

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 506/2015

Reserved on: 11.03.2019
Pronounced on: 19.03.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

Jaydev Rawal son of late Shri Kani Ram Rawal, aged about 40 years, by caste Rawal, resident of Village & Post Musaliya via Sojat Road, District Pali (Raj.).

...Applicant.

(By Advocate: Shri Ganesh Kumar Sharma)

Versus

1. Senior Divisional Medical Officer, (Sr.D.M.O. (Admn.), North Western Railway, Ajmer (Raj.).
2. Divisional Rail Manager (personnel), North Western Railway, Ajmer (Raj.).

...Respondents.

(By Advocate: Shri R.G.Khinchi)

ORDER

Per: A. Mukhopadhaya, Member (A):

As stated by the applicant, who is a physically disabled person, (certificate from Civil Hospital, Ahmadabad), this Original Application, (OA), arises from the denial of family pension to him on the death of his father, the original pensioner. The applicant states that after the issue of OM No.1/33/2012-P&PW(E) dated 16.01.2013 of the Department of Pension & Pensioners' Welfare, (Annexure A/4), his late father, who was an employee of the respondent organisation, applied vide Annexure A/5 dated

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15.04.2013 nominating the disabled applicant, who is married, for payment of family pension after the pensioner's death. In this application, the pensioner stated that his wife, (the applicant's mother), had passed away earlier on 21.07.2005, (copy of death certificate is at Annexure A/2), and that the OM dated 16.01.2013, (Annexure A/4), specifically provided for grant of family pension to a married disabled son like the applicant. He stated that he was nominating the applicant for such pension as the applicant and his family were completely dependent on him. The pensioner had also enclosed a copy of his family ration card with his application in support of his aforementioned contention of the applicant's dependency.

2. The applicant avers that after the demise of his father, (the original pensioner), on 11.10.2013, (copy of death certificate is at Annexure A/2), he represented to the respondent organisation for grant of family pension repeatedly but the respondents, instead of sanctioning and releasing such pension, directed him to present himself for medical examination before a Medical Board. The applicant thereupon presented himself for this medical examination and the respondent organisation's Medical Board after examining him, issued a medical certificate No.MD/55/OH/01 dated 01.10.2014, (attached with Annexure A/1 – the impugned letter/order of 17.10.2014), rejecting his claim to family pension on the ground that the applicant **"is able to earn**

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his livelihood". Aggrieved by this, the applicant has approached this Tribunal seeking the following relief:-

- (i) That impugned rejection order dated 17.10.2014 along with medical certificate dated 01.10.2014 issued by Medical Board of respondent department be quashed and set aside and the respondents be directed to start family pension to applicant under physically disabled person category in the light of office memorandum dated 16.01.2013 (Annexure-4) in the larger interest of justice.
- (ii) Any other order, relief or direction which is deemed fit and proper be also passed.
- (iii) Cost of the Original Application be awarded to the applicant.

3. *Per contra*, the respondents aver that Rule 75(6)(b) of the Railway Pension Rules 1993, as amended vide RBE No. 157/2008 which is relevant in this case, provide for payment of family pension in such a case subject to the satisfaction of certain eligibility conditions, with the following proviso:-

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 Board setting out, as far as possible, the exact mental or physical condition of the child.

Explanation: For the purposes of this sub rule and sub rule (6), "Medical Board" means a Medical Board consisting of a Medical Director or a Chief Medical

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Superintendent or Incharge of a Zonal Hospital or Division or his nominee as Chairperson and two other members, one of them at least shall be Specialist in the particular area of mental or physical disability; (Annexure R/1 refers).

4. The respondents thus aver that the Medical Board set up by them which examined the applicant was in accordance with the Rules and was an essential prerequisite for deciding his case. The Medical Board gave its report that the applicant is able to earn his livelihood. Therefore, the mandatory requirement of not being able to earn his livelihood has not been fulfilled by the applicant. Consequently, he was denied life time family pension, (para 8 of reply refers), while confirming that there is no dispute **“so far as the disability of the applicant is concerned”**; (Para 5(C) of reply refers).

5. In this connection, the respondents also point out that no allegation of any kind of malice or bias has been made by the applicant against this Medical Board and argue that the applicant is thus not rightfully entitled to the relief of family pension as sought in this OA.

6. Learned counsels for the parties were heard and the available record was perused. In their arguments, opposing counsels for the applicant and the respondents reiterated the points raised in the OA and its reply respectively. While the 55%

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disability of the applicant, (Annexure A/3 refers), has not been disputed in this case, we find that the constitution of a Medical Board by the respondents in order to ascertain the applicant's eligibility for family pension is as per the provisions of the Railway Pension Rules 1993. Perusal of Rule 75(6)(b) read with RBE No.157/2008, (Annexure R/1), also confirms that the Medical Board constituted in this case carried out the task entrusted to it under the rules and came to the determination that the applicant is able to earn his livelihood. Given this finding, the applicant becomes ineligible as per rules for grant of family pension for life as sought by him. Thus there appears to be no substantive factual or legal infirmity in the decision of the respondent authorities communicated to the applicant vide impugned letter/order at Annexure A/1 denying him family pension on the death of his father, the original pensioner.

7. The O.A. therefore fails for want of merit or force and is accordingly dismissed.

8. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/