

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.210/2002

Ernakulam Tuesday this the 4th DAY OF MARCH, 2003

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

C.M Madhavan, aged 76 years
S/o Muralidharan
Retired Head Clerk,
Establishment Branch
Headquarters Office,
Western Railway
Church Gate, Mumbai
residing at Chaliyatil House
Kuttoor Tiruvalla
Kerala-689 106.Applicant

(By Advocate Mr.T.C.Govindaswamy,
Mr.KM Anthru, Mr.Martin G.Thottan,
Mr.Mannattil Kumar and Ms.Heera D

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1. Union of India, represented by the
Secretary, Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
Western Railway,
Church Gate, Mumbai.Respondents

(By Advocate Mrs.Rajeswari Krishnan)

The application having been heard on 20th January, 2003, the
Tribunal on 4th day of March, 2003 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant a 76 year old ex-employee of Western
Railways has filed this application aggrieved by Annexure.A2
order dated 15.10.2002 of the second respondent rejecting
his claim for the exgratia payment admissible under Railway
Board's letter dated 27.1.1998 to CPF retirees on the ground
that the benefit would be available only to those
superannuated from service and not to those dismissed,
removed or resigned.

2. The facts necessary for the disposal of this application can be stated thus. The applicant joined the Western Railways as a Clerk on 10.1.1946. After completing a service of 30 years the applicant resigned from service on 12.4.1976. His resignation was accepted by the competent authority by Annexure.A3 order dated 1.9.1976 (A3). The applicant was not governed by any pension rules but was covered by Contributory Provident Fund Scheme. Since the service of the applicant was good, efficient and faithful and the quitting of his service was under conditions similar to voluntary retirement, the applicant was granted special contribution to the Provident Fund as provided in Rule 1314 of the Indian Railway Establishment Code Vol.1. (1971 Edition). Since there was no distinction between resignation and retirement after completion of 30 years of service as the applicant was not covered by the Pension Rules, his resignation accepted by the competent authority is to be treated as voluntary retirement according to the applicant. After the retirement of the applicant as a result of successive pay revisions pension was revised and enhanced for retired pensioners. However, no such benefit became available to those who were covered by C.P.F.Scheme. The IVth Central Pay Commission recommended exgratia payment to pre 1.1.1986 retirees. In partial acceptance thereof Railway Board issued Annexure.A4 order dated 30.6.1988 granting exgratia payment to the widows/families of Railway Servants, retired from service prior to 1.1.1986. The benefit was due only after death of those who had superannuated. There has been a series of litigations and

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it was held in many cases that the benefit would be due to the widows/families of those who quit service by resignation/voluntary retirement also after completion of 30 years of service. While so on acceptance and implementation of the report of the Vth Central Pay Commission, Annexure.A1 order was issued granting exgratia payment with effect from 1.11.1997 to C.P.F. retirees who are alive. The applicant claimed the exgratia payment in his representation explaining his eligibility. His claim was rejected by Annexure.A2 order. Aggrieved by that the applicant has filed this application seeking to challenge Annexure.A2 and Annexure.A1 to the extent it denies the benefit of exgratia payment to those who resigned from service after completion of 30 years of service.

3. The respondents contend that the benefit of exgratia payment as is seen from Annexure.A1 being due only to those who superannuated between 1.4.1957 and 31.12.1985 the applicant who resigned from service has no right to claim it. It is further contended that the Railway Board has in its letter dated 13.11.98 (Annexure.R.1) clarified that SRPF (C) beneficiaries who had retired from service otherwise than superannuation are not eligible for exgratia payment. The respondents have placed reliance also on a judgment of the Mumbai Bench of the Central Administrative Tribunal in OA No.140/2000 and 664/2000 titled Smt.Kamal Madan Ghogale and another Vs. Union of India and others wherein it was held that the applicants in those cases who resigned from service after 23 years of service was not entitled to

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exgratia payment. They have also relied on the judgment of the Hon'ble Supreme Court in Union of India and others Vs. Rakesh Kumar etc. 2001(1) SCSLJ 453. The respondents plead that the application may be dismissed.

4. I have with meticulous care gone through the pleadings and all the materials placed on record and have heard the argument of Shri T.C.Govindaswamy, the learned counsel of the applicant and of Smt.Rajeswari Krishnan, the learned counsel appearing for the respondents. The only question that arises for consideration in this Original Application is whether the applicant who was covered by the SRPF (C) on quitting service after completing thirty years on acceptance of his resignation by the competent authority is entitled to the benefit of exgratia payment in terms of the Railway Board Order RBE No.19/98 (F(E)III/97/PNI/Ex.Gr/5) dated 27.1.1998 (A1)?

5. Shri Govindaswamy, the learned counsel of the applicant inviting our attention to the fact that the allegation in the application that the applicant had put in more than 30 years of service, that he was granted additional contribution of CPF as provided in Rule 1314 of Indian Railway Establishment Code Volume I, as his service was found to be good and efficient and that his resignation was accepted by the competent authority have not been denied by the respondents argued that the resignation of the applicant should be construed as voluntary retirement after having completed 30 years of service as provided in Rule

2046 of the IREM. Because in the case of employees covered by SRPF (C) it did not make any difference regarding the terminal benefits whether it was by resignation or retirement, the nomenclature in the application for quitting service should not be treated as a ground to deny the benevolent provision subsequently made by the Railway Board to ameliorate the condition of SRPF (C) retirees who are suffering at the terminal part of their life not having been given any benefit which their counterparts who opted for pension scheme were enjoying, argued the learned counsel. He also referred us to the ruling of the Apex Court in JK Cotton Spinning and Weaving Mills Co. Limited Vs. State of UP and others, 1990 SCC (L&S) 570 especially to para 8 which reads as follows:

8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee is voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (i) of Section 2(s) of the State Act. In Santhosh Gupta case (1980) 3 SCC 340 Chinnappa Reddy J observed as under (SCC p.342 para 5).

"Voluntary retrenchment of workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination by the employer of the service of a workman"

(Here the word 'retrenchment' has reference to 'retirement').

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The above observation clearly supports the view which commends itself to us. We are, therefore, of the opinion that the High Court was not right in concluding that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employee under Section 6/N. We are also of the view that this was a case of voluntary retirement, within the meaning of the first exception to Section 2(s) and therefore, the question of grant of compensation under Section 6-N does not arise. we, therefore, cannot allow the view of the High Court to stand."

6. The learned counsel of the respondents meeting these contentions invited our attention to para 2 of the Railway Board Circular RBE No. 19/98 (Annexure.A1) which states:

The exgratia payment is not admissible to (a) those who were dismissed/removed from service and (b) those who resigned from service.

and to Railway Board letter dated 13.11.98 wherein it is clarified that "Those SRPF(C) beneficiaries who had retired from service other than on superannuation viz. on medical invalidation, voluntary retirement, compulsory retirement as a measure of penalty, premature retirement, retirement on permanent absorption in or under a Corporation or a company or body corporate or enterprises etc. are not eligible for grant of exgratia payment. The counsel argued that since the order Annexure.A1. itself excludes those who resigned from service from the eligibility to the benefit the

applicant's claim has only to be rejected. She further argued that there is no illegality in the clause in A.1 which denies the benefit to those who resigned from service. The learned counsel placed reliance on the ruling of the Mumbai Bench of the Tribunal in Smt. Kamal Madan Ghoghale and another Vs. Union of India and others decided on 1st March, 2002 as also the judgment of the Hon'ble Supreme Court in Union of India and others Vs. Rakesh Kumar etc..2001(1) SC SLJ 453.

7. In coming to a finding on the apple of discord in this case the historical backdrop in which the RBE No. 19/98 (Annexure.A1) in the case came to be issued has to be properly understood. In the Railways as also in other services among the retirees there were two groups or classes namely those who were governed or those who had chosen the CPF Scheme and those who were governed by the Pension Rules. Those who were governed by the CPF Scheme on their retirement get the lumpsum amount due in terms of the provisions of the Scheme. They were not entitled to any further benefit or revision. However, on the recommendation of the successive Pay Commissions when pay scales and pay structure of serving employees were revised and made better a corresponding hike was given to the pensioners also. Those who were covered by the CPF Scheme were therefore, at a disadvantage. It was with a view to ameliorate their conditions that the IVth Central Pay Commission recommended grant of exgratia payment to CPF retirees. The Government however, accepted the recommendation only in part and

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granted exgratia payment at the rate of Rs.150/- p.m. to the widows/families of deceased P.F. retirees. The Vth Central Pay Commission also made recommendation to grant exgratia payment to CPF retirees. It was on acceptance of that recommendation that the Annexure.A1 order was issued by which exgratia payment at the rate of Rs.. 600/- p.m. was to be granted w.e.f. 15th April, 1997 to the SRPF (C) beneficiaries who retired between Ist April, 1957 and 31st December, 1995, on condition, inter alia, that they should have put in atleast twenty years of service before their superannuation. The intention as discernible from Annexure.A1 was that those who retired without pension having opted to be covered by CPF Scheme would be entitled to get ex-gratia payment provided they had put in 20 years of satisfactory service before retirement.

8. In the background discussed above, I shall examine whether the applicant who after putting in a service of 30 years of good and efficient service, quitted the service on resignation, was granted special contribution under Rule 1314 of the Indian Railway Establishment Code as a SRPF(C) beneficiary is entitled to the exgratia payment under Annexure.A1. order. It is profitable to extract paragraphs 1 and 2 of Annexure.A1. order. Hence that portion is reproduced as under:

"Based on the recommendations of the Vth Central Pay Commission, the President is pleased to grant ex-gratia payment to the SRPF (C) beneficiaries who retired between the period Ist April, 1957 to 31st December, 1985 at the rate of Rs.. 600/- p.m. w.e.f.. Ist November, 1997, subject to the

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condition that such persons should have rendered at least 20 years of continuous service prior to their superannuation for becoming eligible to the ex-gratia payment. They will also be entitled to Dearness Relief at the rate of 5% w.e.f. 1.11.97.

2. The ex-gratia payment is not admissible to (a) those who were dismissed/removed from service and (b) those who resigned from service."

9. With reference to the words "prior to their superannuation" contained in the first paragraph the Railway Board took the stand that this benefit would be due only to those who retired on superannuation and not even to those who have voluntarily retired after putting twenty years of service or retired on medical invalidation irrespective of the number of years of service rendered by them. This stand was made clear by the Railway Board in the clarificatory order dated 13.11.1998 (Annexure.R.1) that SRPF (C) beneficiaries who retired from service otherwise than on superannuation would not be entitled to the ex-gratia payment under RBE No. 19/98. The contention of the Railway Administration that in the light of the provisions in RBE No. 19/98 and the clarificatory order dated 13.11.98 an SRPF(C) beneficiary who had put in 25 years of service and had voluntarily retired would not be entitled to ex-gratia payment was not accepted by the Madras Bench of the Central Administrative Tribunal in OA 1106/2000. The Bench held that the applicant in that case was entitled to the ex-gratia payment. Although the Railway Administration carried the matter to the Hon'ble High Court of Madras the Writ Petition numbered as 12949/2001 and WMP 19041/01 were dismissed. Special Leave Petition against the said decision

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SLP No.22120/2001 was dismissed by the Apex Court. Relying on the ruling of the Madras Bench which was confirmed by the Supreme Court the Ernakulam Bench of the Tribunal in OA 737/2002 KK Mathai Vs. Union of India and others set aside the clarificatory order of the Railway Board dated 13.11.98 (Annexure.R.1 in this case and A.7 in OA 737/02). It was held that the applicant in that case who after 24 years of service retired voluntarily was entitled to the ex-gratia payment. I am in respectful agreement with the view taken by the Madras Bench of the Tribunal as also by this Bench. Even those who were compulsorily retired, voluntarily retired and retired on medical invalidation and those who were in receipt of any pension were entitled to revision of pension resultant to successive Pay Commission Reports. Therefore, the benefit of ex-gratia payment should be available to those SRPF (C) retirees, if they would have been entitled to any sort of pension, had they not opted for SRPF(C). Only those who were dismissed/removed from service or unilaterally quit service without permission could be denied the benefit. I am emboldened to take this view on the basis of well accepted and established principle of interpretation that any benevolent statute or scheme intended to grant a special benefit on a class of persons has to be interpreted liberally in favour of the beneficiary of the statute or scheme.

10. Viewed in that light any Railway Servant who has retired from service after completion of twenty years of service would be entitled to the ex-gratia payment. In this

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case the applicant has resigned from service although he had completed more than thirty years of service. The learned counsel of the respondents argued that even if those who voluntarily retired are entitled to the ex-gratia payment a person who resigned from service would not be entitled to the benefit because according to Para 311 of the Mannual of Railway Pension Rules no pensionary benefits or compassionate grant is to be granted to a Railway Servant who resigned from service. There is no force in this argument because the applicant in this case is not covered by the Pension Rules. He is not seeking any benefit under the Pension Rules. Further in Para 311 of the Mannual of Pension Rules itself it is stated that voluntary retirement from service after 30 years of service in terms of para 620 or 622 would not constitute resignation within the meaning of these Rules. As observed by us supra for SRPF (C) beneficiaries the manner of quitting of service after 30 years either by way of resignation which is accepted for good and sufficient reason or by retirement did not make any difference at all. It is evident from Annexure.A3 that the resignation of the applicant was accepted by the competent authority as he was satisifed that there was good and sufficient reason and that there was no vigilance case pending. It is also not disputed that the service of the applicant having been found good and efficient he was granted the additional contribution under Rule 1314 of the Indian Railway Establishment Code. If the applicant had worded his letter of quitting service as voluntary retirement instead of resignation he would undoubtedly have

been allowed to retire, because the competent authority was satisfied about the reason and had found the service of the applicant good and efficient. At the time when he quit service after completion of 30 years of service being an SRPF (C) beneficiary it made little difference whether the quitting of service was letter of resignation or of voluntary retirement especially when he was granted the special contribution under Rule 1314 of IREC. Merely because in his letter requesting for retire from service of his completion of 30 years of good and efficient service he did not seek 'retirement' specifically, as it hardly made any difference from resignation accepted for proper reasons at this point of time the applicant cannot be denied the benefit due under Annexure.A1 order intended to ameliorate the condition of those who retired opting SRPF(C) instead of Pension Scheme. I am of the considered view that taking a technical stand that the applicant quit service not by voluntary retirement but by resignation would be opposed to the spirit of the scheme under which Annexure.A1 order was issued. I am fortified in taking the view by the following observations of the Apex Court in JK Cotton Spinning and Weaving Mills Co. Ltd. Vs. State of UP and Another (1990 SCC L&s 570) at para 8 of the judgment.

".....The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (i) of Section 2(s) of the State Act."

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Although what was considered by the Apex Court was whether termination of service by resignation would amount to voluntary retirement or retrenchment the principle applies to the situation in this case. In the background in which the applicant quit service after completion of 30 years of good and efficient service, having become entitled to special contribution under Rule 1314 of the Indian Railway Establishment Code although in his letter for release from service I am of the considered view that the leaving of service by the applicant should be treated as voluntary retirement. Therefore the applicant has to be found eligible for receipt of ex-gratia payment under RBE No. 19/98 (A1).

11. The judgment of the Mumbai Bench of the Tribunal in OA 140/2000 does not apply to the facts of this case as in that case the applicant had only 24 years of service when he resigned. Further the said OA was disposed of relying the ruling of the Apex Court in Union of India and others Vs. Rakesh Kumar etc. 2001 (1) SCSLJ 453. The Apex Court in that case was considering the question whether employees of BSF who resigned from service under Rule 19 of the BSF Rules before completing 20 years of service which is the period of eligibility for voluntary retirement would be entitled to pension under the CCS (Pension) Rules in view of Rule 49. The Apex Court held that those who resigned from service without qualifying service would not be entitled to pension under CCS (Pension) Rules. The above ruling does not relate

to a situation like this or to the claim for ex-gratia payment which is granted de hors the Pension Rules. The reliance placed on this ruling by the Mumbai Bench of the Tribunal, I observe with great respect, was misplaced.

12. In view of the finding that the applicant is eligible for the benefit of ex-gratia payment under RBE No. 19/98 (Annexure.A1) it is not necessary to consider the prayer (b) in paragraph 8 of the OA concerning the validity of denying the benefit to those who resigned after 30 years of service.

13. In the result, in the conspectus of the facts and the circumstances and the position of ^{law} ~~rules~~ as discussed above, I allow the application, set aside Annexure.A2 order declaring that the applicant is entitled to the grant of ex-gratia payment as provided for in Annexure.A1 w.e.f.

1.11.1997 and direct the respondents to make available ~~to~~
the applicant the ex-gratia payment as admissible under RBE No. 19/98 (A1) to the applicant w.e.f. 1.11.1997. The arrears of ex-gratia allowance should be made available to the applicant at the earliest. The respondents are directed to comply with the above directions forthwith considering the fact that the applicant is aged 77 years. In any case implementation of the order should be made within a period of two months from the date of receipt of a copy of this order. No costs.

Dated the 4th day of March, 2003


A.V. HARIDASAN
VICE CHAIRMAN

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