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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.350/01526/2015

Dated of order: 29.04.2016

PRESENT:

**THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER**

.....

**TARUN KUMAR NASKAR
V/S
UNION OF INDIA & OTHERS**

For the Applicant : Mr.B.R.Das, Counsel
For the Respondents: Mr.S.Banerjee, Counsel

ORDER (ORAL)

MS.JAYA DAS GUPTA, AM:

Heard the Learned Counsel for both sides. Consulted
the records.

2. The Applicant, Mr. Tarun K umar Naskar, Son of Late Gopal Chandra Naskar has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) Rescind, recall, withdraw and/or cancel the order being Annexure-A/1 denying the Petitioner permanent family pension claimed on the ground of total physical disability;

(b) Allow the petitioner permanent family pension under Rule 75, Sub Rule (b) of R.S. Pension Rules, 1993 with effect from the date claim i.e. 19.11.2013 (Annexure-A/4), if not continued from 13.04.2013;

(c) Pay all the arrears in pension forthwith;

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(d) Certify that transmit the entire records and papers pertaining to the applicant's case so that after the cause shown thereof conscionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (iii) above;

(e) Pass any further order/orders and/or direction/directions as to your Lordships may seem fit and proper;

(f) Costs;

(Extracted as such)

3. The case of the Applicant, in nut shell, is that his father Late Gopal Chandra Naskar was working in the Railway as a Senior Record Sorter and retired from service in the year 1995 and died in the year 1997. After his death, the applicant received family pension upto the age of 25 years i.e. upto the year July, 2000, as per the Railway Services (Pension) Rules, 1993. After he attained the age of 25 years, his sister (Ms. Bandana Naskar) became the recipient of the family pension. Subsequently, she joined the Government service. In the meantime, the applicant was detected with 100% disability and having failed to receive the family pension, he approached this Tribunal in this OA seeking the aforesaid reliefs. He was earlier assigned with 40% disability vide medical certificate dated 12.12.1996 (Annexure-A/6).

3. The Respondents filed their counter in which it has been stated that after the death of the ex employee/pensioner, the applicant received the family pension till he attained the age of 25 years. The applicant failed to bring to the notice of the authorities

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about the nature and extent of his disability. Therefore, his sister, being the next ^{eligible} ~~eligible~~ dependent unmarried daughter of the ex employee/pensioner, was granted the family pension. Meanwhile, the applicant had applied for sanction of family pension in his favour by producing a copy of the disability certificate issued by the Superintendent, District Hospital, Diamond Harbour Health District, South 24 Parganas on 20.08.2013. Accordingly, the applicant was subjected to medical examination by a duly constituted Medical Board at Central Hospital/SERly/GRC and the Medical Board after examining the applicant **certified that the applicant suffers from 100% disability and is not likely to earn his own livelihood in future.** His request for sanction of family pension was considered and necessary **section order for grant of family pension in his favour was communicated to FA & CAO (Pen)/GRC on 26.5.2014.** But the Senior AFA (Sett)/ GRA vide his letter dated 13.6.2014 returned the case of the Applicant on the ground that his disability occurred after the death of his father and as such the applicant is not eligible for family pension as a disabled son. This was also intimated to the applicant vide letter dated 12.8.2014. Hence, the Respondents have prayed for the dismissal of this OA.

4. From the record, it reveals that the father of the applicant, the ex employee was in receipt of family pension and

died in the year 1997. Thereafter, family pension was sanctioned and paid to the Applicant. As it further reveals from the record, prior to receipt of the family pension, the applicant was ^{physically} ~~orthopedically~~ handicapped to the tune of 40%. Disability of 40% and above is termed as permanent disability. The certificate granted by the competent authority to the above extent is annexed to this OA as Annexure-A/6 dated 12.12.1996 which reads as under:

"Medical Certificate for Orthopedically Physically ENT, EYE, Mentally Handicapped Personnel.

I/We have examined Sri Tapan Naskar aged about 20 years son of Gopal Ch Naskar address- Mastikary, Po. D.Barasat, Ps. Joynagar, Block Joynagar-1, Shri Tpan Naskar is blind.....

The disability is reportedly congenital disease and in my own/our opinion impairment is such as not likely to respond to medicine Physiotherapy or remedial exercise physiotherapy.

His partial disability calculated according to the manual for orthopaedic surgeon at American Academy of Orthopaedic Surgeon, U.S.A, published by A.L.M. Corporation of India is/are approximately 40% disability."

5. Further it appears that on the application submitted by the applicant for sanction of family pension, he was re examined by the Medical Director, Central Hospital, Garden Reach, Kolkata-43 and the report submitted by the Medical Authority is at Annexure-A/5 dated 28.04.2014 which reads as under:

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"SOUTH EASTERN RAILWAY

Office of the Medical Director, Central
Hospital, Garden Reach, Kolkata-43.

No.MD/SER/MB/2094

date-28.4.2014.

To

The APO (Settlement),
S.E.Railway,
Garden Reach,
Kolkata-700 043.

Sub: Appeal of Sri Tapan Kumar Naskar, Son of
Late Gopal Chandra Naskar, Ex
RS/Comml./Kolkata for grant of family
pension.

Ref: Your letter No. SER/P-HQ/Sett/662 (4)/FP
/PHC/ Inclusion/2014 dated 03.03.2014.

A duly constituted Medical Board has
examined the above subject named patient and
their recommendation is as follows:

"The members of the medical board
have carefully examined Sri Tapan Kumar
Naskar, 38 years male, son of late Gopal
Chandra Naskar, Ex RS/Comml./Kolkata
and are of the opinion that he is suffering
from profound visual loss in right eye due
to pigmentary retinal dystrophy, which is a
progressive disease and his further visual
improvement is not expected by any
treatment. Hence, Medical Board opines
that his percentage of visual impairment
is 100% (hundred percent) and he is not
likely to earn his own livelihood in
future.

In view of the above, his case is
recommended for family pension as per
extant rules.

The above has been approved by the
competent authority.

For MEDICAL DIRECTOR/GRC"

DWS

6. The relevant provision RBE No. 12/2010 regarding grant of family pension to physically handicapped wards reads as under:

"Estt. Srl. No. 19/2010 RBE No. 12/2010

No.P/S/Pen/Family Pension/98/Pt.II dt. 8.2.2010

Sub: Grant of family pension to a son/daughter of a deceased Railway employee, suffering from any disorder/disability of mind/mentally retarded or physically crippled/disabled -clarification regarding.

Railway Board's letter No. F (E)III/2005/PN1/32 dated 15.1.2010 (RBE No. 12/2010) is as under:

A number of references have been received from the zonal Railways, etc., seeking clarification on certain issues relating to grant of family pension to a son/daughter of a deceased Railway employee, suffering from any disorder/disability of mind/mentally retarded or physically crippled/disabled and is rendered incapable of earning a living even after attaining the age of 25 years, in terms ;of the provisions contained in Rule 75 (6) of the Railway Services (Pension) Rules, 1993. The matter has been examined in consultation with the Department of Pension and Pensioners' Welfare, and the position is clarified as under:

Sl.No.	Clarification sought	Clarification given
(a)	Whether non of disability of a child by a pensioner/spouse in is/her life time renders the child ineligible for family pension?	Non-intimation of physical/mental handicap does not make a person ineligible for family pension.
(b)	Whether a disabled child would be ineligible for family	Disability manifesting itself after 25

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	pension if his/her disability is manifested after attaining the age of 25 years?	years is also acceptable for disbursement of family pension.
(c)	Whether a disabled child would be ineligible for family pension if his/her disability is manifested before the age of 25 years but is certified by an authorized Medical Officer after attaining the said age?	No

2. Accordingly, the Zonal Railways etc. Are advised to settle cases of family pension of sons/daughters of deceased Railway employees, suffering from any disorder/disability of mind/mentally retarded or physically crippled/disabled and are rendered incapable of earning a living even after attaining the age of 25 years which were pending on the Railways for want of the above clarification, at the earliest. While disposing of such cases, it should, however, be kept in view that married sons and daughters whether suffering from any disorder/disability of mind/mentally retarded or physically crippled/disabled, are not eligible for family pension as per the extant instructions."

7. The applicant suffered 40% visually disability from 1996 which is before the death of his father in the year 1997 and subsequently as certified by the Medical Board on 28.4.2014 he suffered from 100% disability and is not likely to earn his livelihood in future. Therefore, as family pension is given at a time to the eligible family members the applicant becomes entitled to family pension for life from the date the unmarried sister stops getting the family pension. Therefore, the case of the applicant was rightly

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sanctioned by the competent authority in his favour but could not be paid as the claim was returned by the Senior AFA (Sett.)/GRA vide letter dated 23.6.2014 on the flimsy ground that the disability of the applicant occurred after the death of his father which is wrong as clarified by RBE No. 12/2010.

It is also worthwhile to quote the Government of India Railway Board's Letter No. F(E) III/2000/PN1/65 dated 14th December, 2005 which reads as under:

“(30) Permissibility of Family pension to blind son/daughter:- In terms of provision below Rule 75 (6) of Railway Services (Pension) Rules, 1993, if a son or daughter of a Railway servant is suffering from any disorder or disability of mind, including 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, family pension shall be payable to such son or daughter for life subject to certain conditions. Certain Railway administrations have sought clarification whether blindness can be considered as a physical disability for the purpose of sanction of family pension for life under this proviso.

2. The matter has been examined in consultation with the Department of Pension and Pensioners' Welfare and it is clarified that blindness is a physical disability, which is covered by proviso below Rule 75 (6) of these rules. The sanction of family pension to such a dependent blind son or daughter will be subject to fulfilment of all other conditions including the one that the son or daughter was suffering from the disability of blindness before attaining the age of 25 years because of which he or she was incapable of earning his/her livelihood and that he or she continues to suffer from the disability even after attaining the age of 25 years and the disability renders him/or incapable of earning his/her livelihood as evidenced by a certificate

[Handwritten signature]

obtained from a Medical Officer not below the rank of a Divisional Medical Officer. The family pension sanctioned on fulfilment of all these conditions will be discontinued if such a son or daughter is cured or improved of the blindness subsequently and he/she becomes capable of earning or starts earning a living."

Thus, the Respondent Authorities are hereby directed to consider release of family pension under Rule 75 of the Railway Services (Pension) Rules, 1993 in favour of the disabled Applicant, within a period of two months from the date of receipt of a copy of this order with effect from the date the sister Ms. Bandana Naskar became disentitled to Family pension and such payment shall continue to the applicant as per Rules.

8. This OA is accordingly allowed. There shall be no order as to costs.

(Ms. Jaya Das Gupta)
Admn. Member

(Justice V.C. Gupta)
Judicial Member

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