

Chief Justice's Court

Case :- WRIT - A No. - 6892 of 2025

Petitioner :- Iftikhar Ali

Respondent :- Union of India and another

Counsel for Petitioner :- Syed Mushfiq Ali

Counsel for Respondent :- A.S.G.I.,Gaurav Bishan

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. Heard Shri Syed Mushfiq Ali, learned counsel for the petitioner, Shri Gaurav Bishan, learned counsel for both the respondents and perused the material available on record.

2. The present writ petition has been filed challenging the order dated 02.01.2024 whereby the Central Administrative Tribunal, Allahabad ('Tribunal') has dismissed Original Application No. 58 of 2020 (Iftikhar Ali vs. Union of India and another). The said O.A. was filed by the petitioner challenging the order dated 07.12.2019 passed by respondent No. 2, whereby the petitioner was held ineligible to receive family pension. A further prayer was made before the Tribunal to issue a direction to the respondents for grant of family pension in the light of Railways Services (Pension) Rules, 1993 and to pay arrears thereof from the due date alongwith 12 % interest.

3. Brief facts of the case are that the petitioner's father was working in the respondent's Department. He retired on 28.02.2002 and was drawing pensionary benefits. He died on 09.12.2015 and his wife i.e., petitioner's mother had pre-deceased her husband on 31.01.2009. The case of the petitioner is that he is 100% disabled (blind) and a certificate dated 27.04.2011 issued by the Chief Medical Officer was also there and when the petitioner moved application in the Department for getting family pension based upon his disability, his application was wrongly rejected on 07.12.2019 by applying a Circular dated 15.01.2010 on the ground that the petitioner being a married son of the deceased-employee, was not entitled to receive family pension, even if he was physically disabled person.

4. Challenge to the order dated 07.12.2019 rejecting the petitioner's claim was laid before the Tribunal on the ground that, in view of Railway Board's letter RBE No. 22 of 2016 dated 24.02.2016, the petitioner was entitled for family pension and the Department had erred in relying upon Circular dated 15.01.2010, which lost its efficacy with issuance of subsequent Circular/letter.

5. The respondents contested O.A. by filing counter affidavit and the defence taken therein was that since the petitioner had been married on 22.06.1997 as per self-declaration made by him, the instructions contained in Circular dated 15.01.2010 being in consonance with Rule 75(6) of Railway Services (Pension) Rules, 1993, the claim of the petitioner was rightly denied. Further defence was that father of the petitioner had never produced any document in respect of petitioner's disability nor had he given any

particulars/details of the petitioner as his family member, as was required while submitting Form No. 6 meant for family pension.

6. The Tribunal has dismissed O.A. by recording a finding that subsequent Circular dated 24.02.2016 does not supersede the earlier Circular dated 15.01.2010 and, therefore, earlier Circular providing that married sons and daughters, whether suffering from any disorder/disability, are not eligible for family pension would remain applicable and, therefore, there was no merit in the petitioner's case.

7. Learned counsel for the petitioner submits that reliance placed by the Department or by the Tribunal on the Circular dated 15.01.2010 is misplaced in view of RBE No. 12 of 2013 dated 11.02.2013 and Office memorandum dated 16.01.2013, whereby Explanations 1 and 3 to sub-Rule (6) of Rule 54 of Central Civil Services (Pension) Rules, 1972 (in short 'Rules, 1972') have been amended w.e.f. 27.12.2012 and, since the Department has clarified that the amended provisions shall apply *mutatis mutandis* on the Railways also, non-consideration of the said Circular/ Office Memorandum by placing reliance on Circular dated 15.01.2010, was thoroughly mis-placed.

8. Elaborating his submissions, learned counsel for the petitioner submits that by way of Explanation 1 added w.e.f. 27.12.2012, a married disabled son is not ineligible for family pension. Further, even Rule 75(6) of the Rules, 1993 also does not dis-entitle a married son to claim family pension; rather the said

Rule debars a married daughter from the date of her marriage to claim family pension.

9. It is further contended that by Railway Board's letter dated 08.07.2022, the respondents have already clarified that a disabled son or daughter, who is already married, can be sanctioned family pension for life subject to livelihood criteria.

10. Insofar as not mentioning the name of the petitioner in Form No. 6, submission has been made that Circular dated 24.02.2016 comes to the rescue of the petitioner, inasmuch as, the same provides that in case the employee has not furnished details of his handicapped child to the pension sanctioning Authority during his life time and such child, after death of his parent, claims family pension and produces necessary medical certificate, his claim cannot be denied merely on the ground that deceased-employee had, during his life time, not incorporated the name of the child in the Form No. 6.

11. Learned counsel for the respondents, while referring to counter affidavit filed on behalf of the respondents, submits that the Railway Board's letters dated 11.02.2013 and 08.07.2022 should be read in the light of Rule 75(6)(d) of Rules, 1993, which provides that the Divisional Medical Officer of the Railway or higher officer will verify disability and submit a certificate stating whether the candidate is capable of earning his livelihood or not. It is further contended that since the aforesaid condition was not complied with by the petitioner and the disability certificate issued by the Chief Medical Officer, Jhansi, who is State Government

Officer, was provided, the same does not conform to the requirement whereby disability of wards of railway pensioners shall have to be evidenced by certificate issued by a competent Medical Authority, and, therefore, the denial of petitioner's claim cannot be faulted.

12. We have considered the submissions made by the parties and have perused the material available on record.

13. A bare perusal of order dated 07.12.2019 holding the petitioner as ineligible for getting family pension, as was impugned before the Tribunal, indicates that denial was only based upon the Railway Board's letter dated 15.01.2010 observing that a married son or daughter, despite his/her physical disability, would not be entitled for family pension. No other ground was mentioned in the said order. Even the Tribunal, while dismissing O.A., has based its decision on the applicability of Circular dated 15.01.2010.

14. Nevertheless, since both the parties extensively addressed the Court on the amendments incorporated in Rule 54 of Rules, 1972, brought into existence w.e.f. 27.12.2012, as clarified by RBE No. 12 of 2013 dated 11.02.2013 and Office Memorandum dated 16.01.2013, we may clarify the legal position reflected therein.

15. Rule 54 of Rules, 1972, after amendment, amends Explanation 1 and 3 thereof. The amended Explanation 1 reads as under: -

“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.”

(emphasis supplied)

16. The aforesaid amendment has been adopted by the respondents themselves vide RBE No. 12 of 2013 dated 11.02.2013 read with Office Memorandum dated 16.01.2013 and the respondents have not disputed the said aspect before us. Further, Clause 5 of Railway Board’s letter dated 08.07.2022 makes it clear that a disabled son or daughter, who is already married or who gets married, can be sanctioned family pension for life subject to livelihood criteria and if no other family member is having prior claim for family pension, as per provisions of Rules of 1993.

17. Applicability of aforesaid RBE No. 12 of 2013 dated 11.02.2013, Office memorandum dated 16.01.2013 and Railway Board’s letter dated 08.07.2022 has not been disputed before us by learned counsel for the respondents, rather the defence in the counter affidavit is that these Office Memorandum/Circulars/Letters have to be read alongwith Rule 75(6) of Rules, 1993 and not in isolation. In view of above, we may examine the relevant Clauses of Rule 75(6) of Rules, 1993, as argued by the respondents side. The same read as under:-

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

(ii) subject to second proviso, in the case of an unmarried son, until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood, whichever is the earliest;

(iii) subject to second and third proviso, in the case of an unmarried or widowed or divorced daughter, until she get married or remarried or until she starts earning her livelihood, whichever is earlier;

....

Provided further that if the son or daughter of a railway servant is suffering from any disorder or disability of mind including the 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:-

...

(d) before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a 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;"

18. A bare perusal of aforesaid Clauses of Rule 75(6) of Rules, 1993 would reveal that an unmarried son, until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood would become eligible for family pension, but since the respondents themselves have clarified by way of RBE No. 12 of 2013 dated 11.02.2013 and Office Memorandum dated 16.01.2013 that amended Rule 54 of Rules, 1972 would *mutatis mutandis* apply on the Railways and would correspond to sub-Rules (6), (17) and (18) of Rule 75 of the Rules, 1993, we are of the view that sub-Rule (6)(ii) of Rule 75 shall have to be read along with RBE No. 12 of 2013 dated 11.02.2013 and Office Memorandum dated 16.01.2013 and not in isolation.

19. We further find that amended Explanation 1, quoted above, clarifies that a married son, **except a disabled son**, shall become

ineligible for family pension. It, therefore, follows that mere married status of the petitioner, who is 100% disabled son of the deceased employee, could not be a ground to dislodge his entitlement for family pension. We may also observe here that neither the Tribunal nor Department has considered the aforesaid legal position while deciding the claim of the petitioner and the consideration made is based upon only and only applicability of Circular dated 15.01.2010 and on no other ground. Once we have arrived at a conclusion that married status of the petitioner, in itself, is not sufficient to deny family pension, the other requirements of law have to be examined by the Department for deciding the petitioner's claim for family pension.

20. We, therefore, find it appropriate to set aside the order passed by the Tribunal and also the order impugned before the Tribunal and remand the matter to respondent No. 2 to re-consider the petitioner's claim on merits other than applicability of Circular dated 15.01.2010, which was earlier made the solitary ground for denying his claim.

21. Consequently, the writ petition stands **allowed**.

22. The impugned orders dated 02.01.2024 and 23.02.2024 passed in Original Application No. 58 of 2020 as well as order dated 07.12.2019 passed by respondent No. 2 are hereby **set aside**.

23. The petitioner shall submit a fresh application alongwith necessary enclosures before respondent No. 2 within a period of **three weeks** from today.

24. In case, after receipt of application, respondent No. 2 requires certain other formalities/requirements/necessities to be completed at the end of the petitioner, he shall issue a notice to the petitioner indicating the requirements.

25. After the petitioner responds to the notice, respondent No. 2 shall take appropriate decision on the application, strictly in accordance with law within a period of **two months** thereafter and shall communicate his decision to the petitioner by speed post without any delay.

Order Date :- 12.8.2025
Sazia

(Kshitij Shailendra, J) (Arun Bhansali, CJ)