

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

Original Application No.21/942/2016

Date of Order: 30.07.2019

Between:

B.V. Raghavamma, D/o. late B. Seshagiri Rao,
Aged about 69 years, R/o. Sagar Apartments,
Flat-11, Safilguda Station Road,
Malkajgiri, Hyderabad – 47.

... Applicant

And

1. Union of India, Rep. by
The Secretary, Railway Board,
Sanchalan Bhawan, New Delhi.
2. South Central Railway, Rep. by
The General Manager, Rail Nilayam,
Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Headquarters Office, Personnel Branch,
Secunderabad – 500 071.
4. The Secretary to Government of India,
Department of Pension and Pensioners Welfare,
Ministry of Personnel, Public Grievances and Pensions,
Lok Nayak Bhawan, Khan Market,
New Delhi – 110 003.

... Respondents

Counsel for the Applicant ... Mr. Siva

Counsel for the Respondents ... Mr. N. Srinatha Rao, SC for Rlys
Mrs. K. Rajitha, Sr. CGSC for R-4

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per B.V. Sudhakar, Member (Admn.) }

2. OA is filed for not considering the request of the applicant for grant of family pension.

3. Brief facts of the case are that applicant is the elder sister of Sri B.V.S. Chalapathi, who worked for the respondent Railways and retired as Office Superintendent and his pension and terminal benefits were paid accordingly. Applicant was dependent on her brother as she had neither property nor any other source of income. Applicant is unmarried and therefore, her brother was taking care of her even after his retirement. Unfortunately, her brother passed away on 21.08.2006. She requested for grant of family pension on 19.04.2007 on the ground that she was totally dependent on the deceased employee. She also filed CA No. 14 of 2011 on the file of Administrator General of Andhra Pradesh and she was declared as a legal heir of the late employee and a letter of Administration was granted in her favour so as to enable her to draw amount lying in the Savings Bank account of the late employee. There is no counter claim for family pension from another sister of the late employee. Consequently, applicant requested for family pension, which was rejected on 30.04.2007 stating that Rule 75(6) of Railway Services (Pension) Rules, 1993 (for short "**Pension Rules**") do not provide for grant of family pension to dependent sisters and therefore, she was not granted family pension. Applicant carried the matter to the Pension Adalat, but there too, she could not succeed as there is no rule provision for providing family pension to her. Later, she was advised that, Rule

107 of Pension Rules empowers Railway Board to relax any provision of the said Rules, which comes in the way of granting pension. Quoting the cited rule, applicant represented to the Railway Board on 27.08.2013 and followed it up by a reminder on 27.01.2014. There being no response, applicant filed OA No. 1505/2014 before this Tribunal, wherein, respondents were directed to dispose of the representation of the applicant dt. 27.08.2013. Thereupon, Railway Board issued the impugned order in April 2016 (Annexure A-2) stating that the matter was referred to the Department of Pension & Pensioners' Welfare (for short "**DOP&PW**") for relaxation of the extant rules. However, DOP&PW negated the proposal. The said order of the Railway Board has been communicated to the applicant vide letter dated 25.04.2016 (Annexure A-1). Aggrieved over the same, present OA has been filed.

4. Contentions of the applicant are that, according to Rule 70 of Pension Rules, family includes dependent sister. Besides, Rule 107 of the Pension Rules empowers the Railway Board to relax the pension Rules in genuine cases and grant pension. Railway Board, on its own, being independent, can take a decision in the matter, rather than referring it to the DOP&PW for relaxation of the rules. The direction of the Tribunal to the 1st respondent was to examine the issue independently and issue an order. The 1st Respondent has not done so. Applicant has no source of income and it has become extremely difficult to make both the ends meet.

5. Respondents 1 to 3 in their reply stated that the applicant was declared as legal heir by the Administrator General of Andhra Pradesh. However, Railway Rules for grant of family pension do not consider the dependent sister as a member of the family. The matter was also taken up by the Railway Board with DoP & PW for appropriate decision in the matter. In response, the DOP&PW has not agreed to the proposal. As per Rule 75(6)(i) to (v) of the Pension Rules, applicant is not eligible for the relief sought. Unless the Rules are amended, there is no scope to grant pension to the applicant.

6. Heard both the counsel and perused the pleadings on record.

7 (I) Applicant being dependent on her brother applied for family pension which was rejected because Rule 75(6)(i) to (v) of Pension Rules does not permit grant of family pension to a dependent sister. Respondents on the directions of this Tribunal in OA No.1505/2014, dt.29.12.2014 have taken up the issue with the DOP & PW for taking an appropriate decision to grant family pension to the applicant. This request was rejected by the 1st respondent vide impugned order dated .04.2016 (Annexure A-2) addressed to the 2nd respondent, which reads as under: -

“Please refer to Secretary, Railway Board’s speaking Order sent vide this office letter of even number dated 03.02.2016. In compliance of the speaking Order, the case was referred to DOP&PW for relaxation of the extant rules, and DOP&PW have found the proposal “NOT” feasible of acceptance.”

Consequently, as the impugned order was issued based on the advice of the DOP&PW, the said Department was impleaded as party respondent No.4 to this OA vide order passed in MA 718/2017, dt. 31.10.2017 and notice was issued to the impleaded respondent. DOP&PW, after having been made a party respondent, several notices were sent to them since 31.10.2017. Till today, the said Department did not file a reply, though nearly two years lapsed. It was also made clear in the notices, that in case they do not file a reply, issue will have to be decided ex-parte, as far as they are concerned. Yet, surprisingly, DOP&PW care not to make their voice heard.

(II) Family pension is not a bounty. It is granted for the services rendered by the employee to the respondent organization. Usually it is given to the family members of the deceased employee. However, the condition is that they should be dependent on the employee. This is a peculiar case, where the unmarried sister was dependent on her brother who took care of her while in service and also after retirement. 1st Respondent taking cognizance of this fact referred the matter to the DOP&PW as per Rule 107 of Pension Rules, which reads as under:

*“107. **Power of relax** – Where the pension sanctioning authority is satisfied that the operation of any of these rules causes undue hardship in any particular case, that authority, may for reasons to be recorded in writing, approach the Ministry of Railways (Railway Board) for dispensing with or relaxing the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. The Ministry of Railways (Railway Board) shall examine each such case and arrange to communicate the sanction of the President to the proposed dispensation or relaxation, as it may consider necessary keeping in view the*

merits of each case and keeping in view of an other statutory provisions:

Provided that no such order shall be made without concurrence of the Department of Pension and Pensioners' Welfare, in the Ministry of Personnel, Public Grievances and Pensions, Government of India."

As can be seen from the said Rule, respondents Railways have to necessarily take concurrence from the DOP & PW for relaxing the rules and grant pension to the applicant. The very fact that the 1st respondent forwarded the proposal to DOP&PW would mean that they are favourably inclined to grant family pension to the applicant. Relaxation is usually considered in very rare cases based on the facts and merits of the case. Here is the applicant aged around 72 years, who is unmarried and who was dependent on her brother for livelihood till his demise. On his demise, she is now unable to eke out a decent living. Being advanced in age, she has no scope to seek employment elsewhere except to look to the respondents for help and assistance in the evening of her life. There are also no counter claims for family pension. Railway Board, as it is, takes independent decisions and in a catena of judgments, Hon'ble Supreme Court did observe that the Railway Board orders are independently issued. Nevertheless, in the present case, Rule very specifically states that the concurrence of DOP&PW has to be sought. Hence, reference was made by the Railway Board for concurrence and the DOP&PW ought to have examined the issue in the perspective in which it need to be and thereafter, issued a concurrence as was sought. We come across cases of this nature in question very rarely. They call for a special relaxation considering the genuineness involved. Rules are

framed to ensure that reliefs found legitimate need to be provided and sometimes by even invoking an exception to the rule, where the situation demands. Here is a case, where an exception is to be made, as is provided for under Rule 107 of Pension Rules. Respondents organization being a model employer, need to take care of cases of this nature wherein the late employee who served the respondent organization for long years and his hapless sister who was dependent on him is now looking for their assistance to carry on with the rest of her life. The impugned order does not indicate on what grounds the DOP&PW has found the proposal not feasible. An order, which is not a reasoned order, is lifeless order. Hon'ble Supreme Court observed that reason is heartbeat of any decision. If there is no reason, there is no heartbeat and therefore, lifeless. Observations of the Hon'ble Supreme Court are extracted hereunder in support of the above assertion, in the case of Ram Phal v. State of Haryana, (2009) 3 SCC 258 : (2009) 2 SCC (Cri) 72 : (2009) 1 SCC (L&S) 645 at page 259:

“6. The duty to give reasons for coming to a decision is of decisive importance which cannot be lawfully disregarded. The giving of the satisfactory reasons is required by the ordinary man's sense of justice and also a healthy discipline for all those who exercise power over others. This Court in Raj Kishore Jha v. State of Bihar[(2003) 11 SCC 519 : 2004 SCC (Cri) 212] has stated: (SCC p. 527, para 19)

“19. ... Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.”

Hon'ble High Court of Jharkhand in Jit Lal Ray v. State of Jharkhand in WP(C) No. 469 of 2019 decided on 26-04-2019, has observed as under:

“It is settled position of law that a decision without any reason will be said to be not sustainable in the eyes of law, because the order in absence of any reason, also amounts to the violation of the principles of natural justice.”

Thus, the impugned order No.E(G)2015/PN1-24, dt. .04.2016 (Annexure A-2) issued by the Railway Board, communicated to the applicant vide letter dt. 25.04.2016 (Annexure A-1), is invalid and hence, the same deserves to be quashed and is accordingly quashed.

III. Therefore, keeping the above in view, since the concurrence has to be given by the DOP&PW, which has been made party respondent No.4 in the OA, they are directed to examine the issue and intimate the concurrence or otherwise, to the 1st respondent by issuing a speaking and well reasoned order, duly marking a copy of the same to the applicant, within a period of three months from the date of receipt of this order,.

IV. OA is disposed of with the above directions. There shall be no order as to costs.

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

Dated, the 30th day of July, 2019

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