

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 557 of 1995

Thursday, this the 8th day of August, 1996

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR P V VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

K. Kamalakshiamma, W/o Late C.K. Nair,
'Sree Nilayam', Alukkal,
Annamanada Post,
Trichur District.

... Applicant

By Advocate Mr T.C. Govindaswamy.

Vs

1. Union of India through
the Secretary to the Govt. of India,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The Chief Personnel Officer,
Central Railway,
Bombay Victoria Terminus,
Bombay.

... Respondents

By Advocate Mr P.A. Mohamed.

The application having been heard on 8th August 1996,
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

Applicant, widow of a Daftary who died on 27.1.77
(after obtaining voluntary retirement on 1.8.76) claims
"ex gratia pension of Rs 150/- per mensem" in terms of A-2
scheme. There was no provision for payment of Family
Pension at the material time, and a Scheme for grant
of Ex gratia payment(A-2) was introduced in 1988 with
effect from 1.1.86. Applicant made a request for grant
of " ex gratia pension" on 7.9.93. Since that was not
granted, she has approached this Tribunal.

2. According to respondents, she is not eligible to receive ex gratia pension, as ex gratia pension is intended only for the widows/dependents of those who retired in the normal course and not for widows of those who retired voluntarily. Such a distinction is not found in the Scheme. A-2 scheme only states:

"The President is pleased to decide that the widows and dependent children of the deceased CPF beneficiaries who had retired from service prior to 1.1.86 shall be granted ex gratia payment of Rs 150/- p.m."

This was subsequently "clarified" by R-1 and R-2, in two different ways. R-1 interpreted the expression "retired" to exclude those who had 'resigned'. For this, no clarification is required. Resignation and retirement, are two different concepts. The crucial change was brought about by R-2. It states that the expression "retired employee" does not include 'voluntarily retired employees'. This clarification is too transparent to stand scrutiny, for reasons more than one. The expression "retired" has an accepted and well-known meaning. Where an expression has a natural meaning, it cannot be given an artificial meaning. May be, a different definition can be given, as is sometimes done in statutes. Reference to Chapter VII of the Central Civil Services Pension Rules will be useful in this context. The rules treat voluntary retirement also as retirement. If the rule making authority wanted to restrict the meaning nothing prevented it from using the expression "superannuated". Anyway it is unnecessary to go into these details because the expression 'retirement'

is a broad expression taking in voluntary retirement also. That apart, an order issued by a statutory authority namely the Railway Board under Rule 123 of the Indian Railway Establishment Code cannot be 'clarified' by a subordinate official like the Financial Advisor and Chief Accounts Officer by an administrative order, euphemistically called "clarification". It is also well to remember, consistent with the principles of directive policy in the Constitution, that an ameliorative measure intended for socially disadvantaged classes, should be read in such a manner as "to advance the object and suppress the mischief" to borrow the words of the Supreme Court (AIR 1974 SC 759). The view in R-2 not only suppresses the object, but advances mischief. Yet for a third reason, a vested right created by A-2 cannot be taken away five years later by an administrative order like R-2.

3. In terms of the plain meaning of A-2 applicant widow, is the widow of a retired employee, as a voluntarily retired employee is also a retired employee. The only other contention is that the claim is barred by delay. There is no time limit prescribed for making an application before the Railways. Apart from that, A-2 was not given due publicity. Though pointedly we asked the counsel for Railways whether A-2 had been published or circulated, he candidly admitted that he has no information regarding such publication. The reply statement also makes no mention of publication.

4. We allow the application and direct respondents to pay ex gratia pension at Rs 150/- per mensem from the date on which a request was made in that behalf, namely

7.9.1993. Such payment will be sanctioned and made within three months from today. The time limit will not be extended and respondents will do well to abide by the direction regarding time limit. Parties will suffer their costs.

Dated the 8th August, 1996.



P V VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

P/9-8