

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH

OA No.571 of 2016

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)

Antaryami Subudhi, aged about 58 years, S/o Late Hadu @ Jadibandhu Subudhi, Vill/Town-Talamali, PS - Kumkbharpura, Tahasil/Dist-Puri, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Senior Divisional Personnel Officer/ E.Co.Rly., Khurda Road Division, At/PO-Jatni, Dist-Khurda.
3. Chief Medical Superintendent, Divisional Railway Hospital, Khurda Road Division, At/PO-Jatni, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.B.B.Patnaik, counsel

Heard & reserved on : 16.8.2019 Order on : 20.8.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

"a) To quash the recommendation dtd. 19.10.2015 and the order of rejection dtd. 4.11.2015 under Ann. A/7 & A/8 respectively.

b) And to direct the respondents to grant disability pension in favour of the applicant and pay the arrears.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;

And for which act of your kindness the applicant as in duty bound shall every pray."

2. The case of the applicant that after death of his father on 29.6.2004, who was a pensioner after retirement from service on 30.9.1997, his mother was allowed the family pension and after death of his mother on 14.4.2014, when he claimed the disability pension on the basis of his disability certificate dated 7.6.2014 (Ann. A/3) issued by the District Medical Board, Puri, his case has not been considered by the respondents. After death of the applicant's mother on 14.4.2014, he applied for disability pension vide his letter dated 18.8.2014 (Ann. A/2). The respondents called for a report from the Tahasildar, Puri about the genuineness of the legal heir certificate and its genuineness was duly confirmed by the letter of the Tahasildar. Then the case was referred to the respondent no. 3 and as per the letter dated 14.9.2015 (Ann. A/6), the

applicant appeared before the Medical Board of the Railways held on 16.9.2015. The Medical Board, after examination of the applicant, assessed his disability to be 50%, but the Board did not recommend the disability pension with the observations as under:-

"As certified by District Medical Board Puri, Disability is 50% percent. But the person is able to walk without support. He can earn his livelihood. Hence not recommended for family pension."

On receipt of the report of the Medical Board, the respondents have rejected the case of the applicant for family pension on the ground of disability vide order dated 4.11.2015 (Ann. A/8)

3. The ground for filing the OA are that under the rule 75(6)(b) of the Railway Services (Pension) Rules, 1993, the applicant was entitled for family pension on the ground of disability and it was not correct on the part of the Medical Board not to recommend the same only on the ground that the applicant was able to walk without support . The Medical Board failed to specify the gravity of the disability and to assess his capability of the applicant for physical labour.

4. Counter has been filed by the respondents without disputing the facts. When the case of the applicant was referred to the respondent no. 3, he forwarded the views of the Medical Board vide letter dated 6.12.2014 (Annexure-R/1). It is also stated that the respondents had referred the case to the Staff and Welfare Inspector, who submitted his inquiry report on 25.3.2015 alongwith the documents on 22.5.2015. The applicant was asked to furnish the Income certificate, which was furnished by the applicant. A copy of the Income Certificate was enclosed at Annexure-R/5 of the Counter. It is stated further that the respondent s informed the decision of the Medical Board to the applicant, rejecting his case.

5. Rejoinder has been filed by the applicant stating that although the Medical Board had mentioned about the extent of disability, but it has not given any finding about the earning capacity. For that purpose the respondents could have referred his case to the District Medical Board, Puri. It is stated that the applicant is a polio patient with 50% disability and he has no source of income.

6. Learned counsel for the applicant was heard. He submitted that the Medical Board appeared to have based their report on the basis of the report of the District Medical Board, Puri without examining the applicant. Learned counsel for the respondents reiterated the stand in the Counter and submitted that as per the Income Certificate at Annexure-R/5, the income of the applicant is Rs. 40,000/- and he submitted that itshows the earning capacity of the applicant.

7. The rule 75(6) of the Railway Services (Pension) Rules, 1993 which governs the payment of family pension states 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 re-marriage, whichever is earlier;
- (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;
- (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 his 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;

.....

Explanation 3.- It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that, (i) he or she has not started earning his or her livelihood, and (ii) he or she has not yet married or remarried and a similar certificate shall be furnished by a childless widow after her re-marriage or by the disabled son or daughter or parents to the Treasury or Bank, as the case may be, once in a year that she or he or they have not started earning her or his or their livelihood.

Explanation 4 .- For the purpose of this sub-rule, a member of the family shall be deemed to be earning his or her livelihood if his or her income from other sources is equal to or more than the minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon."

8. It is noticed that the respondents have declined the family pension based on the report of the Medical Board dated 16.10.2015 in which it is stated that he can earn his livelihood, for which, the family pension was not recommended by the Board. Under the rule 75(6) clause (d) to second proviso, the appointing authority was to consider the application for sanction of family pension submitted by the applicant on the ground of physical disability, and should satisfy, based on the report of the Medical Board, that the nature of the disability is such as to prevent him from earning him from his livelihood. As clarified in the Explanation 4 at the end of the rule 75(6), for the purpose of the sub-rule, the applicant will be deemed to be earning his livelihood of his income is more than the minimum family pension specified under the sub-rule (2) of the rule 75 with Dearness relief, i.e. Rs. 3500/- plus dearness relief. In this case, the applicant's annual income as per the Annexure-R/5, is Rs. 40000/- which seems to be less than the minimum family pension as specified under the rule 75(2). Hence *prima facie*, the applicant's case needs to be reconsidered by the authorities as well as by the Medical Board in terms of the rule 75 of the Railway Services (Pension) Rules, 1993 as discussed above as the report dated 16.10.2015 (A/7) does not appear to have assessed the capacity of the applicant for earning his livelihood as specified under the Explanation 4 of the rule 75(6).

9. In view of the above discussions, the impugned order dated 4.11.2015 (Annexure-A/8) is set aside and the matter is remitted to the respondent no. 2/competent authority to reconsider the matter in accordance with the provisions of the rule 75(6) of the Railway Services (Pension) Rules, 1993 keeping in mind the observations made in this order and to dispose of the same as per law by passing a speaking order under intimation to the applicant within two months from the date of receipt of a copy of this order. The OA is accordingly allowed in part with no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

