

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 12th day of February 2002.

Original Application no. 1131 of 1996.

Hon'ble Maj Gen K.K. Srivastava, Member (A).

- 1/A. Raja, S/o Shardanand
- 1/B. Vijai, S/o Shardanand
- 1/C. Sanjai, S/o Shardanand
- 1/D. Lalsa, D/o Shardanand

Applicant 1/B to 1/D are minor and U/Grandanship to Sukhiya W/o Shardanand All R/o vill Gosai pur Post Mubarkpur. Distt. Ghazipur.

... Applicant

By Adv : Sri Anant Vijai

V E R S U S

- 1. Union of India through Secretary,
Ministry of Railways, New Delhi.
- 2. General Manager, N.E. Rly., Gorakhpur
- 3. Divisional Railway Manager (D.R.M.),
N.E. Rly., Varanasi.
- 4. Assistant Engineer, N.E. Railway,
Ballia.

... Respondents

By Adv : Sri A.K. Gaur

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA filed under section 19 of the A.T. Act, 1985, the applicant has prayed that direction be given to Divisional Railway Manager (in short DRM), N.E. Rly., Varanasi (respondent no. 3) to provide all the retiral benefits and arrears of family pension to the applicants and also pay family pension monthly.

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2. The facts in short giving rise to this O.A. are that the original applicant Smt. Tetari Devi was wife of late Sri Ram Chander. On her death, Misc. Appl. 230/98 for substituting the legal heirs of the deceased applicant was moved. It was allowed and grand childrens of the applicant have been substituted. Sri Ram Chander was appointed as TR[K] Man on 16.9.1939. He was confirmed employee and was to retire on 30.9.1977. On 18.7.1977 PWI Ballia informed Assistant Engineer, N.E. Railway Ballia that Ram Chander was absent from duty since 1.9.1976 and Late Smt. Tetari Devi was also informed on 3.6.1977 that she should send her husband on duty. Smt. Tetari Devi, the deceased applicant moved an application to PWI, Ballia stating that she had no knowledge about her husband and her husband was not at home. Late Smt. Tetari Devi, met PWI, Ballia several times and requested for necessary action to trace her missing husband. No action was taken by the respondents and seven years passed. Late Smt. Tetari Devi, moved an application to Divisional Superintending Engineer, NER Varanasi on 1.7.1985 requesting for payments of funds and release of family pension. When no action was taken on her application dated 1.7.1985 she moved another application on 25.7.1985 through post to Divisional Railway Manager (in short DRM), NE Rly., Varanasi. The D.R.M., N.E. Rly., Varanasi directed PWI, Ballia to submit pension case and service folder of the deceased applicant's husband. The D.R.M. N.E. Rly., Varanasi again directed PWI, Ballia on 9.4.1988 to submit the entire service documents of Shri Ram Chander to finalise the case. All the documents of Sri Ram Chander were sent by PWI Ballia on 12.9.1977 and again the certified copies of the documents were sent on 13.5.1988 but inspite of that no action was taken by the D.R.M. N.E. Rly., Varanasi to finalise the family pension case of Late Smt. Tetari Devi ^{hand} also payment of retiral

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benefits. Hence this OA which has been contested by the respondents.

3. Heard Sri Anant Vijay learned counsel for the applicants and Sri A.K. Gaur learned counsel for the respondents and perused records.

4. Sri Anant Vijay, learned counsel for the applicant submitted that entire service records of Sri Ram Chander had been sent to D.R.M. N.E. Rly., Varanasi on 12.9.1977 through Assistant Engineer and again attested copies of the same were sent by FWI, Ballia directly to D.R.M. N.E. Rly., Varanasi on 13.5.1988 as is evident from Annexure 6 of the O.A. It is clear that respondents were considering the case of late Smt. Tetari Devi the deceased applicant for payment of post retiral benefits including grant of family pension till 13.5.1988 but did not take any action, thereafter.

5. Sri Anant Vijay, learned counsel for the applicants has denied any payment of Rs. 5189/- to late Smt. Tetari Devi as averred by the respondents in short counter affidavit and has alleged that this amount has been misappropriated. He has also assailed the plea of the respondents that the records have been weeded out on the ground that service records of an employee are permanent record and the question of their weeding out does not arise. Besides when the case of Smt. Tetari Devi, wife of Sri Ram Chander was under active consideration till 1985 how could the records be weeded out in this case. Sri Anant Vijay, learned counsel for the applicant submitted that the service of Sri Ram Chander husband of the deceased applicant was pensionable and the claim for family pension was never rejected by the respondents. He has placed reliance on the decision of Hon'ble Supreme

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Court in D.S. Nakara & Ors Vs. U.O.I. & Ors (1983) 1 SCC 305.

6. Sri Anant Vijay further submitted that the preliminary objection of limitation by the respondents that this OA has been filed after a lapse of 19 years is not correct because as per letter of respondents dated 13.5.1988 the matter was under consideration by them. The bar of limitation cannot be pleaded by the Government when the department has defaulted in making payments promptly inspite of demands consistently made by ^{the widow the deceased applicant} employee. He has placed reliance on the judgment of Apex Court in S.R. Bhanrale Vs. U.O.I. & Ors AIR 1997 SC 27 to this effect.

7. Sri Anant Vijay the learned counsel for the applicant finally submitted that the plea of the respondents that late Smt. Terari Devi's husband was a PF Optee is not correct. Late Smt. Terari Devi was entitled to get the family pension and other post retiral benefits. He has placed reliance on the decision of Hon'ble Supreme Court in D.S. Nakara's (supra) ^{be} ^{be} case.

8. Sri A.K. Gaur, the learned counsel for the respondents while contesting the claim of the applicants submitted that OA is grossly time barred as Sri Ram Chander retired on 30.9.1977 and cause of action arose on 30.9.1977. The matter could not ^{be} ^{be} agitated before this Tribunal after a lapse of more than 19 years. Sri Gaur also submitted that as per Railway Board Circular, the records pertaining to the service matter of Railway employees are liable to be weeded out after 10 years of the retirement of the employee.

9. Sri Gaur argued that the present OA is not maintainable before this Tribunal. The case pertains to the year 1977 and therefore as already decided ^{by} number of ^{Cases by} Tribunals and ^{also} provided in section 21 of A.T. Act, 1985, ⁱⁿ ^{the} matters pertaining to 3 years prior to coming into force of Administrative Tribunals Act, 1985 are not maintainable and cognizable by this Tribunal which interalia means that matters or disputes prior to September 1982 are not to be entertained. In support of his argument the learned counsel for the respondents placed reliance on the decisions in 1986 (1) ATC 203, 1987 (2) ATC 1829 and 1987 (3) ATC 602.

10. Sri Gaur further submitted that Sri Ram Chander is deemed to have retired in 1977 and the OA has been filed in the year 1996. It is grossly time barred and therefore should be dismissed as has been held by the Hon'ble Supreme Court in RC Sharma Vs. Udhham Singh Kamal 2000 SCC (L&S) 52 that in absence of application and affidavit for condonation of delay the Tribunal should not condone the delay and the matter should not be heard on merit. The deceased applicant ought to have exercised the right for remedy in 1977 in view of an apex court decision in JS Som Vs. U.O.I. & Ors 1994 (27) ATC 804. Even the Full Bench of the Tribunal in Jacob Abraham's case reported in 1994 (28) ATC 177 has held that case filed in such a situation was time barred and was liable to be dismissed.

11. Sri Gaur further submitted that even after admission, question of limitation can be argued in view of decision of this Tribunal in case reported in 1994 (28) ATC 810. Hon'ble Supreme Court in Commandant TSP Vs Esawar Moorthy

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1999 SCC (L&S) 643 has held that delay condonation ought to be considered and when the case was inordinately time barred then the court was prevented from hearing the matter on merits without condoning delay. Therefore, the OA is liable to be dismissed on the ground of limitation and the merits need not be looked into.

12. I have carefully considered the submissions of the learned counsel for the parties. ^{late}It is an admitted fact that Shri Ram Chander, husband of Smt. Tetari Devi was absent from duty w.e.f. 1.9.1976 and there was no trace of him till 18.7.1977 when PWI Ballia informed Assistant Engineer Ballia about unauthorised absence of applicant's husband. Sri Ram Chander was to retire on 30.9.1977 and he did not show up till then. The respondents, in absence of Sri Ram Chander could not have settled his post retiral benefits. Sri Ram Chander's wife Smt. Tetari Devi also could not have preferred any claim before the respondents till her husband was traced. Sri Ram Chander could not be traced at all and therefore after 7 years of his date of superannuation he was presumed to be dead in 1984. The claim of the applicant had to ^{be} settled thereafter. Thus the submission of learned counsel for the respondents, that husband of late Smt. Tetari Devi retired on 30.9.1977 and the Administrative Tribunal Act, came into force in 1985 the OA is not maintainable before this Tribunal being pre 1982 matter, has no force. The decision cited by the learned counsel for the respondents will not help and they are distinguishable. The cause of action arose during 1984 and the OA is maintainable in this Tribunal.

13. Second submission advanced by the learned counsel for the respondents is that the OA is grossly barred by period of limitation and is liable to be dismissed. I do not agree with this submission of the learned counsel for the respondents also in view of my observations here after. It has been held by the Hon'ble Supreme Court in S.R. Bhanra^l's case (supra) that in respect of pensionary benefits i.e. claim for payments towards encashment of leaves, certain increments arrears etc, bar of limitation cannot be pleaded when the department it self had defaulted in making payments. In the instant case late Smt. Tatara Devi rightly preferred her claim on 1.7.1985 and kept on sending reminders and representations but the respondents failed to take any action. It was the duty of respondents to have settled deceased applicant's claim promptly and they cannot absolve themselves from this responsibility.

14. I also do not agree with the submission made by the respondents counsel that the service record of applicant's being more than 10 years old have been weeded out. The service records of ^{deceased} applicant's husband were sent by PWI, Ballia to D.R.M. N.E. Rly., Varanasi through Assistant Engineer for the first time on 12.09.1977 and again the attested copies of the same were sent by PWI Ballia directly to D.R.M. N.E. Rly., Varanasi on 13.5.1988. Therefore, the plea of the respondents that the records have been weeded out is incorrect and unreliable. Here I would like to observe that the respondents are duty bound to preserve the records till finalisation of claim. In case the service records of applicant's husband ^lhave been weeded out, the action of the respondents is irresponsible and they are liable to settle the claim of the applicant in accordance with law after recreating the service records.

15. The plea of respondents that Sri Ram Chander was Provident Fund aptee and he has already received a sum of Rs. 5189/- towards his Provident Fund dues is not tenable. It is not clear as to who has been paid this amount when Sri Ram Chander is missing since 19.1976. Smt. Tetari Devi is an illeterate lady and she denied having received any amount from the respondents. In case there is any ^{truth} ~~thing~~ in this submission of the respondents they ought to have given a reply to this effect to late Smt. Tetari Devi immediately after her application dated 1.7.1985, requesting for the payment of due claims including family pension, was received by the respondents. It is strange that the respondents kept examining the case till May 1988 and have now come up with the plea that Sri Ram Chander was Provident Fund ⁱⁿ aptee and he was paid a sum of Rs. 5189/- .

16. I find substance in the submission of learned counsel for the applicant that Sri Ram Chander was a government servant and his service was pensionable. He had put in 37 years of service in the respondent's establishment upto 1.9.1976 and therefore it is the duty of the respondents to settle all the claims of the applicant's expeditiously. It has been held by Hon'ble Supreme Court in D.S. Nakara's case (supra) that government servants have right to receive pension under statutory rules and therefore the claim of Smt. Tetari Devi for family pension should be examined and decided in the light of Hon'ble Supreme Court decision in DS Nakara's case (supra).

17. In the facts and circumstances discussed above the O.A. is allowed. Since wife of Sri Ram Chander, late

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Smt. Tetari Devi has since expired, the relief claimed for that the deceased applicant Smt. Tetari Devi be paid family pension on monthly basis has become infructuous. However, the applicants are entitled to get all retiral benefits in respect of Late Sri Ram Chander and also the arrears of family pension which would have been payable to late Smt. Tetari Devi. The OA is finally disposed of with the direction to D.R.M. N.E. Rly., Varanasi (respondent no. 3) to settle the claims of the applicants and make payment within 6 months from the communication of this order.

15. There shall be no order as to costs.


Member (A)

/pc/

MA 4150/02
MA 1131/96

on

MA 4150/02 has been filed
by the respondent to grant
further time to comply the
order dt 12/2/02.

Submitted.

M
24/10/02

M. A. No. 4150/02

in
O. A. No. 1131/96

29.10.02

Hon'ble Mrs. Meera Chhibber, J.M.

Both the counsel are present. The respondents have moved this application bearing M. A. No. 4150/02 seeking extension of time for complying with the orders given by the Tribunal. They have stated that since the records have not yet been traced it will take some more time to refer to the records and to arrange the case of the applicant for retiral benefits as directed by the Tribunal.

The prayer is opposed by the applicant's counsel who has stated in an affidavit in para 5 that one Shri Deep Narain who is posted as Welfare Inspector in the office of respondent no. 3, visited the house of the applicant in the month of September and communicated that even if the orders have been passed by the Tribunal no payment shall be made unless he is pleased along with officers. This is rather a serious matter. In normal course we would have allowed the application filed by the respondents but in view of the categorical averment made by the applicant, we would like to send a copy of this order to the Senior officers in North Eastern Railway with the direction to ascertain the facts and comply with the directions already given in O. A. No. 1131/96 within four weeks positively and in case it is found that there is some truth in the averments made by the applicant with regard to the approach of the Welfare Officer, appropriate action should be initiated against the said officer. With this the M. A. is disposed of.

Copy of this order be sent to the D.R.M., North Eastern Railway, Varanasi by post by the Registry as well, in addition to giving a copy to the counsel for the respondents.



Member-J

/s/ Neelan/

a
MA 4914, 4915 for Hb
by results on the Hb
MA 4910 submitted to MA 13 are submitted.
10/1/03

15-01-03

Hon. Mrs. Meera Chhibber - JM

Respondents have filed their C.A. along with M.A. 4914/02 with a prayer to reject the O.A. This shall be taken up at the time of arguments.

M.A. 4915/02 has been filed with a prayer to direct the applicants to cooperate with the respondents so that personal file of deceased may be prepared and netted by the Accounts and due payments may be paid to the applicant as per directions of the Haile Court.

Since this M.A. has been filed to help the applicant, this M.A. could have been allowed. But, I am not passing any orders in the absence of the counsel. Therefore, list this M.A. for orders on the next date.

M.A. 48/03 has been filed by the applicant to reject both the MAs filed by the respondents. This shall also be taken up on the next date.

List the case for orders on
24-1-03.



JM



24-1-2003

HON. MRS MEERA CHHIBBER, MEMBER (J)

Shri A.Vijay counsel for the applicant and
Shri K.P.Singh counsel for the respondents.

It is seen that the respondents have filed M.A 4914/02 with a prayer to grant further six months time to comply with the order of Hon'ble Tribunal. They have explained that after the first application for extension of time was made, ~~The~~ original applicant had made an allegation against one Shri Deep Narain, Welfare Inspector that he had gone to the applicant's house and stated that unless he is pleased no orders would be passed. Therefore, the Tribunal had recorded the allegations made by the applicant and had directed the Senior Officer of North Eastern Railway to ascertain the facts and comply with the directions given in O.A 1131/96 within 4 weeks positively. It is now submitted by the respondents that pursuant to the order passed in M.A 4150/02 show cause notice was given to the said Shri Deep Narain on 25-11-2002 and reply was given by the said Shri Deep Narain on 26-11-2002 stating therein that the allegation made against him are absolutely baseless as he is ^{not} at all concerned ^{with} the case in hand as ^{the} same is being looked after ^{by} some other Welfare Inspector yet the respondents have constituted an inquiry to go ^{to} the depth of the matter and the same is under progress. As far as payment to the applicant is concerned, they have stated that respondents are trying to construct personal file of the deceased employee in order to arrange the payment as per directions of the Tribunal and in this connection, they have already written a letter to the applicant on 25-11-2002 to give certain factual position so that the orders may be complied with. They have thus ~~XXXXXX~~ requested that applicant may be directed to cooperate in the matter as the case is more than 25 years old and his personal file is not available now. Therefore, it would take some time to



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construct the personal file for making final payment to the applicant.

2. The original applicant has opposed this M.A by stating that they are already cooperating with the respondents and have already given the reply as asked by the respondents on 2-12-2002. Therefore, they have submitted that respondents are only delaying the matter unnecessarily even though all the particulars are already available with them. It is seen that respondents have filed application No. 4915/02 seeking a prayer that applicants be directed to cooperate with the respondents so that personal file of the deceased may be prepared ^{to give} payments to the applicants while applicant has filed M.A no. 48/03 with the prayer to reject the M.As filed by the respondents.

3. I have heard both the counsel and perused the contents of M.As as well.

4. There is no doubt that this case is very old as it pertains to a period of 25 years back and since the respondents are facing some difficulty in constructing the personal file of applicant, they are only seeking cooperation of the applicant to help them in constructing the file so that final payment may be made. As far as the allegation was made by the applicant with regard to some officer claiming some kind of extraneous consideration ^{as they have initiated} ~~has~~ already looked into by the respondents ~~and they are~~ an enquiry ^{is being} into the matter separately and are also taking steps to construct the file by calling the necessary information from the applicants which shows bonafides of the respondents and their intention to help the applicant. Ofcourse it is taking time and I can understand the anxiety on the part of the applicants, as they are being deprived of the

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retiral benefits of their late father. Nonetheless as I have recorded earlier since the respondents are taking the steps I am satisfied that the respondents deserve to be given some more time for complying with the directions. They have sought a period of six months but that would be too longer^a period. It is seen that vide order dated 29-10-2002 the respondents were given 4 weeks time to comply with the directions. Since the applicants have stated^{that} they have already given the information as sought by the respondents I think that respondents should^{be able to} comply with the orders within a period of four months starting from 29-11-2002 which in other word, means the orders must be complied with by 29-3-2003^{positively}. ~~and~~ In case the respondents do not comply with the orders they will be liable to pay interest on the amount ~~payable~~ payable to the applicants for the period which is delayed after March, 2003.

5. With the above directions all the three M.As stand disposed off.



Member (J)

Madhu/