

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO. 573 OF 2000

Cuttack, this the 5th day of Feb.'2002

Najamun Bibi

...

Applicant

Vrs.

Union of India and others

....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*

2. Whether it be circulated to all the Benches of
the Central Administrative Tribunal or not? *No*

M.R. Mohanty
(M.R. MOHANTY) 05/02/2002
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO. 573 OF 2000

CORAM:

Cuttack, this the 5th February, 2002

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDL.)


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Najamun Bibi, aged 63 years, widow of late Abdul Razak,
ex-Shed Khalasi, S.E. Railway, Mechanical Department,
Kharagpur Division, at present residing at Katkana,
P.O/PS-Kakatpur, District-Puri

.....Applicant

Applicant represented by her authorised representative
Sk. Rabani.

Vrs.

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1. Union of India, represented through
General Manager, South Eastern Railway,
Garden Reach, Calcutta.
 2. Divisional Railway Manager, S.E. Railway,
Kharagpur Division, At/PO/Dist. Kharagpur, West Bengal.
 3. Divisional Personnel Officer, S.E. Railway,
Kharagpur Division, At/PO/Dist. Kharagpur, West Bengal

.....Respondents

Advocate for respondents - M/s D.N. Mishra &
S.K. Panda.

....

ORDER

S. Som
SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for
quashing the order dated 10.7.2000 (Annexure-A/9) rejecting
her prayer for exgratia payment and for a direction to the

respondents to grant her exgratia payment from 12.5.1987 along with interest at 18% per annum on arrears.

2. The case of the applicant is that she is widow of one Abdul Razak who had joined Bengal Nagpur Railway (B.N.Railway) before independence. Before partition of the country options were called for from Muslim employees regarding their continuance or otherwise in the service of the Railways in India or Pakistan. Husband of the applicant being a semi-literate person gave option to continue in the service of the Railways in Pakistan. But his transfer to Railways in Pakistan was not finalised and ultimately he was re-employed as Shed Khalasi in S.E.Railway on 15.3.1959. He continued in service of the S.E. Railways in Mechanical Department of Kharagpur Division till 14.11.1968 when he retired on superannuation. True copy of the Service Certificate has been enclosed at Annexure-A/1. After retirement the applicant's husband settled down at his native village and passed away on 11.5.1987. The applicant has stated that her husband was a Contributory Provident Fund (C.P.F.) retiree and after his death the applicant approached the Railway authorities for grant of exgratia payment to her from 12.5.1987. In the letter dated 1.9.1999 (Annexure-A/4) the Divisional Personnel Officer, Kharagpur, directed the applicant to furnish certain documents in response to which the applicant sent all the documents available with her at Annexure-A/5. A reminder was also sent on 27.12.1999



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at Annexure-A/6 and a further representation dated 11.2.2000 at Annexure-A/7. In the letter dated 23.5.2000 the Grievance Cell of the S.E.Railway acknowledged receipt of the applicant's representation dated 11.2.2000. While the applicant was anxiously waiting for getting exgratia payment, in the impugned order dated 10.7.2000 (Annexure-A/9) her prayer for getting exgratia payment was rejected. The applicant has stated that in the letter at Annexure-A/9 the departmental authorities have mentioned that the exgratia payment is allowable to widows/widowers of C.P.F.retirees who were appointed prior to 16.11.1957 and did not exercise their option to come under the Pension Rules. It is stated that as the applicant's husband was appointed on 14.3.1959, she is not entitled to exgratia payment. The applicant has stated various grounds why the above order is liable to be quashed. It is not necessary to refer to these grounds because the same will be taken into account while considering the submissions made by either side.

3. Respondents in their counter have stated that Abdul Razak retired from Railway service on 14.11.1968 after attaining the age of 58 years and expired on 12.5.1987. The present petitioner has applied for exgratia payment as per the Railway Board's circular dated 30.6.1988. But under the rules she is not entitled to ex gratia payment and she has been so informed in the letter dated 10.7.2000 (Annexure-A/9). The respondents have stated that Abdul Razak was appointed for the first time in S.E.Railway on



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14.3.1959. They have denied the averment that the applicant's husband was an ex-B.N.Railway employee. They have stated that the Service Certificate has been issued in 1972 and the entry regarding his being "ex-B.N.Rly Muslim Pakistan optee" is an interpolation. It is further stated that the Provident Fund ledgers are permanent records and according to the P.F.Ledgers Abdul Razak was in Non-Contributory Provident Fund Scheme (NCPF Scheme) and he has been paid his pensionary dues. It is further submitted that as Abdul Razak was in pensionable Scheme, he was entitled to pension. But as he had put in only 9 years and eight months of service, i.e., less than ten years, which is the qualifying service for pension, no pension was sanctioned to Abdul Razak. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in her rejoinder has reiterated the averments made by her in the O.A. and has also contested the averments made by the respondents in their counter. These will be referred to while considering the submissions made by either side.

5. The applicant being a Muslim widow and Pardanasin lady, we have allowed her son to make submissions. He has filed a written note as also copies of the decisions in the following cases:

- (i) Babu Tukaram Bhosale v. Union of India and ors,
276.Swamy's CL Digest 1994;
- (ii) A.C.Doraiswamy Achari v. General Manager,



S.C.Railways, Secunderabad and others,

384. Swamy's C.L.Digest 1994/2; and

(iii) Shri Sona v. Union of India and others,

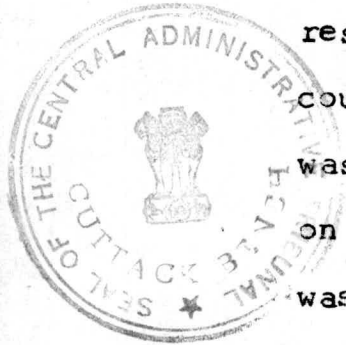
OA No.257 of 1996 (decided on 30.6.1997).

We have also heard Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents.

6. Before proceeding further it is to be noted that the decision in Babu Tukaram Bhosale's case(supra) is on the point of counting military service towards pensionary benefit where no gratuity or pension has been paid for military service. In A.C.Doraiswamy Achari's case(supra) Hyderabad Bench of the Tribunal have held that the Railway official re-employed after termination on invalidation is entitled to certain benefits mentioned in paragraphs 2609 and 2605 of IREC. That is a case for invalidation pension is also not applicable to the instant case. Shri Sona's case (supra) deals with conferment of temporary status and consequent reckoning of qualifying service. That relates to a case of casual labourer and also is not applicable to the facts of the present case.

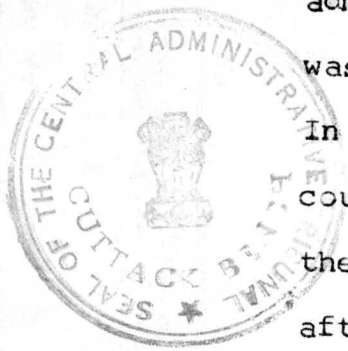
7. Coming specifically to the facts of the instant case, the applicant's case is based on the Service Certificate which shows that the date of birth of Abdul Razak was 15.11.1910. This also finds support from the averment of the respondents in their counter that Abdul Razak retired on superannuation on 14.11.1968 on attaining the age of 58 years. The respondents have stated that the endorsement in the Service Certificate that Abdul Razak

was an ex-B.N.Railway employee is an interpolation. Besides the bland assertion that this entry is an interpolation, the respondents have not made any averment if some enquiry was made by them with regard to the statement in the Service Certificate that Abdul Razak was an ex-B.N.Railway employee. In view of this, merely on the basis of the bland assertion of the respondents, this Service Certificate, which is an old document, cannot be disregarded. Moreover, the respondents have stated that Abdul Razak was appointed in S.E.Railway on 14.3.1959. Going by his admitted date of birth at that time he was more than 48 years of age. The respondents have made no averment as to how Abdul Razak could be appointed in Railways for the first time when he was more than 48 years of age. In view of this, merely on the assertion of the respondents that Abdul Razak was appointed for the first time in the S.E.Railway on 14.3.1959 cannot be accepted. In the Service Certificate at Annexure-A/1 the words "ex-B.N.Rly. Muslim Pakistan Optee" are within brackets. In this endorsement it has also been noted that he was re-appointed on 14.3.1959. The respondents in page 4 of their counter have stated that this entry was inserted with ill-motive for the benefit of getting ex-gratia payment and this is subject to examination. We have already noted that they have not made any enquiry whether Abdul Razak had some service under the B.N.Railway. / Rule 405 of the Manual of Railway



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Pension Rules, 1950, the previous service of staff of the former Private Railway Companies and quasi-Railway Bodies who were absorbed or appointed as fresh entrants on the Indian Government/ex-State Railways, is required to be taken into consideration only for pensionary purpose. It is not necessary to extract the entire rule. But from the portion referred to by us it appears that the staff serving under the private Railways have either to be absorbed or appointed as fresh entrants. This is supported by the admitted position between the parties that Abdul Razak was given fresh appointment in S.E. Railway on 14.3.1959. In other words, even if he was a B.N. Railway employee, he could have been absorbed or given fresh appointment in the S.E. Railway. The respondents have pointed out that after long passage of time, no records with regard to service of Abdul Razak are available, except the Provident Fund Ledger which is a permanent record. The absence of documents, which is ^{only} ~~never~~ to be expected in a case such as this, would not have the result of disallowing the claim of the applicant altogether because Rule 1017 of the Manual of Railway Pension Rules, 1950, lays down that if it be impossible to verify a portion of service otherwise, the procedure indicated in paragraphs 1018 to 1021 should be followed. Coming to the claim of the applicant for exgratia payment, the respondents are right in holding that the applicant is not entitled to exgratia payment.



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Unfortunately, the reasons cited for denial of exgratia payment to the applicant by the respondents are not consistent. In the letter to the applicant, which has been enclosed at Annexure-A/9, the respondents have taken the stand that as the applicant's husband was appointed on 14.3.1959 and as exgratia payment is allowed only to widows/widowers of CPF retirees appointed prior to 16.11.1957, she is not entitled to exgratia payment. In their counter to the O.A. the respondents have taken the stand that the applicant's husband was a NCPF employee after his appointment in S.E.Railway on 14.3.1959. According to the respondents, he would have been normally entitled to pension if he had put in 10 years of service. But as he had put in nine years and eight months of service, he was not entitled to pension. The contention that only on completion of 10 years of service, pension is allowable may not be correct because while calculating 10 years of qualifying service, calculation is made on six-monthly blocks. We extract below the gist of a circular of the Railway Board dealing with this subject which has been printed at page 488 of B.S.Mainee's Railway Establishment Rules and Labour Laws, 1999 (21st Edition):

"In terms of para 401 of Manual of Railway Pension Rules, in calculating the length of qualifying service fraction of a year equal to 6 months and above is treated as completed one half-year and reckoned as qualifying service for pensionary benefits.

The implication of the above provision in the case of a Railway servant who has completed 9 years and 9 months and above service but less than 10 years has been examined in consultation with Department of Personnel & Training and it has been decided that such a



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Railway servant will be deemed to have completed 20 six monthly periods of qualifying service and will be eligible for pension. The said provision will also be applicable for determination of retirement gratuity/ death gratuity as admissible in terms of para 7.1 of Board letter No.PC/IV/87/Imp/PN/1 dated 15-4-1987. (R.B.No.F(E) III/90/PN-1/34 dated 25-10-1990) (N.R., S.N. 10279)."

From this it appears that the Railway Board have decided in consultation with the Department of Personnel & Training that a Railway servant, who has completed nine years and nine months and above of service, will be taken to have completed twenty six monthly periods of qualifying service and will be eligible for pension.

In the instant case, the Railways have not specifically denied that the applicant's husband had served the B.N.Railway. They have stated that in case he had served B.N.Railway, he must have got the retrenchment benefits. This has been denied by the applicant in her rejoinder. From all this, it must be held that the applicant's husband had some service under the B.N.Railway and under Rule 405 of the Manual of Railway Pension Rules, 1950 that service would count towards pension moreso when on his re-appointment he was inducted in pensionable service and therefore, the applicant's husband would have been entitled to pension. But Abdul Razak, the husband of the applicant retired in 1968 and passed away in 1987. During this long period of 19 years, he had not put forth any claim for pension and he having died in 1987, pension is grossly barred by limitation. But in the facts and



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and circumstances of the case and in view of our finding that Abdul Razak, the husband of the applicant was entitled to pension, his widow, the present applicant would be entitled to family pension. We direct that the applicant should be allowed family pension from the date following the death of her husband, i.e., from 12.5.1987. In view of the complicated nature of the case, we allow the respondents a period of six months to sanction and disburse the family pension to the applicant along with arrears.

8. One last point to be noted in this connection is that the applicant in her petition has not asked for family pension. She has asked for exgratia payment to which she is not entitled. But in view of the averment of the respondents in their counter that Abdul Razak was in pensionable service, the applicant in her rejoinder has asked for family pension which is allowed as above.

9. The applicant has asked for interest at 18% on the arrears due to be paid by the respondents to her. But in the circumstances of the case and considering the fact that the applicant has approached the Tribunal after long time, the claim of interest is rejected.

10. In the result, the O.A. is disposed of in terms of observation and direction above. No costs.

M.R. Mohanty
(M.R. MOHANTY) 05/12/2002
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

AN/PS

