



सत्यमेव जयते

Extra 78

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12562/1023/2021

Complainant: Shri Mukesh Kumar Saxena
Gadiyana Chungi, Nigohi Road Nai Basti
Shahjahanpur – 242001, Uttar Pradesh
E-mail: <sangeetasaxena5836@gmail.com>

Respondent: The General Manager
Rifle Factory Ishopore, P.O. Ishopore Nawabgunj
Distt. 24, Parganas, West Bengal – 743144
E-mail: <rfi.ofb@nic.in>

Complainant: 40% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 12.01.2021 submitted that his first disability certificate was issued by the Dr. B.N. Bose Sub Division Hospital, West Bengal on 04.06.1998 when his father was in service. But after retirement of his father, family was shifted to their hometown i.e. District Shahjahanpur where his medical certificate was reviewed by CMO District Hospital Shahjahanpur, U.P. on 11.03.2019 and found worst condition and certified that *the holder of handicapped certificate is unable to earn for his livelihood*. Thereafter above disability Certificate was also submitted to the respondent organization. He further submitted that after the death of his father, he had applied for family pension. But in response, respondent had informed that disability certificate issued by Dr. B.N. Bose Sub Divisional Hospital was verified for genuineness and disability condition and according to the Hospital *"the nature of disability conditions progressive and he is able to earn his livelihood"*, hence family pension was denied by the respondent. Complainant alleged that why his latest disability certificate issued by Medical Board of District Hospital, Shahjahanpur was not reviewed.

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2. The matter was taken up with the Respondent vide letter dated **22.01.2021** under Section 75 of the RPwD Act, 2016.
3. In response, Additional General Manager, Rifle Factory Ishapore vide letter dated **19.02.2021** submitted that Shri Babooram Saxena, Ex-employee of was superannuated on **30.04.2005** and on **21.09.2006**, the said pensioner applied for inclusion of his disabled son's name in pension record with a disability certificate from Dr. B.N. Bose S. Hospital, Barrackpore. After death of the pensioner on **19.02.2019**, Shri Mukesh Kumar Saxena applied for dependent family pension on 03.07.2019 and his disability certificate was forwarded to the Dr. B.N. Bose S, Hospital for verification. In response, they have informed that *"disability certificate is genuine and the nature of disability conditions progressive and he is able to earn his livelihood."* Therefore, based on the verification report and extant Govt. Rules, his case was rejected. They further submitted that meanwhile a new disability certificate from District Hospital, Shahjahanpur dated 11.03.2020 and 07.05.2020 has been submitted by Shri Mukesh Kumar on 27.05.2020 and 31.07.2020 respectively but it was observed that the same has been issued after death of decease Govt. employee which is not in consent with existing Govt. Orders.
4. प्रार्थी का अपने प्रति उत्तर दिनांक **13.03.2021** में कहा है कि महाप्रबंधक राईफल फैक्ट्री, ईशापुर ने केवल बी.एन.बोस मेडिकल कालेज ब्यैरकपुर द्वारा सन् 1998 में जारी प्रथम विकलांगता प्रमाण-पत्र का वेरिफिकेशन करवाया जबकि पिता के जीवनकाल में जिला अस्पताल, शाहजहाँपुर द्वारा दिनांक 18.10.2016 को जारी विकलांगता प्रमाण-पत्र तथा उसी संदर्भ में बाद में जारी अन्य 02 प्रमाण पत्रों का सत्यापन मुख्य चिकित्सा अधिकारी, शाहजहाँपुर से करवाना चाहिए था क्योंकि प्रार्थी की वर्तमान परिस्थिति की सम्पूर्ण जानकारी जिला चिकित्सालय, शाहजहाँपुर के विशेषज्ञ चिकित्सक एवं विकलांगता प्रमाणन बोर्ड के समक्ष उपलब्ध है।
5. After considering the respondent's reply dated **19.02.2021** and the complainant's rejoinder **13.03.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.04.2021**.

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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.04.2021**. The following were present:

- Shri Mukesh Kumar Saxena – complainant
- Shri R.N. Mathey, Joint General Manager on behalf of respondent

OBSERVATIONS & RECOMMENDATIONS

6. Both the parties were heard.

7. Complaint is related to grant of family pension. Complainant submits that he applied for family pension and to support his claim, he submitted Medical Certificate dated 07.05.2020, which declared him unable to earn his livelihood. However, Respondent is denying him benefits of family pension.

8. Respondent submits that father of the Complainant was an employee of the Respondent establishment. He superannuated on 30.04.2005 and died on 19.02.2019. after the demise of the employee, his son, the Complainant applied for extending the benefits of family pension to him. To support his claim, he submitted Disability Certificate issued by Dr. B N Bose Hospital, Kolkata dated 04.06.1998. Respondent forwarded the certificate to the hospital for verification and received information vide letter dated 20.03.2020 from the hospital that the Complainant is 'able to earn his livelihood'. Respondent submits that as per the information received from the authority which issued disability certificate the complainant can earn his livelihood hence, benefits of family pension were not extended to him.

9. This court receives Complaints related to denial of Family Pension, therefore this court is compelled to delineate the legal provisions which govern issue of Family Pension.

10. Rule 54 of CCS (Pension) Rules, 1972 lays down provisions for Family Pension. Sub Rule 6 of Rule 54 contains provision relating to time period for which Family Pension is payable. As per the provision, Family Pension is granted in favour of son of Government

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Servant till the age of 25 years maximum. Similarly, in case of daughter of Government Servant, maximum period for which Family Pension is granted is till marriage or re-marriage of such daughter or until she starts earning her livelihood. However, second Proviso carves out the exception of the above rule. As per the Proviso, Family Pension is granted to son or daughter of Government Servant for life if following conditions are fulfilled –

- a) Such daughter/son is suffering from physical/mental disability; and
- b) The disability is such so as to render her/him unable to earn livelihood; and
- c) Inability to earn the livelihood is evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman 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.

11. **ISSUE** – Whether certificate declaring the disabled daughter/son as 'unable to earn livelihood' is necessary?

12. It is pertinent to note here that, as per Rule 54, such certificate is necessary before allowing Family Pension. The same was held by CAT, Bombay Bench in matter of Sri Shamson Robinson Khandagle v. Union Of India; 2013 SCC OnLine CAT 436. Tribunal held that Disability Certificate alone is not requisite certificate to make the applicant eligible for Family Pension. Applicant in this case produced certificate of 60% disability and pleaded that certification of 60% disability alone proves his inability to earn livelihood. Tribunal rejected this contention.

13. **ISSUE** - Who will issue the certificate declaring the person 'unable to earn livelihood' OR who will decide issue of inability to earn livelihood?

14. Two O.M.s, O.M. No. 1/18/01-P&PW(E), dated 30.09.2014 and O.M. No. 1/18/01-P&PW(E), dated 05.11.2015 sheds light on the history and clarify the issue. Prior to O.M. dated 30.09.2014, competent authority to issue disability certificate for the purpose of family

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pension was 'Medical Officer' not below the rank of 'Civil Surgeon'. Later the position was changed and Medical Board comprising of Medical Superintendent and two other members was made competent authority to issue disability certificate replacing 'Civil Surgeon'. Subsequently by O.M. dated 30.09.2014, it was decided that for issuing disability certificate the competent authority would be as specified in the guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010. For the purpose of issuing disability certificate for 'Multiple Disabilities', Medical Board was retained as competent authority.

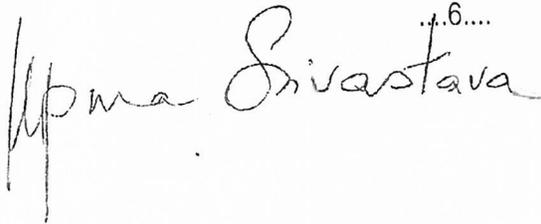
15. Subsequently, by O.M. No. 1/18/01-P&PW(E), dated 05.11.2015, the rule was formed that in addition to authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010, competent authority to issue disability certificate would also be any hospital or institution specified as Medical Authority by state or central government for the purpose of Persons with Disabilities Act, 1995. Hence, as per the two notifications competent authorities to issue disability certificate are –

- a) Medical Board in case of 'Multiple Disabilities' only;
- b) Authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010;
- c) Any hospital or institution specified as Medical Authority by state or central government for purpose of issuing disability certificate.

16. **ISSUE** – Can Appointing Authority decide to grant family pension by itself, in absence of Disability Certificate?

17. With respect to Appointing Authority, word used in the rule is SATISFY. Rule DOES NOT SAY that Appointing Authority can decide whether the applicant can earn his livelihood or not. Further, the rule says that such satisfaction has to be evidenced by the Certificate issued by the Competent Authority.

18. This position was made clear by Gujrat High Court in the matter of Naresh Bansilal Soni v. Union of India; 2016 SCC OnLineGuj 654. In this case Appointing Authority stopped

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Family Pension on the ground that the beneficiary did not produce 'living certificate'. Later he was denied the benefit on the ground that he was present in person before the Appointing Authority and he looked physically abled to earn his livelihood. Court held that decision of Appointing Authority that beneficiary can earn his livelihood, is arbitrary. Court held that in order to preclude Appointing Authority from taking arbitrary decisions, Rule lays down that such satisfaction has to be evidenced by the Disability Certificate. Hence, subjective decision of authority is illegal and arbitrary.

19. It was held in a case reported as Narsi Sambunath Suval v. G.M. Western Railways; 2015 SCC OnLine CAT 1584 by CAT, Ahmedabad that such certificate cannot be issued even by any private hospital. CAT decided that such certificate would be valid ONLY if it is issued by the competent authority, as prescribed in the rules.

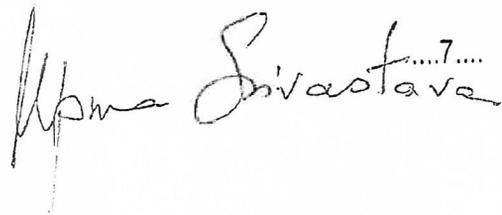
20. **ISSUE** – When it can be deemed that the person is earning his livelihood?

21. O.M. No. 1/17/2019 P&P W (E), issued by Ministry of Personnel Public Grievances and Pension, dated 08.02.2021 settled the issue. As per the OM such disabled child shall be deemed to be not earning her/his livelihood if her/his overall income from sources other than family pension is less than the entitled family pension at ordinary rate and the dearness relief admissible thereon, payable on death of Government servant or pensioner concerned.

22. However, O.M. does not absolve the child from producing medical certificate declaring him 'unable to earn livelihood'. Para 4 of the O.M. lays down the same. As per the Para, it is mandatory to produce medical certificate.

23. **ISSUE** – If the employee/pensioner or her/his spouse did not furnish or intimate the details of the divyang child to Pension Sanctioning Authority during their lifetime and after the death of such employee/pensioner or her/his spouse, divyang child claims family pension, whether benefit of family pension can be extended to divyang child in such case?

24. O.M. No 1/2/09-P&PW(E), dated 30.12.2009 established the basic rule that non intimation of details of divyang child by the employee/pensioner or her/his spouse does not make such child ineligible for family pension.

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25. Further O.M. No. 1/18/2001-P&PW(E) dated 25.01.2016 laid down that even if divyang child obtains disability certificate after death of employee/pensioner or her/his spouse, benefits of family pension can be extended to the child on the basis of such certificate if a) the authority is satisfied that the child is unable to earn his livelihood and b) the child was suffering from the disability on the date of death of employee/pensioner or her/his spouse. The same O.M. reiterates the rule position established in O.M. 1/18/01-P&PW(E), dated 30.09.2014 that in case the child produces disability certificate of permanent disability, issued prior to the death of employee/pensioner or her/his spouse then the child need not to obtain disability certificate afresh. Hence, litmus test in such situation is whether or not the child was suffering from disability on the date of death of the employee/pensioner or her/his spouse.

26. **ISSUE** – Procedure if family pension is granted to guardian of divyang child because of child's minor age or intellectual disability.

27. O.M. No 1/04/06 -P&PW(E) dated 31.07.2006 clears the position that in case the pension is granted to the guardian of divyang child the guardian has to produce certificate issued under National Trust Act, 1999 for his nomination/appointment for grant of family pension.

28. In the present Complaint, the Complainant submitted three Disability certificates to buttress his claim of Family Pension. First one is dated 04.06.1998. This certificate declares disability of the Complainant as 40% of permanent nature, hence, this case is covered under Para 4 of O.M. issued by Ministry of Personnel, P.G. & Pensions dated 25.01.2016. Since, the certificate issued prior to the death of the employee declares the Complainant as permanently disabled hence he need not to obtain the Disability certificate afresh.

29. However, this does not resolve the issue of 'ability to earn livelihood'. Respondent relied on the Disability certificate dated 04.06.1998 to reach to conclusion with respect to 'ability to earn livelihood'. O.M. issued by Ministry of Personnel, P.G. & Pensions dated 25.01.2016 does not mention that the disabled dependant must not be able to earn

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livelihood on the date of issuance of Disability Certificate. O.M. lays down that Disability Certificate issued after the death of the employee must declare the beneficiary dependant as disabled on the date of death of the employee. Perusal of the OM makes it clear that cut off date prescribed for determining disability is date of death of pensioner/employee or her/his spouse whichever is later. However, same criterion of cut off date is not applicable for determining ability to earn livelihood. Relevant paras of the O.M. are reproduced below –

“3. A disability certificate issued after the death of the pensioner/employee or his/her spouse for the disability which existed before their death may be accepted by the appointing authority if he is satisfied that a) it renders him or her unable to earn his livelihood and b) the child was suffering from the disability on the crucial date, i.e. on the date of death of employee/pensioner or her/his spouse, whichever was later.”

30. Therefore, the decision of the Respondent which is based upon the Complainant's ability to earn livelihood in 1998 is not in accordance with the relevant O.M. mentioned above.

31. Hence, on the basis of guidelines issued by the government from time to time, this court concludes that the Complainant is not required to prove his disability afresh, Disability Certificate produced in 1998 is sufficient for the purpose. Secondly, Respondent cannot consider 1998 as cut-off date for determining ability to earn livelihood, instead, such cut-off date must be 07.05.2020, i.e. the date of latest Disability Certificate produced by the Complainant. This court recommends that the Respondent shall decide the issue of extending Family Pension benefits in accordance with the guidelines delineated above.

32. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 25.06.2021