

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A.24/2007

Friday the 16th day of November, 2007

CORAM:HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

S.Kalidas
Commercial Clerk,
Mettur dam R.S.
Residing at
Maruthappatti P.O., Harur Taluk,
Dharmapuri Dist. Applicant

By Advocate Mr.T.C.G.Swamy

V/s

- 1 Union of India represented by
General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai-3.
- 2 The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.
- 3 Maniammal,
W/o late R Sakkan,
Maruthappatti PO,
Harur Taluk, Dharmapuri Dist Respondents

By Advocate Mr.Thomas Mathew Nellimoottil. (1&2)
Mr.T.A.Rajan (R-3)

This application having been heard on 23.10.2007 the Tribunal delivered
the following on 16.11.2007.

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

The claim of the applicant in this OA is that he was entitled to
receive 50% of the ex gratia lumpsum compensation consequent upon the
demise of his father on 24/10/2000.



2 The brief facts are that the applicant is the son of Late Shri R.Sakkan who died due to an injury during the course of his duties as Gangman under the Section Engineer, Permanent Way/Tirupattur of Southern Railway, Palghat Division on 24/10/2000. The respondents have paid 50% of the family pension admissible in the case to the applicant and other 50% to the second wife who has been arrayed as respondent no.3 in the OA. Later on, the applicant was appointed on compassionate grounds as a Group 'D' employee and further promoted as a Commercial Clerk. In terms of the Annexure A-1, Railway Board's order No.R.B.E. No285/99 dated 5/11/1999, the dependent of the deceased government servant is entitled to ex gratia lump sum compensation of Rs.5.00 lakhs less the payment under the Workmen's Compensation Act already received by them. The respondent No.3 has made a representation to respondents claiming the benefit of ex gratia payment. Thereafter, the respondents have taken a decision to disburse the ex gratia lump sum in terms of Annexure A-1 to the dependents of the deceased government servant. When the applicant came to know that the entire amount of compensation was going to be paid to respondent no.3, he made the Annexure A-3 representation dated 10/11/2006, claiming 50% share in it.

3 Respondents in their reply submitted that since Shri R.Sakkan was run over by a train on duty and he was paid Rs.1,53,090/- under the Workmen's Compensation Act and the said amount was deposited with the Deputy Labour Commissioner, Salem and it was distributed between the respondent no.3 and the deceased railway servant's father to the tune of

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Rs.1,23,090/- and Rs.30,000/- respectively. Thereafter, the third respondent represented for the payment of Ex-gratia lumpsum compensation payable to the family of the employees who die in harness while on duty and the proposal to pay the same has been submitted to the Chief Personnel Officer/Madras on 2/2/2007 for onward transmission to the Railway Board who is final sanctioning authority. The respondents have, however, submitted that the applicant had not made any claim in this regard. They have also submitted that the term "family" has not been defined in the Annexure A-1 Scheme. In the absence of any such definition, the railway servant would be governed by Railway Servants (Extraordinary Pension) Rules 1993. The other contention of the respondents is that applicant is an earning member and he does not come within the term family as contained in the aforesaid rules and also not granted any amount under the Workmen's compensation act and hence the Annexure A-1 scheme is not applicable to him. The further contention of the respondents is that there are various settlement benefits under different schemes formulated by the Central Government and the definition of the term "family" for one benefit need not be the same for the other benefit. For example, "Family" under the State Railway Provident Fund means wife or wives, parents, children, minor brother, unmarried sister, deceased son's widow and children and when no parents of the subscriber are alive the paternal grand parent. For the Death Gratuity amount under the Railway Services (Pension) Rules, 1993, "family" means wife or wives, sons, unmarried daughters, widowed daughters and children of pre-

deceased son. For family pension under the Family Pension Scheme for Railway Servants 1964, "family" means wife, son/daughter including widowed/divorced daughter till he/she attains the age of 25 years or upto the date of his/her marriage/remarriage whichever is earlier, and parents who were wholly dependent on the Railway Servant when he was alive provided the deceased employee had left behind neither a widow nor a child. Thus according to the definition of term "family", as contained in the Railway Services (Extra-Ordinary Pension) Rules 1993 and according to the nature of benefits, the applicant does not come within the meaning of 'family' for payment of ex gratia lumpsum compensation vide Annexure A-1 Scheme and hence he is not eligible to receive the amount towards ex gratia lumpsum compensation.

4 Respondent No.3 has also filed a reply and she has also contented that applicant is not entitled to get 50% of ex gratia lumpsum compensation as he will not come within the purview under the Annexure A-1 Scheme. He further submitted that the deceased government servant had several liabilities and it was she who had cleared all of them and the applicant has not paid any amount to clear those liabilities. She has also submitted that it was she who had applied for the benefit under the ex gratia lumpsum compensation Scheme and therefore the benefit has to be given in full to her.

5 In the rejoinder, the applicant has submitted that the very fact that the applicant was drawing family pension itself indicate that he was a member of the family and that he was also the successor to the

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compensation payable as on the date of demise and not on any subsequent date. He has also submitted that the term "family" is not defined under the Railway Services (Extraordinary) Services 1993. He has also submitted that just because the applicant was not granted compensation under the Workman's Compensation Act, he should not be excluded from the purview of the term "family" for the purpose of payment of compensation in terms of Annexure A-1. The compensation under the Workman's Compensation Act is payable to the dependent as defined under the said Act and not to all members of the family but ex gratia payment on the other hand is in the nature of estate of the deceased and therefore it is payable to every successor/legal heir.

6 The applicant's counsel has also relied upon the order in OA-338/2005, T.Saraswati V/s. Union of India & Ors in which the applicant's mother who was a Railway Servant expired during the performance of duty and was granted ex gratia in accordance with the provisions of the DOPT order dated 11/9/1998 as extended to railway employees vide order dated 5/11/1999. After considering the rival contentions of the parties, this Tribunal passed the following order:-

"5. Arguments were heard and documents perused. The counsel for the applicant argued that in so far as ex-gratia is concerned, unlike the extraordinary pension, which is a recurring feature, it is a one time payment and as such, it has to be viewed from an entirely different angle. The term "family" has not been defined in the scheme. If so, it has to take only the literal meaning and under general meaning, family includes daughters and in the absence of any specific bar for married daughter being included as daughter, the term "family" should include married daughters as well. In this regard, the applicant's counsel relied upon the decision in the case of



Union of India V/s. Kantabai reported in 2004 (2) KLT 70 (Case No.82). The relevant portion of the above stated judgment reads as under:-

" In Section 123(b), clause (i) the dependents are mentioned as wife, husband, son and daughter. In sub-clause (ii) it is mentioned that in case of death of a passenger his parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a predeceased son, if dependent wholly or partly on the deceased passenger, but similar wording is not used in respect of the deceased mentioned in sub-clause (i). Had the frames of the Act intended to put the clause mentioned in sub-clause (ii) also to sub-clause (i), they would not have failed to mention the same in sub-clause (i). Therefore, on a plain reading of the Section it can be safely concluded that in respect of wife, husband, son and daughter, there is no condition that they should wholly or partly dependent on the deceased passenger. Since the applicant in this case is no other than the daughter of the deceased, she can be termed as dependent as defined under Section 123(b) sub-clause (i) of the Act. Since there is no ambiguity in the wording used in S. 123, and as the plain reading of S.123 is clearly indicating that the daughter comes within the definition of dependent irrespective of the fact whether she is married or unmarried and as the daughter is the claimant in this case, she is entitled to make the claim irrespective of the fact whether she is depending on the deceased father as on the date of the accident."

11. We have given our anxious consideration to the rival contentions of the parties. Admittedly, the term 'family' has not been defined in the scheme or conditions attached to the scheme. Clause 14 of the conditions is only general in nature and it cannot be stretched to borrow the definition of the term 'family' as given in the Railway Services (Extraordinary Pension) Scheme. For, if the definition has to be adopted, the wordings for this purpose would be different from the ones as contained in clause 14. Invariably, the following wordings would be used:-

"The words and expressions used and not defined but defined in shall have the same meanings respectively assigned to them in the"

12. Thus, when the term family has not been defined in the scheme and when the definition as in the Railway Services (Extraordinary Pension) Rules, cannot be borrowed, then, option is that the dictionary meaning of the term alone should be considered. We are fortified in this regard by the decision of the Apex Court in the case of **State of Gujarat v. Jat Laxmanji Talasji, (1988) 2 SCC 341**,

wherein it has been held as under:-

The expression "family" has not been defined in the Act. One has therefore to go by the concept of family as it is commonly understood, taking into account the dictionary meaning of the expression."

13. From the above point of view, family consists of father, mother, the children (i.e. son and daughter) and son or daughter cannot be qualified as unmarried to exclude married. That married daughter cannot thus be segregated from the family has been highlighted in the decision of the Apex Court in the case of *Savita Samvedi v. Union of India*, (1996) 2 SCC 380, wherein, the Apex Court has held as under:-

6. A common saying is worth pressing into service to blunt somewhat the Circular. It is —

"A son is a son until he gets a wife. A daughter is a daughter throughout her life."

The eligibility of a married daughter must be placed on a par with an unmarried daughter (for she must have been once in that state), so as to claim the benefit of the earlier part of the Circular, referred to in its first paragraph, above-quoted.

9. It was also pointed out before us that the Central Administrative Tribunal, Bombay Bench in one of its decisions in OA No. 314 of 1990 decided on 12-2-1992 (Annexure P-8) relying upon its own decision in *Ambika R. Nair v. Union of India*¹ in which the earlier Circular of the Railway Board dated 27-12-1982 had been questioned, held the same to be unconstitutional per se as it suffered from the twin vices of gender discrimination inter se among women on account of marriage. We have also come to the same view that the instant case is of gender discrimination and therefore should be and is hereby brought in accord with Article 14 of the Constitution. The Circular shall be taken to have been read down and deemed to have been read in this manner from its initiation in favour of the married daughter as one of the eligibles, subject, amongst others, to the twin conditions that she is (i) a railway employee; and (ii) the retiring official has exercised the choice in her favour for regularisation. It is so ordered."

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14. True, the above is in connection with allotment of accommodation, where there is a requirement of the retired railway servant to be taken care of and that situation is not available here. The concession afforded to the married daughter is qualified with the condition that she should be a serving railway servant and she shall have the obligation of providing shelter to her father. In respect of Ex Gratia which is purely to offset the loss of life of the family member such conditions are not there. But what is to be seen is the general legal principle. When a son marries he constitutes a different family as the term family means, the husband, the spouse and their children etc., Similarly, when a female marries, then also, her family shall include herself, her spouse and children. Thus, both the married sons and daughters are in the same legal position, both of them constitute their own separate families, and yet, the married son forms part of the family of his own parents as well, whereas the married daughter is denied this privilege. Here exactly lies the gender discrimination, as held by the Apex Court in the above case of Savita Samvedi.

15. The argument of the applicant that para 5 of the condition stipulating next of kin and next of kin including the married daughters cannot be brushed aside. For, in such cases, the amount paid, though not specifically spelt out in the orders or scheme, in all expectations, is not only for the welfare of the family members but also to perform the obsequies in respect of the deceased. Such an expense would have been incurred by the daughters, in the event of the deceased having no male issue.

16. The counsel for the applicant has also submitted that case could well be looked from another legal angle. When a railway servant dies in harness and while performing his duty, the ex gratia becomes payable. In other words, the same acquires the character of 'property' payable to the next of kin. In that case, the property has to go in the order as given in the Hindu succession Act., which includes married daughter, in the absence of other relatives such as spouse or sons. This also has substance.

17. Thus, the applicant has no doubt made out a case. Nevertheless, keeping in view the fact that Ministry of Personnel is the nodal Ministry for all such general orders and there being a specific provision vide para 15 of the terms and conditions, we feel it appropriate that the Railways should refer the matter to the Ministry of Personnel as well for their consideration and decision. While so considering the above observations, with particular reference to the dictum of the Apex Court in the case of Savita Samvedi (supra) should also be kept in mind and a just decision should be arrived at. Once the decision of the Department of Personnel is communicated, the same may

be followed by the Railways, as they did in respect of the very scheme itself. If the considered decision of the Department of Personnel enables the applicants to receive the ex gratia, the same shall be paid to them, subject to fulfilling the general formalities that are followed by the Railways in such cases. In case the decision of the Ministry of Personnel does not entitle the applicants to receive the ex gratia payment, the decision should be communicated to the applicant by way of a speaking and reasoned order. We accordingly order so.

18. As the Ministry of Personnel is also involved in this case, and perhaps, at their instance, some other organization may also be involved, no stipulation of time limit is made for compliance of this order. It is sanguinely hoped that the Respondents and other authorities concerned would accord due priority to this case, as the applicants have been fighting this battle for the past two years plus.

19. With the above observations and directions, the OA is disposed of. No costs.

7 Since this OA is similar to OA-338/05(supra), I would dispose it of with same direction. Accordingly, the Respondents 1 & 2 are directed to follow the same directions of this Tribunal as contained in Paras 17 and 18 of the OA 338/2005 as quoted above in this case also. As the matter is concerning about the terminal benefits of the deceased employee, receivable by the surviving members of the family, it is expected that the respondents would take appropriate decision in the matter at the earliest but not later than three months from the date of receipt of this order. The OA is accordingly disposed of. There shall be no order as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER

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