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Date of Decision : 18.03.2002

O.A No. 153/2001.

Smt. Takhat Kanwar widow of Late Shri Mangu Singhji (Ex Pointman at Merta Road), aged about 76 years, R/o Rajputo Ka Mohalla, Bassi, Merta Road, District Nagour(Rajasthan).

... APPLICANT.

v e r s u s

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.

... RESPONDENTS.

Mr. S. K. Malik counsel for the applicant.
Mr. S. S. Vyas counsel for the respondents.

: O R D E R :

(per Hon'ble Mr. J. K Kaushik)

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. The applicant has inter alia prayed for quashing of the impugned order dated 20.07.2000 (Annexure A-1), vide which the claim of the applicant for grant of Ex-gratia payment has been rejected and for seeking a direction to the respondents for grant of Ex gratia payment w.e.f. 01.01.1986, alongwith arrears with interest at the rate of 12% per annum till the date of payment with a further request to impose exemplary cost on the respondents.

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2. The brief facts of the case of the applicant are that the applicant is the widow of Late Mangu Singh. Late Mangu Singh expired on 10.11.1944, while serving at Merta Road as Pointsman in Northern Railway, Jodhpur Division, Jodhpur. The Railway Board has issued a circular on 30.06.1988 vide which office memorandum dated 13.06.1988 issued by Ministry of Personnel, Public Grievances and Pension, Department of Pension, has been circulated. As per this office memorandum, the provision has been made for grant of Ex-gratia payment to the families of CPF retirees. The applicant has averred that she is entitled for the Ex-gratia payment and she applied for the same to the respondents. She was asked to submit the available papers regarding the service of Late Mangu Singh. She submitted a copy of Providents Fund slip indicating the position of the P.F. contribution made by the Late Mangu Singh as on 30.09.1943 vide Annexure A-5. She also submitted a detailed application for grant of Ex-gratia payment vide Annexure A-3, giving the all available details of Late Mangu Singh, a copy of the death certificate also has been submitted to the respondents. The said form was duly attested by two gazetted officers, but the claim of the applicant has been turned down vide Annexure A-1 on the ground that the service record of the deceased Government servant is not available and it is not possible to verify as to whether his death took place during service, after the retirement or after his resignation and no action can be taken in the matter, hence this application.



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3. Notices of this Original Application were issued to the respondents and the respondents have filed a detailed reply to the same.

4. The respondents have contraverted the averments made by the applicant in the Original Application mainly on the ground that no records in respect of deceased employee are available and in absence of any evidence or proof in support of the claim made by the applicant for grant of Ex-gratia payment, there is no illegality in passing the impugned order Annexure A-1. They have also averred that the claim cannot be allowed merely on the basis of affidavits and the Original Application deserves to be dismissed.



5. I have heard the Learned counsel for both the parties and have perused the records of the case carefully.

6. My attention was drawn towards the basic OM circulated by the Railway Board vide Annexure A-4. As per Para 1 of office memorandum, it has been mentioned that the Ex-gratia payment shall also be admissible w.e.f. 01.01.1986 to the widow and the dependents children of CPF beneficiaries who dies while in service prior to 01.01.1986. As a matter of fact, as regards the rule position, the learned counsel for the respondents did not contravert the same.

7. Learned counsel for the respondents contended

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that there was a doubt regarding the death certificate submitted by the applicant and have drawn our attention to Annexure R-1, which is extracted as under "-

"Copy of Railway Board's letter No. R(E)III/88/PN-1/24 Dated : 29.05.1991.

Sub : Grant of ex-gratia payment to the families of deceased CPF retirees.

1. Attention is invited to Board's letter No. PC-IV/87/Imp/dated 30/6/88 regarding grant of ex-gratia payment to the families of deceased CPF retirees.



2. Many Railways have been experiencing difficulties in admitting claims for ex-gratia payment where the claimants are not in a position to support their claims with any documentary proof as required in Para 4(b) of Deptt. of Pension & Pensioners Welfare's office memorandum dated 13.06.88 forwarded along with the above mentioned letter of the Railways are also not able to verify such claims because of non availability of relevant records. The question as to how such claims should be settled has been examined in consultation with Department of Pension & Pensioner's Welfare and it has been decided that where the Railways are satisfied that they claimant's husband/wife was an employee of the Railways and they have no further

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record to prove the circumstances under which he quit the Railways, whether he was governed by the SRPF Scheme or pension Scheme etc. the production of documents, prescribed in the orders by the claimant will be sufficient collateral evidence. The claim of the applicant need not, however, be accepted merely on the basis of affidavit where the Railways have absolutely no evidence or proof that the deceased was an employee of the Railways. In such cases ex-gratia payment should not be authorised on the production of an affidavit. Where the sanctioning authority does not feels satisfied that the claim is in respect of a retired Railway servant, such claims need not be admitted. Subject to this, the provision of Department of Pension & Pensioners Welfare's office Memorandum dated 13.06.88 may be acted upon."



8. It has been asserted on behalf of the respondents that there was no evidence or proof that the deceased employee died during the service period or not. Further it has been also said that there is no record to indicate that the deceased was an employee of the Railway and in view of the aforesaid circular, the claim of the applicant cannot be accepted on the basis of affidavits filed by her. On the other hand, Learned counsel for the applicant has drawn our attention to Para 4(b) OM dt. 13.06.88 Supra wherein, it has been provided that under these rules, the identity of the deceased Government

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servant can be established on the basis of CPF accounts slip or some other records and also the bonafidy can be adjudged from succession certificate from a court or affidavits. The extract of the said Para is produced as under :-

"4(b) It will be the 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 Accounts 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



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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. It has been stressed that the last P.F. slip has been produced to the respondents and submitted with the case as Annexure A-5 and this clearly is a proof of service of deceased for the purpose of establishing the claim of the applicant for grant of ex-gratia payment as per the very office memorandum issued for the purpose. The applicant has in fact fulfilled the necessary requirements for grant of ex-gratia payment as per the rules in force and followed by the Railways.

10. It may be worthwhile to mention here that initially the scheme for grant of ex-gratia payment did not apply to those Railway employees who retire or dies before partition of the country and have served the Railway pre partition India. It was only in the year 1989, that the Railway Board issued a circular No. F(e)3I/88/PN-1/23 dated 13.02.1989 (copy taken on record) and the same was made applicable to the families of such deceased employees also. The problem of availability of the relevant records was very much in the mind of the rule making authority and they have specifically provided that the ex-gratia payment could be made in cases where such records are not available but the



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bonafide was established through succession certificate from a court or affidavit before a magistrate or affidavit of claimant which may be acceptable to the head of the department sanctioning authority. After all the benefits were extended under social welfare scheme and a harmonious construction is required to be given to the provisions of the rules while extending the benefits of the scheme

11. In the present case, it cannot be said that in this case there is no evidence produced by the applicant for claiming the Ex-gratia payment. In fact, the applicant has submitted the valid evidence i.e. P.F. Slip as per the requirement of law. In addition to this, she has also submitted the requisite affidavits and there is no reason to disbelieve the same and the claim of the applicant ought not to have been rejected, especially when there is a sufficient proof of service of the deceased.

12. As regards the contentions of the respondents that they did not know as to whether the deceased was in Government service at the time of his death, or he retired from service, or he resigned from service. The perusal of the PF Slip makes it evident that the applicant entered in the service only after October, 1942 and the Contribution Slip shows the closing balance as on 13.09.1943. In this view of the matter, the deceased has served about one year and few months since he expired on 10.01.1944. There was no question of his retirement

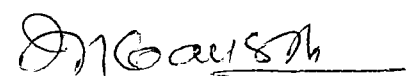


or of resignation at such an early stage. Nextly as regard the validity of the death certificate, the death certificate indicates the death as 10.01.1944 and this has been issued from the public office i.e. Surpanch of the particular village. The fact is supported by a affidavit of the applicant. There is no reason to disbelieve the same. Moreover, the death certificate can be issued at any time and not necessary on the date of death.

13. In view of the aforesaid discussion, the impugned order dated 20.07.2000 (Annexure A-1), is not sustainable in law and deserves to be set aside. Thus, I pass the order as under :-



"The Original Application is allowed. The impugned order dated 20.07.2000 (Annexure A-1) is quashed. Respondents are directed to grant Ex-gratia payment/pension to the applicant w.e.f. 01.01.1986 as per the OM dated 13.06.1988 (Annexure A-4) and the rules in force. The amount of arrears on the amount of Ex-gratia payment/pension shall be paid alongwith the interest at the rate of 9% per annum within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs."



(J. K. KAUSHIK)

MEMBER (J)

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Part II and III destroyed
in my presence on 9-7-07
under the supervision of
Section Officer [Signature] as per
order dated 14/5/07

Section Officer [Signature]

20/3/07