

Date of order : 11.04.1997

(9)

O.A. NO. 82 OF 1996.

SMT. RADHA DEVI W/O LATE SHRI LAXMINARAYANJI JOSHI,
RETIRED POINTSMAN, NORTHERN RAILWAY, JODHPUR DIVISION,
RESIDENT OF GUNDI KA MOHALIA, JOSHION-KA-BERA, JODHPUR.



..... Applicant

Versus

1. UNION OF INDIA THROUGH CHAIRMAN, RAILWAY BOARD, RAIL BHAWAN, RAFI MARG, NEW DELHI.
2. THE GENERAL MANAGER, NORTHERN RAILWAY, BARODA HOUSE, NEW DELHI.
3. THE DIVISIONAL RAILWAY MANAGER, NORTHERN RAILWAY, JODHPUR.
4. THE DIVISIONAL PERSONNEL OFFICER, NORTHERN RAILWAY, JODHPUR.

..... Respondents

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C O R A M

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

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Mrs. Vijay Laxmi, Advocate
Mr. R.K. Soni, Advocate

For the Applicant.
For the Respondents.

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BY THE COURT :

Applicant, who is a widow of retired Northern Railway employee of the Jodhpur Division, has filed this OA with the prayer that the impugned order Ann. A-1 may be set aside and respondent No. 3 may be directed to grant an Ex Gratia payment to the applicant @ Rs. 150/- w.e.f. 1.1.1986 p.m. + Dearness Relief etc. applicable thereon.

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2. Briefly stated the facts of the case are that applicant was married to Shri Laxmi Narain Joshi, who was a Railway employee. He retired from the post of Pointsman and thereafter died on 7.5.1964. The Govt. of India sanctioned an Ex Gratia payment @ Rs. 150/- p.m. + Dearness Relief w.e.f. 1.1.1986 to the widows of the deceased Contributory Provident Fund Retirees. The applicant submitted an application in the prescribed form for grant of an Ex Gratia payment in terms of the Govt. Order to the Divisional Railway Manager, Northern Railway, Jodhpur on 19.6.1992. The applicant was informed by the respondent No. 4 that no record in respect of Late Shri Laxmi Narain Joshi husband of the applicant, was available in the office of the Divisional Accounts Officer, Northern Railway. The applicant was called upon to furnish copy of appointment order or any other document relating to her deceased husband's service with the Railways. The applicant could not produce any document but submitted her own Affidavit and Affidavits of two retired Railway servants with whom applicant's husband had worked in the Railways for the consideration to the authorities. But the claim of the applicant was rejected and she was refused ex gratia payment. She has further alleged that ex gratia payment was sanctioned by the concerned Railway Authorities to one Smt. Jethi Bai W/o Late Shri Dhan Raj Calla, who was similarly placed and had submitted only affidavits in support of her claim but the Authorities in the similar circumstances have refused ex gratia payment to the applicant and thus discriminated amongst two similarly placed widows. The applicant has alleged that as a widow of a retired Railway employee, she is entitled for ex gratia payment. Since the respondents are not agreeable to the applicant's claim, she had to file this O.A.

3. The respondents have filed their reply in which they have mentioned that the applicant has not been able to satisfy the Authorities in terms of Railway Board's letter dated 30.6.1988 for grant of

ex gratia payment, therefore, her claim for ex gratia payment was rejected. It is not established by the applicant that her husband was a Railway employee which is a necessary condition for grant of ex gratia payment to a widow of a Railway employee. However, it is admitted by the respondents that ex gratia payment was sanctioned to Smt. Jethi Bai, widow of Late Sh. Dhan Raj Calla, Ex. Signaller, Jodhpur. The respondents have prayed that applicant deserves no relief.

4. The applicant has submitted a rejoinder to the reply of the respondents and reiterated the facts earlier stated.

5. I have heard the learned counsel for the parties and gone through the records.

6. The learned counsel for the applicant has argued that as per the requirement of letter dated 13.6.1988 issued by the Ministry of Personnel, Public Grievances and Pension (Department of Pension and Pensioners Welfare) (for short 'the Department'), for grant of an ex - gratia payment to the families of deceased Contributory Provident Fund Retirees, the applicant, in order to receive the Ex Gratia payment, was required to satisfy the Head of Office that he is the widow of the Govt. servant concerned by producing CPF Account Slip or letter regarding CPF Account or Retirement Order or such other relevant record which may be in her possession. In case, she has no such record, then she was required to produce Affidavit of herself supported by two documents which may be acceptable to the Head of the Department. It is further argued that the applicant has been able to satisfy the sanctioning authority and has also supported her claim by way of Affidavit of herself and two supporting Affidavits of retired Railway employees. The Divisional Railway Manager's letter dated 14.2.1995 written to GM/P, Northern Railway, clearly shows that the Divisional Railway Manager was satisfied regarding the genuineness of Smt. Radha Devi's claim but still the respondents have not released the ex gratia payment. Similarly circumstanced Smt. Jethi

Bai had also produced two affidavits of retired Railway employee in support of her claim. Smt.Jethi Bai had produced no other document and yet on the satisfaction of the Divisional Railway Manager, ex-gratia payment was released to her whereas the applicant has been denied ex gratia payment. Thus, the respondents have discriminated amongst the two widows. In the circumstances, the Application of the applicant deserves to be accepted.

7. On the otherhand, the learned counsel for the Railways has argued that Railways have issued Annex.R-2 dated 12.7.1991 which clearly mentions that in case documents are not produced in support of the claim then ex gratia payment is not required to be sanctioned on the basis of affidavits alone. Therefore, the applicant was not sanctioned ex gratia payment. She cannot compare her claim with that of Smt.Jethi Bai's claim as that claim was differently circumstanced. The O.A. deserves to be rejected.

8. I have given my anxious considerations to the rival arguments. It appears that the Authorities have denied the claim of the applicant only because she could not produce any document which may go to show that her deceased husband was a Railway employee but in my opinion, the claim of the applicant could not have been rejected by the Railway Authorities simply because she failed to produce such documents. Clause 4(b) of the letter of the Department Annex.A-3, which is quoted hereunder, is very clear on the point.

"4(b).It will be responsibility of the applicant to satisfy the head of office that she/he is the widow/widower or eligible child of the government servant concerned to receive the ex-gratia payment under these orders and establish identity by production of documents such as CPF Account Slips or the letter regarding settlement of Contributory Provident Fund Account or retirement orders or such other relevant records which may be in her/his possession. In cases where no such records are available the applicants will be required to produce one of the following documents for establishing their bona fide :-

- i) Succession certificate from a court, or
- ii) Affidavit sworn before a Magistrate, or

iii) Affidavit of the claimant on a plain paper supported by any two documents which may be acceptable to the head of department/sanctioning authority. In addition the widow/widower may also be required to produce an affidavit on a non-judicial stamp paper of the appropriate value applicable in the State in which she/he is residing to the effect that she/he was married to the deceased employee prior to his retirement. This may not be insisted upon if the sanctioning authority is otherwise satisfied on the basis of other evidence about the eligibility of the claimant."

9. From the foregoing provisions as contained in the letter, it is clear that where there is no record available with the widow, she can produce her affidavit supported by two documents which may be acceptable to the head of Department. The applicant in the instant case has produced her own affidavit that she was married to Laxmi Narain Joshi who was employed as Pointsman in the Railways and had died on 7.5.1964. This affidavit of the applicant is supported by two affidavits of retired Govt. employees, Shri Mohan Gopal, a retired CHC and Shri Bhagwati Lal, I Grade Guard, respectively. The respondents have disclosed no reasons for disbelieving these two affidavits. In the letter Ann.A-10, the satisfaction of the Divisional Railway Manager, Jodhpur, has been quoted in the following words :


 "Smt. Radha Devi widow of Shri Laxmi Narain Joshi met me today in presence of APO/II when she was questioned about where her husband was posted, what job he did and when he expired etc. she could reply satisfactorily."

I am satisfied regarding the genuineness of Smt. Radha Devi."

10. Clause (c) of the Department's letter Ann.A-3, contains that after the head of office has satisfied himself about the bona fide of the claim, he can sanction ex gratia payment and forwarded the same to the Accounts Officer for issue of Payment Order. In view of this specific provision and in view of the satisfaction of the head of office, ex gratia payment ought to have been released to the applicant. In my opinion, her case is not different than that of Smt. Jethi Bai and it does not make any difference as to under whose order the claim of Smt. Jethi Bai was released.

It is significant to note that in Annex.A-8, which is a letter written by Dr.Dinesh Chandra, Additional Secretary, Govt. of India, to the Executive Director (PG), Ministry of Railways, in connection with Smt.Jethi Bai's claim, it is mentioned that "DRM(Jodhpur) is satisfied with the claim made by the widow for grant of ex-gratia payment. In such a situation any rigid interpretation of the above mentioned Circular and the implied conditionalities need not be adhered to. You may therefore, instruct the concern authorities to release ex-gratia payment to the widow. Similar cases of hardships may be decided accordingly." Thereafter, payment in respect of the Ex Gratia payment to Smt. Jethi Bai was released.

11. It is important to note that the husband of the applicant died in the year 1964 and the scheme of ex-gratia payment was introduced in the year 1988 by the department. The applicant who is an illiterate lady cannot ordinarily be expected to retain any papers relating to the service of her deceased husband for such a long time. As such, her failure to produce any such document can not be interpreted against her for rejecting her claim. In my opinion, the Divisional Railway Manager's satisfaction about the claim of the applicant is sufficient for grant of ex gratia payment. Further, there is no reason to disbelieve the ~~affidavits~~ of Shri Bhagwati Lal and Shri Mohan Gopal, both of whom are ~~retired~~ Railway employees. Therefore, in the instant case rigid adherence to the requirement of Circular dated 13.6.1988 (Ann.A-3), is neither required nor demanded. It is needless to repeat that where the Divisional Railway Manager was satisfied about the genuineness of the claim of the applicant and when the claim of the applicant is similarly circumscribed to that of Smt.Jethi Bai's claim, the applicant ought not to have been asked to produce the documents pertaining to the service of the applicant. Thus, by not releasing the payment to the applicant, the Respondents have discriminated between the applicant and Smt.Jethi Bai, which is against the principles of natural justice and is not justified in the eye of law.

12. From the foregoing discussion, I come to the conclusion that Smt.Radha Devi is entitled to the grant



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of Ex Gratia payment as claimed by her. The O.A. deserves to be accepted.

13. The O.A. is, therefore, accepted. The letter Annex.A-1, dated 26.8.1995, is hereby quashed. The applicant is entitled to Ex Gratia payment w.e.f. 1st January, 1986 alongwith allowances as payable on Ex - Gratia payment from time to time. The respondents are hereby directed to make the payment to the applicant within three months from today.

14. The claim of the applicant in respect of the Interest on the said amount, deserves to be rejected and is hereby rejected.

15. No order as to costs.

3m 11/4/97
(A.K.MISRA)
Member (Judl)

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