

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.739 OF 2002
ALLAHABAD THIS THE 18TH DAY OF NOVEMBER, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Smt. Firozi Begum,
Widow of Late Hashim Ali,
Resident of Ander Kot Unchi Haveli,
Mohalla Qasba Murad Nagar,
District-Ghaziabad.

. Applicant

(By Advocate Shri Krishna Mohan)

Versus

1. The Union of India
through General Manager, Northern
Railway, Baroda House, New Delhi.
2. The Secretary (Personnel),
Lok Shikayat and Ministry of Pension,
Pension & Pensioners Welfare Section,
Government of India,
New Delhi-1.
3. The Divisional Railway Manager,
Divisional Railway Manager's Office,
Northern Railway,
New Delhi.
4. The Divisional Personnel Officer,
Divisional Railway Manager's Office,
Northern Railway,
New Delhi.

. Respondents

(By Advocate Shri A.K. Gaur)



- O R D E R -

By this O.A. applicant has sought a direction to the respondents to grant ~~her~~ family pension benefits w.e.f. 22.9.1977 to the applicant in view of decision of Apex Court (AIR 1985 SC 1196), ~~alongwith an order~~ to pass any other and further suitable orders which this Court may deem fit and proper in the circumstances of the case.

2. The brief facts as narrated by the applicant are that her husband Late Hashim Ali S/o Late Umed Ali Driver, Northern Railway, P.F. No.215102/226697 D, died on 03.07.1962 while he was in service. She represented for grant of family pension but ^{she} was paid only Ex-Gratia payment of Rs.150/- by the Divisional Accounts Officer, Northern Railway, plus relief since 1.1.1986 onwards. As such she is getting Rs215/-p.m. since February,1991. In 1985 SC 1196 Hon'ble Supreme Court had held in the case of Smt.Poonamal and Others vs. Union of India and Others on a specific statement made by the counsel for Union of India that Government is prepared to grant benefits to the minor sons etc. of the pensioners under the family pension scheme 1964, ^{the} same pensionary benefits as are admissible to the dependant under the current pension rules. The writ petitions were accordingly disposed of in view of the statement made by the counsel for Union of India after the matter was examined by the Government whereby it was decided that arrears of family pension could be given w.e.f.

22.9.1977 or the date when the pensioner had died, whichever is later. In spite of it since no family pension was being given to her. She filed writ petition no.34137/1994 before Hon'ble High Court of Allahabad which was decided on 21.9.1999 (Page 12) by directing the

authority concerned to decide the petitioner's representation within two months from the date of production of a certified copy of the order in accordance with law.

3. It is submitted by the applicant that she gave a representation on 04.10.1999 followed by another representation dated 20.12.2000 (page 14), but no decision was taken by the respondents, therefore, she filed a second writ petition no.6363/2002 which was dismissed on 13.2.2002 for availing alternative remedy before the Central Administrative Tribunal (Page 23). Therefore, applicant filed the present O.A. She has ~~solely~~ relied on the judgment given by Hon'ble Supreme Court in the case of Smt. Poonamal and Others (Supra) and in the case of S.K. Mastan Bee Versus General Manager, South Central Railway and another reported in(2003) 1 UPLBEC 247.

4. Respondents on the other hand have submitted that the pension scheme in Railways was implemented w.e.f. 1.1.1964 ~~whereas~~ ^{had} the husband of applicant ~~was~~ died on 3.7.1964 and further he did not opt for pension, therefore, at the time of his death, service contribution to the applicant was paid through AV No.1690 A dated 30.8.1963 by Assistant Engineer, Saharanpur, which was sent to her vide letter no. E/2/1/C Misc. dated 6.4.1963 (Annexure R-1). They have thus, submitted that since applicant's husband had not opted for pension scheme, therefore, applicant was not entitled to get family pension or arrears thereof. She was in fact granted Ex-Gratia payment in 1988 which she is still getting. They have further submitted that the Service Book, Leave Record and Personal File of an employees is preserved upto 15 years from the date of his retirement/death and thereafter the same is weeded out. Therefore, at this juncture his records are also not available and the

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present O.A. is, therefore, barred by limitation, They have relied on JT 2002 Vol 5 367.

5. I have heard both the counsel and perused the judgments relied upon by both the counsel.

6. As far as the question of limitation is concerned, firstly the Hon'ble Supreme Court in the case of S.K. Mastan Bee reported in(2003) 1 UPLBEC 247 had held that family pension is a legal right which cannot be defeated merely for delay in making the claim. The Hon'ble Supreme Court, therefore, upheld the view taken by the learned Single Judge who had rejected the objection of delay while deciding the case of family pension in Railway Service. In the said case Railway employee had died in the year 1969 while the claim for family pension was made in the year 1991, therefore, it is clear now that the claim for family pension if admissible to a widow cannot be defeated on the ground of delay, laches or limitation alone. Even otherwise applicant had filed her first writ petition in the year 1994 when Hon'ble High Court had directed the respondents to pass a detailed order on her representation within a period of two months but inspite of the direction of Hon'ble High Court, respondents did not decide the representation of the applicants. Therefore, she filed second writ petition in the Hon'ble High Court but that was dismissed for want of jurisdiction by giving liberty to the applicant to avail the remedy before the Central Administrative Tribunal. It was thus, pursuant to the said liberty given by the Hon'ble High Court that petitioner filed O.A. before this Tribunal. In these circumstances the objection of respondents with regard to limitation cannot be sustained. The



same is accordingly rejected.

7. Coming to the main grievance of applicant, the only ground taken by the respondents in their counter affidavit is that applicant's ^{husband} had not opted for pension, therefore applicant is not entitled to get the family pension and that applicant has already been given the service contribution as well as Ex-Gratia payment. On this aspect, there is no need to spend much time for arguments because the matter is already concluded by Hon'ble Supreme Court in the case of Smt. Poonamal and Others (Supra) as referred to above. In fact, in the said case, Government of India had made a statement through their counsel that Government has examined the matter and since family pension scheme 1964 was made non-contributory from 2.9.1977, Government would agree to extend the benefit of the family pension scheme 1964 to all the living widows. It shall, however, be restricted from 22.9.1977 or the date of the death of the petitioner whichever is later till the date of the death of the widow. It is further clarified that Government is prepared to grant ^{benefits} to the dependents that ^{is R} ~~the~~ minor sons etc of the pensioners governed ^{pre R} ~~under~~ through 1964 scheme, ^H The same pensionary benefits as are admissible to the dependents under the current pension rules.

8. From the perusal of above, it is clear that applicant would also be governed by the clarification offered by Government on their own. Having made that statement before Hon'ble Supreme Court, respondents cannot be now heard of ^{saying R} ~~same~~ that applicant would not be entitled for family pension. However, at this stage ^g we would like to clarify that since respondents have

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already paid service contributions and Ex-Gratia payments to the applicant, which fact is not disputed by the applicant, respondents would be at liberty to adjust the amounts already paid to the applicant while computing the amounts of arrears ^{to be} paid to the applicant as family pension from 22.9.1977.

9. Accordingly, this O.A. is allowed with a direction to the respondents to calculate family pension admissible to the applicant w.e.f. 22.9.1977 and pay her the arrears within a period of six months from the date of receipt of a copy of this order after adjusting the amounts which have already been paid to the applicant by way of service contribution given to her after the death of her husband and Ex-Gratia payments paid to her vide letter dated 30.06.1988.

10. There shall be no order as to costs.



Member-J

/ns/