

(2023) 07 CAT CK 0046

In the Central Administrative Tribunal

Case No : Original Application No. 1528 Of 2017

Rana Mritunjay Pratap Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 21-07-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 07 CAT CK 0046

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : S.K. Pandey, Ajay Kumar Rai

Final Decision : Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the impugned order dated 11.10.2017 passed by respondent no. 2 and to direct the respondents to release family pension (handicap) in favour of the applicant.

2. The facts of the case, in brief, are that the father of the applicant late Bhavnath Singh, who was posted as Assistant Commercial Officer, retired on 31.07.1986. The applicant being handicapped from his childhood was totally dependent on his parents. The mother of the applicant was predeceased to the death of his father. After the death of the mother of the applicant, his father placed his name for family pension in the PPO of the department during his life time on 10.04.2011 and on 21.01.2013, the father of the applicant also died. The applicant received office memorandum dated 22.01.1993 and 22.06.2010 issued by respondent no. 1 which provides family pension to handicapped person. Thereafter, the applicant preferred representation dated 20.02.2014 before General Manager, Northern Railway, Baroda House, New Delhi (respondent no. 2) alongwith relevant documents like handicapped certificate, family register, PPO,

office memorandum and bank account statement of his father etc requesting sanction of family pension. Having received no response, the applicant submitted reminders dated 07.03.2014, 20.07.2015, 18.11.2015 and 28.11.2015. As no heed was given on the representation/reminders of the applicant, he filed OA No. 1479/2016, which was disposed off with direction to the respondents to decide representation dated 22.02.2014 within two months. As the respondents did not comply the order, contempt petition no. 76/2017 was filed. On 19.07.2017, the respondent no. 2 asked the applicant to furnish certain documents although the same was already on record. However, the applicant submitted required papers. Thereafter, the respondent no. 2 passed the impugned order dated 11.10.2017 and refused to give family pension to the applicant by taking baseless grounds. Aggrieved the applicant has filed the instant original application on the ground that the action of the respondents is totally illegal and arbitrary because the applicant is a handicapped person and he urgently require family pension in order to maintain his livelihood.

3. Detailed Supplementary Affidavit has been filed by the applicant on 04.10.2021 reiterating the facts of OA and he has submitted several documents.

4. Counter reply has been filed by the respondents wherein they agreed to the basic facts of the case that the father of the applicant retired on 31.07.1986 and after six years of his retirement, the mother of the applicant expired on 13.06.1992 i.e. prior to death of his father on 23.01.2013. After death of his father, the applicant filed OA 1479/2016 seeking relief of family pension being handicapped since childhood. The claim of the applicant was considered in the light of Railway Board's letter No. F(E)III/2005/PN1/32 dt. 15.01.2010 (RBE-12/2010) and it was rejected vide speaking and reasoned order dated 11.10.2017, which is under challenge. It is stated that the applicant has not enclosed the copy of letter of Railway Board dated 15.01.2010 although it was served upon the applicant alongwith impugned order dated 11.10.2017.

5. The respondents have contended that the applicant is married and as the married son/daughter of pensioner whether suffering from any disorder / disability of mind/mentally retarded or physically crippled / disabled are not eligible for family pension. It is further contended that the applicant has not challenged the aforesaid policy made by the Railway Board. Hence, unless and until the aforesaid policy of the Railway Board is not challenged and changed, the original application is not maintainable and is liable to be dismissed.

6. Rejoinder affidavit has been filed by the applicant reiterating his stand in the OA as well as in Supplementary Affidavit. However, the applicant has emphatically denied the contents of paragraph 4(C) of counter affidavit and submitted that on several occasion, the Government of India and the Railway Board has clarified that disabled person is entitled for family pension even after marriage. In this regard, the applicant has enclosed a part of copy of letter dated 11.02.2013 issued by the Government of India addressed to all Indian Railways at Annexure RA-1 as well as page 42 of Suppl. Affidavit and claims that as per

the aforesaid letter, he is eligible for family pension.

7. The respondents have filed reply to the rejoinder affidavit stating therein that the applicant was replied in terms of Railway Board's letter no. F(E)III/2005/PN1/32 dt. 15.01.2010 (RBE-12/2010) wherein it is advised that the married sons and daughters, whether suffering from any disorder / disability of mind / mentally retarded or physically crippled /disabled, are not eligible for family pension hence the claim of the applicant was rejected vide order dated 11.10.2017. It is further stated that in reference to the Railway Board letter dated 11.02.2013 (RBE 12/2013), in Old Explanation 1, it was clarified that an unmarried son or an unmarried daughter or widowed or divorced daughter shall become ineligible for family pension under this sub-rule from the date he or she gets married or remarried. However, in New Explanation 1, it is again clarified that an unmarried son or an unmarried daughter or widowed or divorced daughter except a disabled son or daughter shall become ineligible for family pension from the date he or she gets married or remarried. The respondents further contended that the applicant has wrongly mentioned in the OA that he is handicapped from childhood and dependent on his parents. It is stated that in terms of certificate issued by the medical authority, Mau, Uttar Pradesh dated 04.11.2008, the applicant is having Locomotor Disability as he was diagnosed as Right Sided Hemiparesis with 50% permanent in relation to his right leg. Thus, in view of the above, the applicant cannot be said to be disabled from his childhood. It is also stated that as per official record, no intimation was ever given by Late Bhavnath Singh that his son is handicapped and dependent upon him.

8. Further, in the counter reply to the Supplementary Affidavit, the respondents have stated that the OA has been filed by the applicant by concealment of facts and he is trying to mislead the court as he has pleaded in para 4.3 of the OA as well as in para 2 of representation dated 20.02.2014 that he is physically handicapped since childhood whereas in para 4 of Supplementary Affidavit he has stated that he met with a severe accident on 31.12.1988, which is evident from medical documents annexed in the Suppl. Affidavit. As the applicant has not approached this court with clean hand as well as clean objective, hence in view of the law laid down by the Hon'ble Apex Court in Ramjas Foundation and others Vs. Union of India and other – AIR 1993 (SC) 852 and K.R. Srinivas Vs. R.M. Premchand and other – 1994 (6) SCC 620, the OA is liable to be dismissed because who seeks equity must do equity. The legal maxim "Jure Nature Aequum Est Neminem Cum Alterius Detrimento Et Inuria Fieri Locupletiolem" means that it is a law of nature that one should not be enriched by loss or injury to another.

9. The respondents further tried to explain that Explanation No. 1 in terms of Railway Board's Letter dated 16.01.2013 (Annexed on page 43 of Supplementary Affidavit) wherein it has been clearly stated that unmarried son/daughter or widowed or divorced daughter, except disabled son or daughter, shall become ineligible for family pension from the date he / she gets married or remarried.

They state that it means that if the individual is already drawing family pension then he/she will be ineligible from the date of marriage or remarriage. However, at the time of retirement, the applicant was not dependent on Railway employee or after retirement.

10. Written arguments have been filed by the learned counsel for the applicant as well as the respondents' counsel where they have reiterated their respective arguments.

11. I have heard learned counsel for the parties and also carefully gone through the records and rival contentions.

12. Before me the issue to be decided is following: -

(i). whether a married disabled son is eligible for family pension or not as per the existing rules and circulars of the Government.

(ii). if disability is not from childhood and develops later due to accident, as in the present case, whether such married son can claim disability pension.

13. Basic facts of the case are not disputed as evident from the record. The impugned order dated 11.10.2017 has been passed pursuant to the order of this Tribunal dated 30.11.2016 passed in OA No. 1479/2016 whereby direction was given to decide the representation of the applicant dated 22.02.2014 within two months. The authorities have found following: -

"However, taking into consideration your representation, it is seen that as per your version, you are handicapped from child hood and dependent upon your parents but in official records there is no evidence in this regard. You have enclosed a photocopy of handicapped certificate issued on 04.11.2008 by the office of Chief Medical Officer / Mau. Certificate of handicap is required to be issued by the following as per pension rules 75 (copy enclosed)

"Handicap certificate required from a Medical Board comprising of a Medical Director or a Chief Medical Superintendent or In-charge of a Zonal Hospital or Divisional 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."

You have declared your marital status as married during inquiry conducted by welfare inspector of this railway and also in inquiry it's proved that you have got married with Ms. Nitu Singh and having two daughters but as per pension rule and extant instruction on the subject (copy enclosed) married sons or daughters of pensioners whether suffering from any disorder / disability of mind/mentally retarded or physically crippled / disabled, are not eligible for family pension. Accordingly, your representation is hereby disposed off with the observation that your claim for granting family pension is not tenable."

14. As is clear from the above, the authorities have raised objection that his

handicapped certificated was issued on 04.11.2008 by the Chief Medical Officer, Mau whereas it is required to be issued as per the Pension Rule 75, which is further elaborated in the next paragraph that the certificate should be issued by a Medical Board comprising of a Medical Director or a Chief Medical Superintendent or In-charge of a Zonal Hospital or Divisional 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. But the authorities have not taken recourse to refer his case to a Medical Board, which they could have easily done, and obtained appropriate certificate. In case of handicapped person, the authorities have to be compassionate and sensitive to understand their limitations in obtaining various certificates and easily they could have constituted an appropriate Board to assess whether he was genuinely physically challenged to be eligible for any benefit. Hence, merely raising such objections do not convince the court that the authorities have discharged their part of duties vis-à-vis handicapped dependent of their past employee who was a pensioner and is no more. Further, the document states that the applicant has declared his marital status as married during inquiry conducted by the Welfare Inspector of the railways and that he was married to Ms. Nitu Singh and having two daughters but as per the pension rules and instructions on the subject, married sons or daughters of pensioners, whether suffering from any disorder / disability of mind/mentally retarded or physically crippled / disabled, are not eligible for family pension. Accordingly, his claim for family pension was not found to be tenable.

15. If we see the DOPT OM No. 1/33/2012-P&PW (E) dated 16.01.2013, at New Explanation 1, it is written as under: -

"New : EXPLANATION 1 – An unmarried son or an unmarried or widowed or divorced daughter, except a disabled son or daughter, shall become ineligible for family pension under this sub rule from the date he or she gets married or remarried.

EXPLANATION 3 – it shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that (i) he or she has not started earning his or her livelihood and (ii) he or she has not yet married or remarried. A similar certificate shall be furnished by a childless widow after her re-marriage or by the disabled son or daughter or parents to the Treasury or Bank, as the case may be, once in a year that she or her or they have not started earning her or his or their livelihood."

16. The existence of the above OM is not denied by the respondents but they have tried to give their own interpretation of the said explanation that it speaks of continuation or discontinuation of family pension to a disabled son or daughter who gets subsequently married and is not applicable to prospective sanction of family pension to someone who is married as well disabled dependent of a deceased employee. Perusal of this explanation does not convince me that it is right understanding of what the said memorandum intended. Logically it may

imply that it may be applicable to both, to new sanctions as well as existing dependent family pension to disabled children. However, if there was any ambiguity and confusion and lack of clarity on that, as an exceptional case, the authorities could have referred the case to the DOPT to guide and take a more informed decision.

17. The contention in reply to rejoinder affidavit that whether a later disability due to accident will entitle dependent married children of deceased employee of a family pensioner or not, is not examined in the impugned order dated 11.10.2017 at all, hence at this stage it is not required for me to get into this question and if any doubt remains, the authorities may get clarification on this also from the DOPT and a decision may be taken.

18. Hence, considering the above facts on record, it is very evident and I have no doubt that the reasons given by the respondents in the impugned order dated 11.10.2017 are not convincing as the authorities have erred in applying their mind fully and sympathetically while examining the case of the applicant. Hence, I pass following orders : -

"The Original Application is allowed. The impugned order dated 11.10.2017 is set aside and the case is remitted back to the respondents for fresh consideration of the case of the applicant sympathetically. The respondents are advised to take a humane view of the case and if there is any doubt regarding the rules, take inputs from the DOPT and take appropriate decision in the matter within a period of four months from the date of receipt of certified copy of this order."

19. All pending associated MAs stand disposed off.

20. No order as to costs.