

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 45/2006

WEDNESDAY, THIS THE 2ND DAY OF AUGUST, 2006.

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

T. Arayiammal W/o Thoplan Palani
Retd. Sweeper, Southern Railway
Palghat Division, Palghat
residing at NO. 17/22
Old Kallivalasu, Jeevanandam Street
Erode-2

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs

- 1 Union of India represented by
the General Manager
Southern Railway, Headquarters Office
Park Town PO
Chennai-3
- 2 The Divisional Railway Manager
Southern Railway, Palghat Division
Palghat.
- 3 The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.
- 4 The Divisional Accounts Officer
Southern Railway, Palghat Division,
Palghat.
- 4 The Divisional Accounts Officer
Southern Railway, Palghat Division
Palghat.

Respondents


By Advocate MR. P. Haridas.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is the widow of Late Thoplan Palani who retired from Railway service during 1980 as a Sweeper in Palghat Division. Her late husband was missing from 1.3.1982 and she is aggrieved by nonpayment of her family pension for the period between 1.3.1982 and 22.7.1993.

2 It is submitted that she lodged an FIR on 22.7.92 regarding her missing husband and on receiving a report from the Police station that her husband could not be traced the applicant was paid family pension with effect from 22.7.93. She was informed that as per certain clarifications the family pension is payable only from a date one year after the lodging of the FIR and that therefore nothing could be done in the matter. Her representation was rejected by the Annexure A2 order. The applicant has relied on Annex A-4 judgment of this Tribunal holding that the Railways are bound to either pay family pension from the date the pensioner was actually missing and not drawn his pension or pay life time arrears of pension from the date the pensioner was actually missing. It is her case that either the applicant's late husband must be deemed to be alive up to 21.7.93 in which event he will be entitled to continued grant of pension till then or be granted family pension with effect from 2.3.1982.



3 *Per contra*, the respondents have stated that there is no rule or order for paying family pension from the date of disappearance of the pensioner. As per the existing rule the same is payable only from a date on completion of one year from date of filing the FIR. She has made this representation in this regard only on 5.12.05 and Annex A4 or A2 cannot give a fresh cause of action to the applicant and the claim of arrears from 1982 is highly time barred. They have also submitted that the applicant's husband was sanctioned pension from 1.1.81 which was disbursed up to June 1985 and the credit of pension was stopped from June 1985 onwards due to the pensioner not appearing in person to receive the pension. The family pension was sanctioned from the date of completion of one year from the date of filing FIR as per rules in force contained in Annex R1. No convincing reasons have been stated by her for the delay in filing the FIR.

4 ^g ~~We~~ have heard the Learned Counsel on both sides. The applicant has placed reliance on the Annex A4 judgement., the findings in which are extracted under:

"However the least the applicant is entitled to till the date the family pension is granted by the respondents would be the arrears calculated at the rate of family pension from the date the pension was last drawn by the pensioner. This liability cannot be disowned or even disputed by the Railway Administration. If the Administration considers the payment at the rate of pension is payable, they have to pay it.. If not, they have at least to pay arrears to the applicant at the rate of family pension from 23.5.88 till the family pension has been paid to her."

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5 The respondents have stated that in OA 1267/96 the claim was seven years old and in the case of this applicant it is more than two decades old and the facts in that case are not similar and in view of various decisions of the Apex Court that benefits arising out of the judgment will be available to the applicants therein only, unless there is a declaration of law, it cannot be made applicable. The Tribunal has also later dismissed OA175/94 filed by similarly placed persons like the applicants. The Learned counsel refuted this argument of the other side stating that delay in case of Pension matters is not a material ground for rejection of the case as held by the Apex court in State of Bihar Vs. Kameshwar, (2000 SCC (L&S) 845).

6 Apart from the legal pronouncements stated above I have considered the matter on merits. The grant of settlement dues to eligible family members of Railway employees who have suddenly disappeared and whose whereabouts are not known is governed by the Board's Letter dated 19th September 1986 and further clarifications issued in Board's letter dated 27th March 1991 and referred as P.B. circular No 94/91. As per the Circular dated 19th Sept 1986, the families of deceased employees are eligible for family pension and other benefits after expiry of one year from the date of disappearance of the Railway servant. However after the clarification in the later circular, the date of disappearance was to be reckoned from the date of First Information Report as can be seen from para 3 of the said instructions noted below:

"3. The date of disappearance of the employee/pensioner will be reckoned from the date the First Information Report is lodged with the Police and the period of one year after which the benefits of family pension and gratuity are to be sanctioned will also be reckoned from this date.....Family pension at normal/enhanced rates as may be applicable in individual cases will be payable to the families of missing employees." Para 2 of the Letter clarifies that the "Board's letter of even number dated 19th Sept 1986 as well as this letter will also be applicable in the case of missing pensioners mutatis mutandis."

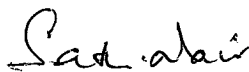
7 Admittedly the respondents had paid Pension to the applicant's husband and he has received the pension till June 1985. It can be therefore reasonably presumed that the applicant's husband was missing only from that date. Hence by virtue of the instructions dated 19th Sept. 1986, then in force, the applicant was entitled to receive family pension after the expiry of one year from that date. The instructions in P.B. circular 94/91 were not in force at that point of time. The respondents have denied the family Pension to the employee on the ground that she failed to lodge an FIR at that point of time and lodged the report only in 1992. The applicant is the wife of a low paid employee who was only a sweeper and would have come to know of the requirement to file an FIR only after the clarification issued in 1991. I am of the view that by applying the clarification given in 1991 to the case of the applicant whose husband was missing for seven years or so at the time of the issue of the said instructions was not just and proper and the same has caused substantial prejudice to the family pensioner. It has also resulted in the anomaly of creating an artificial vacuum for the period when the applicant's husband is neither alive nor presumed to be dead. If he

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were alive he would have received his pension and if he was not alive he should be either treated as missing or dead thereby entitling the applicant to family pension. It could not have been the intention of the Rule making authorities to leave the cases arising between the two instructions in a vacuum.

8 In the light of the above facts and circumstances, I am of the view that the respondents should have applied only the instructions of 19th September 1986 in this applicant's case and determined the date of disappearance of the pensioner from June 1985, the date the pension was last drawn by the pensioner as admitted by the respondents also. Following the judgment of this Tribunal in OA 1267/97, I direct the respondents to determine the arrears of family pension payable to the applicant from June 1985 to 22.7.93, the date the family pension was paid to the applicant and disburse the same to the applicant within a period of three months from the date of receipt of this order. OA stands allowed as above. No costs.

Dated 2.8.2006



SATHI NAIR
VICE CHAIRMAN

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