

28
RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: this the 26th day of April, 2012

Original Application No. 369 of 2006

Hon'ble Ms. Jayati Chandra, Member – A

Smt. Nankee, Widow of late Sri Munnoo, R/o Quarter No. 196-A, New Railway Colony, Subedarganj, City and District – Allahabad.

... Applicant

By Adv : Shri A.K. Dave & Km. Mamta Sharma

V E R S U S

1. Union of India through, through General Manager, Northern Central Allahabad.
2. Divisional Railway Manager, Northern Central Railway, Allahabad Division, Allahabad.
3. Assistant Audit Officer, Office of PAG, (Civil Audit), UP, Allahabad.

... Respondents

By Adv: Shri Arun Prakash

(Reserved on 23.04.2012)

O R D E R

Instant OA has been filed by Smt. Nankee, Widow of late Sri Munnoo for payment of family pension, the prayer for which has been rejected by the respondents vide impugned order dated 16.05.2005.

2. The brief facts of the case are that the applicant is widow of late Munnoo who joined the Railways on 04.11.1955 and was a regular employee on the post of Ex-safaiwala. He expired on 06.03.1977. the applicant was given compassionate appointment on 10.09.1976 as Class IV employee. She was not granted any family pension. An ex-gratia payment of Rs. 150+DA was given since 01.01.1996. She had filed Writ Petition No. 5435/98 seeking family pension. The Writ Petition was disposed of with the direction as under:-

J. Chandra

22

"In view of the aforesaid fact it is provided that if the petitioner submits a supplementary representation giving all the details to the respondent No. 2 within a period of 3 weeks, the respondent No. 2 is directed to consider the claim of the petitioner for payment of family pension according to law and will pass a detailed and reasoned order preferably within 2 months of the production of certified copy of this order."

3. Hence the impugned order has been passed by the respondents.

The respondents have stated that the benefit of family pension were extended to the family of the employee who retired or died before 01.01.1964 or are otherwise not covered by the family pension scheme for Railway employee. Learned counsel for the applicant has drawn the attention particularly to para 5 (a), (b) and (c) which reads as follows:-

"5. Consequent upon the above judgment of the Supreme Court, the President has been pleased to decide that:-

- a. The benefit of family pension Scheme, 1964 may be extended to all the eligible members of the family in accordance with the provisions of the Ministry's letter No. R (P) 63-PN/40 dated 01.01.1964*
- b. all the eligible persons, including dependents, shall be allowed the increased pension rate as introduced from 01.01.1973.*
- c. the arrears of family pension may be granted w.e.f. 22.09.1977 (the date on which contribution of two month's emoluments by pensioners was dispensed with) or from a subsequent date they become eligible for family pension, whichever is later. The benefit will also be available in cases where the death of the pensioner occurs hereafter."*

4. The respondents have highlighted the delay by the applicant in seeking family pension. They have also averred that the applicant's husband expire on 06.03.1973. His services were governed under SRPF (Contributory) Rules. Her prayer for ex-gratia payment was accepted and revised PPO No. 0389/PSB/Ex-gratia (W) 7926 was issued and she was sanctioned Rs. 150+DA per month w.e.f. 01.01.1986.

5. The family pension scheme introduced by the Railway Board letter No. F(E)III/88/PEN/19 dated 26.07.1985 applied to only those employees who were governed by the pension scheme and who died / retired before 01.01.1964 and who, if alive, had opted out of the family pension scheme 1964.

S. Chander

6. I have heard learned counsel for the parties and perused the entire facts of the case. It is appropriate that the question of delay is dealt with first. The cause of action i.e. death of the applicant's husband occurred in the year 1973. She was given compassionate appointment in the year 1976. The family pension scheme of 1985 was introduced in last half of 1985. Therefore, she could not have applied for coverage under the scheme prior to that date. Moreover, she moved an application for ex-gratia payment in 1996. However, she has stated on oath (para 4.2 of the OA) that she had continuously requested the respondents for family pension. It is clear from her application form for ex-gratia payment that the applicant is an illiterate woman who used her thumb impression in lieu of signature. No doubt that an illiterate person and who is also a compassionate appointee and whose date of birth is prior to 1950 cannot be expected to make a habit of making representations in writing. The respondents have denied having received her representation. Both the versions have an element of truth in their own place. For an illiterate compassionate appointee working in a Class IV post verbal representations are very much the ^{usual} mode while for the respondents and their institution, written records take ^{precedence} place on memory. Moreover, in the Writ Petition No. 5435/98 the direction as quoted above is to decide the matter on merit. Hence this OA cannot be dismissed on the ground of limitation.

7. Coming to the merit of the case, it is clear that there were two distinct scheme covering family of the deceased Govt. employee which are as under:-

- a. employees who are covered under SRPF (Contributory) Rules were given the benefit of the scheme of granting ex-gratia payment to Central Govt. employees which was introduced through

J. Chawda

DOP&T letter No. 4.1.87p&W(PIG) dated 13.06.1988
and

b. for those of the Railway employees who were governed by the pension scheme as opposed to the SRPF (Contributory) Rules and who had retired or died before 01.01.1964 or were not otherwise covered by the family pension scheme of Railway employees 1964. This scheme was introduced under the direction of Hon'ble Supreme Court n 1985.

8. There is an inherent anamoly here. The subject matter of the Railway Board letter dated 26.07.1985 reads, "...or are **otherwise not covered by family pension scheme**". The use of the word "otherwise" would appeared to give a wide connotation wherein the inclusion is of persons regardless of whatever scheme they were covered under prior to the introduction of scheme of 1985. Moreover, there is no clause in the said scheme which provides specific exemption for persons covered under SRPF (Contributory) Rules.

9. Looking at all the facts and circumstances the case of the applicant is remanded back to the respondents for the purpose of granting of family pension to the applicant w.e.f. the date on which the scheme is implemented. *Impuned order dated 16/5/2005 is hereby set aside. In effect her case has to be switched from ex-gratia payment to family pension scheme. Her entitlements may be calculated and the net amount after deducting the amount which have already been paid be given to her. The respondents are given 04 months time to comply with the order of this Tribunal from the date a copy of this order is produced before them. The OA is disposed of accordingly. No cost.*

J. Chandra
Member (A)

/pc/