

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Original Application No. 330/01259/2013

Dated: This the 03rd day of May 2019.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Mohammad Ali son of Late Razzaq aged about 28 years, Resident of Village Jungle Saalik Ram near Fatima Hospital Road, Post Office Padri Bazar, District Gorakhpur.

. . . Applicant

By Adv: Shri Sanjay Kumar Om

V E R S U S

1. Union of India through the General Manager, North East Railway, Gorakhpur.
2. The Deputy Secretary, Directorate of Public Grievances, 2nd Floor Sardar Patel Bhawan Sansad Marg, New Delhi 110001.
3. The Chairman, Railway Board, New Delhi.
4. The Divisional Railway Manager (P), North East Railway, Lucknow.
5. The Divisional Personnel Officer, North East Railway, Lucknow.
6. The Chief Medical Superintendent, North East Railway Hospital, Badshahnagar, Lucknow.

. . . Respondents

By Adv: Shri A.K. Shahi

O R D E R

1. The present O.A. has been filed by applicant Mohammad Ali under Section 19 of Administrative Tribunal Act seeking the following reliefs:-

"A) That the order dated 8/9.1.2013 (Annexure A-1), order dated 18/19.3.2013 (Annexure A-2) passed by Divisional Personnel Officer on behalf of Divisional Railway Manager, Lucknow, order dated 18/19.3.2013 (Annexure A-3) passed by Chief Personnel Officer on behalf of General Manager, N.E. Railway, Gorakhpur and order dated 3.7.2013 (Annexure A-4) passed by Deputy Secretary, Directorate

Public Grievances, New Delhi may be declared illegal and same be quashed.

B) That the respondents be directed to sanction and make payment of family pension to applicant within the specified period.

C) That any other and further relief which this Hon'ble Tribunal may deem fit and proper be also awarded to the applicant.

E) Cost of proceeding be awarded to the applicant".

2. Case of applicant Mohammad Ali is during his lifetime, his father Razzaq while working in railways-respondent before his retirement on 30.09.1991 got the applicant medically examined by District Civil Hospital, Gorakhpur which vide certificate dated 20.08.2007 (Annexure A5) certified that applicant is 80 % permanently physically disabled. After the death of his parents, applicant in terms of Rule 75 (6) (iii) of Railway Servant (Pension) Rules, 1993 (hereinafter referred to as the 'Rule') applied for family pension given to disabled children of deceased railway employees which was rejected by respondents vide impugned orders as detailed in the relief paragraph quoted above. Hence the present O.A. for a direction to the respondents to grant the family pension under the Rules.

3. Applicant challenges the following orders:

A. Order dated 8/01.2013 (Annexure A1): "vkonnd Jh eks
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LoLF; gS

ਪਿੰਡ ; ਗ ਦਿ ਫ਼ਫ਼ਦਾਰੀ ਕ ਫ਼ਹਿਕਾਂਦ ਕ ਗਤ ਵਰਾਂ ਤਫ਼ੋਦਿਕਤਾਂ
 ਦਜ਼ਸ ਦਿ ਕੇਰਕ ਦਸ ਲਾਕ ਏਫ਼.ਕੰ ਦਜ਼ਸ ਦਿ ਵੱਫ਼/ਕਦਕ ਵਾਹ
 ਏਫ਼/ਵਾਹਯ[ਕੁਅਾਂ] ਦਿਕਾਂ ਗਹ ਗਾਂ ਵਰਾਂ ਬਿਲ ਲੋਕਵਾਹ ਏਫ਼
 ਏਫ਼/ਵਾਹਯ[ਕੁਅਾਂ] ਕੁਕਾਂ ; ਗ ਫ਼.ਕੰ ਫ਼ਿ; ਕ ਫ਼ਿ ਜ਼ਹ ਏਕਾਂਵੇਨ
 ਵਿਹ ਇਕ ਲੋਹ ਜ਼ਤਕਾਂ ਦਸ ਨਕਾਲ ਇਕ ਇਕਾਂਵੇਨ ਲੋਕਾਂ ਸਾਂਖ ਰਿਗਸ
 ਫ਼ਿ ਲੋਕ ; ਗ ਪਿਅਸ ਏਵਾਂ ਏਫ਼ਕ ਗਤ ਇਕਾਂਵੇਨ ਬੁਧ ਨਕਾਲ ਕਿਗ , ਓਾ
 ਗਕਕ ਵਾਹਿ ਫ਼ਿਏਕ ਵਾਹਿ ਲੋਫ਼; ਗਤ ਰਫ਼ਕ ਏਕਲ ਹਾਂ : ਲੋਕ ਲੋਕ ; ਗ
 ਵਾਹਿ ਰਜ਼ ਲੋਫ਼; ਗਾਂ ਬਿਲ ਰਜ਼ ਦਸ ਵੋਫ਼ਾਰ; ਲੋਕ ਦਸ ਫ਼ਿ; ਸ ਫ਼ੋਕਕ
 ਲੁਕਾਂਵਾਹ ਏਵਾਂ ਵਕਾਂਕ ਦਿ ਵਾਹਿ ਲੋਕ ਗਤ ਫ਼ਿ ਏਕਾਂਵੇਨ ਲੋਕ , ਲੋਕ
 ਯਕਾਂ ਲਾਹੀ ਪਸ਼ ਜਿ ਕਾਂਡਾ ਦਿ; ਲੋਕ ਗਤ ਵਰਾਂ; ਗ ਏਕੂਕ
 ਖਰ ਗਲਕ ਫ਼ਿ ; ਗ ਵਿਹ ਮਿਕਾਰ ਚੇਕਾਂ ਦਸ ਕੁਕਾਂ. ਕ
 ਤਫ਼ੋਦਿਕਤਾਂ ਦਜ਼ਸ ਏਵਾਂ ਇਕਾਂਵੇਨ; ਵਾਂ ਏਫ਼ਕ ਗਾਂ ਵਰਾਂ ਬਿਗਸ
 ਇਕਾਂਵੇਨ ਇਕ ਨਾ ਨਾ ਉਹ ਯਕਾਂ ਗਾਂ”.

For sake of convenience, the English version of the order is:

Applicant has been informed that as per Medical report, he is permanently physically handicapped but his mental faculty is sound. The matter pertains to the Medical wing, hence the capacity to earn livelihood lies within the scope of Chief Medical Officer, Lucknow. The CMO has given the decision that both the legs of applicant are afflicted with polio, as such, he cannot walk but both the upper limbs are healthy and is mentally sound. Such like persons, have a quota in special recruitment jobs. Lots of persons sitting in wheel chair are working. So it would be wrong to say that due to his medical condition, applicant would be incapable of earning. That is why he cannot be given disability pension.

- B. Order dated 15/19.03.2013 (Annexure A2): The contents of this order are similar to Annexure A1.
- C. Order dated 18/19.03.2013 (Annexure A3): The contents of this order are similar to Annexure A1.
- D. Letter dated 03.07.2013 (Annexure A4) written by M.P Sajeevan Deputy Secretary to applicant Mohd. Ali reads as under:-

"Your grievance was taken up with

North Eastern Railways

The following response has been received.

Chairman, Railway Board, vide letter dated 07.06.2013, intimates that as per laid down Rules, the case of Shri Mohd. Ali does not qualify for payment of family pension, as his physical disability is not of a nature that prevents him from earning a livelihood.

It has been further stated that for recruitment from open market against physically handicapped quota, a common examination is held for Group 'C' posts by Railway Recruitment Boards and for Group 'C' posts by Zonal Railway Recruitment Cells for general candidates as well as persons with physical disabilities. Shri Mohd. Ali may be requested to apply to the relevant recruiting body as and when vacancies against physically handicapped quota are notified.

We have examined the above reply in view of the facts and circumstances of the case. We regret that the grievance could not be redressed as requested by you. We are now closing the reference in DPO".

4. Reference may be made to Medical certificate (Annexure A10) of applicant issued by Board of Railway Doctors, relevant portion reads as under:-

"vii) Diagnosis – Bilateral Asymmetric Post Polio residual paralysis both lower limbs with marked wasting in lower limbs & contracture hip, knee & ankle joint both side (Rt > left).

viii) Conclusion & Recommendation-

Sh. Mohd. Ali S/o Shri Razzak is a case of Bilateral Asymmetric Post Polio residual paralysis in lower limbs with marked wasting in lower limbs and contracture hips, knee

& ankle joint both side (Rt > left). He uses wheel chair for routine activities. His locomotion disability is permanent and will interfere with day to day activities & earning capacity partially".

5. In the counter affidavit, the mainstay of respondents for denying the family pension on disability basis is the medical report of the applicant, which, as per, para No. 12 of the CA mentions "that the disability is likely to affect the earning capacity partially of the applicant and as such his request for family pension is not admissible under rules". It would be informative to refer to other averments made in the CA as under:

"26. That the contents of para 4.22 of the original application, as stated are not admitted. It is further stated that there is no relation of the family pension with the recruitment on Group D post nor there are any provision of giving appointment to the dependent of all the disabled employees.

27. That the contents of para 4.23 of the original application, being the subject matter of records, need no comments. It is however stated that job on Group C and Group D are reserved for physically handicapped for which a separate application is required to be given but as far as the fixation of family pension according to para 75.6 (B) of Railway Service Pension Rules 1993, is concerned the disability in earning capacity is decided by the Competent Authority of the Karmik Department and accordingly Competent Authority of the Karmik Department given his comments in his letter dated 15.03.2013 the copy whereof is already contained in Annexure-2 at page no. 28 of the original application. It is reiterated that the Government Service is not only source of earning for livelihood.

28. That the contents of para 4.24 of the original application, being the subject matter of records, need no comments. It is however stated that the applicant was advised to make an application before the relevant recruiting body (Railway Recruitment Board) which has no relation with the family pension. It is further stated that according to para 75.6 (B) of Railway Service Pension Rules 1993, the family pension is given only in case the employee is completely disabled in earning capacity.

29. That the contents of para 4.25 of the original application, as stated are not admitted. It is reiterated that according to para 75.6 (B) of Railway Service Pension Rules 1993, is concern the disability in earning capacity is decided by the Competent Authority of the Karmik Department and accordingly competent authority of the Karmik Department given his comments in his letter dated 15.03.2013 the copy whereof is already contained in Annexure -2 at page 28 of the original application. It is reiterated that the Government service is not only source of earning the livelihood".

6. I have considered the pleadings and the submissions by the learned counsels for both the parties. The learned counsels for the parties have reiterated the pleas taken by them in their pleadings. The issues to be decided in this case are the following:-

- i. Whether the medical certificate issued by the Medical Board is sufficient or adequate for sanction of the family pension in favour of the applicant as claimed by the applicant.
- ii. Whether the action of the respondents to refuse family pension to the applicant was justified on the ground of the

Medical certificate of the Board of Doctors regarding the applicant's ability to earn his livelihood.

7. During the course of arguments, learned counsel for applicant submitted that the respondents did not consider the Notification dated 01.06.2001 issued by the Ministry of Social Justice and Empowerment (Annexure A-14), according to which, the minimum degree of disability should be 40% for benefit of any concessions.
8. It has been argued by learned counsel for applicant that in such a critical condition, applicant cannot work properly and therefore the finding passed by the Board of Doctors 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. Learned counsel has also stated that as he has given a permanent disability certificate of 80% with the remark that he is suffering from Post Polio Residual Paralysis of both lower limbs, it is surprising to note that the Board has stated in its opinion that the applicant is competent to work though his locomotion is permanent and will interfere with day to day activities and earning capacity partially. It is the further case of applicant that the Board cannot under the mandate of law give any opinion about the earning capacity of a handicapped person which, as per, Rule 75 is the function of the sanctioning authority and in any case, the Board is vague on the capacity of applicant to earn partially. How much is 'partial' earning has not been defined by the Board and suffers from vice of ignorance and competency and its finding is beyond its function and jurisdiction. It is for the sanctioning authority to give a finding as to the capacity or incapacity of a disabled person to earn sufficiently to sustain his living based upon the report of the Board of doctors. The sanctioning authority has abdicated its function and power in favour of the Board. He further states that it is a

highly discriminatory view taken by the Board in declaring that applicant 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 the applicant is a disabled dependent of deceased employee.

9. On the other hand, learned counsel for respondents rely on the provisions of the Family Pension Scheme for Railway Servants, 1964, read with proviso to Para 75 (6) (b) of the Railway Servant (Pension) Rules, 1993, to say that the applicant is not entitled for family pension as alleged by the applicant because of the fact that the applicant is able to earn his living, as per, the medical certificate. The respondents state that the certificate issued by Board of Doctors shows permanent disability of both lower limbs and applicant being confined to a wheel chair having 80 % permanent disability but avers that applicant is capable of partial earning. As the Board of Doctors 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 as prayed for by him.
10. The controversy turns upon the interpretation and scope of Rule 75 (6) (iii) of Railway Servant (Pension) Rules, 1993, which reads 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 remarriage, whichever is earlier;
 - (ii) in the case of a son, until he attains the age of twenty five years; and
 - (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 her 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;

11. The Scheme for providing pension to disabled wards of employees of Railway has been put in place by the Government of India to enable the disabled child to overcome the financial crises to sustain himself when his parents being dead are unable to provide him with the basic amenities of life to avoid condition of penury since the child is unable to eke out a living due to physically disability. It is for these reasons that various parameters are provided so that situation can be assessed objectively and

assistance provided by way of a disability pension to the deserving candidate.

12. The provision for pension to a physically challenged family member of deceased employee of the railways is to provide succour to the said child and looking to the medical report and educational qualification of applicant, it is obvious that the applicant is in dire need of such a support. The question to be posed here is, if the sanctioning officer of railways-department sits in the armchair of a prospective employer, would he give a job to the applicant, who sits in a wheel chair with 80 percentage physical disability and has no worthwhile education qualification to do any desk job let alone any work involving physically activity. In my opinion, respondents ought to have taken a pragmatic approach to the plight of the applicant and formed his own opinion as mandated by the Rules.
13. As per the medical report, the diagnosis of applicant is 'Bilateral Asymmetric Post Polio residual paralysis both lower limbs with marked wasting in lower limbs and contractual hip, knee and ankle joint both side (Rt>left)' and the conclusion that "His locomotion disability is permanent and will interfere with his day to day activities and earning capacity partially". This report has been rubber stamped by the Appointing/sanctioning authority without giving reasons for his satisfaction that the handicap is of such nature that it would not prevent the applicant from earning for his basic maintenance. The medical certificate has used terminology 'day to day activities and earning capacity partially' in a very vague manner. On what grounds and reasoning, this decision has been reached is conspicuously absent in the medical report. The Appointing/sanctioning authority seems to have been oblivious of its obligation under law that it has to record its satisfaction of denying the family pension under the disability clause. Clause 6 (iii) (b) is clear that it

is for the sanctioning/appointing authority to independently satisfy himself that the handicap is of such nature that it prevents the applicant from earning his livelihood or otherwise and give reasons for forming such opinion/satisfaction based on disability given in the medical certificate. The satisfaction is to be based on the permanent disability given by medical report and not on the ground of "day to day activities and earning capacity partially" given in the medical report. If the medical opinion is the final word, that would be the end of the matter and so the further role of concerned authority would be superfluous in granting/not granting disability pension to the applicant.

14. In any case, whichever way, the facts of the case are evaluated, the medical report that "His locomotion disability is permanent and will interfere with day to day activities and earning capacity partially" is inconclusive to reach a finding that the applicant has the capacity to earn enough for his basic subsistence. To what outer limit or inner limit, the word 'partially' applies has not been specified by both medical report and the sanctioning authority.
15. The reason given for rejecting the request for family pension on ground of physical disability as coming out in the impugned orders is by way of a bland reason that the physical disability is not of such nature that prevents the applicant from earning a livelihood. Applicant has a 80 % permanent disability confined to wheelchair with no access to keep his body in a state of preparedness and hardiness which has apparently not been kept in mind by the competent authority. What should be the nature of physical disability to disallow a disability family pension has neither being specified in the impugned order or the counter affidavit, so as to afford an opportunity to applicant to convert the correctness of the impugned orders or for this Tribunal to test the correctness of the decision of the competent authority. The

impugned orders are arbitrary, unreasoned and not expected from an administration which is responsible for ensuring the well being of its constituent. I may say that exhibiting the necessity of passing speaking and reasoned order, the Hon'ble Apex Court in the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240 has in para 8 held as under:-

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation".

16. Sequelly, similar question came to be decided by Hon"ble Apex Court in a celebrated judgment in the case of M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that "recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. It was also held that "while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he

has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution. Such authorities are required to pass reasoned and speaking order." The same view was again reiterated by Hon'ble Apex Court in the case of Divisional Forest Officer Vs. Madhusudhan Rao JT 2008 (2) SC 253. Thus seen from any angle the impugned action of the respondents rejecting the claim of applicant in a very perfunctory cannot legally be sustained, under the present set of circumstances.

17. A suggestion has been given by the respondents to the applicant in the impugned order dated 03.07.2013 that "It has been further stated that for recruitment from open market against physically handicapped quota, a common examination is held for Group 'C' posts by Railway Recruitment Boards and for Group 'C' posts by Zonal Railway Recruitment Cells for general candidates as well as persons with physical disabilities. Shri Mohd. Ali may be requested to apply to the relevant recruiting body as and when vacancies against physically handicapped quota are notified."
18. However, till the date of finalising the selection list and date of notification of vacancies, the process of selection and finalisation of selection list and issuance of appointment orders, applicant is left to the vagary of destitution till his appointment, assuming that respondents give him assurance of being appointed.
19. Thus, taking into account all pros and cons of the matter; provisions of pension rules, the fact of the instant case that the applicant is a physically handicapped son of a railway pensioner and was said to be dependent on the deceased railway servant during his life time and that simply on the basis of an opinion of the railway doctor the respondents have denied him family

pension on the ground that his mental faculty is normal, and as such he can earn livelihood in spite of the fact he is handicapped, I am of the considered view that the matter should be re-examined by the respondents/competent authority. Consequently the impugned orders being arbitrary and illegal are hereby set aside. As a consequence thereof, during re- examination the competent authority must consider the following aspect of the matter: Looking to the physical disability of the applicant and his qualifications/ mental ability, what are the jobs which may be reasonably performed by him to earn his livelihood in normal circumstances and whether any jobs would be available to the applicant given his medical condition. The said authority shall also give an opportunity of personal hearing to the applicant and thereafter shall pass a detailed, reasoned and speaking order by considering all the aforementioned aspects. This exercise should be completed by the respondents within a period of three months from the date of communication of this order and the same shall be communicated to the applicant. The O.A. is disposed of in terms of the above directions. There is no order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

Manish/-