



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No: 6143/1023/2016

Dated : 22.09.2017
Dispatch No.

In the matter of :

R3767

...Complainant

Wing Commander (Dr.) P.K. Ray (Retd.),
'DWARAKA',
62, Lake View Park,
Block 'A',
Bonhooghly Baranagar,
Kolkata - 700 108
Email : <dr_raypk@rediffmail.com>

Versus

R3768

..... Respondent No.1

The Chief Personnel Officer,
Headquarters South Eastern Railway
Garden Reach,
Kolkata - 700 043

FA & CAO,
Headquarters South Eastern Railway
Garden Reach,
Kolkata - 700 043

..... Respondent No.2

The Chief Personnel Officer,
Headquarters South East Central Railway,
New Zonal Building,
Bilaspur,
Chhattisgarh - 495 004

R3770

..... Respondent No.3

Date of Hearing : 14.07.2017

Present :

Wg. Commander (Dr.) P.K. Ray (Retd.), on behalf of the Complainant.
Shri Vidur Sikka, Advocate, on behalf of Respondent No. 1, 2 and 3,

ORDER

The above named complainant, had filed a complaint dated 28.03.2016 under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, regarding payment of Family Pension w.e.f. 15.04.2004 for life, payment of interest etc. to Shri Chanchal Ghosh, a person suffering from 90% mental illness.

.....2/-

2. Wing Commander (Dr.) P.K. Ray vide his complaint dated 28.03.2016 has submitted that Shri Chanchal Ghosh is suffering from mental illness since early 1980 rendering him incapable of earning independently. His father Dr. Gopal Chandra Ghosh, Ex ADMO/ITR and his mother Dr(Mrs) Bela Ghosh, Ex DMO/MIB are no more. The complainant is the brother-in-law of Shri Chanchal Ghosh. The complainant submitted that Shri Chanchal Ghosh is eligible for Family Pension of both his parents w.e.f. 15.04.2004 for life. Shri Chanchal Ghosh is eligible to receive the 'Life Time Arrears' of Family Pension & Pension of late Dr. Gopal Chandra Ghosh and Dr. (Mrs) Bela Ghosh. A Disability Certificate reflecting the patient suffering for more than 10 years with 90% disability issued by competent Medical Authority alongwith treatment records since Jan 1994 onwards were submitted to the Sr. DPO, SEC Rly, Ngp and the CPO SE Rly GRC in March 2014 in support of the claim of Family Pension w.e.f 15.04.2004 for life. The competent authority of NGP division SEC Rly accorded sanction to the Family pension case of Shri Chandal Ghosh w.e.f. 15.04.2004 for life on the basis of formal 'plan paper consent from Smt. Shikha Nandi, the blood relation sister & proposed Guardian and 'No objection from other legal heirs.

3. The matter was taken up with the Respondents under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, vide this Court's letters dated 01.06.2016 and 14.10.2016 followed by reminders dated 11.08.2016 and 30.11.2016, 06.01.2017 respectively and handed over to the concerned bank by the bearer of their Office for effecting payment.

4. The Divisional Personnel Officer-II, South East Central Railway, Nagpur vide letter no. Pen/NGP/SET/2014/06 dated 24.11.2016 has admitted that the grant of family pension has been abldy delayed owing to a single reason that the case was during the material time dealt by SE Railway/HQ/Garden Reach/Kolkata and after death of both parents, i.e. late Smt. Dr. Bela Ghosh and late Dr. Gopal Chandra Ghosh, Chanchal Ghosh became eligible in turn to receive family pension being, mentally challenged.

.....3/-

5. The Dy. Chief Personnel Officer (NG), South Eastern Railway vide their letter no. SER/P-HQ/Samadhan/661/CCCP&D/01/CG dated 14.12.2016 has informed this Court that necessary PPA has already been issued vide Sr. AFA(Pen)/S.E. Railway's letter No. Pen/11948/SE-87/BK-C-2/P-55/GRC/MRS-422/NB/484/150 dated 20.10.2016 and No. Pen/13871/SE-87/BK-C-2/P-55/GRC/MRS-422/MB/484/151 towards grant of family pension to Shri Chanchal Ghosh, mentally handicapped son of late Dr. Gopal Chandra Ghosh, Ex-ADMO/Nagpur and Dr.(Mrs.) Bela Ghosh, Ex. ADMO/Nagpur through his non-natural Guardian, Smt. Sikha Nandi(married sister(w.e.f. 15.04.2004.

6. The Sr. Personnel Officer (HQ), South East Central Railway, Bilaspur vide their letter no. P-HQ/Sett/952/4614 dated 26.12.2016 has stated that both the parents of Shri Chandhal Ghosh is being pre 1990 retirees. Their service records are held at South Eastern Railway/Garden Reach Kolkata and hence necessary PPO in favour of Shri Chanchal Ghosh is to be issued by South East Central Railway to enable drawing family pension in favour of Shri Chanchal Ghosh. They further stated that Chief Personnel Officer/South Eastern Railway, Kolkata has already been requested to issue necessary PPO in favour of Shri Chanchal Ghosh to facilitate drawing family pension in his favour by Nagpur Division of South East Central Railway vide their letter dated 28.07.2016.

7. The Complainant vide his rejoinder dated 17.06.2016 has submitted that the Disability Certificate no.30 dated 21.02.2014 issued to Shri Chanchal Ghosh reflecting that the patient has been suffering from Mental Illness with 90% disability has been accepted by the Competent Authority of the Railways for the purpose of granting family pension. The period of validity of the Disability Certificate, as assigned by the Medical Board is five years. After 5 years, the patient has to undergo the review Medical Board for reassessment of disability or for recategorizaion. He further submitted that Shri Chanchal Ghosh who attained the status of senior citizen on 02.10.2016 has got the past history of illness of 30 years, is presently treatment resistant and has been declared severely disabled.

.....4/-

8. The Complainant vide his rejoinder dated 17.01.2017 submitted that in Sept. 2013, Shri Chanchal Ghosh was subjected to IDEAS at Bangur Institute of Neurosciences, Govt. of West Bengal. During December 2013, the patient was evaluated as severely disabled by Pavlov Mental Hospital, Govt. of West Bengal. On 21.02.2014, Shri Ghosh underwent the Med Board at Calcutta National Medical College and Hospital, Kolkata which declared him as mentally disabled 90% for more than 10 years. He further submitted that the Disability Certificate was available after one month and submitted along with other relevant documents to the Sr. DPO SEC Rly NGP in support of the claim of family pension w.e.f. 15.04.2004. Shri Ghosh had to under the 2nd Medical Board at B. R Singh Hospital, Eastern Railway, Kolkata on 24.10.2014. The holding of 2nd Medical Board at the Rly Hospital, caused avoidable delay in processing the case, apart from inconveniencing the patient and the family in arranging conveyance and special manpower for the mentally disabled, from the Rehabilitation Centre 30 Kms away to the Rly Hospital and back.

9. The Complainant vide his letter dated 13.05.2017 submitted that there are three agencies which are involved in processing & disbursing the family pension claim to Shri Chanchal Ghosh :-

- (a) the O/o Sr. DPO SEC Rly Nagpur – family pension sanctioning authority
- (b) the Chief Personnel Officer & Sr AFA (Sett) SE Rly Garden Reach Kolkata – authority for final processing of the case for payment action and issue of PPO.
- (c) the IDBI Bank, Mookerjee House, Brabourne Road Branch, Kolkata – the pension disbursing agency, through its CPPC Mumbai office.

He submitted that grant of family pension of both the parents of Shri Ghosh along with the Disability Certificate and all other supporting documents, was submitted to the Sr. DPO SEC Rly Nagpur Division in March 2014 and a copy of the same application was submitted to the CPO SE Rly Garden Reach Kolkata in May 2014 also. The Sr. DPO SEC Rly Nagpur Division which is the sanctioning authority, intimated about the requirement of the lost earning capacity certificate/2nd Medical Board for the patient in the Rly Hospital in Spet. 2014. The Office of DPO SE Rly Garden Reach Kolkata maintained that the Non natural Guardianship Certificate from the competent Court of

...5/-

Law is the necessary pre-requisite in processing the case further. The CPO SE Rly Garden Reach issued vide letter no. SER/P-HQ/Sett/MHC/Gaz/NGP dated 11.02.2016 intimated that Shri Chanchal Ghosh is not eligible to claim family pension quoting certain conditions. He further submitted that PPOs were issued on 20.10.2016 and officially hand delivered to IDBI Bank , Kolkata. The family pension with arrears was finally credited on 31.12.2016.

10. Upon considering respondent No.1's replies dated 14.12.2016, 06.02.2017 Respondent No. 2's reply dated 31.01.2017 and Respondent No.3's replies dated 24.11.2016, 26.12.2016, and complainant's letters dated 17.06.2016, 28.09.2016,17.01.2017 and 13.05.2017 a personal hearing in the matter is scheduled on 14.07.2017 at 12:00 Hrs.

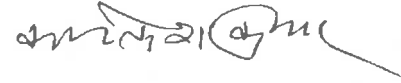
11. During the hearing the Complainant vide his written submission dated 14.07.2017 submitted that it is nowhere mentioned in the page 75(6)(d) of Railway Services (Pension) Rules 1993 that 'certificate should be issued by Railway Medical Officer not below the rank of DMO (Divisional Medical Officer)', as asked for through SEC Railway Nagpur letters No. P/NGP/SET/2014/06/156 dated 08.09.2014 & No.P/NGP/SET/2014/06/167 dated 16.10.2014. He submitted that the 'Lost earning capacity certificate' could have been issued by the same Medical Board at Calcutta National Medical College & Hospital Calcutta, on 21.02.2014, the Competent Medical authority to issue the Disciplinary certificate. The holding of fresh Med Board at the Railway Hospital took time and delayed the process, apart from causing inconvenience & avoidable misery to the mentally disabled & his family. The requirement of 'Lost earning capacity certificate' was raised six months after submission of family pension claim. The same was processed & forwarded to CPO (Sett) Garden Reach Kolkata for payment action, in March 2015, one year after preferring family pension claim. The undue delay in processing is unacceptable. He further stated that the certificate issued by Dr. Abhishek Somani, Psychiatrist, Got. Med College, Nagpur on 08.02.2011 and countersigned by Dr. G.M. Rathod, Med Specialist & Civil Surgeon Nagpur, submitted alongwith the family pension application, stands testimony to 'Lost earning capacity' of the patient and should have served the purpose. Shri Chanchal Ghosh is a senior citizen, a patient suffering from severe Mental Illness.

....6/-

12. During the hearing the Legal Counsel for Respondent reiterated his earlier submissions and stated that the pension has already been released along with arrears from the year 2004 onwards.

13. After the hearing, the Court informed the Complainant that his prayer for 'Compensation' cannot be acceded as the same does not fall within the jurisdiction of this Court. Further, the Respondent was advised to be more sensitive in future while dealing with the issues concerning persons with disabilities. The Respondent was also specifically apprised that the rules in Railways are not clearly disseminated in respect of Mental Illness and Mental Retardation, for which it is advised that the respondent should apprise adequately its administrative staff on the same to avoid any discrimination/harassment caused to a person with disability.

14. The case is accordingly disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities