

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 19 of 2008

Thursday....., this the 19th day of June, 2008

CORAM:

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

M. Chellammal,
W/o. K.R. Marichetty,
(Retd. Senior Rakshak, Railway
Protection Force/Southern Railway/
Palghat Division)
Residing at No.10, Indira Gandhi Street,
Nadarmedu, Erode. Applicant.

(By Advocate Mr. T.C. Govindaswamy)


v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai - 3
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
3. The Divisional Security Commissioner,
Southern Railway, Palghat Division,
Palghat. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

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

The applicant in this O.A. is the widow of Late Marichetty (D.O.B. 08.10.1922), who was serving as Sub Inspector in the Southern Railways from 22.11.1943 till 18-05-1968 when he retired voluntarily. He was the beneficiary



of State Railway Provident Fund (Contributory) Scheme. The said Marichetty expired on 27-12-2003 i.e. at his eighty-second year of age.

2. The IV Pay Commission recommended certain ex-gratia payment for the widows of those government servants, who were, by virtue of being contributory Provident Fund holders, not entitled to any pension. The condition fastened to the said benefit was that the government servant should have put in 20 years of service before retirement. The Railways accepted this recommendation partially, which, by RBE 147/88 dated 30-06-1988 provided for grant of ex-gratia payment to the widows/families of the Railway employees who were governed by the CPF Scheme and who retired from service prior to 01-01-1986. As this concession was available only to the widows of the retired CPF contributory employees, and not to surviving employees, the V Central Pay Commission recommended extension of this benefit to the surviving government Servants also. This recommendation has also been accepted and implemented w.e.f. 01-11-1997 by RBE No. 19/98 dated 27-01-1998, vide Annexure A-2. The said order contained the elaborate publicity procedures, which included that where the addresses of such retired employees are available, a copy of the order be sent to them in addition to the other modes of publication.

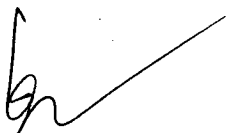
3. In its order dated 27-01-1998, it has been specifically mentioned, "*The ex-gratia payment is not admissible to (a) those who were dismissed/removed from service and (b) those who resigned from service.*"



4. Later on by a clarificatory order dated 13-11-1998, the Railway Board stipulated that ex-gratia payment is admissible to those who had retired on superannuation subject to fulfilment of the condition that the superannuated Provident Fund beneficiaries should have rendered at least 20 years of continuous service prior to their superannuation. Those who had retired from service other than on superannuation namely, on medical invalidation, voluntary retirement, compulsory retirement as a measure of penalty, premature retirement, retirement on permanent absorption by other employer etc., were not eligible for grant of ex-gratia payment.

5. The DOPT had issued an order dated 22-03-2004, a clarification relating to the exclusion class as above, to the extent that *"The ex-gratia payment is not admissible to (a) those who were dismissed or removed from service (b) those who resigned from service and (c) those who retired from service other than on attaining the prescribed age of superannuation."*

6. The Madras Bench of the Tribunal in O.A. No. 1106/2000, in the case of a Railway employee, who had put in 25 years of service but who retired voluntarily allowed the claim for such ex-gratia payment. When this matter was taken up in CWP No. 12949/2001 before the High Court of Judicature at Madras by the respondents in the said O.A., the same had been dismissed by a Division Bench of the High Court on 23-07-2001 and the Railways had preferred an S.L.P. (C) No. 22120/2001 which had, however, been dismissed by the Apex Court.



7. Before this Bench, earlier while deciding an O.A. seeking an identical relief as in the above OA of the Madras Bench this Bench held that a different view was not possible to be taken and had allowed the application quashing the clarificatory order dated 13-11-1998 of the Railways. There has been no appeal against this order of the Tribunal. This decision was followed in O.A. No. 210/2002 as well and that too attained finality, in view of the absence of any appeal against the same.

8. The applicant in the present O.A. having come to know about the entitlement of her late husband to the ex gratia payment during his life time, vide Annexure A5, approached the Pension Adalat in 2007 claiming ex gratia payment to be paid to her husband for the period from 01-11-1997 (the date of introduction of ex-gratia payment to the surviving retired employees who were, while in service, subscribers to contributory Provident Fund) till 27-12-2003, the date of demise of her husband. And, in response, Annexure A-6, the Divisional Office Palghat had called for certain particulars from the applicant.

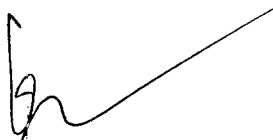
9. The applicant, on coming to know about the entitlement of ex-gratia payment during the life-time of the employees, through the decisions in some cases, through this O.A. has prayed for a declaration that the applicant's late husband is entitled to the grant of ex gratia payment in terms of Annexure A-2 for the period from 01-11-1997 till 27-12-2003 and for a direction to the respondents to pay the life-time arrears of ex-gratia payment (Pension) payable to the applicant's late husband in terms of Annexure A-2 together with 12% interest per



annum calculated month after month as the arrears fell due. Cost also has been claimed.

10. Respondents have contested the O.A. Their preliminary objection is that the O.A. is not maintainable or sustainable either in law or on facts and circumstances of the case (Para 2). Again, it is highly barred by limitation (Para 3 of the counter). They have also stated that the applicant had not exhausted the remedy and directly approached the Tribunal (Para 6). They have also contended that the applicant's husband had not applied for ex-gratia payment during his lifetime and the claim of the applicant is an afterthought (Para 13). It has further been contended that applicant cannot claim the benefits based on judgments (Para 4). As regards merit of the case, the respondents contended that the applicant's husband having retired voluntarily and not on superannuation, no ex gratia payment is admissible during his lifetime. Emphasis had been given that in the Railway Board order dated 13-11-1998, the Railway Board has specifically restricted and interpolated that the ex-gratia payment is admissible only to those who had retired on superannuation subject to fulfilment of other conditions also (Para 10). It was also stated that those SRPF© beneficiaries who had retired from service other than on superannuation, viz on medical invalidation, voluntary retirement, compulsory retirement in a measure of penalty, premature retirement etc., are not eligible for grant of ex-gratia payment.

11. Applicant has filed her rejoinder stating that the OA is not barred by limitation and not liable to be rejected for that reason. There was no occasion for

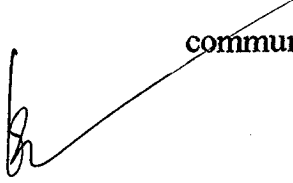


the applicant's late husband to give a representation. As regards contention of directly approaching the Tribunal, it has been stated that the Pension Adalat is conducted by the D.R.M., superior to the authorities at the lower level in different Branches of the Railways.

12. Counsel for the applicant argued that when the High Court has held that ex-gratia payment is admissible even for those who had voluntarily retired, there is no reason as to why the applicant's claim be not allowed. He has also reiterated the grounds in the OA and the rebuttal of contentions of the Respondents, as contained in the applicant's rejoinder.

13. Counsel for the respondents reiterated the contentions in the O.A.

14. Arguments were heard and documents perused. First as to the preliminary objections. Two such objections have been raised. As regards limitation, the applicant's counsel submitted that the fact of ex-gratia being available to the retired railway servants could be known to the applicant only after the pronouncement of judgment in this regard. Respondents' counsel submitted that on account of such judgment the OA cannot be filed and that since the period of ex-gratia pertained to 1997 to 2003, the case is delayed. The respondents have stated that it is "an after thought." The Board's orders vide Annexure A-2 provided for various ways of publication of the benefit. It is not known whether the press notes were published. Nor is it known whether individual communication was sent to the applicant's husband. The husband of the applicant

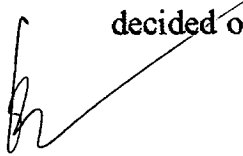


at the time of issue of the above orders in January, 1998 was of the age of 76 years and as such, it would be too much if one expected that he should see the notice board of each Railway Establishment or to keep in touch with the Unions. As such, it was only when the applicant came to know about the benefit having percolated to Periannan, retired Pointsman the and a colleague of her late husband that she took action. In **Lt. Governor, Delhi vs Dharampa**, (1990) 4 SCC 13, the respondents were dismissed from service along with certain others. Some of the dismissed approached the Delhi High Court against the order of dismissal and the High Court had allowed their writ petitions after a few years. It was after such judgment of the High Court, Dharampal approached the Delhi High Court, when the respondents to the writ petition raised the issue of delay and laches but the Delhi High Court rejected the objection and allowed the writ petitions. LPA against the same was filed before the Division Bench, which was however, dismissed due to delay in filing the appeal. This judgment of the High Court was taken up with the Apex Court but the Apex Court rejected the contention of the respondents to the writ petition that there was a delay in filing the writ petition. As such it cannot be stated that on the basis of a judgment rendered the applicant cannot file the OA nor could it be held that there was delay in filing the OA. In the instant case, soon after the applicant came to know about the benefit to surviving employees, she had approached the Lok Adalat for the same in respect of her husband's case, who was entitled to ex gratia payment from 01-11-1997 till 27-12-2003. Thus, it cannot be stated that there had been any deliberate delay. It was contended by the respondents that the very husband of the applicant did not apply for the same during his lifetime. The reason is obvious. Had he known about the



availability of this benefit, he would have certainly applied for the same. Again, the order of the Railway Board being one of beneficial in nature, on account of technicalities, the case should ^{not} be torpedoed. If the matter is meritorious, even delay if any could be condoned. This is the law laid down by the Apex Court in catena of cases, including **Collector Central Excise Anantnag vs Katiji (1987) 2 SCC 107** and subsequent judgment in **N. Balakrishnan vs M. Krishnamurthy (1998) 7 SCC 123**. Perhaps there could have been some justification in the contention of the respondents about limitation, had they communicated to the applicant's husband in 1998 or immediately thereafter about the existence of this welfare measure. Hence, preliminary objection relating to limitation is to be rejected. As regards remedies not exhausted, the applicant is right when he stated that Pension Adalat is functioning under the D.R.M. and as such the same is a compliance with the requirement of administrative remedies being exhausted. There is no other statutory remedy in respect of this case. Thus, both the preliminary objections are rejected.

15. Now on merit. The respondents have contended that by 13-11-1998 clarificatory order of the Railway Board it was stipulated that those who had retired, other than by way of superannuation, were not entitled to the benefit. This contention has to be summarily rejected in view of the decision by this Tribunal quashing and setting aside the said order in O.A. No. 210 of 2002 and also on the basis of the decision by the Hon'ble High Court in the case of Senior Divisional Personnel Manager, Palghat vs R. Varadappan CWP No. 34399 of 2004(S) decided on 7th June, 2005, vide Annexure A-3. Thus, subject to verification of the



applicant's husband's service in the Railway for a minimum period of twenty years, the applicant should be made entitled to receive the ex gratia payment for the period from 01-11-1997 till 27-12-2003 payable to the applicant's husband, in her capacity as his legal heir. Respondents themselves have stated in para 3 of the counter that the husband of the applicant joined the Railways on 01-09-1947 and had voluntarily retired on 18-05-1968. As such, there has been a total service of 21 years plus. If records are available the same could be verified and if not, on obtaining an indemnity bond from the applicant, the amount due to the applicant towards ex gratia payment for the period from 01-11-1997 till 27-12-2003 should be paid to her. However, no interest on the same shall be payable. The O.A. is **allowed** accordingly. Time for compliance of this order is calendared as five months from the date of communication of this order.

16. Under the circumstances, there shall be no orders as to costs.

(Dated, the 19th June, 2008)


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvt.