

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 1436 of 1996.

Present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.
HON'BLE MR. D. PURKAYASTHA, JUDICIAL MEMBER.

Tripti Mukherjee
W/o- Late, Durgadas Mukherjee
C/o- Ajit Banerjee,
Vill & PO. Khanyan, Hooghly.

... Applicant.

Vs.

1. Union of India,
service through
General Manager, Central Rly,
Bombay (VT),

2. Chief Personnel Officer,
Central Rly,
Bombay (VT)

3. Works Manager,
Central Rly,
Kurduvadi-413 208.

... Respondents.

For Applicant : Mr. B.C. Sinha, Counsel.

For Respondents : Mr. P.K. Arora, Counsel.

Heard on : 17.2.97 and
25.3.97.

Ordered on : 30.5.97.

O R D E R

D. Purkayastha, JM.

1. One Smt. Tripti Mukherjee, who is the wife of late Durgadas Mukherjee, died in harness, on 12.4.68 while he was in service as Fitter in the office of the Works Manager, Kurduwadi under Central Railway, has filed this application under Sec. 19 of the Administrative Tribunals Act, 1985. The applicant's husband ~~had~~ died in Sholapur claiming family pension.

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Hospital. She claims that she is entitled to get family pension due to death of her husband in harness. She knocked the door of Central Railway administration but in vain. Ultimately, she approached this Tribunal for having a direction upon the respondents to pay family pension to her w.e.f. 12.4.1968 instead of ex-gratia pension and also for a direction upon the respondents to pay her all other consequential benefits including interest thereon.

2. The claim of the applicant has been resisted by the respondents by raising objection at the admission stage without filing any written statement ~~disallowing~~ ^{disallowing} ~~controverting~~ ^{disallowing} the claim of the applicant in this case. The 1d. Advocate, Mr. Arora appearing on behalf of the respondents submits that Smt. Tripti Mukherjee, the applicant, is not in a Government or Railway service and, hence, cannot approach this Tribunal for getting relief as prayed for in this application. Mr. Arora further argues that this Tribunal has no jurisdiction to entertain this application since the cause of action arose outside the jurisdiction of this Bench of the Tribunal in view of the provision of Rule 6 of the CAT (Procedure) Rules, 1987. Mr. Arora ^{has} also drawn our attention to the Judgement dated 23.1.1996 passed in O.A. No. 1465 of 1995 wherein it was decided that the applicant not being a government servant has no locus standi to approach this Bench of the Tribunal claiming compassionate appointment. On the contrary, the 1d. Advocate, Mr. Sinha appearing on behalf of the applicant submits that the wife being a widow of the deceased railway employee has legal right to get all pensionary benefits or retiral benefits which was due to be paid to the widow of the railway employee on account of death and, therefore, she ~~is~~ has every legal right to approach this Tribunal as recipient of the family pension under the Pension Rules.

3. In view of the aforesaid controversy, the main question arises in this case whether the applicant, Smt. Tripti Mukherjee, not being a Government servant but being a widow of the deceased employee of the Central Railway can seek the relief by invoking the

provision of Sec. 19 of the AT Act, 1985 and the rules framed thereunder. Secondly, whether the applicant being a legal representative of the deceased railway employee and being resident of West Bengal after death of her husband can invoke the jurisdiction of this Bench of the Tribunal in view of the provision of Rule 6 of the Central Administrative Tribunal (Procedure) Rule, 1987.

4. We have considered the submission of the learned Advocate for both the sides and also we have gone through the records placed before us. It remains undisputed in this case that the applicant's husband Durgadas Mukherjee, who died on 12.4.1968 had held a non-pensionable post. In this case his widow was entitled to the payment of the entire amount standing in the credit in the Provident Fund Account and Gratuity etc. In the instant case the applicant being a recipient of retiral benefits on account of death of her husband raised the claim to get family pension under the Pension Rules. The widow being a recipient of all pensionary benefits under the Rules on account of death of her husband has every legal right to approach the Tribunal if she is not paid the payable pension or retiral benefit on account of death of her husband. The question of payment of family pension arises in cases of death of an employee ~~while~~ he was in service or ~~not~~ even after retirement. So, the entitlement of the family pension depends on the fact whether the husband of the applicant was in service or not. So, her right to get the family pension ^{under} ~~of~~ the Rules on account of death of her husband cannot be denied ^{if} ~~and~~ the family pension is prescribed by the Rules.

5. We have gone through the Judgment relied upon by the 1d. Advocate, Mr. Arora, in which my learned brother, Dr. B.C. Sarma delivered Judgement holding that the applicant being not a Government servant is not entitled to get the benefit of compassionate appointment since the applicant was not in Government service. In the said Judgment it was held that the benefit of compassionate appointment is not available to the applicant since the applicant was never in Government service. Moreover, the prayer made in that case was about

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the grant of compassionate appointment which cannot be claimed as a matter of right. So, facts of this case is quite distinguishable from the instant case at our hand. In the instant case the question comes on denial of the family pension on account of death of her husband. The question of ~~employment~~ ^{entitlement of family pension} will be considered by us at the time of Final hearing of the case. So, ^{from the} aforesaid observation, we are of the view that the applicant being the recipient of the retiral benefits on account of death of her husband, is entitled to seek remedy by invoking the provision of Sec.19 of the A.T.Act, 1985.

6. The next question comes whether she can seek remedy before this Bench of the Tribunal being resident of West Bengal after the death of her husband, Durgadas Mukherjee, who died in Shallopur Hospital on 12.4.1968. The Rule 6 of the Central Administrative Tribunal(Procedure) Rules, 1987 runs as follows :-

"(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -
(i) the applicant is posted for the time being, or
(ii) the cause of action, wholly or in part, has arisen. Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.
(2) Notwithstanding anything contained in sub-rule(1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such persons is ordinarily residing at the time of filing of the application."

7. From the above provision of sub-section(2) it is found that the employees who have retired or who have been dismissed or whose services have been terminated at his option may file an application within the jurisdiction of the Bench of this Tribunal where such person ordinarily resides at the time of filing of application. The said rule remains silent in respect of legal representative of the deceased Government/Railway employee filing

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of application. The said rule remains silent in respect of legal representative of the deceased Government/Railway employee for filing the case. The rule is silent in respect of death case. However, as per Sub-rule 6(1)(ii) of the CAT(Procedure) Rules, 1987, she was to file the case before the Tribunal whose jurisdiction in the cause of action or part of the cause of action had arisen. But in the instant case admittedly, the cause of action did not arise within the jurisdiction of this Tribunal. So this Bench has no jurisdiction to try the case. So the application be returned to the applicant for filing it before the appropriate authority/forum, if she thinks fit and proper. Accordingly, the application is disposed of. No costs.

30/5/97
(D. Purkayastha)

MEMBER (J)

30/5/97
(B. C. Sarma)

MEMBER (A)