

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

HON. SHRI R.K. AHOOJA, MEMBER 'A'

21

OA NO.674/95

NEW DELHI, THIS 22nd DAY OF NOVEMBER, 1996.

SMT. KAMLA
Wd./o Shri Sadhu Ram
Gangman under PWI, Kaithal
R/o Opp. Railway Quarters
KAITHAL.

...APPLICANT

(By Advocate - SHRI B.S. Mainee)

VERSUS

UNION OF INDIA, through
1. General Manager
Northern Railway
Baroda House
NEW DELHI.

2. The Divisional Railway Manager
Northern Railway
State Entry Road
NEW DELHI

..RESPONDENTS

(By Advocate - SHRI R.L. DHAWAN)

ORDER (ORAL)

The applicant's husband who was working as a Gangman under PWI, Northern Railway, met with an accident while on duty on 29.3.1980. In the said accident he lost his left arm. He remained on HOD (Hurt On Duty) upto 4.11.1980. He was then directed to report to Assistant Engineer, Ambala, for further orders. The applicant submits that her husband was not given further duty nor an alternate job and only after six years as per A-3 dated 26.2.1986, some queries were raised with PWI Kaithal followed by reminders. Though no alternate job was given to him,

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22

his son Roshan Lal was given an offer of appointment in 1983. The applicant's husband was retired from service on 30.6.1992, but unfortunately he died on 18.9.1994. The applicant's grievance is that after the death of her husband, the respondents have not paid the entire benefits due to her late husband nor have granted family pension to her even though she filed a number of representations. The respondents in their first reply on 21.9.1995 submitted that the applicant's late husband was paid compensation amounting to Rs.18,844/- under Workmen's Compensation Act as well as provident fund dues amounting to Rs.12,114/- Further action on pension, DCRG, commuted value of pension etc. could not be processed in the absence of his service records which were not easily traceable and were therefore being restructured. In a subsequent reply dated 2.2.96, the respondents submitted that the service record has been restructured and the Pension Pay Order/Family PPO has been issued in December 1995. The matter of gratuity was under examination and will be arranged shortly. As regards commutation of pension, the applicant's husband retired from service on medical grounds and therefore in terms of rule 19 of Railway Pension Rules, he was required to undergo medical examination but before the same could be arranged he expired on 18.9.1994. They also submit that the Group Insurance Scheme came into effect from 1.1.1982 and since the applicant's husband was on leave without pay, no contribution was made by him towards this insurance scheme and hence the same was not due. In another supplementary reply, the respondents have stated that an amount of Rs.4,614/- has been paid to the applicant by way of gratuity and have also annexed a copy of the PPO allowing pension and family pension from the date of retirement and date of death respectively.

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23

2. Shri Mainee, ld. counsel for the applicant, in his arguments submitted that the applicant was entitled to commutation of pension since ~~the~~ her husband had duly applied for commutation and it was not his fault that the requisite medical examination was not arranged by the respondents during his life time. Further, the respondents have taken into account only the service rendered by the applicant's husband upto 1980, though he retired in 1992, for purposes of payment of gratuity. It was not the fault of the applicant's husband that he had not been assigned any duty. He was available but the respondents slept over the matter and took almost seven years even to raise a query with his office about his particulars. The learned counsel also submitted that though Pension Pay Order has been issued, so far as his information goes, actual payment of pension has so far not been made. In regard to insurance also, he submitted that the applicant's husband was very much in service upto 1992 and the scheme having come into effect in 1982, the respondents could not take the plea that the applicant's husband was not covered by the Group Insurance Scheme.

3. After the various replies have been filed by the respondents, it is clear that the applicant has received the gratuity amount. As regarding Shri Mainee's plea that the period between 1980 and 1992 should be taken as qualifying service, I find that the applicant's husband has been treated as on Leave Without Pay - LWP. LWP means extraordinary leave which is not counted as qualifying service for purposes of pension including gratuity. In these circumstances, the claim for treating this period as qualifying period does not merit further consideration.

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24

4. The other question is regarding commutation of pension. The ld. counsel for the applicant submits that had the respondents been prompt in arranging medical examination, it would have been possible for them to allow the commutation and since the delay is on their part, it would be proper that the application for commutation be treated as sanctioned. I am unable to agree with the ld. counsel on this point. The applicant's husband had been retired on medical grounds and it was on that score necessary that a medical examination should be conducted. The fact remains that the applicant's husband expired in 1994. In these circumstances, it is difficult to say what could have been the result of the medical examination. For this reason, one cannot proceed on the hypothesis that the medical examination if held would have resulted in a sanction order for commutation of pension. Hence, this claim cannot be allowed.

5. In respect of insurance, the rule is that at the time of retirement, the retiree gets all the premium contributed by him towards the scheme. In case any contribution had been made by the applicant's husband, the same would have been reimbursed to him with interest. Since no contribution was admittedly made, no claim on this account can be said to arise.

6. I finally come to the question of payment of pension. It is clear that the PPO has been issued in 1996, though it should have been issued in 1992 when the applicant's husband had retired, followed by the family pension when he died. The respondents themselves admit that this could not be done in time because the service record could not be easily traced and had to be reconstructed. Shri Dhawan, ld. counsel for the respondents, submits that the delay was inevitable because the applicant had not reported

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25

for duty for 12 long years and hence his records could not be properly maintained. The maintenance of service records is the responsibility of the employer and the non-availability of the applicant's husband could not be the cause of either non-completion or non-tracing of the service record. The delay for finalising the pension is therefore directly attributable to the respondents. In view of this, in the interest of justice, the applicant should be paid interest at 12% for the period from six months from the date of retirement of her husband till the date of actual payment. The payment of pension and interest thereon should be arranged within three months from the date of issue of this order.

This application is accordingly disposed of.
No costs.

R.K. Ahooja
(R.K. AHOOJA)
MEMBER (A)

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