

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 50 of 2007

Friday, this the 6th day of June, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

D. Sarasu,
W/o. Late C. Dhanasekharan,
(Ex-Telecom Maintainer,
Southern Railway, Erode),
Residing at Railway Quarters,
ERODE.

... Applicant.

(By Advocate Mr. TCG Swamy)

v e r s u s

1. Union of India, Represented by
The Secretary to the Government of India,
Ministry of Railways, New Delhi.
2. Divisional Railway Manager,
Southern Railway, Palakkad Division,
Palakkad. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

(This application having been heard on 6.6.08, the Tribunal on the same day delivered the following) :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant has prayed inter alia for the following main relief(s) : -

(a) Hon'ble Tribunal be pleased to declare that the applicant is entitled to be paid ex-gratia lump sum compensation of Rs. Five Lakhs less the amount of Rs. 1,72,520/- (paid under Workmen's Compensation Act) and direct the respondents to pay the same accordingly forthwith.



(b) Declare that the applicant is also entitled to be paid ex-gratia family pension at the rate of Rs. 2500/- per month plus dearness relief thereon, with effect from 28.1.2000 and direct further to grant the same with all consequential arrears arising therefrom.

(c) Direct the respondents to pay interest at the rate of 9% per annum to be calculated from the date from which the amount of ex-gratia lump sum compensation and arrears of ex-gratia family pension as aforesaid fell due, upto the date of full and final settlement of the same.

2. In so far as (a) above is concerned, the respondents have already sanctioned the Ex Gratia Lump sum Compensation of R 5 lakhs, admissible to the applicant, vide order dated 18th April, 2008, at Annexure R-4 to the OA and arrangements for payment of the amount due to the applicant was also being made.

3. As regards para (b) above, the contention of the railways is that the rules for extraordinary pension are applicable to all the Railway servants other than those to whom the Workman Compensation Act, 1923 applies vide Annexure R-2, as re-affirmed by the Headquarters, vide Annexure R-3 letter dated 6th July, 2005.

4. The question is whether the applicant is entitled to the relief sought for vide para 8(b) of the OA, extracted at 1(b) above.

5. The minimum facts of the case required for adjudication are as under: -

(a) The applicant is the widow of one late Dhanasekharan, who was

working as Telecom Maintainer in Southern Railways at Erode, and who died due to an accident arising out of and in the course of his duties on 27-01-2000. She was paid a minimum family pension of Rs 2,250/- As she was given to understand that in such cases, Ex-gratia Payment of Rs 5 lakhs and enhanced Family pension of Rs 2,500/- are admissible (vide Annexure A-1 and A-2), she had preferred a representation dated 16th February, 2005 vide Annexure A-3. However, since there was no response, she has filed this OA inter alia praying for the relief as extracted in para-1 above.

(b) Respondents have contested the OA. According to them, as stated earlier, the applicant has now been authorized Ex gratia lump sum compensation and as per Annexure R-2 family pension is admissible those who were not covered under the Workmen compensation Act 1923 and since she is paid the compensation, she is not entitled to the family pension.

6. Counsel for the applicant submitted that in so far as enhancement of family pension is concerned, the issue is no longer res-integra, as this Tribunal vide order dated 11th January, 2007 in OA No. 105/2006 and connected O.As, had held that where family pension is already made available, enhancement due to the recommendations of the Pay Commission cannot be denied on any score.

This order was taken into account in yet another order dated 24th October 2007 in OA No. 159/2007. Hence, on the basis of the above, the applicant is also entitled to the enhancement of family pension as claimed.

7. Counsel for the respondents has not denied the above position i.e. existence of the two orders of the Tribunal mentioned above.

8. In OA No. 105 of 2006, the Tribunal has held as under: -

"10. Now on merit in respect of all the cases. It is the admitted fact that the applicants are in receipt of family pension. It is also equally admitted that the railway servant in all such cases died while on duty, caused by accidents. Equally admitted is the fact that Workmen compensation was paid for the death due to accident while performing the duty. Equally admitted is the further fact that in all cases, the applicants are paid the family pension notwithstanding the fact that at the time of death of the railway servants, workmen compensation was also paid. Thus, the applicants are continuously drawing the family pension and their cases fall under Category 'C' under the 3rd Feb., 2000 Rules. And, the modification of family pension to this category, as per the recommendations of the Vth CPC, and duly accepted by the Government/Railways is 60% of pay subject to a minimum of Rs 2,500/- plus dearness relief. Thus, the claim of the applicant is only payment of extra-ordinary family pension at the revised scale. In other words, the Railways have admitted the fact of the applicants' entitlement to family pension which stand sanctioned to the applicants from the time of the death of their spouse, and, order dated 3rd Feb. 2000 read with order dated 8-03-2000, is only a modification of the quantum of such pension, which the applicants have been already receiving, and therefore, linking this with Compensation under the Workmen Compensation Act, 1923 and consequently denying them of the benefit referring to para 4 or order dated 3rd February, 2000 is illegal. Put differently, when the drawal of family pension by the applicants has not been affected by virtue of their having received the compensation under the Workmen Compensation Act, 1923, modification of the quantum of such family pension also cannot be affected on the ground that the applicants were the beneficiary under the Workmen's Compensation Act, 1923, of compensation at the time of the demise of their spouse.

11. Thus, O.As Nos. 105/06, 166/06, 365/06, 433/06, 434/06, 435/06 and 436/06 are all allowed. The impugned orders in all these cases are quashed and set aside. It is declared that the applicants are entitled to modified quantum of the family pension drawn by them. Hence, there is no question of recovery of the arrears paid to applicants who have been so paid. Respondents shall continue to pay the applicants in all these O.As, the enhanced family pension. In so far as the applicants in OAs 105/06 and 166/06 are concerned, they are to be paid the revised family pension at the rate of Rs. 2,500/- plus dearness relief from 01-01-1996. Respondents are directed to work out the same and pay the applicants in OAs No. 105/06 and 166/06 the arrears of difference in the family pension due to and drawn by them, within a period of six months from the date of communication of this order. However, in so far as revised family pension to the said applicants is concerned, the same shall be made available to the applicants within two months from the date of communication of this order.

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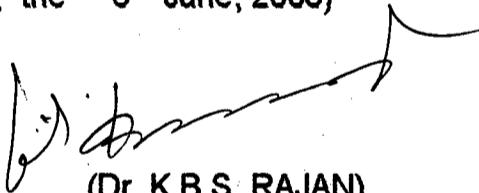
(Time limit of six months as contained above is only in respect of payment of arrears).

12. Under the above circumstances, there shall be no orders as to costs."

9. The case of the applicant herein is squarely covered by the above order of the Tribunal. The respondents have not denied the fact that the applicant is being paid the family pension of Rs 2,250/- . Accordingly, the OA is allowed. It is declared that the applicant is entitled to the modified quantum of family pension w.e.f. 01-01-1996. The respondents shall revise the family pension w.e.f. 01-01-1996 plus other relief if any, admissible under the Rules from 01.01.1996 and also pay her the arrears of dues on account of revised family pension within three months from the date of receipt of this order. Claim for payment of interest is, however, rejected.

10. In the above circumstances, there shall be no order as to costs.

(Dated, the 6th June, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.