

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 2229/90.

DATE OF DECISION : 22.05.1992

Smt. Binapani Banerjee ...Applicant

vs.

Union of India & Ors. ...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri V.P. Sharma

For the Respondents

...Shri B.K. Aggarwal

1. Whether Reporters of local papers may be allowed to see the Judgement? *JS*

2. To be referred to the Reporter or not? *JS*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant is widow of Shri Hira Lal Banerjee, who retired as Assistant Superintendent on 24.12.1955 and died on 28.3.1963. The applicant applied to the respondents for the grant of family pension, but the same has not been granted to her. The applicant, however, has been granted the ex-gratia payment of Rs.170 p.m. under another scheme w.e.f. 1.1.1986. The claim of the applicant is for grant of family pension under the circular dt.26.7.1985.

2. The applicant has claimed the relief that a direction be issued to the respondents for the payment of family pension w.e.f. 22.9.1977 along with arrears

upto date and the pension paid ex-gratia may be adjusted against the dues thus arrived at. It is further prayed that 18% interest p.a. on the arrears be also awarded.

3. The respondents contested the application and stated that the application is barred by time. The applicant has sought the relief under the circular dt.26.7.1985 and made a representation in November, 1989, i.e., after 4 years. The letter dt.26.7.1985 extending the benefit of pension w.e.f. 22.9.1977 to families of those Railway servants who were/are borne on pensionable establishment and are not presently covered by that scheme, namely the families of those Railway employees, who retired/died before 31.12.1963 and those who were alive on 31.12.1963, but opted out of the family pension scheme, 1964. According to the respondents, as Shri Banerjee retired on 24.11.1955 and was not borne on pensionable establishment but was governed by contributory provident fund scheme, he was not entitled to the new pension rules contained in the instructions referred to above. Pension rules were introduced in the Railways on or after 16.11.1957 with

an option to coming over to pension rules at that time or at the relevant time thereafter for those employees appointed prior to 16.11.1957. Since between 16.11.1957 to 31.12.1963, no family pension scheme was introduced on Railways and as such the widows of the Railway employees and the retired employees during the above period who have opted out of the family pension scheme, could opt for the family pension scheme, 1964 and as such the case of Shri Hira Lal Banerjee is not covered under family pension scheme, 1964 as he retired from service on 31.12.1955.

4. I have heard the learned counsel for both the parties at length and have gone through the record of the case. The circular dt.19.8.1985 mentions the judgement of the Hon'ble Supreme Court giving the benefit of the family pension scheme, 1964 to the family of those Railway servants who were/are borne on pensionable establishment and are not presently covered by that scheme, namely the families of those Railway employees who retired/died before 31.12.1963 and all those who are alive on 31.12.1963, but who opted out of the pension scheme, 1964. Consequent on the above judgement of the Hon'ble Supreme Court, the President has been pleased to decide that :-

- (a) the benefit of Family Pension Scheme, 1964 may be extended to all the eligible members of the family in accordance with the provisions of this Ministry's letter No.F(P).63-PMT/40 dated 2.1.64.

(3)

- (b) all the eligible persons, including dependents shall be allowed the increased pension rates as introduced from 1.1.1973;
- (c) the arrears of family pension may be granted w.e.f. 22.9.1977 (the date on which contribution of two month's emoluments by pensioners was dispensed with) or from a subsequent date they become eligible for family pension, whichever, is later. The benefit will also be available in cases where the death of the pensioner occurs hereinafter;
- (d) persons who are now to be granted the benefit of family pension will not be required to contribute two months' emoluments. Similarly no demand for refund of contribution already made by pensioners will be entertained by the Government; and
- (e) Life-time arrears of family pension would also be payable in respect of widows/eligible members of the family of the deceased Railway employees who were alive on 22.9.1977 and who died subsequently to this date, for the period from 22.9.1977 to the date of death.

The learned counsel for the applicant has referred to a decision in the case of Smt. Parsanden vs. UOI decided by the Ahmedabad Bench of the Central Administrative Tribunal in OA 77/87 on 15.4.1988. In this case also, the applicant was the widow of Ex-Railway employee getting ex-gratia pension claims at enhanced rate of pension in terms of Board's letter dt.21.7.1985. The respondents took the plea that the letter does not cover the ex-gratia payment holders and the matter was remanded to the respondents to consider the case of the applicant. The learned counsel has also referred to the judgement of Smt.Chandravati vs. UOI in OA 1224/88 decided on 28.9.1989 by the Principal Bench. In this case, the Railway servant died in 1961 while in harness and the widow applied for the family pension under the Board's instructions dt.26.7.1985. There is an observation in the

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judgement in the last para that, "The intention of the circular dt.18.6.1985 was to extend as a welfare measure the benefit of family pension to widows of Government servants who retired or died long before the family pension scheme was brought into force. That being so, the said benefit cannot be denied to the applicant."

In this case, the deceased employee was borne on the pensionable establishment. The learned counsel for the applicant has also referred to certain authorities. None of these authorities make it clear whether those who were not on pensionable establishment, they too were entitled to the benefit of the circular dt.26.7.1985. Moreover in the present case, the applicant has also been granted ex-gratia pension. However, since the representation of the applicant has not been disposed of and is still pending, so the application is disposed of in the

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1. 1991 (2) ATJ 418
2. 1991 (1) ATJ 646
3. 1990 (2) ATJ 91
4. 1991 (2) SLJ 354.

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following manner :-

The respondents shall dispose of the representation of the applicant dt.3.3.1990 within a period of three months from the date of receipt of a copy of this judgement. If no such representation is available with the respondents, the applicant can make a fresh representation and the respondents are directed to dispose of the same on merits as per the Circular of the Railway Board dt.26.7.1985 in the light of the Family Pension Scheme of 1964 letter No.F(P).63 PNT/40 dated 2.1.1964. In the circumstances, the parties shall bear their own costs.

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J.P. Sharma
22.5.92
(J.P. SHARMA)
MEMBER (J)