

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No. 256/2004

Wednesday, this the 21st day of September, 2005.

CORAM:

HON'BLE Mr. K. V.SACHIDANANDAN, JUDICIAL MEMBER

Rosa Vareed
W/o late O.Vareed
(Retired Gangman, Southern Railway, Alwaye)
Residing at : Nalkara House,
Karayamparambu, Karukutty P.O.
Ernakulam District

: Applicant

(By Advocate Mr. T.C.Govindaswamy)

Vs.

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 Personnel Officer
Southern Railway,
Palghat Division, Palghat

: Respondents

(By Advocate Mrs. Sumathi Dandapani)

The application having been heard on 21.09.2005, the Tribunal on the same day delivered the following:

ORDER (Oral)

HON'BLE Mr.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is an aged lady of 79 years. She has filed this O.A making specific averment that her late husband O.Vareed who was working as a Gang Man at Alwaye under the Permanent Way Inspector was covered under the State Provident Fund (Contributory) Rules. He retired from service on 30.06.1975. He has rendered a service of 30 years and five months. Her late husband was not

State Provident Fund (Contributory) Rules. He retired from service on 30.06.1975. He has rendered a service of 30 years and five months. Her late husband was not covered under Pension Rules. There was a series of orders of the Government of India granting upward revision of pension to those who retired in the past and also to those who retire in future. However, those who retired under the Contributory Provident Fund Scheme of the State Railway Provident Fund Rules were not granted any benefits. But as per Annexure A-1 and A-2 the benefit was granted to the retirees who had 20 years service. It was followed by several judicial announcements. Aggrieved by the inaction on the part of the respondents, the applicant has filed this O.A seeking the following main reliefs:-

- i. Declare that the non-feasance on the part of the respondents to sanction ex-gratia payment in the light of Annexure A-3 in favour of the applicant's late husband for the period from 01.11.1997 to 06.01.2000 is arbitrary, discriminatory, contrary to law and hence unconstitutional.
- ii. Declare that the non-feasance on the part of the respondents to grant ex-gratia payment to the applicant with effect from 07.01.2000 is arbitrary, discriminatory contrary to law and unconstitutional.
- iii. Direct the respondents to grant the life time arrears of ex-gratia payment due to the applicant's late husband for the period from 01.11.1997 to 06.01.2000 and direct further to grant the applicant ex-gratia payment in her name with effect from 07.01.2000 with all consequential arrears emanating therefrom.
- iv. Direct the respondents to grant the applicant interest at the rate of 12% per annum on the arrears of ex-gratia payment with effect from the date from which the said arrears fell due month after month, until the date of full and final settlement of the same.

2. The respondents have filed a detailed reply statement contending that the applicant ought to have come before this Tribunal within a period of one year from the date of the order Annexure A-6. As per Annexures A-1 and A-3 Scheme, persons who have completed at least 20 years service are entitled for the said benefit. Despite making a thorough search the details of the service of the applicant could not be found and the SRPF No. is also not available with the respondents.




3. I have heard the learned counsel for both the parties and given due consideration to the pleadings and arguments advanced by them.

4. This Court vide order dated 04.08.2005 directed the respondents to depute a competent person to find out the details regarding PF Account No. etc. and to report the facts by the next date of hearing.

5. When the matter came up for hearing, the learned counsel for respondents submitted that as per the direction, the Senior Divisional Personnel Officer has deputed the Personnel officer to find out the details. The PF No. and Society No. stands recorded as 45022 and 55192 respectively. It is categorically admitted that he is having SRPF number and the last wage period is also available as 30.06.1975 (Book No. 11 Page 88). It is submitted that the case of the applicant will be considered favourably by the respondents provided the applicant files an affidavit as stipulated in Annexure A-1 Clause 4 (b) (ii) "Affidavit sworn before a Magistrate".

6. On going through Annexure A-1 and A-3 the portion of Clause 4 is very relevant as far as the relief is concerned.

- a. The member of the family of the deceased CPF beneficiary eligible to receive ex gratia payment in terms of these orders shall make an application in the enclosed form in quadruplicate accompanied by all the relevant documents mentioned therein to the head of office in which the deceased CPF beneficiary last served before retirement or death while in service. In case a department has been abolished or merged with another department, the ex-gratia payment would have to be processed and sanctioned by the office in which the parent department of the retired employee was merged or the office which is keeping the record of the abolished office, as the case may be
 - b. It will be the responsibility of the applicant to satisfy the head of office that she/he is the widow/widower or eligible child of the government servant concerned to receive the ex-gratia payment under these orders and establish identity by production of documents such as CPF Account slips of the letter regarding settlement of Contributory Provident Fund Account or retirement orders or such other relevant records which may be in her/his possession. In case where no such records are available the applicants will be required to produce one of
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the following documents for establishing their bona fide.

(i) Succession certificate from a Court, or

(ii) Affidavit sworn before a Magistrate, or

(iii) Affidavit of the claimant on a plain paper supported by any two documents which may be acceptable to the head of department/sanctioning authority. In addition the widow/widower may also be required to produce an affidavit on a non-judicial stamp paper of the appropriate value applicable in the State in which she/he is residing to the effect that she/he was married to the deceased employee prior to his retirement. This may not be insisted upon if the sanctioning authority is otherwise satisfied on the basis of other evidence about the eligibility of the claimant.

7. The relevant portion of Annexure R-3 is also reproduced below :-

“ Sub:- Grant of ex-gratia payment to surviving SRPE(C) retirees of the period 01.04.57 to 31.12.85.
(No.F.(E) III/97/PNI/Ex.Gr/5 dated 27.01.98)

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 01.04.1957 to 31.12.1985 at the rate of Rs.600/- p.m with effect from 01.11.1997, subject to the condition that such person 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 55 w.e.f. 01.11.1997.”

8. Further, it is clear that as per Annexure A-3, the voluntary retirees are also entitled for the benefit which has been reiterated by this Tribunal by a series of decisions, one of which was produced by the learned counsel for the applicant (Annexure A-9). By order dated 04.03.2003, this Tribunal found that :

“ In the result, in the conspectus of the facts and the circumstances and the position of law as discussed above, I allow the application, set aside Annexure A-2 order declaring that the applicant is entitled to the grant of ex-gratia payment as provided for in Annexure A-1 w.e.f 01.11.1997 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. 01.11.1997. The arrears of ex-gratia allowance should be made available to the applicant at the earliest. The



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."

9. The learned counsel for applicant also submitted that identical matters have been taken before the Hon'ble High Court in Writ Appeal No.34399 of 2004 (S) and 3609 of 2005 and the High Court dismissed the Writ Appeals and upheld the decision of this Tribunal granting such benefits to identically placed employees.

10. Hon'ble High Court in Writ Appeal No. 34399/04 (S) dated 07.06.2005 has observed as under :-

" In the above said background we are not interested by the argument put in by the Standing Counsel for the Railways that the Government of India on 22.03.2004 by an Office Memorandum had clarified the Government Order, in line with the view taken by the Railway Administration. Likewise, reference to Ext.P8 namely the Board order dated 01.06.2004 also is not helpful to resolve the issue, especially since the Railway Board has not taken notice of the binding decision that had been taken by the Tribunal, upheld the High Court and also given the stamp of approval by the Supreme Court. We find no merit in the writ petitions and the same are dismissed. Parties are directed to bear their respective costs."

11. In the conspectus of facts and circumstances, the applicant is entitled to the benefit as prayed for. The learned counsel for respondents submitted that her case could only be considered if she files an affidavit as laid down in Annexure A-1 4 (b) (ii) sworn in before a Magistrate. Therefore, this Court directs that the applicant shall file an affidavit as above within a period of two weeks and the respondents shall consider and pass appropriate orders granting the benefit to the applicant within a time frame of two months on receipt of such affidavit.

12. The O.A is disposed of as above. No order as to costs.

Dated, the 21st September, 2005.


K.V.SACHIDANANDAN
JUDICIAL MEMBER