

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 29/3 day of March, 2006.

Original Application No. 930 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)

1. Raja S/o Sri Sharanand, R/o Village Gosaipur Post Mubarakpur, District Ghazipur.
2. Vijai
3. Sanjai

All minor SS/o Late Sharanand U/G to Sukhiya w/o Late Sharanand R/o Village-Gosaipur, Post-Mubarakpur, District-Ghazipur.

....Applicants

By Adv: Sri A. Vijay

V E R S U S

1. Union of India through the Secretary, Ministry of Railway, New Delhi.
2. General Manager, N.E.R., Gorakhpur.
3. D.R.M. N.E.R., Gorakhpur.
4. Asstt. Engineer, N.E.R., Bareilly.

....Respondents

By Adv: Sri K.P. Singh

O R D E R

"if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it".

Lord Asquith of Bishopstone in *East End Dwellings Co. Ltd. v. Finsbury Borough Council*  
(1952) AC 109

The above dictum squarely applies to this case.

2. The Facts: Certain payments were due to be paid in respect of late Sri Ram Chandra, earlier working as TR/K Man. His date of appointment was as early as 1939 and he

was missing sometimes in late seventies. His date of retirement as per schedule was 30<sup>th</sup> September, 1977. His wife Smt. Tetari Devi applied for the terminal dues and through order dated 12-02-2002 in OA 1131/1996 direction as under was given:

*"In the facts and circumstances discussed above, the O.A is allowed. Since wife of Sri Ram Chander, late 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 retrial benefits in respect of late Sri Ram Chander and also the arrears of family pension which would have been payable with the direction to DRM N.E. Railway, Varanasi (respondent no.3) to settle the claims of the applicants and make payment within 6 months from the communication of this order.*

3. As the order was not complied with, a miscellaneous petition was filed and an order to the following extent had been passed vide order dated 24-01-2003:-

*"In case the respondents do not comply with the orders they will be liable to pay interest on the amount payable to the applicant for the period which is delayed after March, 2003."*

4. The applicant through this OA claims two items:- (a) G.P. Fund amount of Rs 5,189/- which according to the finding of this Tribunal in its earlier order dated 12-02-2002 still remains unpaid and (b) interest on the delayed payment of terminal benefit.

5. Respondents contest the same. Their plea is that the amount of GP Fund had been paid to the widow of the deceased as early as in 1977, while in respect of the

interest, there has been no order for payment of interest in the original order. Even the order dated 24-01-2003 was only conditional. It is further contended by the counsel for the respondents that the nature of the amount paid to the legal heir of the deceased cannot be ascertained as the applicant did not exercise any option.

6. The case has been examined. First the nature of the amount released to the legal heirs of the deceased. The respondents have themselves, identified the heads under which various payments have been made. They are - (a) Provident Fund (the disbursement of which, is of course, in dispute); (b) DCR Gratuity and (c) Family Pension. This classification, according to the counsel for the respondents is in pursuance of the Court's order. Be that as it may. Once the amounts are deemed to be under a particular head, as per the dictum stated in para 1 above, the attendant benefits of the same should also percolate to the applicant. Hence, it is declared that whatever is the benefit of interest for delayed payment that is admissible under different heads i.e. DCR Gratuity and Family Pension as per the Rules, the same are available to the applicant. In so far as non payment of GP Fund is concerned, the stand taken by the respondents that the amount has been paid to the widow in 1977 itself cannot be held to be true in view of the categorical finding in the earlier order that the amount had not been paid. It is appropriate to quote verbatim the relevant portion of the order dated 12-02-2002.

*[Handwritten signature/initials over the text]*

"The plea of respondents that Sri Ram Chander was provident Fund optee 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 1.1.1976. Smt. Tetari Devi is an illiterate lady and she denied having received any amount from the respondents. In case there is any truth 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 optee and he has paid a sum of Rs. 5189/-

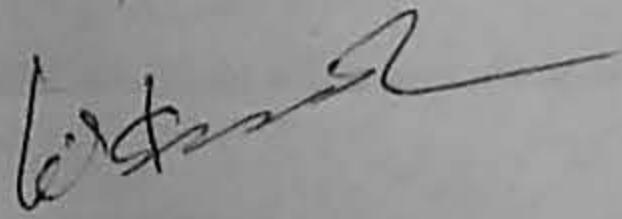
7. It is pertinent to observe here that no documentary evidence has been shown by the respondents that the amount of Rs 5,189/- had been paid to the widow of the deceased government servant.

8. In view of the above the OA is disposed of with the following directions:

- (a) The respondents are directed to pay the amount of Rs 5,189/- being the PF balance in the account of Late Shri Ram Chandra TR/K Man with interest at the relevant rate of interest for various years from 01-04-1978 onwards (on compound basis i.e. the amount of Rs 5,189/- would be incremented by the extent of interest for 1978-79 to work out the interest for 79-80 and so on.) and the said amount should be paid to the applicant.
- (b) As regards the amount of interest in respect of other items, as per the provisions of rules relating to interest on delayed payment, the same shall be worked out and paid.

*BR*

9. The above drill shall be completed within a period of six months from the date of communication of this order. No Cost.



MEMBER-J

GIRISH/-