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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.827 of 2010

Cuttack this the 21st day of January, 2013

CORAM:

HON'BLE SHRI R.C.MISRA, MEMBER(A)

H.Bibi, aged about 74 years,
W/o.late Md.Hafiz
At-Banapanjuri, PO-Tirimal
Via-Bajapur
Dist-Puri

...Applicant

(By Advocates:M/s.

D.R.Pattnaik)
L.Pattanayak
N.S.Panda
N.Biswal

-VERSUS-

Union of India represented through

1. General Manager,
S.E.Railway,
Garden Reach,
Kolkata
(West Bengal)
2. D.R.M.S.E. Rwilay,
Kharagpur
At/PO-Kharagpur,
Dist-Madinapur
(West Bengal)
3. Divisional Personnel Officer,
S.E.Railway, Kharagpur
At/PO-Kharagpur,
Dist-Medinapur
(West Bengal)
4. Accounts Officer, S.E.Railway,
Kharagpur,
At/PO-Kharagpur
Dist-Medinapur (West Bengal)

...Respondents

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(By Advocates:Mr. S.K.Ojha)

ORDER(Oral)**SHRI R.C.MISRA, MEMBER(A):**

Applicant Md.Hfiz had filed this Original Application. During pendency of this O.A., he having passed away, his wife has been substituted vide order dated 1.10.2012.

2. In this case, the applicant has approached this Tribunal putting forth her grievance regarding non-disbursement of full pension by the Respondents though her husband had served the Ministry of Railways who are Respondents herein for more than 40 years.

3. Facts of the matter are that the applicant's husband joined as Khalasi in the Railways on 9.4.1935. Subsequently, he was promoted to the post of Driver, Gr.C in the year 1957. While he continued in this position, he retired on 30.4.1977. According to applicant, her husband had submitted his option for payment of pension before Respondent No.3, i.e, the Divisional Personnel Officer, S.E.Railway, Kharagpur. However, he was subsequently informed by the Respondents that his option forms have been misplaced in the office. Consequently, he was asked to give fresh option. Even thereafter his pension was not sanctioned and his representations in the year 1988 made to the Chairman, Railway Board met with no result. It is also the case of the applicant that her husband was being paid ex gratia @ Rs.600/- from 1.11.1997, but he was never given full pension in spite of 42



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years of service in the Railways. In this context, applicant has come up with a prayer for taking into account the entire service period from 9.4.1935 to 30.4.1977 and for payment of pension and other retiral dues along with interest.

4. Respondents in the counter that they have filed before this Tribunal have first of all mentioned that the present Original Application is grossly barred by limitation since the date of retirement of the applicant's husband was in the year 1977, in view of the provision of Section 21 of the A.T.Act, 1985. Accordingly, they have pleaded that this case is not maintainable before the Tribunal, being a case where the cause of action has arisen from the date of retirement of the applicant, i.e., 30.4.1977.

5. Further, the learned counsel for the Respondents has argued that the applicant's husband had accepted ex gratia payment and having accepted so, applicant cannot raise a further claim of pension. Another submission that he has made is that this matter has come up at a very belated stage and the records pertaining thereto are not available in the Department. However, the Railways have been able to trace the Contributory Provident Fund Ledger Card of the applicant's husband, which carries the CPF No.350267/66097. It has been further pleaded that the Pension Scheme for the Railways came into effect from 1.4.1957 with the stipulation that those Railway Servants who were appointed on or after 16.11.1957 are automatically governed under the Pension Scheme and those Railway

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Servants (non-pensionable) who were in service on 1.4.1957 or have joined Railway service between 1.4.1957 and 15.11.1957 may come to the pension scheme by exercising their option. It is the case of the Respondents that the date of exercising option was extended a number of times but the applicant's husband did not exercise his option before his retirement on 30.4.1977. This means that he continued in the old CPF Scheme which was known as S.R.P.F. He was also granted ex gratia payment of Rs.600/- per month with effect from 1.11.1997 and he also accepted this claim without any dispute. Further, the learned counsel for the Respondents has cited the judgment of the Hon'ble Supreme Court in K.V.S. & Ors. Vs. Jaspal Kaur & Another (2007) 2 Supreme Court Cases (L&S) 289 (arising out of Civil Appeal No.2876 of 2007 decided on 6th June, 2007). In this case, Hon'ble Supreme Court has taken a view that on account of applicant's inability to produce the original option, secondary evidence was considered sufficient to show that respondent preferred to remain in Contributory Provident Fund Scheme (CPF) and accordingly, the contrary view taken by the C.A.T. and Hon'ble High Court was reversed.

6. On the other hand, learned counsel for the applicant vehemently opposed the stand taken by the Respondents with regard to the non-payment of pensionary benefits to the applicant. His claim is that the applicant has submitted his option from time to time and the plea taken by the Railway

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authorities that the records were not traceable because this case is very old is not acceptable. He further mentioned that the applicant's husband having served for 42 years in the Department has a rightful claim to pensionary benefits. In support of his case, he has also cited the judgment of the Hon'ble Supreme Court in S.R. Bhanrale vs. Union of India &Ors. (AIR 1997 SC 27) (arising out of Civil Appeal No. 9489 of 1996 disposed of on 19.7.1996) wherein it has been held that bar of limitation cannot be pleaded by the Government of India when the Department itself had defaulted in making payments promptly in respect of demands consistently made by the employee. Learned counsel has admitted that the applicant's husband had received the ex gratia payment which was made applicable from 1.11.1997. However, his claim is based upon the fact that as the options given by the applicant's husband from time to time were not duly acted upon by the Railway authorities applicant is entitled to relief even at this belated stage.

7. I have heard Shri N.Biswal, learned counsel for the applicant and Shri S.K.Ojha, learned counsel appearing on behalf of the Respondent-Railways and also carefully perused the documents that have been filed.

8. First of all, the case is a very old one and since the applicant's husband had retired admittedly on 30.4.1977, the agitation of this case before the Tribunal has been hopelessly delayed by the applicant. However, since it is a matter of

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pensionary claim, the various points which have been raised by both the learned counsels have been carefully noted.

9. Admittedly, the applicant's husband was a member of the old CPF Scheme which is called SRPF and had not been brought over to the Pension Scheme in the year 1957. The learned counsel for the applicant pleaded that this was because the options for pension given from time to time by the applicant's husband were not acted upon whereas learned counsel for the Respondents mentioned that such options were not at all exercised even in spite of several extensions of the date line for filing of the option. However, since the old records in this matter are not traceable, it is not possible to find out any documentary proof of this matter. The learned counsel for the applicant has also not given any document to establish his case. On the other hand, the learned counsel for the Railways has produced some records about the CPF Scheme and has also furnished the CPF Account Number of the applicant's husband. It is also an admitted fact that the ex gratia payment of Rs.600/- per month with effect from 1.11.1997 had been accepted by the applicant's husband. The date of retirement of the applicant's husband being 1.4.1977 adequate time was available with him to further agitate the matter of his option in the appropriate forum. But, he had preferred not to do so and thus continued as a member of the SRPF for long many years and also accepted the ex gratia payment with effect from 1.11.1997.

10. Considering all these factors, there seems to be no case for the applicant in this matter. As there is no evidence of option claimed to have been exercised, the claim made by the applicant at this belated stage, in my considered view, does not deserve consideration. However, since the ex gratia payment is being made @ Rs.600/- per month with effect from 1.11.1997 and if in the meanwhile, the rate of the ex gratia has been revised, the applicant should be paid as per the revised rate, if not already paid, from the date on which such revised rates were made effective under the scheme.

11. With the above observation, the O.A. is dismissed. No costs.


(R.C.MISRA)
MEMBER(A)

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