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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. No. 689 of 1993

Cuttack this the 20th day of November, 1995.

Smt. Hemalata Sethy

Applicant

Versus

Union of India & Others.

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? No
2. Whether it be circulated to all the Benches of the M. Central Administrative Tribunals or not?

N. SAHU
(N. SAHU)
Member (Administrative)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 689 of 1993
Cuttack this the 20th day of November, 1995.

CORAM:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

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Smt. Hemalata Sethy,
aged about 47 years,
widow of late Gobinda Chandra Sethy,
of village-Krishnapeta Sahi,
PO/PS. Berhampur, Dist. Ganjam.

.... Applicant

By the Advocate M/s. S.K. Mund, D.P. Das, J.K. Panda,
Advocates.

Versus

1) Union of India represented through
General Manager South Eastern Railway,
Garden Reach, Calcutta.

2) Divisional Manager,
Khurda Road Division,
South Eastern Railway,
Khurda Road.

3) Senior Divisional Personnel Officer,
South Eastern Railway, Khurda Road,
PO. Jatni, Dist. Khurda.

4) Chief Personnel Officer (Settlement),
South Eastern Railway, Garden Reach,
Calcutta. Respondents

By the Advocate ... Mr. D.N. Mishra, Standing Counsel (Central).

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ORDER

MR .N .SAHU, MEMBER (ADMINISTRATIVE) :

This application filed on 30.11.1993 prays for a direction to the Respondents to grant Family Pension with effect from 24.6.1963. The husband of the applicant late Gobinda Chandra Sethi was appointed as T. P. M. at Tadcher Operative Department in the year 1959. He was in continuous service till he died on 24.6. 1963. In the absence of precise date of entry into service, it can only be said that the total years of service put in by the applicant was more than three years and less than four years.

2. The applicant was denied family pension and ex-gratia by Respondent No.3, who is the Senior Divisional Personnel Officer, S.E. Railway, Khurda Road. The applicant referred to Establishment Circular No.213 of 1985 for grant of family pension to the families of those railway employees who retired or died before 30. 12. 1963. A claim has been made that the husband of the applicant had been settled under pensionable scheme , and, therefore, she as the widow is entitled to family pension. By Annexure-2, the Senior Divisional Personnel Officer, replied that, as

late Shri G.C. Sethi was settled under non-contributory Scheme, ex-gratia pension cannot be arranged in this case. With regard to family pension, their office could not find out any settlement case to prove that the applicant's husband was settled under a pensionable scheme.

3. In the counter-affidavit, it is urged that the application is hopelessly barred by limitation as it is filed 30 years after the death of Shri Sethi. It is also mentioned that this Tribunal has no jurisdiction with regard to cases which arose three years prior to the commencement of this Central Administrative Tribunals Act. It is further stated that the exact service particulars of late Shri Sethi could not be verified as the relevant records were destroyed in accordance with the rules governing preservation of service Records. The applicant had never approached the authorities for releasing family pension. She claimed for an exgratia payment which is not permissible under the rules. As the applicant's husband had settled in a non-contributory Scheme, the applicant was not eligible for ex-gratia payment. With regard to the Railway Board's circular Establishment Sl. No. 213 of 1985, it is stated that the said Circular

was issued only to give benefit to those employees who were borne on pensionable establishment, but could not be given the benefit of family pension scheme, 1964.

Persons who are governed by the pension scheme of 1964, ^{are given this benefit to opt for family pension.} but not included in family pension. It is stated that the applicant's husband, is not governed by the pension scheme, and therefore, he is not eligible for provisions of family pension. The applicant has delayed for so long that it is not a fit case for consideration. The most important averments in the counter-affidavit is that the husband of the applicant had never settled in a pension scheme as he had worked for railways for only three years and even on this, records are not available to ascertain the genuineness of the service particulars. Further no records have been produced to substantiate the claim of the applicant.

4. The learned counsel for the applicant Shri D.P.Das, brought to my notice at the time of hearing, the Establishment Circular No.213/85 by which the benefit of family pension Scheme, 1964, was extended to the families of those railway employees who were borne on pensionable establishment, but who are not covered by the family pension scheme. The husband of the applicant died before ³¹ 13.12.1963 and it was submitted that he opted for the family pension scheme of 1964.

5. I heard the learned counsels for both sides. Unfortunately, enough material was not available on record. Though the Railway Administration had liberalised benefits to the category of persons like the applicant several times, neither counsel was able to supply the material at the time of hearing. This matter is covered by a reported decision : Smt. Kadiram Bibi vs. Union of India and others (CAT Patna Bench 33 Swamy's CLT Digest, 1994). In that case the husband of the applicant was appointed as a Porter on 30.12.1961. He died on 9.5.1962. The Patna Bench of the Tribunal held that the Widow was entitled to Family pension.

6. Railway Services Pension Scheme was implemented on 1.4.1959 and the employees were getting pension after completing 20 years of service. On 1.1.1964 the Family Pension Scheme was introduced for Railway Employees. Under this scheme, the family pension will be applicable to those employees who are appointed prior to 1.1.1964. With regard to Family Pension Scheme, there is a judgment of the Supreme Court dated 30.4.1985. The Chief Personnel Officer circulated the order dated 19.12.1986 for grant of family Pension to those employees who died before completion of one year of continuous service.

In the case before me, it is true that at the time of the applicant's husband death, on 24. 6. 1963 he did not complete 20 years of service and could not qualify for Pension. Therefore, on the basis of the conventional Railway Pension Scheme as it existed on the date of death of her husband, the applicant could not claim any pension. The only question to be decided as to whether under the Family Pension Scheme which was introduced in the railways with effect from 1.1.1964, the applicant is entitled to family pension or not. As mentioned above, pursuant to the decision of the Supreme Court, the family Pension scheme 1964 was extended to the family of those Government/Railway Servants also who died prior to 1.1.64 in Order No. F(E) iii/85/PN-1/19 dated 19.12.1986. Under this any Railway Servant who died before completion of one year of continuous service is entitled to Family Pension provided that immediately prior to his appointment he was examined by the appropriate medical authority and declared fit by the authority for Government service.

7. In the present case, the applicant's husband was in service for four years. But the Respondents have dismissed the applicant's claim for Family Pension or

other benefits on the short ground that the records were not available to check-up service particulars. This is not the proper way to dispose of a claim. The Railway Administration is a giant public sector undertaking, the largest in the country and it is supposed to be a modern, model, welfare organisation. Non-preservation of service particulars is no ground for not allowing a valid claim. It is expected of the Railway administration to guide the persons like the widow applicant before me about all the benefits which are current and help a poor widow to get her legal dues. The Railway Administration must construct the records, if there are none, from other ancillary sources or from finding out particulars from the widow herself. It is not ⁱⁿ dispute that the applicant's husband rendered four years of continuous service. If a person who had less than one year of continuous is entitled to Family Pension, the applicant's case is all the more stronger.

8. In Bahri's Guide, "Railway Pension and Retirement Benefits", the Government instructions in Annexure-1 where service records are incomplete runs as under:

"(A) For the purpose of Family Pension, 1964:

(i) If the deceased Government servant at the time of death had rendered more than one year service but less than seven years service, the service and the emoluments for the last year of service shall be verified and accepted by the Head of Office and the amount of family Pension determined under sub-rule (2) and sub-Rule 2A) of Rule 54 of the CCS(Pension)Rules 1972".

When these are the instructions what then is the justification for the Railway Administration to turn down the applicant's case on the facile ground of non-tracing of records?.

9. There is a question of limitation also. It is settled law that once there is an entitlement to Family Pension, the applicant's right to Family Pension recurs every month till she is alive and therefore, as she has a continuing cause of action, this claim is not barred by limitation. It is another matter that the recovery of the amount of arrears of Family pension may be barred by limitation applicable to a money claim and for that reason arrears of family pension would not be admissible since 1963.

10. I find two Annexures to the application. I would only extract Annexure-1 in toto.

"BY REGD. POST A4D.
No. Self/Optg./Exgratia/147/667, dt. 16.5.90.

To.

Smt. Hemalata Sethy, W/o late G.C. Sethy,
Qr.No.D-6 'A'-Traffic Colony, Po-Jatni,
Puri, Dist-Puri.

Sub:-Your application for Ex-gratia.

Your above Exgratia application form together with its enclosures are returned herewith, since your late husband was settled under Non-contributory Scheme as communicated by DAO-KUR under his letter No.DAO/Kur/PF/E&P/Spol. Dt. 4.4.90.*

11. This shows that the SDPO knew that the applicant

was settled under Non-contributory Scheme. Annexure-2 is a letter from S.E. Railway, addressed to C.P.O. for verification of records. It clearly shows that the applicant had been pressing her claim as early as 16.5.1990. I would thus, declare that she is eligible to Family Pension with effect from 16.5.1990.

12. To sum up, I direct the Respondents viz. Assistant Personnel Officer who signed the counter-affidavit, the Divisional Personnel Officer, Khurda and the Chief Personnel Officer, S.E. Railway, Khurda collectively to construct all the connected records relevant for the purpose of granting family pension, work out admissible Family Pension as per rules and ensure that Family Pension is paid to the applicant, arrears w.e.f. 16.5.1990 and current from month to month, within three months from the date of receipt of a copy of this order. If an unlettered innocent old widow could not clearly spell out what she wanted it was the duty of the Railway Administration to educate her about her rights. Otherwise all the benefits arising out of circulars of the Railway Board and the judicial pronouncements would go in vain. Pension is not a bounty, a dole; it is a right, thus declared the Supreme Court. The application is partly allowed. No costs.

Narasimha Mohanty
(N. SAHU)
MEMBER (ADMINISTRATIVE)