

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 424 OF 2007

Dated the 20. th June, 2008

CORAM:

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

V.Sampoornam,
W/o late P Arumugham,
Residing at Door No.74/1 Street,
Sastri Nagar, Sadayampalayam Road,
Erode-2.

..Applicant

[By Advocate: Mr TC Govindaswami]

-Versus-

1. Union of India,
represented by the General manger,
Southern Railway, Headquarters,
Park Town PO, Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
3. The Secretary,
Railway Board, Rail Bhavan, New Delhi.
4. The Divisional Finance Manager,
Southern Railway, Palghat Division,
Palghat.

.. Respondents

[By Advocate : Mr. P. Haridas, and Ms Simla]

This application having been heard finally on 16th June, 2008 the Tribunal delivered the following : -

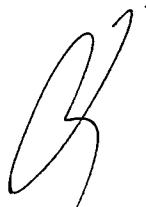
ORDER

The applicant is the widow of late P Arumugham, who was working as Driver (Special) at Erode Railway Station of Palghat Division of Southern Railway. Shri Arumugham died in an accident while on duty on 11.2.1981. The applicant was thereafter

sanctioned family pension at normal rates. Subsequently, vide Railway Board order dated 8.3.2000 (RBE No.39/2000) family pensioners whose spouses passed away due to accident on duty became entitled to the payment of enhanced family pension at the rate of 60% of the basic pay, subject to a minimum of Rs.2500/- plus relief with effect from 01.01.1996. When the applicant came to know about the enhanced family pension she made a representation in the year 2004 followed by another representation in February 2005. In spite of these representations, the applicant has not been granted enhanced family pension. Aggrieved by the inaction on the part of the respondents, the applicant has filed this OA seeking following reliefs:

- "(1) Declare that the applicant is entitled to be granted enhanced family pension at the rate provided for in Annexure -A1 with a minimum of Rs.2500/- per month plus relief as admissible with effect from 1.1.96;
- (2) Direct the respondents to grant the enhanced family pension as declared in para (1) above with all consequential arrears of pension and dearness relief thereon;
- (3) Direct the respondents to pay interest on the delayed payment of arrears of enhanced pension at the rates and from the dates as found just and proper by this Hon'ble Tribunal upto the date of full and final settlement of the same.
- (4) Award costs of and incidental to this application;
- (5) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

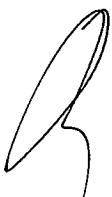
2] Respondents have contested the OA by filing reply statements. In their first reply filed in September 2007 it was stated that the husband of the applicant who was working as Driver died on 11.2.1981 due to Vaniampadi Train accident. Accordingly, his service was terminated wef 11.2.1981. The applicant was thereafter paid a sum of Rs.30,000/- as compensation under Workmen Compensation Act, 1923 in addition



to the terminal benefits applicable at that time. According to the respondents, there is a provision for payment of extra ordinary family pension as contained in Railway Services (Extra Ordinary) Rules, 1993. Such extra ordinary pension is not applicable to the employees who are covered by Workmen's Compensation Act. As the husband of the applicant is covered by the Workmen's Compensation Act, the applicant is eligible to receive only the ordinary family pension under the Pension Rules and is not entitled to get extra ordinary family pension as per Annexure-A1 order. The orders passed by the Tribunal in OA 105/2006 in which the Tribunal had allowed enhanced family pension has been challenged by the respondents in the Hon'ble High Court of Kerala and the matter is pending before the Hon'ble High Court. In response to a specific query by this Tribunal regarding the emoluments drawn by the applicant's husband, it has been admitted by the respondents in their subsequent reply filed on 16.6.08 that the applicant's husband was drawing more than Rs.1,000/- and was, therefore, not covered by Workmen's Compensation Act. The amount of Rs.30,000/- which was paid to the applicant was by way of ex-gratia payment as confirmed by the applicant in her representation at Annexure -A2.

3] I have heard Sri TC Govindaswamy, learned counsel for the applicant, Ms Simla for Sri P Haridas, learned counsel for the respondents and also perused the documents carefully.

The issue for consideration in this OA is whether the applicant is entitled to enhanced family pension as per Railway Board's Order dated 8.3.2000, Annexure-A1? The said order



reproduced Office Memorandum dated 3.2.2000 issued by the Ministry of Personnel, Public Grievances & Pension (Department of Pension & Pensioner's Welfare). This order classifies different category of deaths while on duty. The applicant's husband is covered under category "C" which reads as follows:-

"Category-'C' Death or disability due to accidents in the performance of duties. Some examples are accidents while travelling on duty in government vehicles or public transport, a journey on duty is performed by service air craft, mishaps at sea, electrocution while on duty etc."

For the 'C' category of employees, it was decided that the family pension will be enhanced as follows:

"Family pension - for categories 'B' & 'C'

"(1) Distinction between widows without children or those with children, for determination of the quantum of Extra ordinary family pension shall stand abolished. The quantum of monthly extra ordinary family pension for all categories of widow shall be :-

- (a) Where the deceased Government servant was not holding a pensionable post 40% of basic pay subject to a minimum of Rs.1,650;
- (b) Where the deceased Government servant was holding a pensionable post: 60% of basic pay subject to a minimum of Rs. 2,500/-"

It is not in dispute that the applicant's husband died in an accident while on duty. It is also not in dispute that he was holding a pensionable post. Therefore, all the conditions stipulated in the order dated 8.3.2000 (Annexure-A1) for sanction of enhanced family pension have been fulfilled.

4] During the hearing of the case, the counsel for the applicant has vehemently denied that the applicant had received compensation under Workmen's Compensation Act. He also stated that the applicant's husband could not have been covered by the Workmen's Compensation Act, as contended by the respondents, as his total emoluments exceeded Rs. 1000/- per month. In

order to verify his contention, the respondents were directed to produce the service record of the employee. The respondents thereafter produced the extracts of the service register. It is seen from the extracts of the Service Register that compensation under Workmen's Compensation Act, 1923 for Rs. 30,000/-was claimed vide Bill No. MT 702 of 16.6.81. Even after this evidence was produced, the counsel for the applicant persisted that his contention that the applicant was not covered by Workmen's Compensation Act as the emolument of the deceased employee was more than 1000/-.

5] The Respondents was thereafter directed to verify the emoluments received by the applicant's husband in the last month of his service. In response to this direction, the respondents have filed an affidavit on 16.6.08. In the said affidavit a detailed break up of pay drawn by late P Arumughan is mentioned. He was drawing a total sum of Rs. 1300.25. It was also admitted by the respondents that the applicant's husband was indeed drawing more than Rs.1,000/- and, therefore, compensation under Workmen's Compensation Act is not admissible. It transpires that the amount of Rs.30,000/- paid to the applicant was by way of ex-gratia payment under discretionary power of the General Manager.

6] In view of the clear cut evidence, which has been brought on record, there is no doubt that the applicant's husband was not covered by the Workmen's Compensation Act, and therefore, she is entitled to the benefit of enhanced pension w.e.f. 01.01.96.

During the course of argument, the learned counsel for the respondents stated that the applicant will have to refund the amount of Rs.30,000/- paid to her as ex-gratia for becoming eligible for enhanced family pension. I do not accept this argument, as the conditions governing the sanction of enhanced family pension stipulated in order dated 8.3.2000 (Annexure-A/1) do not provide that any amount paid as ex-gratia will have to be adjusted against enhanced family pension or that such ex-gratia payment will have to be refunded in the event of sanction of enhanced family pension.

7] The respondents in their reply statement have referred to the order passed by this Tribunal in OA 105/06 and related matters. It has been stated during the course of the arguments that the Hon'ble High Court has stayed the order of this Tribunal in those cases. However, it is seen that the facts of the present case is entirely different from those of OA 105/06 and related cases, as the applicants in those cases were covered by Workmen's Compensation Act. In the present case, it has been clearly established that the husband of the applicant was not covered by Workmen's Compensation Act. Therefore, there is no justification to deny the benefit of enhanced family pension to the applicant.

8] Before parting with this case, I wish to place on record my appreciation for the assistance rendered by the learned counsel for the respondents and the efforts made by the concerned officers of the Respondent-Organisation, in tracing 25 year old

records to facilitate the proper adjudication of the matter involved.

9] For the reasons stated above, the OA is allowed. It is declared that the applicant is entitled to the enhanced family pension as provided in the Railway Board's order dated 8.3.2000 (Annexure-A1). MA No. 477/07 for condonation of delay is also allowed. The respondents are directed to sanction and pay the enhanced family pension at the rate of 60% of basic pay subject to a minimum of Rs.2,500/- with all consequential arrears to the applicant, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Dated 26th June, 2008



(Dr. K.S. Sugathan)
Member Administrative

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