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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 25th September, 2019*

+ W.P.(C) 10295/2019

OMPAL

..... Petitioner

Through Mr. A.K. Bhardwaj with Ms. Jagriti
Singh, Advocates

versus

CHIEF EXECUTIVE OFFICER & ORS. Respondents
Through Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Devanshu Lahiny,
Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM. APPL 42501/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is directed against order dated 31.07.2019 passed by the Central Administrative Tribunal (the 'Tribunal'), by which an OA filed by the petitioner herein stands dismissed.
4. Notice.

5. Mr. Sumeet Pushkarna, learned counsel for the respondents accepts notice; and has handed-over written submissions in Court, which are taken on record.
6. With the consent of the parties, the writ petition is set-down for final hearing and disposal at the stage of admission itself.
7. The petitioner before this Court seeks family pension while relying upon an OM dated 16.01.2013 of the Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners' Welfare), Government of India on the ground that, as required by the said OM, the petitioner is 100% visually impaired. It is also the case of the petitioner that his father worked as a S.G. Beldar in Delhi Jal Board; that the father retired on 30.09.2004 and passed-away on 25.02.2012; and that the mother of the petitioner predeceased the father and had passed-away on 27.04.2007. In support of the plea that the petitioner is 100% visually impaired, reliance is placed on a Disability Certificate. On this basis the petitioner had sought family pension from the respondents, which was declined; and this led to the filing of an OA, which also now stands dismissed.
8. Mr. Bhardwaj, learned counsel for the petitioner submits that it is an undisputed fact that the petitioner is 100% visually impaired. He further submits that there is also no doubt that the petitioner has no source of income to sustain himself. He further contends that it is not relevant as to when a person may seek family pension; what is relevant is that the applicant/petitioner suffers from a disability as contemplated by the OM of the Government, which includes mental and physical disabilities of

children who are drawing or may draw family pension, regardless of their marital status.

9. Mr. Pushkarna, learned counsel for the respondents has opposed this petition and submits that there is no infirmity in the order passed by the Tribunal that would require judicial review by this Court. He contends that the facts of the case would show that the petitioner does not require any family pension; and that therefore the exchequer cannot be burdened with financial responsibility in the facts of the present case. He further contends that, admittedly, the petitioner was not dependent on his father during the father's lifetime, for which strong reliance is placed on the Enquiry Report dated 01.12.2017. He submits that as per the Enquiry Report, two officials, a Head Clerk and an AAO, visited the house of the petitioner at Ghaziabad, when the wife of the petitioner informed them that the petitioner is already living in his own house separately. It is further disclosed that the petitioner sold his house twice; and acquired a new house; apart from having married twice. The first wife having passed-away, the second wife of the petitioner interacted with the team. It was further disclosed by the second wife that the petitioner has two children from his first wife and two children from the second wife; and that he has also married-off one daughter. Additionally, the team was also informed that the petitioner has some family income. Paras 6 and 9 of the Enquiry Report are reproduced below:

“6. Accordingly a team of two officials comprising Head Clerk and AAO visited his place at Ghaziabad. His wife informed that claimant Sh. Om Pal has always lived separately in his own house. He sold his house

twice to acquire new one. He also married twice. She is his second wife. Claimant has two children from first wife and two children from present wife. His first wife has expired. He has also married off his one daughter. She also informed that her father-in-law and mother in-law were govt. servants. He has some family income which she could not explain.

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9. In view of above facts, circumstance, observations made by PGC and bearing in mind the amendment made by DOP & PW vide O.M. dated 16.01.2013, it is concluded that Sh. Om Pal, Claimant for grant of family pension was not dependent financially upon his father during or after the death of employee, Sh. Shish Pal, Ex-SG Beldar. He is living independently and separately from the time his father was alive. He owned/disposed of house property at will and got married twice and even married off daughter which shows his financial condition is not miserable to pull off his family. The living condition of the claimant do not support the criteria mentioned in O.M. dated 16.01.2013 that he has not started earning his livelihood. Moreover, Rule 54 sub-rule (29) of CCS (Pension) rules 1972 also make him ineligible for drawing family pension, as elaborated above in S.No.3 para. So, his claim for grant of family pension is not legally substantiated and hence rejected.”
10. Learned counsel for the respondents has additionally submitted while relying on the judgments in the cases of *O.P. Gupta v. DVB* reported as (2000) (54) DRJ and *A.K. Bindal and Others. v. Union of India and Ors.*, reported as (2003) (5) SCC 163 that CCS Rules do not apply automatically to autonomous bodies and that such bodies may give relief as per their financial capability.

11. We have heard the learned counsels for the parties and have also examined the order passed by the Tribunal.
12. We have carefully examined the facts to satisfy ourselves as to whether the petitioner has made-out a case for grant of family pension. The relevant portion of the OM dated 16.01.2013 is reproduced below:

“The undersigned is directed to state that the Government has decided to allow continuance of family pension to mentally/physically disabled children who drew, are drawing or may draw family pension even after their marriage. Further, the Government has also decided to allow two family pensions where the pensioner drew, is drawing or may draw two pensions for military and/or civil employments.”

13. No doubt, the OM which has been relied upon by the learned counsel for the petitioner and the relevant portion of which we have reproduced in the foregoing paragraph, allows family pension to the mentally/physically disabled children even post their marriage.
14. In this case however, based on the Enquiry Report, it can safely be said that the petitioner was not dependent on his father even when the father was alive and in fact has been living independently. We find from the Enquiry Report that the petitioner sold his house twice and acquired a new one; he is also carrying-out his day-to-day activities from his own resources; and has also got married twice, his first wife having passed-away. He has two children from his first wife and two children from the second wife; and he has also had his daughter married. We therefore find that at no point of time was the petitioner dependent on his father and he has also lived separately from his father in his own house.

15. Resultantly, we find no infirmity in the order passed by the Tribunal, that would require interference by this Court sitting in judicial review. We find no merit in the writ petition; and the same is accordingly dismissed.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 25, 2019/pst

