

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.180/08

Tuesday this the 21st day of April 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

K.Padmini,
W/o.late K.Gopalakrishnan,
(Retd. Station Master/
Southern Railway/Palghat Division.)
Residing at Payyappilli House,
Panamanna, Ambalavattom Post,
Ottapalam, Palghat District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Divisional Finance Manager,
Southern Railway, Palghat Division,
Palghat.
4. The Secretary to the Government of India,
Ministry of Railways, Rail Bhavan, New Delhi. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 21st April 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is the widow of late Shri.K.Gopalakrishnan, Station Master of Southern Railway, Palghat Division who superannuated on 31.12.1994. Before his date of superannuation he was proceeded

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under the Prevention of Corruption Act which resulted in his conviction by judgment dated 11.12.1996 in CC No.2/93 by the Hon'ble Special Judge/CBI/Ernakulam. Against the aforesaid judgment late Shri.K Gopalakrishnan had filed Criminal Appeal No.12/97 before the Hon'ble High Court of Kerala and the sentence was stayed. On the same set of facts and allegations, disciplinary proceedings were also initiated against him which resulted in his exoneration by Office Order No.E.(D&A) 96 AE-7-7 dated 15.3.2002 issued by the Railway Board. However, on account of his conviction in the aforesaid judicial proceedings, his entire pensionary benefits were forfeited vide Annexure A-1 order dated 1.1.2004. The applicant had challenged the aforesaid Annexure A-1 order earlier by filing O.A.206/04 before this Tribunal. During the pendency of the said O.A he passed away on 9.12.2005 and the applicant substituted herself in his place. By the Annexure A-2 order of this Tribunal dated 13.8.2006 the aforesaid Annexure A-1 order was set aside and the respondents were directed to grant provisional pension to late Shri.K.Gopalakrishnan/his legal heir till the date of his demise on 9.12.2005. Due to his death the Criminal Appeal No.12/97 pending before the High Court was also closed as abated. It is in the above circumstances that the applicant has filed this present O.A seeking a declaration that non feasance on the part of the respondents to grant family pension to her with effect from 10.12.2005 i.e., from the date next after the date of demise of the applicant's husband is arbitrary, discriminatory, contrary to law and hence unconstitutional and for a direction to the respondents to grant her family pension from the aforesaid date with arrears.



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2. Counsel for the respondents submitted that Annexure A-2 order of this Tribunal has since been challenged before the High Court in WPC 34466/06 and the same is still pending. The High Court has also granted interim stay in the case. The respondents have also contended that since the applicant's husband was not in receipt of any pension from the date of his superannuation till his date of death, the applicant is also not entitled for any family pension. In other words, their contention is that unless a Railway employee is in receipt of pension, his dependents are not entitled for any family pension. In this regard they have relied upon Family Pension Scheme for Railway servants, 1964 (Rule 75 of Railway Service Pension Rules, 1993). Sub rule 2 of the said Rule reads as under :-

(2) Without prejudice to the provisions contained in sub rule (3), where a railway servant dies -

(a) after completion of one year of continuous service, or

(b) before completion of one year of continuous service provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service.

(c) after retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in rule 53.

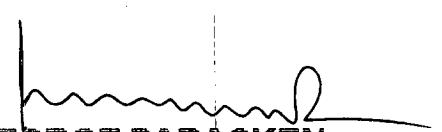
3. I have heard the counsel for the parties. The undisputed fact of this case is that the applicant's husband, late Shri.K.Gopalakrishnan, has never been sanctioned regular pension after his superannuation during his life time. He was granted only provisional pension because of the pendency of the criminal case CC No.2/93 against him. When he was convicted, vide judgment dated 11.12.1996 by the Hon'ble Special Judge/CBI/Ernakulam



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in the above case, his case for continued payment of provisional pension was considered by the Railway Board in consultation with the UPSC. As the allegations of misappropriation of Government cash framed against him have been proved conclusively and beyond any reasonable doubt before the Hon'ble Court, the President ordered to forfeit the entire pensionary benefits payable to him vide Annexure A-1 order dated 1.1.2004. Though he had successfully challenged the aforesaid order before this Tribunal in O.A.206/04 and obtained an order setting aside the same, the respondents have challenged the aforesaid order of this Tribunal before the High Court in WPC 34466/06 and obtained a stay against the order of this Tribunal. In effect, the Annexure A-1 order has been revived. As the Pension Rules clearly says that family pension can be granted to a dependent of Government employee only if the concerned Government employee has been drawing pension, there is no question of granting the prayer of the applicant to grant her family pension from the date of the death of her husband on 9.12.2005. I, therefore, dismiss this O.A. However, this order will be subject to the final outcome of the WPC 34466/06 pending before the High Court. There shall be no order as to costs.

(Dated this the 21st day of April 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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