

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

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No. O.A. 350/01097/2017

Date of order: 22-04-2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Bharati Mukherjee,
Daughter of Late Durgadas Mukherjee,
Residing at Village & Post Office Khanyan,
P.S. Pandua,
District : Hooghly,
PIN - 712147,
West Bengal.

..... Applicant

Versus

1. Union of India,
Service through the General Manager,
Central Railway,
Mumbai - 400 001.
2. Chief Personnel Officer,
Central Railway,
Mumbai - 400 001.
3. Works Manager,
Central Railway,
Kurduvadi,
PIN - 413208.

..... Respondents

For the Applicant : Mr. K. Chakraborty, Counsel
Mr. P. Sanyal, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

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ORDERDr. Nandita Chatterjee, Administrative Member:

The applicant, the unmarried daughter of an ex-employee, and, an aspirant for family pension, has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

"(a) An order be passed directing the respondent authorities and/or its subordinates to rescind, revoke and/or cancel the Letter No. KWV/E/Settl/F.P/B. Mukherji, dated 25.10.2016 issued by the respondent No.3.

(b) An order directing the respondent authorities to grant family pension to the applicant is being the un-married daughter of the deceased railway employee, as per extant rules and procedure.

(c) An order to the respondent authorities for placing the relevant papers and documents before the Hon'ble Tribunal for proper adjudication of the matter.

(d) Costs.

(e) And to pass any other order or orders as Your Lordships may deem fit and proper."

2. The brief facts of this matter, as submitted by Ld. Counsel for the applicant, is that the applicant's deceased father was a B.T. Fitter, who died in harness on 12.4.1968. That, the deceased employee had failed to opt for family pension at the material point of time, and, hence, the widow was granted only an ex-gratia amount after the demise of her husband. That, as the authorities had not informed the deceased employee that he was required to opt for the Railway Pension Rules, he had missed out on opting for pension, and, because of his untimely death, was denied further opportunities to opt for pension during his lifetime.

That, the applicant had represented repeatedly to the authorities claiming her lawful entitlement to family pension. The authorities, however, rejected her prayer vide communication dated 25.10.2016 at Annexure A-10 to the O.A. and,

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accordingly, being aggrieved, the applicant has approached this Tribunal praying for the above mentioned relief.

3. Per contra, the applicant's submissions have been resisted by the respondents both during hearing and in their written statement to argue as follows:-

(i) That, the maintainability of this O.A. is in question as because this Tribunal had dismissed earlier O.A.s 1346 of 1996 as well as in O.A. 939 of 1996 wherein the mother of this applicant had approached this Tribunal praying for family pension.

(ii) The respondents would also argue that this O.A. suffers from delay and laches, and, in support, would cite the orders of the Hon'ble Courts in

S.S. Rathore vs. Union of India & ors., AIR 1990 SC 10

CMD & Another vs. K. Thangappan and anr., 2006 (4) SCC 322

Jai Dev Gupta v. State of Himachal Pradesh & ors., 1999 (1) AISLJ SC 110

Shri Bhoop Singh v. Union of India & others, 1992 (3) SCC 136

AIR 1974 SC 2271, *P.S. Sadasivawswamy v. S/O Tamil Nadu*,

Jacob Abraham & ors., A.T. Full Bench Judgment, 1994-96

Ram Chandra Samanta v. UOI, 1994 (26) ATC 228

S.S. Rathore v. State of M.P., 1989 (2) ATC 521

Bhoop Singh v. UOI, IR 1992 SC 1414

Secretary to Govt. of India v. Shivaram M. Gaikwad, 1995 (6) SLR (SC)

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Ex. Capt. Harish Uppal v. UOI, 1994 (2) SLJ 177

L. Chandra Kumar v. Union of India & ors., 1997 (2) SLR (SC) 1

Dattaram v. Union of India, AIR 199 SC 564

UOI v. Bhagnoar Singh, 1996 LLJ 1127 (SC)

Ramesh Chand Sharma v. Udham Singh Kamal & ors., (1998) 8 SCC 304

E. Parmasivan & ors. v. UOI & ors., 2002 (5) SLR (SC) 307

Kaushal Kishore v. UOI & ors., O.A. No. 92 of 2006

Arun Agarwal v. Nagreeka Exports, (2002) 10 SCC 101

UOI & ors. v. M.K. Sarkar, (2010) 1 SCC (L&S) 1126

Esha Battacharjee v. Management Committee of Ragnathpur Nafar Academy, 2014 (1) SLJ (SC) 20

State of Uttarakhand v. Shri Shiv Charan Singh Bhandari, 2014 (2) SLR 688 (SC)

(iii) On merit, the respondents would argue that the applicant's father had entered Railway service on 21.11.1955 and had expired on 12.4.1968 while in service. That, on 5.12.1986, the applicant's mother had applied for family pension but the same could not be considered as the ex-employee himself had not opted for Railway Pension Rules. The widow, however, was granted ex-gratia payment.

Hence, the respondents would argue that as the ex-employee himself was not a pensioner, the scope of grant of family pension to his dependent does not arise.

4. We have considered the rival arguments, have examined the annexed documents as well as the decisions of this Tribunal in the earlier O.A.s preferred by the mother of the applicant.

Our inferences are as follows:-

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- (a) Admittedly, the father of the applicant had not opted for the Railway Pension Rules. This has been admitted by the applicant in Annexure A-12 to the O.A. to state, inter alia, as follows:-

"That Sir, my father died in harness in Railway Hospital at Solapur in 1968 after 7/8 years service in the Railway and that entitlement was there to grant family pension as per Railway Rules but sorry to say that my mother was deprived of legitimate claim and instead, was granted ex gratia on the ground that my father did not opt for Railway pension."

- (b) The applicant would aver that it was the responsibility of the Railway authorities to advise the ex-employee that he had to opt for Railway Pension Rules but as he expired shortly, he failed to exercise such option on account of his ignorance of Rules and lack of opportunity in preferring such option under the Railway Pension Rules.

- (c) The applicant would also argue that since "one post one pension" rule was in vogue while her father was in service, he should have been automatically entitled to pension and his widow should not have been granted ex-gratia in violation of the "one post one pension" rule.

In her representation dated 18.2.2016 (A-12 to the O.A.), the applicant had stated that her mother was a family pension holder only to contradict such submissions in her representation dated 10.12.2016 (supra) wherein she would admit that her mother was granted ex-gratia upon demise of her father, the ex-employee.

5. The fact that the applicant's father had held a non-pensionable post was settled by this Tribunal in O.A. No. 1436 of 1996 (*Tripti Mukherjee v. Union of India & ors.*) wherein the Hon'ble Tribunal had held as follows:-

"4. We have considered the submission of the learned Advocate for both the sides and also we have gone through the records placed before us. It remains undisputed in this case that the applicant's husband Durgadas Mukherjee, who died on 12.4.1968 had held a non-pensionable post."

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Hence, this Tribunal, having held that, undisputedly, the applicant's husband, namely, the father of the instant applicant, had held a non-pensionable post, and, as no successful challenge to the orders of this Tribunal in O.A. No. 1436 of 1996 have been brought before us, this Tribunal will refrain from reopening the issue as to whether the ex-employee had occupied a non-pensionable post or otherwise.

Accordingly, the applicant's contention that her father should have been considered with reference to "one post one pension" rules is not subject to any further adjudication.

6. Pension Rules mostly provide for grant of family pension. Akin to pension, there are qualifying conditions which have to be fulfilled in order to confer such entitlements on the dependent family. Family pension is a necessary corollary and an adjunct of pension earned by an employee on superannuation. The widow of the ex-employee becomes entitled to family pension, if so nominated, by the serving employee only after the demise of the said employee.

When it has been held in the earlier O.A. that the ex-employee occupied a non-pensionable post, the scope of judicial review as to whether he had failed to exercise his option due to ignorance or due to his untimely demise, is largely an academic exercise at this stage. Annexure A-7 to the O.A. reveals that the respondents had informed the mother of the applicant that she would be entitled to get ex-gratia pension which was admittedly received by the widow.

The applicant's claim would have merited consideration in accordance with circular dated 3.7.2008 (at Annexure A-10 to the O.A.) on the subject of

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grant of family pension to unmarried daughters had her father, the ex-employee, held a pensionable post.

As this Tribunal in earlier O.A. in *Tripti Mukherjee (supra)*, however, had held that ex-employee occupied a non-pensionable post, the claim of his applicant's daughter to family pension fails to succeed.

7. Ld. Counsel for the applicant would rely on 2003 SCC (L&S) 93 S.K. *Mastan Bee v. General Manager, South Central Railway and Anr.* to claim that it was obligatory for the Railways to compute the payable family pension and offer the same to the widow without being so demanded or an initiation of litigation. The Hon'ble Apex Court, however, was adjudicating on the right of the petitioner widow to family pension with effect from the date of death of her husband. The fact that the petitioner's spouse was a pensioner was not in dispute. In the instant matter, the ex-employee was in a non-pensionable post. Hence the ratio of *S.K. Mastan Bee (supra)* does not come to the aid of the applicant.

To the contrary, in *Appeal (Civil) Case No. 576 of 2008 Uttar Haryana Bijli Vitran Nigam v. Surji Devi*, the Hon'ble Apex Court held as follows:-

"14. The Scheme relating to grant of Family pension was made under a statute. A person would be entitled to the benefit thereof subject to statutory interdicts.

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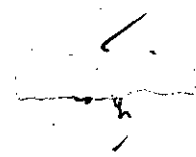
Sympathy alone cannot be a ground for taking a view different from that permissible in law. [See *Maruti Udyog Ltd. V. Ram Lal and Others*, (2005) 2 SCC 638, *State of Bihar & ors. v. Amrendra Kumar Mishra*, 2006 (9) SCALE 549, *Regional Manager, SBI v. Mahatma Mishra*, 2006 (11) SCALE 258, *State of Karnataka v. Ammerbi & ors.* 2006 (13) SCALE 319 and *State of MP and Ors. vs. Sanjay Kumar Pathak and Ors.* [2007(12) SCALE 72]. They statutory provisions, as noticed hereinbefore, debar grant of family pension in favour of the family members."

Furthermore, there exists a distinction between a pensionable and non-pensionable establishment. Shri Krishan being a member of a non-pensionable establishment, Family Pension was not admissible."

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Accordingly, the applicant's claim for family pension, fails to be sustained either on fact or in law.

8. O.A. is accordingly dismissed. There will be no orders on costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

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