

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.Nos.540/2007, 541/2007, 546/2007 & 584/2007

Dated Tuesday, 19th day of February, 2008.

CORAM:

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

OA No.540/2007

P. Deivanai
W/o Late N Palanimuthu
(Asst. Guard/Southern Railway/Erode),
No.22, Kumaresan Illam,
Kamarajar Street, Erode ... Applicant

By Advocate Mr.T.C.G.Swamy

V/s.

- 1 Union of India represented by
General Manager,
Southern Railway, Headquarters Office,
Park Town, 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 Thomas Mathew Nellimoottil

OA No.541/2007

R Muthammal
W/o.Late K.Ramasamy,
Ex. Diesel Assistant/Southern Railway/Erode,
No.172-A, Vasantha Nagar, Solar, Erode ... Applicant.

By Advocate Mr.T.C.G.Swamy

V/s.

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

By Advocate Mr.P.Haridas

OA No.546/2007

N Sarasammal
W/o.Late A.Nanjappan
(Ex Pointsman 'A'/ Southern Railway,
Palghat Division)
No.1/21, Chinnapullyampalayam,
Vayppadi Anjal, Vijayamangalam(Via),
Perundurai Taluk,
Erode Dist. Pin 638 056. ... Applicant

By Advocate Mr.T.C.G.Swamy

V/s.

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

4 The Divisional Finance Manager,
Southern Railway, Palghat Division ... Respondents.

By Advocate Mr.Thomas Mathew Nellimoottil

OA No.584/2007

P Kamalam
W/o.late P.Periasamy,
(Chief Signal Inspector/Special/
Salem/Palghat Division/Southern Railway
Residing at 3/168, Vellakaipatti,
Puthanampatty PO, Tiruchirapalli ... Applicant

By Advocate Mr.T.C.G.Swamy

V/s

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

By Advocate Mr.P.Haridas

These applications having been heard on 19.2.2008, the Tribunal on the same day delivered the following :

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

- 1 In all these OAs, the common question of law raised by the applicants is whether they are entitled for the minimum family pension of Rs.2,500/- as ordered by the Government vide Ministry of Personnel, Public Grievances and Pension (Department of Pension & Pensioners Welfare) vide

OM No.45/22/97-P&PW(C) dated 3.2.2000 irrespective of the fact that they were in receipt of some consolidated amount on account of compensation under the Workmen's Compensation Act, 1923 (Act for short).

2 The facts in each of these OAs are as under:-

OA-540/07

The applicant in this OA is a widow of late N Palanimuthu, Assistant Guard who met with an accident while on duty on 11.2.1981 resulting in his death. She and other members of the family were granted Rs.30,000/- by way of compensation under the "Act". She was also granted the family pension at the rate applicable at the relevant time.

OA-541/2007

The applicant in this OA is a widow of late K.Ramasamy, Ex-Diesel Assistant who met with an accident while on duty on 11.2.81 resulting in his death. She and other members of the family were granted Rs.42,000/- by way of compensation under the "Act". She was also granted the family pension at the rate applicable at the relevant time.

OA-546/2007

The applicant in this OA is a widow of late Shri Nanjappan, Pointsman 'A' who met with an accident while on duty on 19.1.1986 resulting in his death. She and other members of the family were granted Rs.58,480/- by way of compensation under the "Act". She was also granted the family pension at the rate applicable at the relevant time.

OA-584/2007

The applicant in this OA is a widow of late P.Periasamy, Chief Signal Inspector who met with an accident while on duty on 28.5.1996 resulting in his death. She

and other members of the family were granted Rs.52,780/- by way of compensation under the Workmen's Compensation Act. She was also granted the family pension at the rate applicable at the relevant time.

3 The 5th Central Pay Commission, has categorised cases under five different categories for determining the compensation payable for death or disability. Category 'C' deals with "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 aircraft, mishaps at sea, electrocution while on duty, etc." The quantum of extra-ordinary family pension payable to such widows was determined as 60% of basic pay subject to a minimum of Rs.2500/- where the deceased Government servant holding a pensionable post. The Government of India has accepted the above recommendation and vide Ministry of Personnel, Public Grievances and Pension (Department of Pension & Pensioners Welfare) OM No.45/22/97-P&PW(C) dated 3.2.2000. According to the Applicants in these OAs, they are covered by the aforesaid provision. They have, therefore, made representations to the respondents to enhance their pension to a minimum of Rs.2500/- pm w.e.f 1.1.1996. The respondents resisted the aforesaid cases both on the question of delay as well as on merits. Their preliminary objection is that these OAs are barred by limitation as provided under Section 21 (2)(b) of the Administrative Tribunals Act, 1985 and the rulings of the Apex Court in S.S.Rathore Vs State of Madhya Pradesh AIR 1990 SC 10 and Bhoop Singh Vs. Union of India & Ors JT 1992 (3) SC 322 etc. On merit they have submitted that after the recommendation of the Vth Pay Commission, the monthly family pension has been enhanced to minimum Rs.1,275/- with effect from 1.1.1996. Their further contention is that the Railway Servant (Extra Ordinary Pension)

Rules 1993 would not apply to cases where "Act" applies. In this regard they have relied upon para 1202 of Indian Railway Establishment Code Vol.I 1985 which reads as under:-

"1202 : Compensation for injuries or death:- Compensation to Railway servants for death or injuries attributable to and due to Railway service shall be awarded under the Workmen's Compensation Act, 1923. In cases where the Workmen's Compensation Act is not applicable, the compensation shall be granted under the Railway Services Extra-ordinary Pension Rules, as amended from time to time."

According to them, since the applicants are already in receipt of compensation under the "Act" after the death of her husband, Extra Ordinary Family Pension would not be admissible to them and, therefore, the enhancement of Extra Ordinary Family Pension ordered by the aforesaid OM dated 3.2.2000 raising the minimum family pension to Rs.2500/- p.m. w.e.f. 1.1.1996, also would not apply in their case.

4 The issue involved in this case has already been considered by this Tribunal vide OA No.105/2006 and connected cases. Applicants in these OAs were already in receipt of the enhanced family pension and the Respondents have initiated steps to reduce it. Allowing those applications, this Tribunal held that receipt of compensation under the "Act" does not come in the way of the applicant's therein to get the enhanced family pension granted to widows in terms of the aforesaid OM dated 3.2.2000. Accordingly, the applicants therein were declared eligible for modified quantum of family pension and the respondents were directed to continue to pay them the revised family pension @ Rs.2500/- p.m. + Dearness Relief w.e.f. 1.1.1996. Based on the aforesaid orders, this Tribunal has subsequently also allowed OA No.159/2007. A.Saraswathi Vs. Union of India vide order dated 24.10.2007.

5 The relief sought by the Applicants in these OAs are identical and they are as under:-

- (i) 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..
- (ii) Direct the respondents to grant the enhanced family pension as declared in para (i) above with all consequential arrears of pension and dearness relief thereon
- (iii) 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 up to the date of full and final settlement of the same;
- (iv) Award costs of and incidental to this Application;
- (v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

6 I have heard Advocate Mr.T.C.Govindswamy, for the Applicants in all these OAs and Advocate Mr.Thomas Mathew Nellimoottil for Respondents (in OA No.540/07 & 546/07) and Mr.P.Haridas for the Respondents (in OA Nos.541/07 and 584/07). These OAs are squarely covered by aforesaid orders of this Tribunal in OA Nos 105/2006 and connected cases as well as OA 159/2007 decided on 11.1.2007 and 24.10.2007 respectively. I, therefore, allow these OAs and declare that the applicants are entitled to be granted the enhanced family pension as provided in the Ministry of Personnel, Public Grievances and Pension (Department of Pension & Pensioners Welfare) OM No.45/22/97-P&PW(C) dated 3.2.2000. The respondents are therefore, directed to revise the family pension of the applicants @ Rs.2,500/- pm w.e.f. 1.1.1996 and pay the same with upto date arrears dues on account of such revision within three months from the date of receipt of a copy of this order. They are also entitled to payment of interest at the rate of 9% for the delayed payment of pensionary benefits with effect from 1.1.1996 as held by the Apex Court, State Bank of India v/s. K.C.Tharakan, 2005(8) SCC 428 and in its recent

judgment in S.K.Dua vs. State of Haryana & anr 2008(1) SCALE 284. There
shall be no orders as to costs.

GEORGE PARACKEN
JUDICIAL MEMBER

abp