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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 239 of 1999

New Delhi, this the 2nd day of July, 1999

Hon'ble Mr. N. Sahu, Member (Admnv)

Smt. Ganga Devi, W/o late Dhanoo Ram,
R/o H-241A, Gali No.5, Aman Vihar,
Sultanpuri, New Delhi - APPLICANT

(By Advocate Shri A.K.Trivedi)

VERSUS

1. Union of India through the General Manager, Northern Railway HQS, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Moradabad (U.P.) - RESPONDENTS

(By Advocate Shri B.S.Jain)

ORDER

By Mr. N.Sahu, Member (Admnv)

The prayer in this Original Application is to declare that the resignation of the husband of the applicant be treated as voluntary retirement and consequently the applicant be entitled to grant of family pension with effect from the date of her husband's death i.e. 11.11.1983 along with other retirement benefits. This relief is claimed on the basis of the following facts which are in a brief compass.

2. The husband of the applicant late Dhanoo Ram submitted his resignation which was accepted by the respondents on 18.10.1974 after rendering 24 years of service as a Hospital Attendant in Health Unit, Northern Railway, Laksar, Saharanpur (U.P.). Admittedly, his claim after resignation for pension or ex-gratia pension was not accepted. He died on 11.11.1983. On

10.1.1989 the applicant submitted a representation to the Divisional Railway Manager, Moradabad for grant of family pension and ex-gratia payment. Because her husband resigned with effect from 24.10.1974, the respondents denied her claim by a communication dated 24.1.1992. It is stated in the communication that grant of ex-gratia payment can only be sanctioned to the family of the Central Government employee governed by CPF Scheme who retired/died while in service prior to 1.1.1986. As Shri Dhanoo Ram resigned, her wife is not eligible for the same. Thereafter she submitted a representation dated 12.5.1997 to the General Manager, Northern Railway, Baroda House, New Delhi and also attended the Pension Adalat on 16.1.1997. The Pension Adalat rejected her claim. The applicant relies on the decision in the case of Smt. Bimla Devi Vs. Union of India and another, 1992(1) ATJ 360 decided by this Court as well as the decision of the Hon'ble Supreme Court in the case of M/S J.K. Cotton Spg. & Wvg. Mills Company Ltd. Kanpur Vs. State of U.P. and others, AIR 1990 SC 1808. That was a case in which the employee's request contained in the letter of resignation was accepted by the employer and that brought to an end the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary included the word 'retirement'. The Supreme Court, therefore, ruled that when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. On the basis of this authority the Jabalpur Bench of the Tribunal in the case of A.P. Shukla Vs. Union of

India and others, 1996(2) ATJ 157 has held that a person who could get pension on completion of 10 years of service should be equated with a person who has tendered resignation after equivalent or more period of service. In the case before the Jabalpur Bench the resignation was tendered after performance of 17 years of service.

3. In the counter reply the respondents raised a preliminary objection that the OA should have been filed before the appropriate Bench as the applicant was resident of Karnal/ Saharanpur as per her representations but the most important preliminary objection is that the application is barred by limitation. On merits, it is submitted that as the husband of the applicant resigned from Railway service on 18.10.1974 he is disentitled to pensionary benefits. The counsel for the applicant states that it is a case of recurring cause of action. It is also stated besides the residence of the applicant in Delhi as per her later representations in 1997 and 1998, the headquarters of the Northern Railway is situated at Delhi and the applicant in the later part of her life shifted to Delhi to stay with her daughter.

4. In my view this OA is barred by limitation. The resignation of the applicant's husband was accepted on 18.10.1974 and he died on 11.11.1983. The applicant did not file any claim on the death of her husband on 11.11.1983. The matter has attained complete finality. The claim for family pension had arisen on that date. The representation dated

10.1.1989 having been turned down on 24.1.1992 she did not move the Court. Thereafter she sent repeated representations without any response. In the first place the real grievance arose for a right to pension on 18.10.1974. There was no family pension scheme applicable at the relevant time. It was only ex gratia payment. That matter has been settled by the communication dated 24.1.1992 which was not challenged. I cite the following Supreme Court decisions to hold that this OA is barred by limitation -

1. State of Karnataka Vs. S.M.Kotrayya, 1996 SCC (L&S) 1488 wherein it is held that the mere fact that the applicant filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal was not a proper explanation to justify condonation of delay.

2. State of Punjab Vs. Gurdev Singh, JT 1991 (3) SC 465 wherein it is held that the party aggrieved by the invalidity of the order has to approach the Court, within the prescribed period of limitation, for relief of declaration that the order against him is inoperative and not binding upon him. If the statutory time limit expires the Court cannot give the declaration sought for.

3. Ratam Chandra Sammanta and others Vs. Union of India and others, JT 1993(3) SC 418 wherein it is held that "delay deprives the person of the remedy available in law. A person who has lost his remedy by lapse of time loses his right as well.

4. Bhoop Singh Vs. Union of India and others, ATR 1992 (2) SC 278 wherein it is held that a person cannot be permitted to challenge the termination of his service after a period of 22 years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed.

5. P.K.Ramachandran Vs. State of Kerala and another, (1997) 7 SCC 556 wherein their lordships have held that the Courts have no powers to extend the period of limitation on equitable grounds.

5. This is not a case of recurring cause of action. In a matter of pension the recurring cause of action arises when the right to receive pension is established. For instance, if someone dies after rendering service for a particular period and being eligible for family pension and he/she was deprived of the same, it is in such an event that the doctrine of continuous cause of action would apply. The reason is that family pension is due at the beginning of every month and deprivation of the said pension brings into existence a fresh cause of action after every month.

6. The case here is totally different and the matter in this case stood settled and unchallenged when in October, 1974 the respondents accepted the resignation. Right or wrong, this matter cannot be revived after 24 years. The applicant may say that she is only reviving the case of family pension but even for that the cause of action had arisen on 11.11.1983 on her husband's death. This cause of action would be valid only if the earlier cause of action is valid, i.e. it is only when the husband is entitled to pension, the wife would be entitled to family pension. If the husband is not entitled to pension, the wife is not entitled to family pension. Even here, the reply in 1992 has closed the case and the applicant did not challenge the same. It would be setting a very dangerous precedent, if the case is allowed to be revived; the courts will be flooded with thousands of applications of widows similarly

situated. Where the matters achieved finality, the doctrine of limitation would be reduced to a farce if such a matter is allowed to be revived.

7. The learned counsel for the applicant cited a decision of the Hon'ble Supreme Court in the case of Union of India vs. Lt. Col. P. S. Bhargava, (1997) 2 SCC 28. That was a case of Army officer who had completed the minimum period of qualifying service. Notwithstanding his voluntary resignation, the Apex Court held that he would not be disentitled to terminal benefits. In this case the question of limitation has not been considered. The judgments cited in the cases of A. P. Shukla (supra) & Smt Bimla Devi (supra) did not also discuss the question of limitation. Therefore, those judgments cannot be cited as relevant to the question raised by the respondents in this case.

8. In the result, the OA is dismissed on the ground of limitation. No costs.

Narashimha Sahu
(N. Sahu)
Member (Admnv)
2/7/99

rkv.