

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 225/2007

Date of Order: 30.4.2010

HON'BLE JUSTICE Mr. S. M. M. ALAM, JUDICIAL MEMBER

Smt. Geri widow of Late Shri Bhanwara S/o Zora, Kantewala Munabav Station Jodhpur Division of Erstwhile Northern Railway, aged 67 years, R/o D/o Derawar Singh, Railway Hospital, Barmer.

....Applicant

Mr. S.K. Vyas, counsel for applicant.

VERSUS

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

....Respondents.

Mr. Salil Trivedi, counsel for respondents.



ORDER

(Per Justice Mr. S.M.M. Alam, Judicial Member)

Smt. Geri widow of Late Shri Bhanwara, a temporary waterman (later on confirmed) working as Kantewala at Munabav Station, Jodhpur Division, North Western Railway has preferred this Original Application for grant of following reliefs:-

Signature

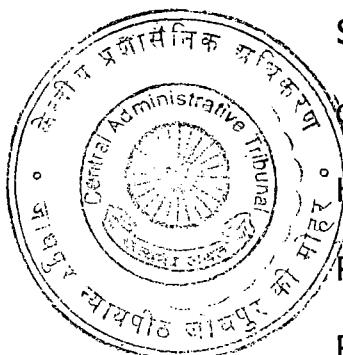
- "(i) That the respondents may be directed to pay Education allowances, Family gratuity and Death gratuity as admissible in terms of Rly. Board's letter dated 24.09.1973.
- (ii) That the Railway Board may kindly be directed to pay interest on Family pension/Enhanced pensionary awards as per rates admissible from time to time as admissible on G.P.F. amounts for the periods arrears (i.e. 09.09.1995 to 09.09.2007) have been paid.
- (iii) The Tribunal may kindly grant such other relief as it deem necessary and appropriate under the circumstances of this case."

2. The brief facts of the case are as follows:-

During 1965 Indo-Pak war Shri Bhanwara, the husband of applicant (Smt. Giri), was killed due to enemy bombardment on

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09.09.1965. At that time he was working as Waterman (Kantewala) at Munabav Station, Jodhpur Division. After the death of Shri Bhanwar his widow (applicant) was paid certain amount including ex-gratia payment etc. from Contributory Provident Fund Scheme (SRPF). In the year 1970 the Railway Board through letter No. F(E) III/68 PN1/37 dated 07.10.1970 decided that the family members of the Railway Employees who had retained the contributory provident fund scheme (SRPF) and who were either killed or died in course of performance of their duties be given opportunity to choose the benefits under the Pension Rules including family pension scheme, 1964 in lieu of SRPF (contributory) benefits. The option was to be given within one month of the receipt of advice by the Railway authorities. However, the applicant was not given any such advice by the Railway authorities to exercise option. In the year 1973, the Railway board through letter No. F(E) ITI 72-PN1/9 dated 10.03.1973 issued directions for grant of enhanced pensionary awards in respect of Railway servants, who were killed or injured by enemy action while on duty during the operations against Pakistan in the year 1971 (Annexure A-1). Again on 22.10.1975, the Railway Board issued a direction that the benefits will also be given to the employees/servants, who were killed in 1965 International War vide Annexure A-2. Since the applicant had no knowledge about the above mentioned letters of the Railway Board and only in April, 2000, she came to know about the existence of such instructions then she applied for family pension/enhanced pensionary awards. But the request was



rejected by the Divisional Railway Manager, North Western Railway vide order dated 18.02.2002. Thereafter, the applicant filed an OA no.186/2005 before this Tribunal and during the pendency of this said OA, the Railway Board sanctioned family pension alongwith arrears to the applicant vide Annexure A-3 and then OA No.186/2005 was disposed of by order dated 16.11.2006 with observation that substantial relief has already been granted to the applicant and the O.A. as such, has rendered infructuous and the same stands disposed of accordingly with no order as to costs. However, a liberty was given to the applicant to file a fresh application in case any ancillary benefit is left out and the applicant is so felt advised. It is stated that despite the order of the Tribunal for grant of ancillary benefits like Family Gratuity, Death Gratuity and Educational allowance, the respondents did not grant such benefits to the applicant and as such the applicant has preferred this Original Application for grant of the abovementioned ancillary benefits besides interest over the amounts payable to the applicant.

3. On filing of the application notices were issued to the respondents and in compliance of the notices the respondents appeared before the Tribunal through Lawyer and filed reply of the O.A.

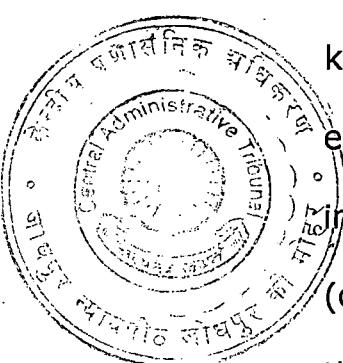
4. The respondents have contested this Original Application mainly on following grounds:

(a) The OA is hit by the principle of res judicata.

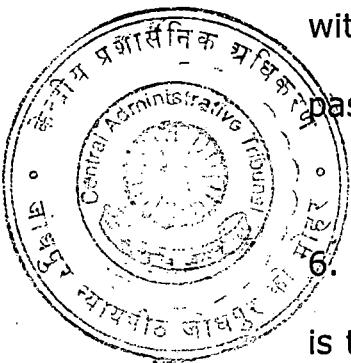
(b) All the ancillary benefits have already been sanctioned and paid to the respondents.

(c) The respondents are not legally entitled for grant of interest as the same has been rejected by the Tribunal in the previous Original Application No.186/2005.

5. I have heard the learned advocates of both sides at length. In this case, there are some admitted facts which do not require adjudication. It is admitted fact that through Railway Board's letter dated 07.10.1970 option was called for from the widow/dependent of the deceased employee who were either killed or died as a result of injury sustained in Indo-Pak war to exercise option to choose the benefits under Pension Rules including Family Pension Scheme 1964 in place of SRPF (contributory) benefits. It is also admitted that the Railway Board through its letter granted enhanced pension, family gratuity and death gratuity to the widow/dependent/deceased employee who were killed in 1965 Indo-Pak War. It is also admitted fact that in the beginning the applicant i.e. widow of deceased employee Shri Bhanwara did not opt for family pension but later on, in the year 2000 she opted for family pension in place of SRPF (contributory) benefits. It is also admitted fact that in the beginning the Railway authorities did not accept the claim of the applicant but during the pendency of OA No.186/2005, the Railway board sanctioned the family pension with arrears to the applicant vide letter dated 15.11.2006 (Annexure A-3) hence the decision reported in (2010) 2 Supreme Court Cases page-59 relied by the respondents has



got no relevancy in this case. It is also admitted fact that on the basis of the said letter of the Railway Board dated 15.01.2006 OA No.186/2005 was disposed of with directions that the applicant is also entitled for ancillary benefits and if the same is not paid to the applicant, she may prefer fresh OA. Admittedly respondents have not brought on record any such documents which can establish that the applicant was paid family gratuity and death gratuity. These are the ancillary benefits to be granted to the widow of the deceased employee as per the directions contained in the above mentioned letters of the Railway Board and, therefore, I am of the view that the filing of OA is in accordance with the directions contained in the order dated 16.11.2006 passed in OA No.186/2005.



6. The arguments of the learned advocate of the respondents is that this OA is hit by the principle of Res judicata but the same cannot be accepted. In view of the fact that this Tribunal in its order dated 16.11.2006 passed in previous O.A. had given liberty to the applicant to file fresh O.A. if any ancillary benefit is left out. Admittedly, there is nothing on record to establish that all these ancillary benefits payable to the applicant have actually been paid to the applicant and therefore I am of the view that this O.A. is maintainable in respect of grant of ancillary benefits to the applicant and the same is not hit by the principle of Res-judicata.

7. As regards the claim of ancillary benefits with regard to educational allowance, I find that as per the instructions

contained in the letter of Railway Board dated 10.09.1973 the same is not admissible to the applicant.

8. As regard the claim of the applicant for payment of interest is concerned, I am of the view that this relief cannot be granted to the applicant on two grounds:-

- (a) The application for opting pension scheme was filed by the applicant after a lapse of about 35 years since her husband was killed in Indo-Pak War in the year 1965. So the delay for allowing the option for change of scheme from SRPF scheme to pension scheme was caused due to the latches of the applicant herself.
- (b) In previous OA the claim of the applicant for grant of interest was rejected by the Tribunal and hence this relief is hit by the Principle of res judicata.

9. The learned advocate of the applicant has placed reliance upon the decision of Central Administrative Tribunal, Ernakulam in the case of P.N. Gopinathan Nair vs. General Manager, Heavy Vehicles Factory, Madras and others (ATR 1990 (1) CAT 173) in support of his arguments that the applicant is entitled for grant of interest for the delayed payment. Since I have already stated above that the delay in granting permission to the applicant for exercising option for change from SRPF scheme to pension scheme was caused to the latches of the applicant and the same was not accepted by the Tribunal in previous OA as such this decision is of no help to the applicant.

10. In the result this Original Application is partly allowed and it is held that the applicant is entitled for grant of family gratuity and death gratuity by way of ancillary benefits as awarded in earlier OA. The respondents are directed to calculate these amounts towards family gratuity and death gratuity and if not paid earlier then the respondent shall ensure the payment of such ancillary benefits to the applicant within a period of 03 months from the date of receipt/production of copy of this order. No order as to costs,



S.M.M. Alam
(Justice S.M.M. Alam)
Judicial Member

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