applicant to examine himself and submit report of physical disability. The applicant presented himself before Medical Board, Maharana Bhopal Government Hospital, Udaipur and Medical Board provided the certificate of Govt. of Rajasthan Medical & Health Department Medical Board's Certificate on Permanent Disability showing that he is aggregate 60% (Sixty) percentage of the permanent disability vide his certificate dated 23.01.2006 (Annexure A4). The said certificate clearly shows that he is having Post Polio Residual Paralysis of both lower limbs. The applicant is also getting disability pension from Rajasthan Government which is given to the physically disabled person @ Rs.500/- per month.

iii) The applicant states that he is also entitled to get revised family pension with effect from 01.01.2006 as per the provisions of the Revised Family Pension Rules, 2006. He states that as per the provisions of Family Pension Scheme for Railway Servant, Rules 1964 read with Rule 75 (6) proviso of Railway Services (Pension) Rules, 1993 "Provided that if the son

or daughter of a Railway Servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years, the family pension shall be payable to such son or daughter for life subject to following conditions”.

iv) It is his plea that the impugned certificate dated 29.10.2010 (Annexure A2) as well as order dated 24.12.2010 (Annexure A3) are passed without examining the applicant and without seeing the condition of the applicant. The applicant states that in such a critical condition, he cannot work properly and therefore the order passed by the Senior Medical Officer that the applicant is competent to work and rather earn his living is inappropriate and unjust and therefore the same deserves to be quashed and set aside.

v) He has also stated that as he has given a permanent disability certificate of 60% with the remark that he is suffering from Post Polio Residual Paralysis of both lower limbs. It is surprising to note that the Medical officer has stated in his opinion that the applicant is competent to work and earn his living and therefore he is not entitled to family pension. He further states that it is highly discriminatory view taken by the Senior Medical Officer in declaring that he is competent to work and earn his living and therefore prayed that the impugned certificate and order be quashed and set aside and appropriate orders be passed for grant of family pension as he is a disabled dependent of deceased employee.

3. The respondents have filed their reply and have raised preliminary objection as to the maintainability of the Original Application. The respondents state that the cause of action accrued from the date on which the applicant's mother Smt. Khumani Bai expired life time of applicant's father on 30.03.2000. The applicant for the first time approached respondent no.2 making an application in the month of August, 2010, after

a delay of more than ten years. Therefore, the claim of the applicant deserves to be rejected for grant of family pension. As it is hopelessly time barred as per Section 21 read with Section 20 (2) of the Administrative Tribunals Act, 1985. The respondents further state that the claim of family pension was rejected by the respondents on 24.12.2010 (Annexure A3) and the applicant has preferred the present OA on 21.10.2016 i.e. on the expiry of more than six years, therefore, the present OA deserves to be dismissed on this account alone. It is not disputed that respondent no.2 vide letter dated 24.09.2016 requested respondent no.3 to examine the applicant about his disability vis-à-vis his ability to earn his living. On 06.10.2010, the applicant was examined by the Senior Medical Officer (Orthopedic Specialist), NW Railway Hospital, Ajmer with reference to the letter dated 24.09.2010. The Senior Medical Officer (Orthopedic Specialist) after examining the applicant about his disability, was of the opinion that the applicant is able to earn his living and the same was conveyed by respondent no.3 to respondent no.2. The applicant was informed by respondent no.2 vide letter dated 24.12.2010 (Annexure A2) that he is not entitled for grant of family pension. The certificate issued by the Senior Medical Officer clearly states that the applicant is able to earn his living, though he is physically handicapped having 60% permanent disability due to Post Polio Residual Paralysis of both lower limbs.

4. The respondents rely on the provisions of the Family Pension Scheme for Railway Servants, 1964, read with proviso to Para 75 (6) (b) of the Family Pension (Re-grant) Pension Rules, 1993, the applicant not entitle for family pension/revised family pension as alleged by the applicant because of the fact that the applicant is able to earn his living and has crossed the age of 25 years much before, the applicant is 53 years old now as admitted by the applicant himself on 21.10.2016. Since

the applicant is not eligible for family pension/revised family pension as per rules, therefore, he is not entitled to get revised family pension with effect from 01.01.2006. The respondents state that the certificate produced by the applicant dated 23.01.2006 (Annexure A4) by Maharana Bhopal Government Hospital shows 60% permanent disability due to Post Polio Residual Paralysis of both lower limbs only but is completely silent on the fact as to whether the applicant is able to or is unable to earn his living. As the Senior Medical officer after examining the applicant about his disability was of the opinion that the applicant is able to earn his living, therefore, the applicant is not entitled for grant of family pension/revised family pension as prayed for by him.

5. The applicant has filed his rejoinder. He has relied on the judgment dated 04.12.2002 in Appeal (Civil) No.8089 of 2002, in case of S.K. Mastan Bee Vs. The General Manager, SCR & Anr., wherein the Hon'ble Apex Court held that the appellant was entitled to receive family pension from the date of the death of her husband and have also granted arrears of pension alongwith costs. The applicant has also relied on the judgment passed by the Hon'ble High Court of Delhi in WP (C) No.6604/2006, decided on 26.03.2008 in case of Om Prakash Vs. The Ministry of Indian Railway, wherein on the same issue in an identical case, the petitioner was granted family pension during his life time after the demise of his father though he had crossed the age of 25 years. The Hon'ble Apex Court in Smt. Bhagwanti Vs. UOI, (1989) 4 SCC 397 while considering the question whether the post retirement spouse and children are entitled to family pension and whether the provision contained in the Pension Rules denying such family pension is constitutionally valid, had held that such provision denying the family pension is ultra vires of Article 14 of the Constitution of India and cannot be sustained.

6. The respondents have vociferously argued on the question of limitation that the present OA of the applicant is time barred and that the applicant should have approached the Hon'ble Tribunal within time as per Section 21 of the Administrative Tribunals Act, 1985. It is the claim of the respondents that the cause of action to approach the Tribunal arose on 30.03.2000. It is only in August, 2010 i.e. after more than 10 years the applicant approached the respondents. He specifically relied on several Apex Court judgments that the delay in approaching the Tribunal cannot be condoned.

7. Heard Shri Madan Lal Purohit, learned counsel for the applicant and Shri R.K. Soni, learned counsel for respondents no.1 to 3 and perused the pleadings of both the parties.

8. It is the argument of the learned counsel for the applicant is that as per Rule 75 (6) of the Family Pension Scheme for Railway Servants, 1964, the proviso is clear that if the son or daughter, of a railway servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years, the family pension shall be payable to such son or daughter for life. The applicant also stressed on the submission that he is suffering from Post Polio Residual Paralysis of both lower limbs and is having 60% permanent disability. The said certificate has been obtained by the applicant after examination of the Medical Board at Maharana Bhopal Government Hospital, Udaipur. In spite of producing this certificate, the Senior Medical Officer has opined that the applicant is competent to work and earn his living and therefore not entitled to family pension. The applicant stated that in such a critical condition, he cannot work properly and therefore he is entitled for grant of family pension and therefore the impugned certificate and order be quashed and set aside.

9. The respondents have controverted and stated that the opinion of Senior Medical Officer (Orthopedic) North Western Railway, Ajmer is very clear that the applicant is able to earn his livelihood and therefore he is not entitled for grant of family pension. The respondents have also stated that as the applicant is able to earn his living and has crossed the age of 25 years much before the date of submitting the present OA before this Court, he is not entitled for grant of family pension / revised family pension as he is 53 years old and therefore having loss their eligibility criteria and proviso to Para 75 (6) (b) of the Family Pension Scheme for Railway Servants, 1964, he is entitled to get family pension as prayed for.

10. As is evident from the record that the applicant is having 60% disability and has produced a certificate dated 23.01.2006 (Annexure A4), due to Post Polio Residual Paralysis of both lower limbs. As per the provision of the Sub Clause 75 (6) (ii) & (iii) & (b) of Family Pension Scheme for Railway Servants, 1964 is reproduced hereunder:-

- “(i);
- (ii) in the case of a son, until the attains the age of twenty five years; and
- (iii) in the case of an unmarried daughter, until she attained 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 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);

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 a medical officer not below the rank of a Divisional Medical Officer setting out, as far as possible, the exact mental or physical condition of the child.”

11. The main controversy which arises in the present matter is that of the opinion of the Senior Medical Officer (Orthopedic Specialist) who after

examining the applicant about his disability has opined that the applicant is able to earn his living. This opinion was conveyed by respondent no.3 to respondent no.2 vide letter dated 29.10.2010 (Annexure A2), which was subsequently informed to the applicant vide its letter dated 24.12.2010 (Annexure A3) that the applicant is not entitled to the benefit of family pension. The applicant has produced the medical certificate dated 23.01.2006 (Annexure A4) issued by Maharana Bhopal Government Hospital which shows that 60% permanent disability due to Post Polio Residual Paralysis of both lower limbs. It is clear that though the certificate shows its permanent disability but the said certificate did not mention the fact whether he is able to earn his livelihood or not. But the main question remains as to whether the applicant is entitled to get family pension or not. The respondents had rejected the case of the applicant on the ground of the opinion of the Senior Medical Officer that he is able to earn his livelihood and that the certificate produced by the applicant is silent as to whether on account of his disability the applicant is unable to earn his livelihood and therefore he is not entitled for family pension.

12. It is clear that the respondents informed about the denial for family pension vide letters dated 29.10.2010 as well as 24.12.2010. The applicant approached this Tribunal only on 21.10.2016. No communication was made by the applicant to the respondents after the impugned order. As held by several Apex Court judgments, delay in approaching the Tribunal cannot be condoned and the issue of limitation to be considered with reference to the original cause of action.

- i) State of Karnataka & Ors. Vs. S.M. Kotrayya & Ors. (1996) 6 SCC 267.
- ii) Isha Bhattacharya Vs. Management Committee of Tools 2014 (1) SLJ (SC) 20.
- iii) Union of India Vs. M.K. Sarkar 2009 (6) SLR 756 (SC) Para 14

13. On considering the submissions of both the sides, I find that the present claim of the applicant is grossly time barred but considering the merits of the case, I feel it appropriate that the respondents be directed to refer the case of the applicant before the Medical Board to reconsider his case as to whether the applicant who is having 60% physical disability is able to earn his livelihood and to give a reasoned finding on the same within a period of three months from the date of receipt of a certified copy of this order.

14. Accordingly, the OA is disposed of with the above directions, with no order as to costs.

Dated: 10.09.2018
Place: Jodhpur

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(HINA P. SHAH)
MEMBER (J)

