

(2023) 07 CAT CK 0050

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00740 Of 2022

Xavier Mathew

APPELLANT

Vs

Union Of India Represented By The General Manager,
Southern Railway Park Town, Chennai ? 600003 & Ors

RESPONDENT

Date of Decision : 25-07-2023

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 75, 75(5)(d)

Citation : (2023) 07 CAT CK 0050

Hon'ble Judges : K. Haripal, Member (J)

Bench : Single Bench

Advocate : Martin G Thottan, Mini.R Menon

Final Decision : Disposed Of

Judgement

1. Applicant is the son of late Mathai E.P, a Railway pensioner who passed away on 20.9.2020. His mother, the widow of the Railway pensioner also passed away on 10.7.2021. The applicant claims that he is a physically handicapped person. Relying on Annexure A-1 Disability Certificate issued by a Medical Board. He claims that he is suffering from 50% permanent disability which is not likely to improve. On that basis, claiming invalid pension under Rule 75 of the Railway Services (Pension) Rules- 1993, he approached the respondents for sanctioning disability pension, which stands rejected by Annexure A-6 order. According to the applicant, such an order has been passed without application of mind, purely based on the alleged certificate issued by the Divisional Railway Medical Officer, the 4th respondent. Thus Annexure A-6 sought to be quashed besides the respondents are sought to be directed to sanction him invalid pension with effect from 10.7.2021 with all consequential benefits.

2. The respondents have disputed the contentions of the applicant. According to them, the eligibility for disability pension was considered in the proper perspective and was rejected by Annexure A-6/Annexure R-2 order, the applicant is not entitled to get any relief from this Tribunal.

3. I heard the learned counsel for the applicant Shri.Martin G Thottan and also the learned Standing Counsel for the respondents Smt.Mini.R Menon.

4. According to the learned counsel for the applicant, the respondents had considered the prayer for disability pension basing on the unamended provisions of the Railway Services (Pension) Rules, 1993. Now in line with the 'The Rights of Persons with Disabilities Act, 2016 and the Rules thereunder, amendments have been brought in by the Ministry of Railways in Railway Services (Pension) Rules as well, which insist that the appointing authority has to take a call based on the certificate obtained from a Medical Board comprising of a Medical Director or a Chief Medical Superintendent or incharge of a Zonal Hospital or Division 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. In this connection he has highlighted clause (d) to Sub Rule 5 of Rule 75 of Railway Services (Pension) Rules.

5. The learned counsel for the applicant also highlighted that in Annexure A-6/R-2 even though mention has been made about some advice obtained by the first respondent, no such advice has been produced. According to the learned counsel, such an advice is not in existence and the impugned order has been passed on the basis of a non-existing advice reportedly issued by the Divisional Medical Officer. Secondly, he highlighted that it is for the sanctioning authority to conclude that the applicant is suffering from disability which prevents him from earning his livelihood.

6. Even though, the learned Standing Counsel has tried to justify Annexure A-6/R-2 order, as rightly pointed out by the learned counsel for the applicant, the impugned order does not reflect independent application of mind by the Appointing Authority in the matter of assessing the capability of the applicant to earn his livelihood, based on any medical advice given by the Medical Board as provided in the Rules, as amended.

7. It is very important that the appointing authority has to independently assess the capability of the applicant to earn his livelihood. Here, the said advice is not available. In the reply statement, the respondents have relied on un-amended Rule 75 of the Railway Services (Pension) Rules. That means, the amended Rule has not been considered while passing the impugned order.

8. Having regard to the circumstances, I am convinced that the matter requires to be considered afresh in the light of sub Rule 5(d) of Rule 75 of the Railway Services (Pension) Rules, 1993. In the result, Annexure A-6/Annexure R-2 is quashed. The appointing authority shall consider the representation of the applicant afresh and will pass orders in the light of the above observations, within a period of 60 days from the date of receipt of a copy of this order.

9. The Original Application is disposed of as above. No cost.

(Dated this the 25th day of July, 2023)