

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2237/2017

Order reserved on 11.02.2019
Order pronounced on 14.02.2019

Hon'ble Mohd. Jamshed, Member (A)

Vishwas Kumar Aged about 54 years
Male, Aya 'D'
S/o Late Shri Mool Chand
R/o House No.O-158
'O' Block Extension, Geeta Enclave
Vani Vihar, Uttam Nagar
New Delhi-110059.

...Applicant

(By Advocate: Shri G.D. Bhandari)

Versus

Union of India through

1. The General Manager
Northern Railway, Baroda House
New Delhi.
2. The Divisional Railway Manager
Norther Railway
Moradabad.
3. The Chief Medical Supdt.
Northern Railway
Railway Hospital
Moradabad. ..Respondents

(By Advocate: Shri V.S.R. Krishna)

ORDER

The present OA has been filed seeking the following relies:-

"(i) set-aside and quash the Chief Medical Supdt./Northern Railway, Moradabad's letter No.54/Med/Medical Board dated 20.02.2008, Annexure - 'AA', along with Respondents' order No.720-E/15-Pension/EXHA/CMS/MB/87 dated 20.09.2001, Annexure - A-14, and any other ancillary orders, being malafide, arbitrary and badly vitiated;

(ii) direct/command the Respondents to also sanction the family pension in favour of the applicant, which was being paid to applicant's mother with regard to the death of late Shri Mool Chand, the father of the applicant (Ex-Token Porter/Dhanera/ Moradabad Division), till her death i.e. 05.04.2004 with resultant arrears and ancillary allowances etc. with compound interest @ 24% p.a.

(iii) direct/command the Respondents to sanction the Family Pension in terms of the Railway Rules from the date of death of his pension holder mother w.e.f. 05.04.2004 with the resultant arrears and ancillary benefits of family pension revision in terms of the respective Central Pay Commissions along with compound interest @ 25% p.a. with heavy exemplary costs against the Respondents in favour of the applicant."

2. As stated in the OA, the facts of the case are as under:

The father of the applicant was employed with the Northern Railway as Token Porter in Morabad Division. He died in harness leaving behind a widow, two sons and one daughter. The applicant is the younger son.

3. The respondents appointed wife of the deceased employee and mother of the applicant on compassionate grounds in Group 'D' in the Medical Department of Northern Railway. She retired on 31.07.1987 on superannuation. She was granted pension. She had provided details of the family members in the retirement documents clearly indicating the name of the applicant. In the representation submitted by the mother of the applicant dated 21.11.2003, also she indicated that the applicant herein, who is her handicapped son, has not been indicated being entitled to family pension in case of her death in terms of Railway Rules.

4. In terms of Railway Rules, the mother of the applicant also received family pension being widow of the deceased employee. It is also stated that after retirement, she continued to get pension. Her daughter

had already expired and elder son had been earning his own livelihood. The applicant who is the younger son, being handicapped was staying with her. The applicant being physically handicapped, having no means of livelihood, was entirely dependent upon his mother. The mother of the applicant passed away on 05.04.2004. Subsequent to the death of the mother, the applicant has been left with no means of sustenance. The applicant has also annexed copy of a certificate dated 29.05.1980, issued by the ADMO Railway Hospital, Moradabad, to the effect that the applicant is physically handicapped as his left lower limb is invalid and that he uses crutches. Subsequently, the Chief Medical Officer, Civil District Hospital, Moradabad, constituted a Medical Board of five Specialists for deciding on the medical condition of the applicant. The applicant was subjected to various medical tests and the Board issued handicapped certificate dated 05.02.1991 in favour of the applicant, assessing his disability as "about 50%" and also indicating that this is a permanent disability and the applicant comes under the category of physically/Orthopedicapped person. The Medical Board,

Civil Hospital, Moradabad has again issued a certificate dated 17.01.2017, indicating the physical disability to be 50%. The respondents asked the applicant vide their letter dated 07.11.2005 to furnish information regarding his marriage and also the monthly income and sources. The applicant submitted another representation dated 06.11.2006 indicating that he is neither married nor earning at all due to his physical disability. The applicant was also provided Certificate for Railway concession indicating that he cannot travel without any escort. He has further submitted that the applicant has been approaching the respondents and reiterating his request for grant of family pension in terms of the Railway Rules, drawing the respondents' attention to the disability/handicapped Certificate.

5. The respondent No.3 (Chief Medical Superintendent), Northern Railway, Divisional Railway Hospital/Moradabad vide letter dated 20.02.2008, referring to the applicant's case for grant of family pension, stated that the applicant is a handicapped person but the "disability is not as such, which may render him unable to earn his livelihood".

6. Further, the respondents vide their letter dated 20.09.2011 (translated copy of which has been annexed with the OA) informed the applicant that his case has again been considered but the same has not been found acceptable, as the Chief Medical Officer, Moradabad, in his certificate has mentioned that the disability is not such, which will render him unable to earn his livelihood and it is not possible to take action on his request. Aggrieved by the action on the part of the respondents, in rejecting his claim for family pension, the applicant has sought relief through this OA.

7. The applicant has also submitted in the OA that the application is within limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. Stating that his mother expired on 05.04.2004 and that the applicant has been agitating his grievance continuously and also submitted a sworn affidavit as directed by the respondents, solemnly declaring that he is unmarried and has no source of income. The same has been rejected by the respondents vide order dated 20.02.2008. The applicant submitted his appeal dated

12.07.2009 which was also rejected vide order dated 20.09.2011 and as the payment of family pension is a recurring and continuous cause of action, therefore, the bar of limitation is not attracted.

8. In the short counter affidavit filed by the respondents it is stated that the OA is not maintainable in terms of Administrative Tribunals Act and Rules. They have further submitted that the applicant raised his grievances way back on 26.10.2007 and thereafter preferred an appeal on 12.07.2009 which was rejected vide order dated 20.09.2011. After a long gap, the applicant has filed this OA on 06.07.2017 which is patently barred by limitation as stipulated under AT Act, 1985. Further, the delay is totally unexplained and the OA deserves to be dismissed.

9. Learned counsel for the applicant has drawn the attention of the Tribunal to the letter of the Chief Medical Superintendent, Railway Hospital, Moradabad dated 20.02.2008 addressed to the respondent No.2 indicating that applicant's disability is not such which may render him unable to earn his livelihood. A copy of the letter dated 05.02.1991, issued by the Medical

Board of Chief Medical Hospital, Moradabad, Civil Hospital has also been annexed indicating that he is about 50% handicap.

10. Learned counsel has also argued that in terms of Railway Board circular dated 15.05.1990, the family pension is payable to children suffering from disorder/disability of mind or are physically crippled rendering them unfit to earn living even after attaining the age of 25 years, subject to fulfillment of certain conditions. He has also quoted DOP&T's OM dated 22.06.2010 highlighting that family pension may be provided to the parents and eligible dependent disabled siblings. He has also argued that in terms of DOP&T OM dated 03.02.2000, the extent of disability or functional incapacity shall be determined in the manner that less than 50% disability, assessed by the medical board, shall be reckoned as 50% for computation of disability element.

11. Learned counsel for the respondents argued that this case is totally barred by limitation in terms of Section 21 of the Administrative Act, 1985 and that the applicant's grievances were addressed by the

department and, later on, in the appeal that was decided on 20.09.2011. From 20.09.2011, the applicant has filed this OA only on 06.07.2017. Thus, the same is barred by limitation.

12. Learned counsel for the respondents further argued that in terms of extent Railway Rules, his disability has been carefully assessed by the Chief Medical Superintendent, Railway Hospital, Moradabad and he was found to be 'about 50%' handicapped and the disability is not such which may render him unable to earn his livelihood. The applicant has, therefore, been denied the family pension.

13. Heard learned counsels for the applicant and the respondents and perused the record.

14. It is evident beyond doubt that the applicant is a physically challenged person. Since the time of the death of his mother on 05.04.2004, he has been making representations to respondent No.2 stating that he is a physically challenged person without any means of livelihood and after the death of his mother, the family pension should be extended to him. He is

making representations to the respondents since 2006, annexing the medical certificate obtained from the Chief Medical Superintendent, Civil Hospital, Moradabad and also the Concession Certificates issued to him by Railways. The respondents vide their letter dated 27.01.2010, addressed to the applicant, have rejected his claim stating that in view of the medical report of the Chief Medical Superintendent, he is not eligible for handicapped family pension. It is also stated that there is no rule providing grant of family pension to those who are 50% handicapped. It is also stated that in the family detail papers submitted by applicant's mother, giving particulars of the family members, he had not been shown as handicapped. Further, in response to the representation of the applicant dated 10.08.2011, the respondents have replied vide their letter dated 20.09.2011 that his case has been examined sympathetically and he is once again been informed that although vide Railway Board's letter dated 10.08.2005, sons/daughters of deceased Railway Servants who are mentally retarded or physically disabled and crippled, even after attaining the age of 25 years, shall be eligible for grant of family pension, in

view of the report of the Chief Medical Superintendent, Railway Hospital, Moradabad consequent to applicant's Medical examination, it is found that "the disability is not such which will render him unable to earn his livelihood". The respondents have, therefore, rejected the appeal stating that in view of the CMS, Moradabad report it is not possible to take action on applicant's request.

15. Aggrieved by the rejection of his application, he filed the present Original Application on 06.07.2017. There is obviously a huge gap between the respondent's reply on his representation dated 10.08.2011 and the applicant's preferring this Original Application on 06.07.2017, filed with the Tribunal.

16. The applicant's counsel has argued that there is no delay as the cause of family pension is recurring and continuous. The respondents have, however, strongly argued that this case is barred by limitation, as stipulated in Administrative Tribunals Act, 1985 and is liable to be dismissed.

17. No application for condonation of delay has been preferred by the applicant. As far as the matter of limitation is concerned, at this stage of final hearing, the matter of condonation of delay or invoking the limitation, is not very relevant.

18. Considering the merits of the OA and actions taken by the respondents it is obvious that the respondents have rejected the case of the applicant for grant of family pension primarily on two grounds i.e.,

- (i) that the physical disability is less than 50%; and
- (ii) that the medical report of the Chief Medical Supdtt., Northern Railway, Moradabad, indicating that "the disability is not such, which may render him unable to earn his livelihood".

19. The applicant has submitted that as per the report of the Chief Medical Officer, Civil Hospital, Moradabad signed by other doctors, it is certified that the applicant suffers from "Post Polio Paralysis....(illegible) of left lower limb". It is also mentioned in the report that he is about 50% handicapped. Another copy of the report

signed by group of doctors and Chief Medical Officer, Civil Hospital, Moradabad, dated 17.01.2017, has been annexed, mentioning the disability as 50%.

20. The respondents in their short counter affidavit have neither been able to counter these documents submitted by the applicant nor have they been able to indicate the relevant rules on the subject specifying the conditions which prohibit extension of family pension to a physically handicapped person, in case his physical disability is less than 50% and or he is unable to earn his livelihood in view of his disability.

21. In view of the above mentioned and an undated pending representation of the applicant addressed to respondent No.2(annexed with OA), it is directed that the respondent No.2 shall consider and decide the representation of the applicant for grant of family pension to him in terms of the extent rules. In case no such representation is available, the applicant is free to make such a representation within two weeks from the receipt of this order which will be considered and decided by the respondent No.2 within a period of two

months thereafter, taking into account the above mentioned factors.

22. With the above directions, the OA is disposed of.

There shall be no order as to costs.

**(Mohd. Jamshed)
Member(A)**

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