

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 20/731/2018

**Reserved on: 19.03.2019
Pronounced on: 20.03.2019**

Between:

P. Tejeswara Rao, aged about 48 years,
S/o. P. Satyanarayana Murthy,
D. No. 1-25/1, Gavarapalem Colony,
Chintala Agraharam, Vepagunta (PO),
Visakhapatnam – 530 047.

... Applicant

And

1. Union of India,
Rep. by its Secretary to Government of India,
Ministry of Communications, Department of Posts,
Dak Bhavan, New Delhi – 110 116.
2. The Chief Accounts Officer (Pensions),
O/o. Directorate of Accounts (Postal),
C/o. Chief Post Master General, Hyderabad – 500 001.
3. The Post Master General,
Visakhapatnam Region,
Visakhapatnam – 530 017.
4. The Post Master, Waltair R.S., Visakhapatnam – 530 004.

... Respondents

Counsel for the Applicant	...	Sri T. Koteswara Rao
Counsel for the Respondents	...	Mrs. K. Rajitha, Sr.CGSC

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicant has filed this OA to seek family pension
3. Applicant's father who worked for the respondents organisation as Mail Overseer, had the last breath on 10.11.2014. On the death of the Applicant's father, family pension was granted to his mother who too expired on 5.5.2017. In

2010 applicant who is the youngest son of the deceased employee, was involved in an accident resulting in his right lower limb being amputated. Govt. of A.P certified that consequent to the amputation he is 70% disabled and granted him disability pension of Rs.1000 per month. Applicant has represented on 12.10.2017, 2.2.2018 & 14.5.2018 for family pension but since the respondents have not responded, the OA has been filed.

4. The grounds for seeking family pension by the applicant are that due to the accident he was living as a dependent on his father when he was alive and later on his mother till she left for the heavenly abode. Being ignorant of the rules his name was not declared as a dependent in the PPO (Pension Payment Order) after his accident. At present he is surviving on the meagre earnings of his wife who is working as a maid servant. As per family pension rules permanently disabled children of the deceased employee are eligible for family pension irrespective of age.

5. Respondents in response state that the deceased employee has nominated his wife for receiving family pension and he did not intimate that the applicant was disabled and was dependent on him. The representations made by the applicant were sent to the second respondent for disposal. Further, as per sub rule 6 (ii) of Rule 54 of CCS (Pension) Rules, 1972, family pension is sanctioned to an unmarried son till he attains the age of 25 years or till he gets married or he makes a livelihood on his own, whichever is the earliest. The applicant was born on 4.9.1971, got married in 2001 and was disabled in 2012. Besides, he is earning a disability pension of Rs.1000 from the Govt. of Andhra Pradesh. As per G.O.I decision No.33 of Pension Compilation, married sons and daughters who are suffering from any disorder or any disability are not eligible for

family pension. Hence applicant is ineligible for family pension as per pension rules.

6. Heard both the counsel and perused the documents as well material papers submitted.

7. I. The resolution to the dispute on hand lies in the application of the relevant rules. The applicant is 70% disabled. There is no dispute on this count. Respondents state that the deceased employee has not declared that the applicant is dependent on him consequent to the reported accident. In this regard it needs to be adduced that the deceased employee being from the lower rung of the bureaucracy would not be conversant with the nuances relating to sanction of family pension. This is common knowledge and it need not be emphasized. Besides, it is also the responsibility of the respondents to guide the family members of the deceased employee as to their eligibility for family pension. It should not be lost sight of the fact that the respondents organisation is a model employer as per Hon'ble Apex Court observation in 2013 (2) SCC 516. A model employer need to ensure that the relevant rules are made known so that those eligible for any benefit can legitimately seek the same within the ambit of rules. Besides, family pension is not a bounty as observed by the Hon'ble Supreme Court in Deokinandan Prasad Vs. State of Bihar, 1971 (Supp.) SCR 634. It is granted for the years of service rendered by the deceased employee to the respondents organisation. Hence the issue in question has to be examined from this perspective and not otherwise. Therefore the deceased employee not declaring the applicant as a dependent is a minor procedural aberration due to ignorance and for which the respondents are equally responsible as much as the deceased employee.

II. Now focussing on the rules that govern the issue of family pension the relevant rule is Rule 54 (6) of CCS (Pension) Rules which is extracted as under:

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

(i) xxxx

(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;

Xxxxx

Provided further that if the son or daughter of a Government 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:.....”

The G.O.I decision vide Dept. of P & PW, OM No. 1(21)-P.&P.W./91-E, dated 20.01.1993, given hereunder also clarifies that the applicant is eligible for family pension:

“Under OM No. 1/80/89-P.&P.W.(C), dated the 19th February, 1990, the condition of manifestation of the disability of children before retirement or death in harness of the Government servant for grant of family pension for life has been dispensed with. Representations have been received that in such cases difficulties are experienced on account of the fact that the disability of the child is not mentioned in the details contained in the PPO.”

III. As per the above rules, it needs no reiteration that a physically handicapped child of a deceased employee irrespective of age is entitled for family pension, even if the manifestation of the disability occurred while the Govt. Servant was in service or on retirement. The applicant became physically handicapped in 2012 before the death of the father and mother. Lack of knowledge of the rule is no basis to reject a claim which the applicant is legally

entitled for. In the present case there was no breach of rule, but it was just that the deceased employee nor his wife had the knowledge to inform the respondents about the applicant becoming handicapped in an accident. The elder brother of the applicant has filed an affidavit dt 14.9.2017 informing that the applicant was dependent on father and mother for livelihood. Respondents have quoted Rule 33 of CCS (Pension) Rules 1972 which is applicable only to Railway servants and not to others. Therefore, this rule will not come to the rescue of the respondents to deny family pension to the applicant. The applicant is getting a disabled pension of Rs.1000 from the Govt. of A.P which he may have to forego once the family pension is granted. Therefore, based on the rules cited, OA succeeds. The action of the respondents in not granting family pension to the applicant is against rules and arbitrary.

IV. Therefore, respondents are directed as under:

- i) To consider grant of family pension to the applicant from the date of the demise of his mother and pay family pension arrears from the date due as per extant rules.
- ii) Govt. of A.P. be informed about the grant of family pension to the applicant and an undertaking be taken from the applicant that he would not claim disability pension from the Govt. of A.P from the date he is granted family pension. Any violation of the same will make him ineligible for family pension.
- iii) As the applicant is 70% disabled there may not be much scope for him to get employed. However, respondents may obtain a certificate of non employment once a year from the applicant and keep it on record as per rules in vogue. If the applicant were to get employed he will be ineligible for family pension from the date of employment.

- iv) Time permitted to implement the order is 3 months from the date of receipt of this order.
- v) With the above directions, the OA is allowed.
- vi) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 20th day of March, 2019

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