

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA050/808/2017

Order, dated 25.09.2018

CORAM

HON'BLE MR. JAYESH V. BHAIKAVIA, MEMBER (J)

Madhusudan Gupta, Son of late Kasha Nath Prasad, Ex- Geeral (SP1.).KIR, Veena Bhawan, Driver Tola, P.O. Katihar, P.S. Katihar, Distsrict-Katihar.

..... Applicant.

By advocate: Md. Qumrul Hoda.

Verses

1. The Union of India through Ministry of Railways, New Delhi.
2. The General Manager (P) N.E. Railway, Maligaon.
3. The Divisional Railway Manager, N.F. Railway, Katihar.
4. The Chief Personnel Officer, Katihar Division, Katihar.
5. The Senior Divisional Commercial Manager, N.I. Railway, Katihar.

..... Respondents.

By advocate: Sri S.K. Ravi, Ld. Standing Counsel for Railways.

OR D E R (ORAL)

Per Jayesh V Bhairavia /M (J):- In the present OA, the applicant has prayed to quash the order dated 11.11.2015 issued by the office of DRM(P)/KIR N.F. Railway and letter dated 27.06.2016 issued by the office of the General Manger (P), Maligaon, N.F. Railway and also prayed to grant the benefit of family pension.

2. Learned counsel for the applicant submits that the father of the applicant, namely late Kashi Nath Prasad was working as Guard and he retired from service on 31.07.1987 after attaining the age of superannuation. He was availing the benefit of pension till his death, i.e. on 06.12.1994. The applicant is handicapped person and under

the provision issued by the Railways Board, the applicant is entitled to receive the benefit of family pension. Therefore, the applicant submitted his claim to receive the benefit of family pension. In response to it, vide letter dated 07.10.2014, the office of DRM(P)/KIR, N.F. Railway, advised the applicant to obtain a fresh handicap certificate and submit the same to the office, thereafter further action will be taken in regard to his claim. (Annexure-A/1).

3. As per the instruction by the respondents vide order dated 07.10.2014, the applicant remained present for examination by the Civil Surgeon-cum-Chief Medical Officer, Katihar and vide communication dated 10.12.2014, the office of CMS/KIR, informed to the office of DRM(P),NF Railway that the applicant appeared before handicapped medical examination and it was ascertained loss of earning capacity and the applicant has been examined and found Right Eye vision loss since birth and Left Eye vision is 6/60(DV) at present i.e. 45% handicapped as per Civil surgeon Cum Chief Medical Officer, katihar and loss of earning capacity is 45 % as per Worksmen Compensation Act of Volume-II of IRMM 2000. (Annexure-A/2). Thereafter, vide impugned letter dated 11.11.2015, the office of DRM(P)/KIR, NF Railway informed the applicant that his claim for family pension being handicapped has been examined. In terms of Railway Board's letter dated 23.05.2000 and policy dated 14.12.2005, the candidates should be incapable of earning in order to be entitled for handicap pension. Since, as per certificate issued by Medical Board, Katihar, he is only 45 % handicapped, which does not prevent

him from earning. Therefore, his case cannot be considered for grant of handicapped pension. (Annexure-A/3).

4. Against the said decision, the applicant has submitted his appeal before the competent authority. In response to the same, vide letter dated 27.06.2016, the applicant was intimated that his case was again reviewed and it is reiterated that the decision taken earlier by KIR Division stands good in regards to sanction of family pension and accordingly, the appeal of the applicant has been rejected. (Annexure-A/4).

5. Learned counsel for the applicant submits that the said impugned orders, Annexure-A/3 and A/4 are contrary to the provision of guidelines issued by the Railway Board, dated 21.12.2015, in which there is nothing stated about 45 % deficiency in the eye vision. Therefore, the respondents have not considered the case of the applicant in its true spirit and the same is in violation of principle of natural justice as well as contrary to their own policy. As such, the applicant is entitled to receive family pension as per policy for the purpose of grant of family pension to physically handicapped/mentally retarded children.

6. Learned Standing counsel for the Railways, Shri S.K. Ravi submits that the decision taken by the respondents for denial of family pension to the applicant is as per terms of policy, therefore, the applicant is not entitled for any relief as sought for.

7. I have heard the parties and perused the material on record. It is noticed that the father of the applicant was retired from service on 31.07.1987 and he had received all the pensionary benefits till he died on 06.12.1994, and subsequently after long span of time, the applicant, who is son of late railway employee has submitted his application for grant of benefit of family pension as he claimed to be physically handicapped person. The said benefit has been filed under the policy/guidelines dated 21.12.2015, issued by Railway Board (Annexure-A/5). The said policy dated 21.12.2015 is in regard to grant of family pension to physically handicapped/mentally retarded children of late railway employee and for inclusion of name of the children for family pension. The respondents department required to be followed the instructions, i.e. to verify:-

(1) *Genuinity of son/daughter of late employee.*

(2) *Requirement of submission of certificate issued by medical authorities not below the rank of DMO from the railway hospital, indicating percentage of handicappedness. Details required to be submitted by the employee/pensioner, family pensioner as the case may be, to submit details of son/daughter, physically handicapped/mentally retarded, either in service or after retirement and also required to submit nomination.*

(3) *For sanction of family pension.*

8. It is provided that after receipt of the application for family pension and after assessing the above stated points, the sanctioning authority is required to satisfy himself that the physical handicappedness is so much which prevent the son or daughter from earning his/her livelihood. {As per Rule 75 (6)(d) of Railway Services (Pension) Rules, 1993}.

9. Since, the genuinity of the dependent son of the deceased employee is not in dispute, the case of the applicant was considered by the respondents. He was called for medical examination and it was found that applicant has loss Right Eye vision since birth and Left Eye vision is 6/60(DV) at present i.e. 45% handicapped as per Civil surgeon Cum Chief Medical Officer, katihar and further it is observed that his loss of earning capacity is 45 %. Therefore, the respondents, vide letter dated 11.11.2015, informed the applicant that claimant/candidate if found incapable of earning then only entitle for handicapped pension. In the case of the applicant, he was found only 45 % loss of earning capacity, hence the case of the applicant was not accepted by the respondents. There is no material on record which indicates that the applicant has totally lost his capacity or become incapable of earning. In my considered opinion, there is no infirmity in the decision of the respondents.

10. In view of the above discussions, I do not find any merit in the present OA. Hence, dismissed being devoid of merit.

[Jayesh V. Bhairavia]M(J)

Bp/-