

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.159/2007

Wednesday this the 24<sup>th</sup> day of October, 2007

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***HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER***

A.Saraswathi, aged 48 years  
W/o (late) P.M.Gopalakrishnan  
residing at "Krishna Sadan"  
Anangate House, Kalladipetta PO,  
Ongallur, Pattambi (Via)  
Palakkad Dist.679313.

...Applicant

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 Union of India, represented by the  
General Manager, South Western Railway,  
Headquarters Office, Hubli, Karnataka.
- 2 The Divisional Railway Manager,  
Hubli Division, South Western Railway  
Hubli, Karnataka.
- 3 The Divisional Personnel Officer,  
Hubli Division, South Western Railway,  
Hubli, Karnataka.
- 4 The Secretary,  
Railway Board, Rail Bhavan,  
New Delhi.
- 5 The Divisional Finance Manager,  
Hubli Division, South Western Railway,  
Hubli, Karnataka. ....Respondents

(By Advocate Mr.Thomas Mathew Nellimootil)

The application having been heard finally on 3.10.2007, the Tribunal on  
24.10.2007 delivered the following:

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ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

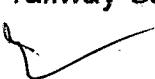
The applicant in this case is widow of late P.M.Gopalakrishnan, who was working as a Carriage & Wagon Khalasi under the Assistant Mechanical Engineer, Carriage & Wagon, Miraj of Hubli Division of the South Central Railway. Consequent upon his death on 2.3.91 after an accident while on duty, the applicant was granted family pension at the rate of Rs. 375/- per month with effect from 3.3.91 which has been enhanced to Rs. 1275/- p.m with effect from 1.1.96. Later, on the basis of the Office Memorandum No.45/22/97-P&PW(C) dated 3.2.2000 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Pension & Pensioners Welfare) on the recommendations of the 5<sup>th</sup> Central Pay Commission, the Railway Board also issued Annexure A1 order No.RBE 39/2000 on 8.3.2000 extending the benefit of the aforesaid O.M dated 3.2.2000 *mutatis mutandis* to the retired Railway employees also. According to the aforesaid O.M, the cases for determining compensation payable for death or disability under different circumstances have been categorized under five distinct heads. The applicant belongs to the category (c) namely, "*death or disability due to accidents in the performance of duties. Some examples are accidents while traveling on duty in government vehicles or public transport or a journey on duty is performed by service aircraft, mishaps at sea, electrocution while on duty, etc.*" For the aforesaid category of employees, the entitlement for family pension has been decided as under:



"Family pension – for categories B & C:

(b) Where the deceased government servant was holding a pensionable post, 60% of basic pay subject to a minimum of Rs. 2500/-"

2 When the applicant came to know about the aforesaid Office Memorandum she made the Annexure.A2 representation dated 19.1.2004, A4 representation dated 27.10.04, A5 representation dated 1.12.04 and A6 representation dated 20.1.05 to various authorities in the Railways. It was only by Annexure.A7 letter dated 15.3.2005 the respondents have responded for the first time informing that her request for revision of family pension was under process. In the meanwhile vide Annexure.A8 letter dated 25.2.2005 the Divisional Railway Manager, Hubli, Karnataka has informed her that the sanction of the competent authority was obtained for payment of revised family pension of Rs. 2500/-with effect from 1.1.96 and the 5<sup>th</sup> respondent DFM, Hubli was asked to take necessary action to authorize revised pension to the applicant. Since the Respondent No.5 did not take any action in the matter, the applicant had to take up the matter again by the Annexure A9 representation dated 19.10.2005 to the Sr.Divisional Personnel Officer, S.W. Railway, Hubli Division for implementation of the A8 order and payment of the revised family pension. However, vide Annexure.A10 impugned order dated 21.11.2005 the Divisional Railway Manager,S.W. Railway, Hubli took a different view and informed the applicant that they have again examined her case in terms of the instructions contained in DOP and P.Ws Office Memorandum No.45/22/95 P&PW dated 3.2.2000 circulated by the Railway Board Letter No. F(E)III/2000/PN 1/16 dated 8.3.2000 but they "are applicable only to the cases in which extra ordinary pension/family pension sanctioned under railway services (Extraordinary Pension) Rules, 1993 which are in turn not



applicable to the employees who are governed by the Workmen Compensation Act, 1923" but her late husband Shri Gopalakrishnan was governed by the Workmen Compensation Act under which she has already received the compensation and she was governed by the Family Pension Scheme, 1964 and, therefore, she was not eligible for the benefits under the Railway services (Extraordinary pension) Rules, 1993.

3 In the reply filed by the respondents also, aforementioned position was reiterated. They have submitted that in exercise of the power conferred by the proviso to Article 309 of the Constitution of India, the President made the Rule called "Railway Service (Extra Ordinary pension) Rules, 1993 and by the said rules are not applicable to the Railway Servants covered by the Workmen's Compensation Act, 1923. They have submitted that in terms of Rule 11 of the Railway Service (Extra Ordinary Pension) Rules, 1993 "when death of a Railway servant is conceded as due to Railway service in terms of rule 4, his widow and children shall be awarded pensionary benefits in accordance with Schedule IV."

4 We have heard Ms. Rejitha for the applicant and Mr. Varghese John representing Mr. Thomas Mathew Nellimootil for the respondents. It is not necessary to go into the rival contentions of the parties in this case as the issue raised in this OA has already been decided in a group of cases i.e., OA 106/06 and connected cases decided by this Tribunal on 11.1.07. The following specific question was framed and addressed:

"Whether order dated 3<sup>rd</sup> February, 2000 of the Ministry of Personnel, extended to the Railways vide order dated 08-03-2000 with regard to enhancement of Family Pension in the wake of the V Central Pay Commission Recommendations is applicable to the applicants."

After considering the various contentions raised by the counsel for the

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applicants and respondents in the OA, a coordinate Bench of this Tribunal has concluded a 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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. (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.

5 In my considered opinion the present case is squarely covered by the aforesaid decision of this Tribunal in OA 105/06 and connected cases decided on 11.1.2007. Accordingly this OA is allowed. The impugned order is quashed and set aside. It is, therefore, declared that the applicant is entitled to the modified quantum of family pension w.e.f: 1.1.1996. The respondents shall revise the family pension in favour of the applicant at the rate of Rs. 2500/- plus other reliefs, if any, admissible under the rules from 1.1.96 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. In the above circumstances, there shall be no order as to costs.

Dated this the 24th day of October, 2007

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**