

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1015 of 1998

Allahabad this the 13th day of March, 2003

Hon'ble Mrs.Meera Chhibber, Member(J)

Smt.Prema alias Premavati Devi, Widow of late Mangroo Prasad Kori(SC) Ex-Shed Khalasi, Loco Shed Khadagpur, S.E. Rly, Resident of Village Harakhpur Post Mandhata, Distt.Pratapgarh, present address- Mau Aima Township Harizan Basti(Chamrauti) P.O.Mauaima Distt.Allahabad.

Applicant

By Advocate Shri S.K. Pandey

Versus

1. W.O.I. through General Manager, S.E. Rly. Headquarters Office, Garden REACH, Calcutta.
2. The Divisional Rly Manager, Khadagpur, Divisional Office S.E. Rly.

Respondents

By Advocate Shri Prashant Mathur

O R D E R (Oral)

By Hon'ble Mrs.Meera Chhibber, Member (J)

By this O.A. ~~the~~ applicant has claimed the following reliefs:

"In view of the aforesaid circumstances the applicant seeks the following reliefs being consequential;

1. The petitioner may be awarded retirement benefits of her husband which have been legally due to her on the day and date of her husband's death which include the

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P.F. dues gratuity amount, insurance benefits and family pension for which the petitioner is entitled.

2. The petitioner may be allowed interest on retirement dues and total arrears as due to the applicant being the surviving widow of the deceased employee.

3. The petitioner may be considered for any other reliefs as deemed fit and proper in the interest of justice."

2. I have heard both the counsel and perused the pleadings as well.

3. At the outset counsel for the applicant has since submitted that the applicant was an illiterate widow, at the time of filing of the O.A. there were certain factual mistakes committed by the applicant ^{in B} as much as in different representations different dates were given for example, in the first representation given by the applicant on 16.07.93 (page 19) it was stated that her husband Late Mangroo Prasad Kori died on 18.07.81 in railway hospital and since he was a regular employee he was given the P.F. account no. 541773 and as per the P.F. deposit slip for March, 1982, an amount of Rs. 1059/- was entered in it, whereas in the second representation given by her on 04.12.1987 (page 21) it was shown that her husband had died on 18-07-87. Counsel for the applicant explained that this mistake took place ^{because} in 1981 her newly borne child had died in the hospital which certificate was annexed by the earlier Advocate having shown the same as death certificate of applicant's husband. In the third representation given by the applicant through her Advocate (page 25) it was stated that her husband ~~had~~ died on 17.07.81. So naturally when the applicant herself was not ensure as to when

her husband had expired and ^{had 12} ~~was~~ not even given the correct facts to the authorities, she cannot have any right to claim any benefit for her own mistakes. Counsel for the applicant appearing now submitted that after he took over the case, he has filed a supplementary affidavit on 06.01.2003 wherein he has given the correct facts alongwith documentary proof namely that her husband Late Shri Mangroo Prasad Kori had died on 17.10.1983 in the railway hospital of S.E. Railway Khadagpur. The death certificate is annexed with the affidavit as annexure S.A.-1 at page 8, which shows that Shri Mangroo Prasad had died on 17.10.1983. He has also submitted that after getting all the relevant documents, he has given another representation dated 09.12.2002 to the D.R.M.(P) Khadagpur, Midnapur, West Bengal claiming therein that her client may be given all the terminal benefits and to kindly inform the progress in the matter. This affidavit has been filed by the counsel alongwith misc.application no.49/2003. In para-4 of the said affidavit, applicant has submitted that she came to know through newly engaged counsel that there is some mis-representation of the facts in the O.A. and it is necessary to bring out the correct facts by filing a supplementary affidavit. For the reasons given in the affidavit and taking into consideration that the applicant is an illiterate lady, misc. application no.49 of 2003 is allowed and supplementary affidavit is taken on record.

4. Counsel for the applicant strenuously argued that since the applicant's husband was working

with the railways, after his death it was their obligation to send some Welfare Inspector to assist the widow of the employee in the matter of filling up of her form etc. but, since no such effort was made by the respondents, therefore, applicant should be not only paid the terminal benefits after the death of her husband but, also interest at the rate of 18% per annum for the delayed payment. He has relied on 1996(33)A.T.C. 788 for substantiating his contention.

5. The respondents on the other hand have stated that the applicant had not ^{even} ~~been~~ given the correct facts to the respondents, therefore, they cannot be blamed for non-payment of terminal benefits. -Counsel for the respondents has also invited my attention to the various representations, which were filed by the applicant before them as mentioned above and which show that in each representation the applicant had given a different date of death of her husband. So naturally they could not have acted on the said representations. Therefore, vide their letter dated 09.03.99 they had requested counsel for the applicant in response to his letter dated 17.2.99 to send the original death certificate of Late Mangroo Prasad immediately or applicant may be advised to produce the same ^{in R} to the office for verification. It was made clear that until this document was received, no action can be taken on his request. This letter is filed as annexure C.A.-1 with the counter-affidavit. They have submitted that since no reply was given either by the said Advocate of the applicant or by applicant herself

therefore, they had sent another letter on 20.4.99 once again requesting him to send the original death certificate of Late Shri Mangroo Prasad alongwith form no.10 so that appropriate action may be taken and unless the said documents are received, office may not be held responsible for non-filing of reply in time. This letter is annexed as annexure C.A.-2 with the counter-affidavit. Counsel for the respondents had infact submitted that since the applicant had not been responding to their letters nor she had given any death certificate of her husband, inspite of repeated requests made by the respondents, this O.A. should be dismissed as being time barred and no relief may be granted to the applicant. In support of their contentions, counsel for the respondents has relied on the Judgment given by the Calcutta Bench of the Tribunal on 11.2.97 in O.A.No.1235/97. In the said case, Tribunal had taken the view that since the claim was with regard to the period 1961 when the husband had died and the O.A. was filed only in the year 1997 i.e. after 36 years, therefore, the O.A. was hopelessly barred by limitation. It was also held in the said case that if petitioner could live for 36 years without any pension or gratuity, she can remain now. On these grounds, the O.A. was dismissed. I do not think the view taken by the Calcutta Bench of the Tribunal holds good now in view of the latest Judgment given by the Hon'ble Supreme Court in the case of 'S.K. Mastān^{bee} Vs.G.M.South Central Railway and another reported in 2003(1) S.C.C. page 184 wherein the Hon'ble Supreme Court held as under;

"It is on record that the appellant is an illiterate who ^{after} ^{death} at the time of her husband's

filed the petition late - Art 21 - Livelihood - Right to family pension - pension - generally- Duty of the employer to pay family pension in certain cases without being demanded.

"Constitution of India - Arts. 226 and 21 - Maintainability - Delay/Laches - Where the petitioner was an illiterate widow with meagre resources who had been deprived by the Railways of her Gangman husband's arrears of family pension, held, the petition and claim was maintainable despite delay."



6. In view of the law laid down by the Hon'ble Supreme Court, objections taken by the respondents that this case should be thrown out as barred by limitation, is rejected.

7. Now coming to the merits of the case, it is seen that respondents had by their own letters written as late as in 1999 requested the counsel of the applicant to give the death certificate of her husband so that the matter may be processed early. Now the applicant has been able to get the death certificate of her husband issued by the Department of Health and Family Welfare, wherein it is certified that on the basis of information taken from the original record of death, which is in the register - - - - -



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of South Eastern Railway Hospital of Khadagpur, P.S.Midnapur, West Bengal, Shri Mangroo Prasad had died on 17.10.1983. The applicant has already submitted a representation alongwith document on 09.12.2002, which is evident from annexure E.A.-3 filed alongwith the supplementary affidavit, therefore, I am of the considered view that the Div. Railway Manager(P), Khadagpur, Midnapur, West Bengal may get the facts verified as submitted by the applicant from their own hospital records and if it is found correct that the applicant's husband had died on 17.10.1983 in the Railway Hospital and, there is no other claimant except the applicant in that case subject to the condition that the applicant gives the original certificate to the respondents or fulfil any other formality, which is required by the authorities, they may calculate the amount, which are due to the applicant and pay the same to her within a period of 4 months from the date of receipt of a copy of this order. From the facts as narrated above, it is clear that the delay cannot be attributed to the respondents at all because it was applicant's own mistake that she did not give the correct date of birth to the respondents and the respondents had infact been requesting her all this time to produce the original death certificate so that the case ^{may be} ~~can~~ be processed, therefore, applicant would not be entitled to any interest on the amount which shall be paid to her. With the above directions, the O.A. stands disposed off. The applicant is directed to co-operate with the respondents fully for finalising her own case. No costs.

 
Member (J)