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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. NO. 21/2004

Date of Order : 9th February, 2005.

CORAM :

HON'BLE MR. G.R. PATWARDHAN,
ADMINISTRATIVE MEMBER

.....

Smt. Jeewani Devi S/o Late Sh. Ganesh, Ex. Driver (Loco) Makrana
District Nagaur (Raj) aged about 78 years, R/o Rajoura Bass, Ward No.
18, Makrana, District Nagaur.

.....Applicant.

(By Mr. S.K.Malik, Advocate, for the respondents).

Versus

1. Union of India through the General Manager,
North Western Railway, Jaipur
2. Divisional Railway Manager, North Western Railway,
Jodhpur Division, Jodhpur.
3. Divisional Personnel Officer, North Western Railway,
Jodhpur Division, Jodhpur.

.....Respondents.

(By Mr. M. Godara Advocate brief holder for Mr. Vineet Mathur, for the
respondents)



ORDER
[BY THE COURT]

O.A. 21/2004 has been filed by Smt. Jeevani Devi describing herself as widow of late Shri Ganesh, Ex.Driver (Loco), Makrana, District Nagaur, who is aged about 78 years, against the Union of India through the General Manager, North Western Railway, Jaipur, Divisional Railway Manager, Jodhpur and the Divisional Personnel Officer of North Western Railway, Jodhpur. Admittedly, the O.A. has been filed against order dated 23rd October, 2003 placed at Annex. A/1 passed by the respondent No. 1 through which, applicant has been

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denied Ex-gratia pension. O.A. has been filed on 20th January, 2004 and is thus within limitation. The facts of the case, as revealed by the O.A., are as follows :

(A) Applicant is the widow of Late Sh. Ganesh, Ex. Driver (Loco) Makrana, Distt. Nagaur who had retired on 30.3.1945 after having rendered full service. Her husband was CPF beneficiary so he did not get any pension during his life time. Her husband died on 8.11.1977. Applicant represented to the respondents in the year 1988 for grant of Ex-gratia pension in her favour in view of Railway Board Orders which has been circulated in the Railway vide P.S. No. 9632. Her request was rejected on the grounds that the family of deceased employee who retired from Princely State Railway, before their being taken-over by the Government are not eligible for ex gratia pension. Thereafter, Railway Board issued letter dated 13.2.1989 wherein, benefits got extended to the families of those Railway servants who retired or died before the partition and vide letter dated 14.1.1992 the benefits of Ex-gratia pension for the families of those employees who retired or died while serving in the Company / Princely State Railway, even prior to their take over by the Government, have also been extended benefits of Ex-gratia pension subject to the condition that widows/families of deceased employees have to establish their claims as prescribed in the Board's letter dated 14.1.1992.



(B) That thereafter, she again applied for ex gratia pension on the printed form on 11.10.2002. She had

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also submitted affidavits of two respectable persons of her village, i.e. Sh. Hukma Ram and Sh. Tara Chand, and the CPF Slip in support of her claim along with this application.

(c) That after her application dated 11.10.2002, applicant submitted an affidavit dated 9.9.2003 before the respondents stating the clear position with regard to the date of death of her husband, late Sh. Ganesh, her date of birth and her date of marriage with late Sh. Ganesh.

(d) That the applicant was called by the respondent No. 2 for interview who thereafter, vide impugned order dated 9/23.10.2003, rejected her claim for grant of Ex-gratia pension.

2. A detailed reply has been filed by the respondents. Learned counsel for both the parties have been heard. Respondents have maintained their stand contained in the impugned letter dated 23rd October, 2003, a copy of which is placed at Annexure A/1. The letter is in Hindi and describes following contradictions in the case of the applicant to show that Ex-gratia pension cannot be paid:



(a) In the Affidavit dated 18th October, 1988 and dated 24th August, 2002, the date of death of the husband is different.

(b) The Affidavit indicates the date of marriage as 25th February, 1943 which would make the applicant marrying at the age of 56 years of her husband which is generally not possible.

(c) In the Affidavit, the date of marriage is indicated as 25th February, 1943 whereas, the elder daughter was

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borne on 20th June, 1943.

3. Following are the grounds of challenge to the decision and claiming relief :

(a) According to the Railway Board's Order, applicant has submitted the proof of her husband, being the employee of the respondents inasmuch as she had produced the Slips of CPF indicating the position that late Sh. Ganesh was a Railway employee and further she had submitted the affidavits of two persons clearing that she is the wife of late Sh. Ganesh who was Driver in the Railways.

(b) Because applicant is an illiterate and old lady, she is not expected to remember the exact date of her birth, marriage etc. Even she had produced an affidavit dated 9.9.2003 before the respondents stating the clear position with regard to the date of death of her husband, her date of birth and also her date of marriage with late Sh. Ganesh.

(c) Because along with the application for Ex-gratia pension, applicant has submitted certificates of date of death of her husband and also about her date of birth. Even affidavits of two respectable persons of her village were submitted stating that she is wedded wife of late Sh. Ganesh, Driver (Loco). Not considering this aspect of matter is also contrary to law and arbitrary and thus, violative of Articles 14 and 16 of the Constitution of India and deserves to be quashed and set aside by this Tribunal.

4. The relevant letter dated 30th June, 1988 addressed to the

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7/14

General Manager's of Railways from the Railway Board, a copy of which is placed at Annex. A/2 as also copy of letter dated 13th June, 1988 from Dy. Secretary to Government of India, in the Department of Pension and Pensioners Welfare to all Ministries somewhat runs as follows :-

"(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 account slips or the letter regarding settlement of Contributory Provident Fund Account or retirement order or such other relevant records which may be in her/his possession. In cases where no such records are available the applicant will be required to produce one of the following documents for establishing their bonafide :-



i) Succession Certificate from a Court, or

ii) Affidavit sworn before a Magistrate, or

iii) Affidavit of the claimant on a plain paper 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."

5. The learned counsel for the applicant has, therefore,

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submitted that at this late stage of her life, the applicant has submitted whatever was readily available and that the respondents should not pick up minor contradictions and reject her claim. Attention has also been drawn by him to an order of this Tribunal in O.A. No. 153 of 2001 dated 18.3.2002 in the case of Smt. Takhat Kanwar Widow of Late Shri Mangu Singh Ji Ex Pointsman of Merta Road, against the same set of respondents. It would be appropriate to reproduce some of the important portions of this order to appreciate the logic followed in disposing of the claims made in that case :-

"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 Provident 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.

4. The respondents have controverted 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.



7. Learned counsel for the respondents contended 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

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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 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 feel 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."



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.

13. In view of the aforesaid discussion, the

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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 O.M. 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."

6. In the reply filed by the respondents their prayer to dismiss the O.A. is based on the following points :-



(A) The case of the applicant was considered and after examining it thoroughly, the respondents had rejected the claim of the applicant on the grounds that the dates and facts mentioned by the applicant are being contrary to each other and also affidavits and applications submitted by the applicant time to time were also contrary to each other.

(B) Being an old lady, she cannot be expected or permitted to give any dates and facts as per her suitability in regard to the death of her husband and further also affidavits of two persons named as Shri Hukma Ram and Shri Tara Chand submitted by the applicant are also go to show that these persons were approximately of 13 and 15 years of age respectively in the year 1945 i.e. the date of retirement of deceased Shri Ganesh Ram. Therefore, the persons giving affidavits mentioned above were being minor at the time of

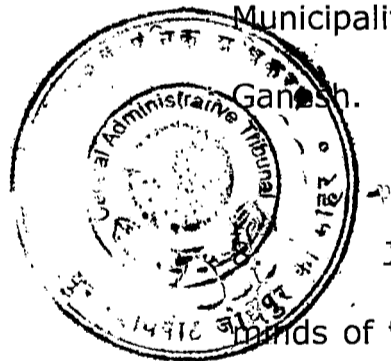
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retirement of deceased Shri Ganesh Ram. Hence, their affidavits and statements cannot be believed to be true and worthy enough.

7. It is found from the O.A. that the applicant has been able to enclose copy of Jodhpur Railwahy Provident Fund Slip of one Mr. Ganesh, Driver, Loco S/o Mr. Chokha, for the year ending 30th September, 1943. This is an enclosure to the application to the Divisional Railway Manager, Jodhpur and forms Annex. A/5 of the O.A. A description of the same is contained in paragraph 4.2 of the same. Nothing has been said about the genuineness of this document except that this indicates the ex employees name as Ganesh whereas, the applicant has described the late husband in the affidavit as Ganesh Ram. But, a copy of the affidavit at Annex. A/6 sworn on 9th September, 2003 indicates the name of the husband as Ganesh. Similarly, copy of the marriage certificate issued by the Makrana Municipality certifies that Mrs. Jeewani Devi is the widow of Shri

Ganesh.



Just as the impugned order describes the doubts in the minds of the respondents, the proceedings before them raise doubts about the approach followed by them in coming to the conclusion. There is no specific averment either in the impugned order or in the reply that the status of the applicant has been doubted. All that is being said is that the competent authority i.e. the Divisional Railway Manger has not sanctioned payment of Ex-gratia pension to the applicant.

One of the grounds taken in support of the impugned order

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by the respondents is that Shri Hukma Ram and Shri Tara Chand have sworn affidavits about an event of 1945 when both of them were aged 13 and 15 years and so were minors. Respondents have not been able to show any law or authority which rejects the affidavit of a person who has attained majority but which describes some events of his minority. Therefore, the mere fact that these two gentleman have recounted an event that took place when they were 13 and 15 years respectively, cannot be rejected simply on the basis of their being minors at the relevant point of time. Therefore, the logic advanced by the respondents in not accepting these two affidavits does not appear correct.

9. In the letter of 1988, a copy of which is placed at Annex. A/2, the emphasis is on the claimant to satisfy the Head of Office that she is the widow of the Government servant concerned. She is expected to establish her claim by production of documents such as C.P.F. Account Slips. In so far as the establishment of identity is concerned Sections 50 and 60 of the Indian Evidence Act, 1872 can serve as a guide and they run as follows :



50. Opinion on relationship, when relevant.-

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise has special means of knowledge on the subject, is relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act 1869 (4 of 1869) or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code, 1860 (45 of 1860).

Illustrations

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

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(b) The question is, whether A was legitimate son of B.

The fact that A was always treated as such by members of the family, is relevant.

60. Oral evidence must be direct.-

Oral evidence must, in all cases, whatever, be direct; that is to say -

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is, held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable ;

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection."



The import of these Sections has been clearly described in the case of Gourhari Das Vs. Smt. Santilata Singh, decided on 28th January, 1998 by their Lordships of the Orissa High Court (AIR 1999 Orissa 61). The relevant portion of the judgement of their Lordships runs as follows :-

"12. During the course of arguments reference has been made to the case of Bol. Gobinda Paricha v. Nimai Charan Misra, AIR 1959 SC 914 relating to the principle under Sections 50 and 60 of the Evidence Act in assessing and evaluating the opinion evidence on relationship Apex Court has said that at page 918 :

21/10

"..... . It appears to us that the essential requirements of the section are – (1) there must be a case where the Court has to form an opinion as to the relationship of one person to another; (2) in such a case, the opinion expressed by conduct as to the existence of such relationship is a relevant fact; (3) but the person whose opinion expressed by conduct is relevant must be a person who is a member of the family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfil the condition laid down in the latter part of the section. If the person fulfils that condition, then what is relevant is his opinion expressed by conduct. Opinion means something more than mere retailing of gossip or of hearsay; it means judgement or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. Now, the "brief" or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion. What the section says is that such conduct or outward behaviour as evidence of the opinion held is relevant & may, therefore, be proved. We are of the view that the true scope and effect of Section 50 of the Evidence Act has been correctly and succinctly put in the following observations made in Chandu Lal Agarwala v. Khaliar Rahman, ILR (1942) 2 Cal 299 at p. 309 : (AIR 1943 Cal 76 at p. 80).

"It is only 'opinion as expressed by conduct' which is made relevant. This is how the conduct comes in. The offered item of evidence is 'the conduct', but what is made admissible in evidence is 'the opinion', the opinion as expressed by such conduct. The offered item of evidence thus only moves the Court to an intermediate decision; its immediate effect is only to move the Court to see if this conduct establishes any 'opinion' of the person, whose conduct is in evidence, as to the relationship in question. In order to enable the Court to infer 'the opinion', the conduct must be of a tenor which cannot well be supposed to have been willed without the inner existence of the 'opinion'.

When the conduct is of such a tenor, the Court only gets to a relevant piece of evidence, namely, 'the opinion of a person'. It still remains for the Court to weigh such evidence and come to its own opinion as to the 'factum probandum' – as to the relationship in questio".

"also accept as correct the view that S. 50 does not make evidence of more general reputation (without conduct) admissible as proof of relationship; ' Lakshmi Reddi v. Venkata reddy, AIR 1937 PC 201.' (from paragraph 6 at pages 918 & 919).

Considering the scope of section 60 of the Evidence Act and its import on Section 50, the Apex Court has further held that :

".... If we remember that the offered item of evidence under S. 50 is conduct in the sense explained above, then



920

there is no difficulty in holding that such conduct or outward behaviour must be proved in the manner laid down in S. 60; if the conduct relates to something which can be seen, it must be proved by the person who saw it; if it is something which can be heard, then it must be proved by the person who heard it; and so on. The conduct must be of the person who fulfils the essential conditions of S. 50, and it must be proved in the manner laid down in the provisions relating to proof. It appears to us that that portion of S. 60 which provides that the person who holds an opinion must be called to prove his opinion does not necessarily delimit the scope of S. 50 in the sense that opinion expressed by conduct must be proved only by the person whose conduct expressed the opinion. Conduct, as an external perceptible fact, may be proved either by the testimony of the person himself whose opinion is evidence under S. 50 or by some other person acquainted with the facts which express such opinion, and as the testimony must relate to external facts which constitute conduct and is given by persons personally acquainted with such facts, the testimony is in each case direct within the meaning of S. 60. This, is our opinion, is the true interrelation between S. 50 and S. 60 of the Evidence Act....." .



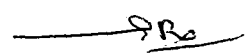
The impugned order leads one to infer that the respondents do not doubt the status of the applicant as the widow. The parameters described in the judgement above, when considered along with the enclosures to the O.A., also seem to lead to only one inference – that the applicant is the widow of late Mr. Ganesh.

10. Matters like the one before the respondents, do require careful and intense examination of facts by virtue of the reason that the claim relates to someone who had served one of the State Railways before independence and records may not be easily available of those periods. But, it is specifically with respect to such matters that the Government has made specific provisions vide their letter of 14th January, 1992, a copy of which is placed at Annex. A/4 with the O.A. and where in paragraphs 3 and 4, it is explained how the benefit of Ex-gratia payment not earlier extended to the families of employees of princely State Railways needs to be extended to them and that such widows/families who are able to establish their claims should be

considered for the grant of the same. It is also mentioned that where the service or other records of the employees are not available, the claim should be examined and decided on the basis of procedure laid down in Railway Board's letter of 5.6.1991. In the instant case, however, the exercise undertaken by respondents falls short of the requirements and, therefore, cannot be called complete.



The relief clause vide paragraph 8 of the application would like the communication in Annex. A/1 to be quashed and respondents directed to extend the benefit of Ex-gratia pension to the applicant. In view of the foregoing and the peculiar nature of the case described above, it would be appropriate if the contents of Annex. A/1 are quashed and respondents directed to assess the papers appended to this O.A. keeping in view the observations above and come to a definite conclusion by passing a speaking order. This exercise should be done within next 90 days and result communicated to the applicant within 30 days thereafter. The applicant may agitate the matter again, if so advised. No orders as to costs.


(G.R. Patwardhan)
Administrative Member

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Part II and III destroyed
in my presence on 08/1/14
under the supervision of
section officer () as per
order dated 12/12/14

Section officer (Record)

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on 16/2/2005
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Adv.

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