

(2008) 03 DEL CK 0032
In the Delhi High Court
Case No : WP (C) No. 6604 of 2006

Om Prakash

APPELLANT

Vs

The Ministry of Indian Railway and Another

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Railway Services (Extraordinary Pension) Rules, 1993 — Rule 75(6)

Citation : (2008) 149 DLT 599 : (2008) 102 DRJ 462 : (2009) 1 SLJ 216

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Krishan Kumar and Ajay Kumar, for the Appellant; B.S. Jain, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioner has claimed the family pension from 25th December, 2000 after the death of his father who was a Railways employee during the lifetime of the petitioner on the ground that he is disabled and unable to earn his livelihood.

2. The brief relevant facts for adjudication of the present petition are that the father of the petitioner was working as a fitter (MCM) in the Central Railways. The petitioner's father retired on 30th June, 1987 and his pay at the time of retiring from service was Rs. 1800/-. The father of the petitioner had served from 2nd May, 1949 upto 30th June, 1987.

3. The petitioner contended that his father was getting pension from Central Railways after his retirement on 30th June, 1987 till 25th December, 2000 when the father of the petitioner expired. The petitioner has produced a copy of the pension book and a copy of the death certificate of his father.

4. It is asserted by the petitioner that he is 55% physically handicapped and he is fully dependant on his elder brother after the demise of his father. It is

contended that during the lifetime of his father also he was dependent upon him and he is unable to earn his living. The petitioner has produced the disability certificate issued by All India Institute of Medical Sciences certifying that he has 55% disability of both lower limbs. Petitioner pleaded that though he is 10th Class pass but he could not continue due to illness as he had T.B of hip joints and he became physically handicapped of both lower limbs. He is stated to be unable to do any kind of physical job and was always dependant on his father who was an employee of respondent Railways. The petitioner has also produced the old record pertaining to his illness, T.B of hip joints making him disabled.

5. The petitioner contended that in the family pension book all the documents relating to the pension of the father of the petitioner were prepared by the clerks of respondent No. 2 who had left the column pertaining to the dependants of the petitioner's father blank, however, form 6 was filled by his father and he was shown as his dependent. The mother of the petitioner had pre deceased his father.

6. The petitioner has claimed that under the Family Pension Scheme for Railway Servants, 1964 the family pension is payable not only to the widow or the widower after the demise of the retired person but to the son or daughter also if such a son or a daughter is suffering from any disorder or disability of mind or is physically crippled or any disability which renders son or daughter unable to earn a living even after attaining the age of 25 years. The relevant part of Rule 75 of Family Pension Scheme for Railway Servants, 1964 is as under:

75: Family Pension Scheme for Railway Servants, 1964.

(1). The provision of this rule shall apply:

(a) To a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and

(b) To a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension the Scheme for railway employees, 1964, contained in Railway Board's letter No. F(P)63 PN-1/40 dated the 2nd January, 1964 as in force immediately before the commencement of these rules.

Note: The provisions of this rule has also been extended from 22nd September, 1977 to railway servants on pensionable establishment who retired or died before the 31st December, 1963 and also to those who were alive on that date but had opted out of the 1964 Scheme.

(2) Without prejudice to the provisions contained in Sub-rule (3), where a railway servant dies:

(a).After completion of one year of continuous service, or

(b). Before completion of one year of continuous service provided the deceased railway servant concerned immediately prior to his appointment to the service or

post was examined by the appropriate medical authority and declared fit by that authority for railway service;

(c). After retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V other than the pension referred to in Rule 53. The family of the deceased shall be entitled to a family pension 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table Explanation:

The expression "Continuous one year of service" where-ever it occurs in this rule shall be construed to include "less than one year of continuous service" as defined in Clause (b).

(3). The amount of family pension shall be fixed at monthly rates and expressed in whole rupees and where the family pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee. Provided that in no case a family pension in excess of the maximum specified under this rule shall be allowed.

(4).(i) (a) where a railway servant, who is not governed by the Workmen's Compensation Act, 1923 (8 of 1923), dies while in service after having rendered not less than seven years' continuous service the rate of family pension payable to the family shall be equal to fifty per cent of the pay last drawn or twice the family pension admissible under Sub rule (2), whichever is less, and the amount so admissible shall be payable from the date following date of death of the railway servant for a period of seven years, or for a period up to the date on which the deceased railway servant would have attained the age of sixty five (now sixty-seven) years had he survived, whichever is less.

(b) In the event of death of a railway servant after retirement, the Family Pension as determined under Sub-clause (a) shall be payable for a period of seven years, or for a period up to the date on which the retired deceased railway servant would have attained the age of sixty five (now sixty-seven) years had he survived, whichever is less. That is no case the amount of family pension determined under Sub-clause (b) of this clause shall exceed the pension sanctioned on retirement from railway service:

Provided further that where the amount of pension sanctioned on retirement is less than the amount or family pension admissible under Sub-rule (2) the amount of family pension determined under this clause shall be limited to the amount of family pension admissible under Sub-rule (2).

Explanation: For the purpose of this sub-clause "pension sanctioned on retirement" includes the part of the pension which the retired railway servant may have commuted before death.

(ii) (a) where a railway servant, who is governed by the Workmen's Compensation Act, 1923 (8 of 1923), dies while in service after having rendered not less than seven years continuous service, the rate of family pension payable to the family shall be equal to fifty per cent of the pay last drawn or one and a

half times the family pension admissible under Sub-rule (2), whichever is less.

(b) The family pension so determined under Sub-clause (a) shall be payable for the period mentioned in Clause (i): Provided that where a compensation is not payable under the aforesaid Act, the pension sanctioning authority shall send a certificate to the Accounts Officer to the effect that the family of the deceased railway servant shall be paid family pension on the scale, and for the period, mentioned in Clause (i) (iii) After the expiry of the period referred to in Clause (i), the family, in receipt of family pension under that clause or Clause (ii) shall be entitled to family pension at the rate admissible under Sub-rule (2).

(5).Where an award under the Railway Services (Extraordinary Pension) Rules, 1993 is admissible, no payment of family pension under this rule shall be authorized.

(6). The period for which family pension is payable shall be as follows:

(i) In the case of widow or widower, up to the date of death or remarriage, whichever is earlier;

(ii) In the case of a son, until he attains the age of twenty-five years; and

(iii). In the case of an unmarried daughter, until she attains the age of twenty-five years or until she gets married, whichever is earlier:

Provided that if the 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 the family pension shall be payable to such son or daughter for life subject to the following conditions, namely:

(a). The family pension shall be paid to such son/daughter through the guardian as if he or she were a minor on the basis of guardianship certificate or the guardian appointed by a court except in the case of physically crippled son/daughter who has attained the age of majority. The spouse of the deceased pensioner/employee also allowed to furnish the details of the eligible children to the Pension Sanctioning Authority if such details were not furnished earlier.

(b). Before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap 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.

(c). The person receiving the family pension as a guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of Divisional Medical Officer to the effect that the son or daughter continues to suffer from disorder or disability of mind (including mentally retarded) or continues to be physically crippled or disabled. Explanation:

(1). Only the disability which manifests itself before the retirement or death of the railway servant while in service shall be taken into account for the purpose of grant of family pension under this sub rule. (Explanation No. 1 deleted vide notification No. F(E).III/94/PN-1/31 (Amendment) dated 3.2.1995)

Explanation: 2()

(2) A daughter shall become eligible for family pension under this sub rule from the date she gets married.

(3) the family pension payable to such a son or daughter shall be stopped if he or she starts earning his or her livelihood.

(4) in such cases it shall be the duty of the guardian to furnish a certificate to the Treasury or Bank, or Post office (Authorised disbursement units for Railways) as the case may be, every month that (i) he or she has not started earning his or her livelihood; (ii) in case of daughter that she has not yet married;

(d) in the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the Railway Servant or the pensioner, as the case may be, and in case no such nomination has been furnished to the Head of Office of such Railway servant or pensioner during his life time, to the person nominated by the spouse of such Railway servant or family pensioner, as the case may be , later on.

(e) if the son and unmarried daughters including sons and unmarried daughters suffering from disorder or disability of mind (including mentally retarded) are alive, the family pension shall be payable in the order of their birth irrespective of the sex of the child and the younger of him shall not be eligible for family pension unless the elder above him or her becomes ineligible for the grant of family pension. In cases, where the family pension is payable to twin children, the same shall be payable to such twin children in equal shares and in the event of any of such.

7. The Petitioner contended that under the relevant rule the family pension of the father of the petitioner is to continue in the name of the petitioner as he is a disabled son of the retired employee with permanent disability and is unable to earn his livelihood and, Therefore, he sent representations to the respondents dated 3rd April, 2001, 14th September, 2002 and 1st November, 2002 for grant of family pension to the petitioner after the death of his father on 25th December, 2000. On the representations made by the petitioner it was communicated to the petitioner by communication dated 4th October, 2002 that at the time of retirement, petitioner's father did not give in writing intimation about disability of petitioner though the disability certificate is dated 28th April, 1997. It was also communicated to the petitioner to submit all the relevant papers in compliance of letter dated 15th May, 2002.

8. After petitioner complied with the requirements under the rules, by another communication dated 18th November, 2002 the petitioner was intimated that in

terms of Explanation 1 of para 6 of Explanation of Rule 75 Clause 6 only that nominee will be taken into consideration, which has been mentioned by the Railway employee at the time of retirement or before death during the course of the employment and in the case of the petitioner in the forms of the retirement it had not been so mentioned, Therefore, the petitioner is not entitled for family pension.

9. The petitioner contended that he had sent all the documents demanded by the respondents and even sent a legal notice dated 25th December, 2000, however, the family pension has not been granted to him and he is on the verge of starvation and is dependent on his elder brother and in the circumstances he is claiming family pension on the ground that he is the disabled son of Sh.Lampoo, who was a Railway employee and he is unable to earn his livelihood.

10. The respondent has contested the petition on the ground that the physically handicap certificate dated 28th April, 1997 certifying that the petitioner is 55% handicap does not state that the petitioner is unable to earn his livelihood. It is also alleged that the father of the petitioner in the statement showing the details of the members of the family for the purpose of Family Pension Scheme, 1964 had not stipulated the disability of the petitioner. A copy of the form No. 6 has been produced by the respondent which is the statement showing the details of the members of the family for purpose of Family Pension Scheme, 1964 which is dated 9th May, 1987. According to the respondent the physical disability of the petitioner is after the retirement of his father on 30th June, 1987. Relying on the Explanation 1 of Rule 75(6) it is contended that the petitioner is not eligible for family pension and the petitioner was intimated by letter dated 18th November, 2002 that he is not entitled for the family pension.

11. The petitioner has refuted the allegations made by the respondents and contended that the Explanation 1 to Rule 75(6) contemplating that only that disability which manifests itself before the retirement or death of the Railway servant while in service shall be taken into account for the purpose of grant of family pension under this sub rule, was deleted vide notification No. F(E) III/94/PN-1/31 dated 3rd February, 1995 and Therefore, the respondent cannot contend that he is not entitled for family pension. The petitioner reiterated that he is entitled for family pension.

12. I have perused the petition, reply and the documents filed by the parties and have heard the learned Counsel for the parties at length. This is not disputed that the father of the petitioner was a Railway employee who retired after a long service from 2nd May, 1949 to 30th June, 1987. This also cannot be disputed that the name of the petitioner was mentioned in Form 6 which is the statement showing the details of the members of the family for the purpose of Family Pension Scheme, 1964 which is dated 9th May, 1987. The respondents in their letter dated 4th October, 2002 denied the family pension on the ground that the petitioner has not sent the relevant documents and since the father of the petitioner had not given any information in writing about the physical disability of

the petitioner and as the certificate is dated 28th April, 1997 the petitioner is not entitled for the family pension. By said communication dated 4th October, 2002 the petitioner was, however, asked to comply with the requirement demanded by letter dated 15th May, 2002. The copy of the letter dated 15th May, 2002 has not been produced either by the petitioner or by the respondents. The case of the petitioner is that he had submitted all the documents demanded by the respondents from time to time which fact has not been denied by the respondents. The family pension to the petitioner has been declined by letter dated 18th November, 2002 on the ground that the physical disability of the petitioner was acquired by him after the retirement of his father on 30th June, 1987. However in the reply filed to the writ petition it is also alleged that no certificate from a medical officer not below the rank of a Divisional Medical Officer of the Railways about the exact mental and physical condition had been submitted. It is pertinent to notice that by communication dated 18th November, 2002 the claim of the petitioner was rejected solely on the ground that under the Railway Services (Pension) Act, 1993 Chapter VI Rule 75 Explanation 1, the nominees for family pension could only be those nominees who are mentioned by the Railways employees at the time of retirement or before death during the course of the employment whereas in Form 6 submitted by the father of the petitioner at the time of retirement it had not been mentioned that the petitioner was disable. The respondents thus have rejected the case of the petitioner only on the ground that in terms of Explanation to Sub rule 6 of Rule 75, since the petitioner did not acquire the disability before the retirement or the death of the Railway servant while in service, Therefore, the petitioner is not entitled for the family pension.

13. While rejecting the case of the petitioner the ground taken was not that the petitioner had not submitted a proper medical certificate stipulating that petitioner is not able to earn his livelihood on account of his disability but on the ground that the nomination of the petitioner was not mentioned by the Railway employee at the time of retirement or before death during the course of the employment. However, in the counter affidavit filed by the respondents, the grounds taken are that the petitioner has not submitted a certificate stipulating that he is unable to earn his livelihood and his disability is after retirement of his father on 30.6.1987 and he is not entitled for family pension under Rule 75 (vi) (b) Explanation 1. It is no more res-Integra that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons.

14. The orders dated 18th November, 2002 is rather crypt and the only reason given is that the father of the petitioner at the time of retirement had not given any information about the disability of the petitioner. No other ground was taken by the respondents at that time. The Apex Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, had held that an orders cannot be supplemented by fresh reasons as otherwise an order bad in the beginning may, by the time it comes to Court on account of a

challenge, gets validated by additional grounds later brought out. Consequently the respondents cannot validate their order on the grounds now raised in the counter affidavit filed on their behalf. The Supreme Court in *Mohinder Singh Gill* (supra) in para 8 page 417 had held:

8. ...that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, :

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." Orders are not like old wine becoming better as they grow older.

15. The learned Counsel for the respondents has very vociferously argued that since there is no certificate showing that the petitioner is unable to earn his livelihood on account of his disability, the petitioner is not entitled for family pension. This is not disputed that petitioner has 55% disability of both his limbs which he has acquired on account of TB of hip joints long back. The plea of the petitioner is that after becoming disable he was totally dependent on his father, a retired Railway employee and after his death on 25th December, 2000 he is dependent upon his elder brother. The respondents have also admitted that a certificate dated 28.04.1997 of AIIMS was given which was not rejected on the ground that it is not from an officer below the rank of Divisional Medical Officer nor was the family pension declined on the ground that the certificate did not stipulate categorically that the petitioner is unable to earn his livelihood. Therefore, the respondents cannot be permitted to decline family pension to the petitioner on this ground. The medical certificate is from the premier institution of this country and it cannot be doubted and Therefore, this fact that the petitioner is a disabled person cannot be denied by the respondents. The respondents have also not alleged that the petitioner is able to earn his livelihood. In the facts and circumstances it can be inferred that the petitioner is unable to earn his livelihood.

16. The Apex Court in *Smt. Bhagwanti Vs. Union of India (UOI)*, while considering the question whether the post retirement spouse and children are entitled to family pension and whether the provision contained in the Pension Rules denying such family pension is constitutionally valid, had held that such provision denying the family pension is ultra virus Article 14 of the Constitution

of India and cannot be sustained. The Apex Court had further held that the purpose for which the family pension is provided, is frustrated if children born after retirement are excluded from the benefit of the family pension and in the event of death of the Government servant such minor children would go without support. In another judgment *Bhagwanti Mamtani v. Union of India*, the Apex Court had held that the benefit of the provision of the rule to a mentally disabled person cannot be denied on the ground of making such claim belatedly. The Apex Court had also held that any nomination made contrary to the statute denying the claim of the rightful person to get the family pension will not disentitle such person from family pension under the Pension Rules in (1999) 5 SCC 237, *G.L.Bhatia v. Union of India*. Following the principles laid down by the Apex Court; it is Therefore, evident that the pension being payable on consideration of the past services rendered by the Government servant and the avowed purpose of the pension rules being to provide sustenance in old age and some solace that in the event of his/her death, children will get some support in the form of family pension, such pension cannot be deprived to a disabled child surely on the ground that no declaration was made by the Government servant, while in service or at the time of retirement, as in that event the very purpose granting family pension would be defeated.

17. The Rules 75(6) of the Railways family Pension Scheme for Railway Service, 1964 categorically contemplates the period for which the family pension shall be payable, under which the family pension is payable to a son until he attains the age of 25 years and even to such a son who has attained the age of 25 years provided he is suffering from a disability which has rendered him unable to earn a living even after attaining the age of 25 years. Consequently, according to the rules of the respondents, even though the petitioner has attained the age of 25 years but on account of his 55% disability of limbs has rendered him unable to earn his living, he shall be entitled for the family pension during his life time. The plea of the respondent that the disability was not acquired by the petitioner before the retirement of the Railway servant in terms of Explanation to Rule 75 (6) is based on the misconception of the respondents that the Explanation No. 1 to Rule 6 still persists though by notification No. F(E) III/94/PN-1/31 dated 3rd February, 1995 the Explanation 1 stipulating that the disability must have been manifested before retirement or death of the railway servant while in service, was deleted.

18. If after the demise of the retired Railway servant who was entitled to pension, the pension continues to the widow up to the date of death or remarriage and if in case of a son after the death of a retired employee the pension continues to his son till he attains the age of 25 years, then by virtue of the proviso to Rule 75 (b) in case of a disable son who is unable to earn his livelihood, after the demise of the retired Railway servant, the pension shall continue during the lifetime of disabled son who is unable to earn his livelihood.

19. Consequently, the rule is made absolute and the writ petition is allowed

holding that the petitioner is entitled for the family pension. Therefore, the petitioner is entitled for family pension during his lifetime. The respondents, in the facts and circumstances should pay the amount of family pension to the petitioner after the demise of his father on 25th December, 2000 and continue to pay family pension to the petitioner during his lifetime. Considering the facts and circumstances of the case, the parties are however, left to bear their own costs.