

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.307/08

Wednesday this the 22nd day of April 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

A.Kuppan,
S/o.Andi,
OT Assistant, Railway Hospital,
Southern Railway, Palghat.
Residing at 375/B, Railway Hospital Colony,
Kallekulangara, Palghat.Applicant

(By Advocate Mr.Shafik M.A.)

Versus

1. Union of India represented by General Manager,
Southern Railway. Chennai.
2. The Chief Personnel Officer,
Southern Railway, Chennai.
3. The Senior Divisional Personnel Officer,
Palghat Division, Southern Railways, Palghat.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 22nd April 2009 the Tribunal
on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant was the husband of Smt.Mallika, Ex- Sweeper-cum-
Porter, working with the Southern Railway, Palghat Division, who died while
in service on 28.6.2000. After her death the applicant was in receipt of
family pension at the rate of Rs.1275 + relief. Later, it was enhanced to
Rs.2500/- which is the minimum of the family pension payable with effect
from 29.6.2000, in terms of the Railway Board's letter No.F(E)
III/2000/PNI/16 dated 8.3.2000. After the applicant's remarriage on



10.7.2003 the payment of family pension was stopped to him and the minimum family pension of Rs.2500/- was sanctioned to his minor daughter Uma Maheswari. Consequent upon the death of Smt.Mallika, the Railway Administration had also sanctioned an amount of Rs.5,00,000/- as Ex-Gratia compensation to the family. However, vide Annexure A-2 dated 1.6.2007, the amount payable was restricted to Rs.2,94,050/- after deducting an amount of Rs.2,05,950/- paid to him as per an award by the Workmen's Compensation Authority. Vide Annexure A-1 letter dated 24.7.2007 issued by the Sr. Divisional Personnel Officer, Palghat the applicant was informed that in terms of the letter No.P(S) 500/P/Clarification/Vol.III dated 6.7.2006 of the Headquarters the benefit of Extra ordinary Family pension can be extended only to those who are not covered under Workman Compensation Act, 1923. Since his case was covered under the said Act, a Notice was issued to him to show cause why the Extra ordinary family pension should not be revised to Family Pension and to fix the same under normal Rules. As no reply was received by the respondents to the said notice, the Sr. DFM/PGT was advised to revise the Extraordinary Family Pension into Family Pension under Rules RSPR-1993 as originally sanctioned and to adjust the overpayment from the Ex-Gratia Lumpsum compensation amount payable to the applicant. According to the applicant, an amount of Rs.1,75,403 was deducted from the aforesaid amount of Ex Gratia on account of the alleged over payment of pension. He has, therefore, submitted that his minor daughter who is entitled to family pension shall be paid the same at the rate of 60% of the basic pay of the deceased employee subject to a minimum of Rs.2500/- with effect from 29.6.2000 in terms of Annexure A-4 OM dated 3.2.2000 issued by the Government of India, Ministry of Personnel, Public

Grievances and Pensions, Department of Pension and Pensioners' Welfare, according to which special benefits have to be sanctioned in cases of death and disability due to accidents in the performance of duties by the Government servant in terms of the recommendations of the 5th Central Pay Commission and there will not be any more distinction between widows without children or those with children for determination of the quantum of Extra-ordinary family pension.

2. In view of the above position, the applicant made Annexure A-5 representation dated 22.11.2007 requesting the respondents to pay him the entire Ex Gratia without any deduction of the amount paid under the Workmen's Compensation Act and also to refund the amount of Rs.1,75,403 shown to have deducted from the Ex-Gratia payment paid to him. He has also requested the respondents to enhance the family pension to 60% of the basic pay of the deceased employee subject to a minimum of Rs.2500/- with effect from 29.6.2000. As the respondents have not responded to the aforesaid representation, he has approached this Tribunal by filing the present O.A seeking to quash the Annexure A-1 and Annexure A-2 orders and for a declaration that he and his daughter, are entitled to family pension at the rate of 60% of the basic pay of the deceased employee subject to a minimum of Rs.2500/- with effect from the date on which family pension has been sanctioned to him and her i.e., with effect from 29.6.2000 and 11.7.2003 respectively. The applicant has also sought a declaration that the family of the deceased employee is entitled to get the full amount of Ex-Gratia compensation without any deduction and direct the respondents to disburse the withheld amount to the dependents of the deceased employee with 18% interest per annum.



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3. Counsel for the applicant has also relied upon an earlier order of this Tribunal dated 11.1.2007 on very same issue passed in O.A.105/06 and connected cases. The common question contained in all the aforesaid O.As was whether the enhanced family pension was applicable to the similarly placed applicants. The applicant in O.A.105/06 was a widow of late D Karunakaran, Ex Ticket Collector who met with an accident whilst on duty and died on 25.10.1979. Compensation on account of death while on duty was paid to the family of the deceased consequent to filing Workmen Compensation Case No.22/81 under Workmen's Compensation Act, 1923. The applicant therein was paid family pension of Rs.175/- from 1979 onwards and it was revised to Rs.1275/- plus dearness relief with effect from 1.1.1996. This Tribunal held that "when the drawal of family pension by the applicants have not been affected by virtue of their having received the compensation under the Workmen Compensation Act, 1923, modification of the quantum of such family pension also cannot be affected on the ground that the applicants were the beneficiary under the Workmen's Compensation Act, 1923 of compensation at the time of the demise of their spouse". Accordingly, those O.As were allowed and it was declared that the applicants therein were entitled to modified quantum of the family pension drawn by them and there was no question of recovery of the pension paid to them.

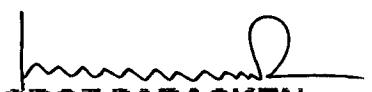
4. Counsel for the respondents has not disputed any of the facts as stated by the applicant. However, he has submitted that Annexure A-6 order of this Tribunal dated 11.1.2007 in O.A.105/06 and connected cases has been stayed by the Hon'ble High Court in W.P.(C) No.15054/07 and the same is still pending.

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5. In my considered view this O.A is fully covered by the Annexure A-6 order of this Tribunal dated 11.1.2007 in O.A.105/06 and connected cases. I, therefore, quash and set aside Annexure A-1 and Annexure A-2. I also declare that the applicant was entitled for family pension at the rate of 60% of the basic pay of the deceased Government servant subject to a minimum of Rs.2500/- with effect from 29.6.2000. Similar benefits are admissible to the applicant's minor daughter with effect from 11.7.2003. The applicant and his minor daughter are also entitled to get the full amount of Ex Gratia compensation of Rs.5,00,000/- without any deduction of the amount they have already received under the Workmen's Compensation Act, 1923. The respondents shall, therefore, pay the difference in the amount of Ex Gratia payment with 9% interest to the applicant and his minor daughter within a period of three months from the date of receipt of a copy of this order. They shall also refund the difference of family pension deducted from the applicant/his minor daughter with 9% interest within the aforesaid period. With the aforesaid directions, the O.A is allowed. There shall be no order as to costs.

(Dated this the 22nd day of April 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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