

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00358/2016

Jabalpur, this Wednesday, the 14th day of August, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER

Manoj Pandey (Unemployed), S/o Late Shri Gupteshwar Pandey, aged about 43 years, R/o Narmada Road, In front of GRC Mess, Jabalpur 482001 (M.P) **-Applicant**

(By Advocate – Shri Amardeep Gupta)

V e r s u s

1. Union of India through its General Manager, of West Central Railway, Opposite Indira Market, Jabalpur (M.P) – 482001.
2. Divisional Railway Manager (P), Office of Divisional Railway Manager, Habibganj Railway, Bhopal – 462001 (M.P)

-Respondents

(By Advocate – Shri A.S. Raizada)

(Date of reserving order : 08.08.2019)

O R D E R

The applicant is aggrieved that respondents are not granting him family pension.

2. This is the third round of litigation filed by the applicant before this Tribunal, who is an unemployed handicap son of the retired Railway servant.

3. In the first round of litigation in OA 578/2010, this Tribunal, in its order dated 02.08.2010 (Annexure A-7) had directed the respondents as under:

“3. In the aforesaid premises, this case is hereby disposed of by granting liberty to the Applicant to submit a detailed representation (to the Respondents) by end of August 2010 and the Respondents are directed to cause a verification (through Welfare/Personnel Inspector); consider the grievances of the Applicant and do needful/pass a reasoned order, within a period of 120 days from the date of receipt of copies of this order, under intimation to the Applicant.”

4. The respondents decided the representation of the applicant vide order dated 01.12.2010 (Annexure A-2) and have rejected the claim for family pension.

5. Being aggrieved, the applicant again approached this Tribunal by way of OA No.158 of 2011. This Tribunal, vide its order dated 27.09.2012 (Annexure A-7) considered the issue in detail and allowed the O.A. In the said order, the report of the Medical Board that the applicant can perform a sitting sedentary job to earn his living was considered.

6. The respondents have sent the letter dated 11.07.2014 (Annexure A-1) to the applicant, wherein the following has been stated:

“1) Keeping the view express in the order dated 27.09.2012 passed in subject O.A. by Hon’ble CAT/JBP your case has been forwarded to Chief Medical Director Jabalpur to review the out come of Medical Board date 04.07.2012 constituted under the direction of Hon’ble CAT/JBP and issue a fresh certificate to enable the authority concern to sanction the family pension.

2) Chief Medical Director has advised that out come of medical board dated 04.07.2012 has not been quashed hence no need to review vide letter dated 20.06.2014.

3) In terms of rule 75 (6) (b) it is mandatory for the authority concerned who is empowered to sanction the family pension that *“before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicapped 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 Officer not below the rank of a Divisional Medical Officer setting out, as far as possible, the exact mental or physical condition of the child.”*

4) Your case has been examined/enquired afresh and found that the sanctioning authority of family pension could not sanction the same for want of certificate from competent medical officer which satisfy the authority concerned that you can not earn your livelihood.

5) As per out come of the Medical Board as communicated vide letter dated 04.07.2012 is declared that you have moderate difficulty in ambulation and can perform a sitting sedentary job to earn your living. As per this certificate the rule mentioned above prevent to sanction the family pension for life as claimed by you.”

7. Now, the applicant has again approached this Tribunal through this Original Application praying for the following reliefs:

“8. RELIEF SOUGHT :

It is therefore prayed that this Hon'ble Tribunal may kindly be pleased to :

8.(i) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal;

8.(ii) Quash and set aside the impugned rejection orders dated 11.07.2014 (Annexure-A/1).

8.(iii) After quashing the impugned order, direct the respondents authorities to grant family pension to applicant from the date of his entitlement i.e., from the date of death of father of applicant with all consequential benefits, arrears and interest thereon @ 18% per annum;

8.(iv) Any other order/orders, direction/directions may also be passed.

8.(v) Award cost of the litigation to the applicant.”

8. The respondents have filed their reply in which it has been stated that the Railway Administration had challenged the order dated 27.09.2012 passed in Original Application No.158 of 2011 before the Hon'ble High Court of Madhya Pradesh at Jabalpur in Writ Petition No.21567/2012. The Hon'ble High Court has found no error in the order of this Tribunal and the W.P was dismissed on 20.03.2014. Subsequently, the respondents have issued the speaking order dated 11.07.2014 (Annexure A-1).

9. Heard learned counsel for the parties and perused the pleadings and the documents available on record.

10. Learned counsel for the applicant submitted that the respondents are deliberately denying the facility of family pension to the applicant even after the orders of this Tribunal. He placed reliance on a decision of Hon'ble High Court of Madhya Pradesh in the case of **Union of India and others vs. Baba Singh** [2013(1) M.P.L.J 416].

11. Learned counsel for the respondents vehemently opposes grant of any relief as the case has been dealt with as per rules.

F I N D I N G S

12. The respondents have taken a technical ground that they need to have a certificate of competent medical authority before family pension can be given. Since the certificate of the Medical Board dated 04.07.2012 has not been quashed by this Tribunal, the Chief Medical Director has stated that there is no need to review the findings of the Medical Board.

13. It is seen that in the order of this Tribunal dated 27.09.2012 (Annexure A-7), the report of the Medical Board has already been considered and subsequent to it, the detailed orders have been passed.

14. Further, the Hon'ble High Court has also dismissed the W.P, when the respondents approached the Hon'ble High Court.

15. In the case of **Baba Singh** (supra), the Hon'ble High Court has held as under:

“15.....The Board tendered the certificate that the nature of petitioner’s handicap is not such as would not prevent him from earning. This becomes the foundation for rejecting petitioner’s claim. The Tribunal has dwelt upon this aspect of the matter eloquently as would warrant any further analysis thereon. Suffice it to say that merely because a person may earn his livelihood even with physical limitation cannot be construed in the given case rendering the respondent appellant ineligible for family pension under Rule 54(6)(iv) of 1972 Rules.”

16. I feel that this is a case where the respondent department is hiding behind technicalities whereas the judicial order, both by this Tribunal as well as by Hon'ble High Court, has explicitly directed the respondents to consider grant of family pension to the applicant. The report of the Medical Board was considered by this Tribunal. Once relief through a judicial Court has been granted, the act of the respondents in not honoring the same is not appropriate.

17. Accordingly, the O.A is allowed. The respondents are directed to consider grant of family pension to the applicant under Rule 54 (6) of the Railway Services (Pension) Rules, 1993, within 60 days from the date of receipt of a certified copy of this order.

No costs.

(Navin Tandon)
Administrative Member

am/-