

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 692 of 2017

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

Abhiram Panda, aged about 53 years, S/o Late Alekha Panda, resident of Vill-Hatasahi, PO-Gatiroutapatana, PS – Sadar, Dist-Cuttack, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43, West Bengal.
2. Chief Workshop Manager, South Eastern Railway, Carriage Repair Workshop, At/PO-Kharagpur, Dist-Paschima Medinipur, West Bengal.
3. Workshop Personnel Officer, South Eastern Railway, Carriage Repair Workshop, At/PO-Kharagpur, Dist-Paschima Medinipur, West Bengal.
4. Chief Medical Superintendent, Main Hospital, South Eastern Railway, Kharagpur, Dist-Paschim Medinapur, West Bengal.

.....Respondents.

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

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 30.8.2019 Order on : 17.9.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

"(a) To quash the order of rejection dtd. 29.10.2017 under Ann. A/12;
(b) And to direct the respondents to grant family 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 applicant in this OA is aggrieved by the impugned order dated 29.10.2017 (Annexure-A/12) by which, the case of the applicant for sanction of the family pension on the ground of physical disability was rejected by the respondent no.3 on the ground that the Medical Board after examining the applicant, was of the view that since the applicant can earn his livelihood, his case was not recommended. His father was retired on 31.7.1977 and expired on 24.11.1994 vide the death certificate at Annexure-A/2 series. His mother had already expired before the death of his father. The applicant applied on

6.2.2015 followed by a series of representations thereafter vide copy at Annexure-A/4 series, requesting for grant of family pension on the ground that the applicant has disability as per the certificate dated 24.2.2001 (Annexure-A/3 series). When no action was taken, he filed the OA No. 260/16 which was disposed of vide order dated 8.9.2016 (Annexure-A/5) directing the respondents to dispose of the representation of the applicant. Thereafter, the applicant was called by the respondents to appear before the Medical Board on 4.10.2017 and based on the recommendation of the Board, the impugned order was issued to the applicant rejecting his case.

3. It is stated in the OA that the Medical Board obtained information regarding his illness from his wife and the respondent no.4 misbehaved one of the member of the Board and hence, the order dated 29.10.2017 is malafide and it is liable to be quashed. It is further stated in the OA that denial of the family pension by the respondents needs to be interfered by the Tribunal.

4. Counter filed by the respondents relied on the provisions of the Railway Services (Pension) Rules, 1993 and stated that as per the OA the applicant was suffering from the disease Rheumatism while his father was alive. It is stated in the Counter that his father never informed about the disease of the applicant to the authorities when he was alive. It is further stated that the applicant did not enclose any certificate to prove his contention that his disability was 50% in 1992. It is further averred in the Counter as under:-

" 5.....The disease inflicted to the applicant after death of his father. As such, his father never intimated about the disease and handicappedness during his life time to the Railway authorities. The applicant also did not enclose any medical certificate for the year 1992 in the support."

The contentions in the OA were denied in the Counter.

5. The applicant filed the Rejoinder. In reply to the averments in para 5 of the Counter, it is stated in para 4 of the Rejoinder as under:-

"That, in reply to para 5 of the counter it is humbly and respectfully submitted here that the applicant has submitted the documents available with him along with his application dtd. 28.12.2016. Further, from the other medical certificates it is clear that the disability of the applicant is permanent and not temporary."

6. It is further stated in the Rejoinder that the applicant appeared before the CDMO, Cuttack who gave a certificate (copy at Annexure-A/13), stating that the applicant was not capable of earning his livelihood.

7. Heard learned counsel for the applicant who submitted that the disability of the applicant is 74% as assessed by the District Medical Board vide the certificate dated 1.7.2017 (Annexure-A/9) and argued that with 74% disability

the applicant is not in a position to earn his livelihood. He further submitted that although this certificate was mentioned in the Medical Board report at Annexure R-II of the Counter, but the fact that the applicant has 74% disability as per the certificate at Annexure-A/9, was not considered by the Medical Board of the respondents.

8. Learned counsel for the respondents referred to the sub-rule (6) of the rule 75 of the Railway Services (Pension) Rules, 1993, stating that the report of the Medical Board is mandatorily required before sanction of the family pension on disability ground. It was submitted that the Medical Board has considered the case of the applicant and has rejected the case of the applicant with the observation that the applicant is capable of earning his livelihood.

9. Having regard to the submissions as well as the pleadings on record, it is noted that in para 4.3 of the OA it is averred that when his father was alive and drawing pension, the applicant suffered from Rheumatism and became permanently disabled and the Medical Board had assessed the disability of the applicant was 50%, which became 70% in 1999. It is stated that by lapse of time he became fully disabled. If his disability was 70% in the year 1999 as per the copy of the certificate at Annexure-A/3 series, then the reason for not approaching the Railway authorities when his father was alive and in the year 1999, after 5 years of his father's death, has not been explained by the applicant. As stated in the OA, the applicant has approached the authorities for the first time on 6.2.2015 (Annexure A/4 series). Further, the certificate at Annexure-A/3 series reveals that he was 70% disabled and was not able to earn his livelihood. In that case, the reason for not moving the Railway authorities for sanction of family pension prior to 6.2.2015 should have been explained. It is noted that the applicant has taken the plea that his family's financial condition is very bad and he is not able to earn his livelihood.

10. As stated in the OA as well as in the Counter, as per the sub rule (6) of the rule 75 governs the modalities for consideration of the cases for sanction of family pension on the ground of disability and the said sub-rule implies that the medical board has to report about the applicant's ability to earn his livelihood. The relevant provisions in the said sub-rule states as under:-

"(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;

(e) the person receiving the family pension as guardian of such son or daughter or such son or daughter not receiving the family pension through a guardian shall produce a certificate, 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, once, if the disability is permanent and if the disability is temporary, once in every five years to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled;"

11. In view of the above discussions, the OA is disposed of with liberty to the applicant to submit a fresh representation to the respondent no. 3 for reconsideration of his case with fresh documents, if any, within 15 days from the date of receipt of a copy of this order, keeping in mind the discussion at para 9 of this order. If such a representation is received from the applicant within the above stipulated time, then the respondent No.3/competent authority will re-consider the same by getting the applicant examined again by the competent Medical Board under the sub-rule 6 of the rule 75 of the Railway Services (Pension) Rules, 1993 and dispose of the said representation in accordance with the provisions of law, by passing a speaking order, copy of which is to be communicated to the applicant within four months from the date of receipt of a copy of this order.

12. The OA stands disposed of as above with no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath