

In the Central Administrative Tribunal  
Calcutta Bench  
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OA No.195 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Gita Rani Ghosh

.... Applicant

-VS-

- 1) Union of India represented by  
General Manager, Central Railway,  
Mumbai, Maharashtra.
- 2) Deputy Chief Electrical Engineer (POH),  
Central Railway, Bhusaval.

.... Respondents

For the Applicant : Mr. M.M. Roychoudhury, Advocate

For the Respondents: Mr. C. Samaddar, Advocate

Heard on : 24.2.99

Date of Judgement : 18-3-99

ORDER

The applicant herein was originally an employee of Company Railway known as Howrah - Amta Light Railway and he joined the service w.e.f. 31.3.1953. Thereafter, the said Company Railway was dissolved on condition that the said employee was to be considered in the Indian Railway. According to the applicant, he was appointed as substantive Artisan Staff in the Central Railway on a pay scale of Rs.75 - 110 (AS) by order dated 25-4-73 (Annexure A-2 to the application). After his appointment applicant's husband's pay was fixed by the Central Railway giving all the previous length of service to the maximum pay of Rs.110/- in the pay scale of Rs.75 - 110/- (AS). Thereafter, he was made permanent to the Central Railway without giving any special contribution to Provident Fund and his Provident Fund Slip A/C No. is 2937. The applicant's husband retired on

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superannuation w.e.f. 1.6.79 vide letter (Annexure A-4 to the application) and after retirement he was denied the pensionary benefit as admissible to him without disclosing any reason. Thereafter, applicant's husband died on 15.3.1983. Thereby, applicant made representation to the authority for granting family pension. But respondents denied the said relief without proper justification vide letter dated 5-2-91 (Annexure A-6 to the application). Thereafter, applicant made another representation to the General Manager, Central Railway; but no action has been initiated by the General Manager. Hence, applicant filed this case for granting family pension under the Scheme of Pension Rules, 1964.

2. Respondents filed written statement denying the claim of the applicant. It is stated by the respondents that application is barred by limitation. It is also stated that the ex-gratia payment is permissible to those employees who were governed by the CSRPf i.e. Contributory State Railway Provident Fund Rules and retired/dies while in service prior to 1.1.86. It is stated by the respondents that the ex-employee i.e. applicant's husband was governed by the Pension Rules. But no pension has been granted to him because he did not complete 10 years qualifying service in the Central Railway. It is stated that the applicant was appointed in the Central Railway as fresh entrant. Thereby, his past service in the Company Railway was not considered for the purpose of pension and it is stated that the some staff of Arrah-Sasaram Light Railway who were absorbed in the Eastern Railway due to closure of the said Light Railways had filed the original application bearing No.113 of 1989 before the Central Administrative Tribunal, Patna Bench for non-granting of pensionary benefit to them. The Tribunal of the Patna Bench, after hearing both the parties, did not pass any specific order on the claim of the applicants in OA.113 of 89 vide judgement dated 16.9.92 (Annexure R-2 to the reply). It is reiterated by the respondents that to mitigate the hardship of the employees of Howrah - Amta Light Railways, they were taken over by the Indian Railways as fresh entrants and the employees who had rendered 10 years or more qualifying service in the Indian Railways are only eligible for pensionary benefits. Applicant's husband was appointed as Basic Fitter in the scale of pay of Rs.75 - 110(AS) as a fresh entrant

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and his pay was fixed as per Railway Board's letter dated 22.10.73 and his past service in Howrah - Amta Light Railways has not been counted for pensionary benefit. Thereby, applicant is not entitled to get any benefit of family pension under the relevant Rules.

3. It is found that Id. Advocate for the applicant strongly relies on the case of the judgement passed in OA.113 of 1989 since their judgement was partly in favour of the applicant. Id. Advocate Mr. Roychoudhury submits the applicant's pay was protected in the scale of pay of Rs.75 - 110(AS) as per letter dated 25.4.73 (Annexure A-2). So, his past service was <sup>Taken into account</sup> ~~granted~~ by the respondents for the purpose of fixation of pay. <sup>So</sup> ~~But~~ respondents were not justified for not taking into account his past service for the purpose of pension. Thereby, applicant is entitled to get benefit of family pension and other relief as sought for.

4. Id. Advocate Mr. Samaddar, appearing on behalf of the respondents submits that order of the Patna Bench in OA.113 of 1989 passed by the Central Administrative Tribunal, Patna Bench has been set aside by the Hon'ble Apex Court in an appeal bearing No.5864 of 1994 preferred by the Railway Authorities. Thereby, applicant is not entitled to get any benefit in the light of the judgement of the Hon'ble Apex Court passed on 9.9.96.

5. In view of the aforesaid circumstances, I find that judgement of the Patna Bench has been set aside by the Hon'ble Apex Court. Thereby the said judgement does not help the applicant for granting benefit of pension as sought for in the application. It is found that the appointment of the staff and their fixation of pay have been taken up with the competent authority as it appears from the letter dated 22.10.73 issued by the Assistant Director(Estt.), Railway Board to the General Manager. In the said letter it is found that it was decided by the Board that in respect of those getting higher emoluments than what was admissible to them as fresh entrants, their status as such will not be altered for appointment. It is found that respondents did not take any decision regarding counting of past service of the applicant for the purpose of pension. From the letter referred to above (Annexure A-2)

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it is found that applicant's pay was fixed granting him maximum pay of Rs.110 in the scale of pay of Rs.75 - 110/-. From the correspondence of the Railway it is found that the railway authority did not intend to give any benefit of past service to the new recruited erstwhile employee of Howrah - Amta Light Railways since they were treated as fresh entrants in the service. I find that that <sup>substantive</sup> matter was disposed of by the Hon'ble Appex Court in the judgement under reference. Applicant also could not produce any paper to show that the respondents had taken any decision to give benefit of past service to other employee who were appointed from preceding Company Railway to the Central Railway. In view of the aforesaid circumstances, I find that the case of the applicant cannot be considered for the purpose of counting of past service for pension. It is admitted fact that applicant is entitled to get other benefits except the pension. In view of the aforesaid circumstances, application is devoid of merit and liable to be dismissed. Accordingly, it is dismissed.

H-8-1873/99  
( D. Purkayastha )  
Member (J)