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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

O.A.No. 43/2011

Resvred on : 17.7.2012

Date of order: 20.7.2012

CORAM

**Hon'ble Mr. K B S Rajan, Judicial Member
Hon'ble Mr. B K Sinha, Administrative Member**

Smt. Hasina Bano wife of late Shri Hasan Ali,
Aged about 78 years, resident of Hasan Ali Manjil,
Mohulla-Chungran, Bikaner her late husband
Was last employed on the post of Loco Khalasi
Lalgarh Jn. North Western Railway.
(erstwhile Northern Railway).

.....Applicant

(By Advocate Mr. J.K. Mishra)

Vs.

1. Union of India through General Manager,
North Western Railway, Jaipur Zone, Jaipur.
2. Divisional Railway Manager, NWR
Bikaner Division, Bikaner.
3. Financial Advisor & Chief Accounts Officer (Pension)
North Western Railway, Jaipur Zone, Jaipur.
4. Senior Divisional Finance Manager,
Bikaner Division, NW Railway, Bikaner.Respondents

(By Advocate Mr. Vinay Jain)

O R D E R

Per: Dr. KBS Rajan, Judicial Member

The applicant's husband, Mr. Hasan Ali, a Washout Khalasi
died in May 1963. He was governed by SRPF Rules. His wife, the
applicant, was granted the ratio of payment, sanctioned by the
Railway Board.

[Signature]

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2. The Railways introduced family pension scheme w.e.f. 01-01-1964. Earlier, though pension scheme was available, no family pension scheme was there. As such, the Railway Board extended the facility of family pension to the pre-01-01-1964 pensioners/family of the deceased pensioners. However in respect of subscribers to contribute to the provident funds, the above facility was not made available. The applicant made various attempts to obtain the family pension but the case was turned down vide Annexure A3 letter dated 21 - 02 - 2006. The matter was taken up with Pension Adalat and later on family pension was sanctioned in the place of ex-gratia payment, vide order dated 17-04-2008, Annexure A-8. Arrears were also sought to be paid w.e.f. 22-09-1977. The applicant was asked to fill up the requisite form for release of family pension, which had been furnished, vide Annexure A-10. However, the same was not disbursed to the applicant and the applicant had to move the Tribunal in OA No. 176 of 2009 which was, however, withdrawn with liberty to refile. The respondents have, vide order dated dated 23-03-2010 finally rejected the claim of the applicant stating as under:-

"The sanction for eligibility of family pension in lieu of Ex-gratia payment to Smt. Hasina Bano W/o late Shri Hasan Ali, Ex Washout Khalasi, Lalgarh Bikaner has been communicated vide this office letter referred as (i) above.

The matter has been reviewed in light of observations made by Associate finance that such benefit can only be extended to those who were on pensionable establishment prior 31.12.1963. Whereas late Shri Hasan Ali was SRFF Optee, so this benefit of family pension is not due to Smt. Hasina Bano W/o late Shri Hasan Ali. In view of these observations competent authority has decided to withdraw the communication of sanction of eligibility of family pension to Smt. Hasina Bano vide letter referred above dated 17.4.2008."



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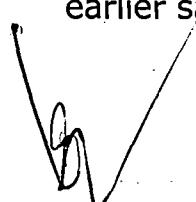
3. The applicant has filed this OA challenging the aforesaid order and has claimed for the following reliefs:-

- (i) *The impugned order dated 23.3.2010 and 12.7.2010 (Annexures A1 and A2 respectively) may be declared illegal, without jurisdiction and the same may be quashed. The respondents may be directed to release the family pension in place of ex-gratia and allow all consequential benefits accordingly. The amount of due arrears may be paid along with interest at market rate.*
- (ii) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (iii) *That the costs of this application may be awarded.*

4. Respondents have contested the O.A. They have contended that the earlier sanction of family pension accorded was by mistake and that the applicant is not entitled to family pension, since, the same is not extended to the SRPF or other Contributory Provident Fund subscribers.

5. Counsel for the applicant argued that the applicant's case deserves consideration as she had been earlier sanctioned the family pension. The counsel had referred to the order at Annexure A-5 whereby the provision of family pension was extended to the pre-01-01-1964 retirees or the family of the deceased Railway employees.

6. Counsel for the respondents has, however, stated that when the rules do not permit family pension to family of those retired Railway servants who were not governed by any of the pension rules, there is no question of grant of such family pension and that the earlier sanction order had been issued by sheer mistake.



Arguments were heard and documents perused. This is not the first time that such a claim by the subscribers to the Contributory Provident Fund to switch over to the Pension scheme is made. Earlier, before the Apex Court certain Writ Petitions were filed. The petitioners therein were retired Railway employees who were covered by or had opted for the Railway Contributory Provident Fund Scheme. It was their case that before 1957 the only scheme for retirement benefits in the Railways was the Provident Fund Scheme wherein each employee had to contribute till retirement a portion of his annual income towards the Provident Fund and the Railways as the employer would make a matching contribution thereto. This Provident Fund Scheme was replaced in the year 1957 by the Pension Scheme whereunder the Railways would give posterior to his retirement certain monthly pension to each retired employee instead of making prior contribution to his Provident Fund. The employees who entered Railway service on or after April 1, 1957 were automatically covered by the Pension Scheme instead of the Provident Fund Scheme. Insofar as the employees who were already in service on April 1, 1957, they were given an option either to retain the Provident Fund benefits or to switch over to the pensionary benefits on condition that the matching Railway contribution already made to their Provident Fund accounts would revert to the Railways on exercise of the option. Till April 1, 1957 or even some time thereafter, the pensionary benefits and the alternative Contributory Provident Fund benefits were considered to be more or less equally beneficial, wherefore, employees opted for either of them. That the benefits of the two were evenly balanced was

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evidenced by the Railway Board circular dated September 17, 1960 which gave an option to the employees covered by the Provident Fund Scheme to switch over to pension scheme and vice versa. When certain individuals failed to exercise their option and continued to enjoy the benefit of the provident fund scheme after a few years wanted to switch over to the pension/family pension scheme, a Constitution Bench of the Apex Court negatived their prayer and has, in ***Krishna Kumar vs Union of India (1990) 4 SCC 207*** held as under:-

32. *In Nakara¹ it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retiree finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regard Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara¹ that the State's obligation towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara¹*

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cannot, therefore, be an authority for this case.

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38. That the Pension Scheme and the PF Scheme are structurally different is also the view of the Central Pay Commissions and hence ex gratia benefits have been recommended, which may be suitably increased.

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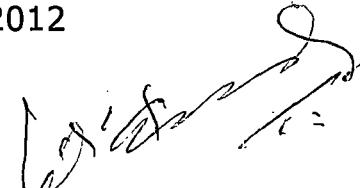
The PF retirees and pension retirees having not belonged to a class, there is no discrimination. In the matter of expenditure includible in the Annual Financial Statement, this Court has to be loath to pass any order or give any direction, because of the division of functions between the three co-equal organs of the government under the Constitution.

8. In view of the above, we have no option but to reject the OA.

We order so. Needless to mention that any increase in ex-gratia available to other CPF beneficiaries/families would equally be available to the applicant. No costs.

Dated the 20th day of July, 2012


(B K SENHA)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

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