

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.307/2004

Monday, this the 12th day of July, 2004.

CORAM;

HON'BLE MR K.V.SCAHIDANANDAN, JUDICIAL MEMBER

R.Varadappan,
145, Rajapuram,
Sooramangalam,
Salem-5. - Applicant

By Advocate Mr TC 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 Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

The application having been heard on 12.7.2004, the Tribunal
on the same day delivered the following:

O R D E R

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

The applicant joined the Railway service on
18.10.1945. On completion of 23 years, he voluntarily retired
from service on 20.7.1969. On 30.6.1988 the Railway Board has
issued an order granting ex-gratia payment to widows/families



of the Railway employees who were governed by the CPF scheme and who retired from service prior to 1.1.1986. Subsequently the Railway Board on 27.1.1998 issued another order extending the benefit of ex-gratia payment with effect from 1.11.1997 to all those who retired with 20 years of service under the CPF Rules prior to 1.1.1996. The applicant submits that he has made an application on 15.5.1998 to the third respondent for grant of ex-gratia benefit. Vide A-5 the respondents gave an assurance that the matter is being processed. In the meantime, the Railway Board vide A-8 order dated 13.11.1998 clarified that the scheme is applicable to those who have superannuated from service and not to those voluntarily retired from service. Thereafter the applicant made a representation dated 6.3.2003 which did not evoke any response. Aggrieved, the applicant has filed this application for the following reliefs:

- a) Declare that the applicant is entitled to be granted ex-gratia payment for the period from 1.11.1997 as provided for in A-4 and direct further to grant the applicant the consequential arrears thereof.
- b) Direct the respondents to grant the applicant interest at the rate of 9% per annum on the arrears of ex-gratia payment with effect from the date from which such arrears fell due month after month, until the date of full and final settlement of the same.



2. Respondents have filed a reply statement contending that the O.A. is highly barred by limitation and repeated representations will not revive the period of limitation. The applicant retired from service under the State Railway Provident Fund(SRPF) on 20.7.1969. The ex-gratia payment is not admissible to such of those SRPF(C) retirees who had retired from service voluntarily. The Contributory Provident Fund Scheme was in vogue, prior to the introduction of Pension Scheme in Railway. The Pension Scheme was introduced in Railway with effect from 1.4.1957. The rules governing the Provident Fund Scheme and its contribution are different from the rules governing the pension scheme. The respondents further contended that the IVth Central Pay Commission has recommended payment of ex-gratia monthly payment to the widows of those SRPF optees who had retired/expired prior to 31.12.1985. Similarly the Vth Central Pay Commission recommended ex-gratia payment to the surviving SRPF retirees who retired between 1.1.1957 and 31.12.1985, subject to the condition that the beneficiaries should have put in a minimum continuous service of 20 years prior to their superannuation. As per the condition stipulated, those employees who had retired on superannuation, subject to the conditions being fulfilled, are only eligible for ex-gratia payment. It was specifically clarified that such of those SRPF(C) beneficiaries who had retired from service to medical invalidation, voluntary retirement and compulsory retirement as a measure of penalty, premature retirement, retirement on permanent absorption etc. are not eligible for the ex-gratia payment in terms of Railway Board's letter dated 13.11.1998.



As the applicant has been retired voluntarily, he is not entitled to get the ex-gratia payment.

3. The applicant has filed a rejoinder contending that the Railway Board letter dated 13.11.1998 is no longer in force, the same having been set aside by the C.A.T., Madras Bench affirmed by the High Court of Judicature Tamil Nadu and by the Hon'ble Supreme Court (R-1). Hence the applicant is entitled to get the benefit. The IVth Central Pay Commission recommended ex-gratia payment both to the CPF retirees and also to widows of such retirees, but it was implemented only as regards the widows of CPF retirees. The Vth Central Pay Commission also recommended the same for CPF retirees. The condition was that the employee should have had 20 years of service at the time of retirement and nothing more.

4. I have heard Shri T.C.Govindaswamy, learned counsel for the applicant and Shri Thomas Mathew Nellimoottil, learned counsel for respondents. I have also gone through the various pleadings, evidence and material placed on record.

5. Learned counsel for the applicant submitted that since A-8 order of the Railway Board has already been set aside by the competent authority/Court, it has no legs to stand. In O.A.No.210/2002, this Bench of the Tribunal has elaborately dealt with an identical case and held that the applicant therein was entitled to get ex-gratia payment. Learned counsel for the respondents on the other hand argued that the case of the applicant is not applicable to the facts and

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circumstances of the case in O.A.210/2002. Moreover, the Tribunal did not declare any dictum in that case.

6. It is an admitted fact that vide A-2, the voluntary retirement of the applicant was accepted with effect from 20.7.1969. Vide A-4 order the Railway Board has passed an order granting ex-gratia payment to widows of those SRPF(C) optees who had retired/expired prior to 31.12.1985. The operative portion of the said order is reproduced below:

"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 1st April 1957 to 31st December, 1985 at the rate of Rs.600/- p.m. w.e.f. 1st November 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 5% w.e.f. 1.11.97."

(emphasis supplied)

From a reading of the above, it is clear that the very intention of the respondents was to grant ex-gratia payment to SRPF(C) beneficiaries who retired between 1.4.1957 to 31.12.1985 on 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. But vide order dated 13.11.1998(A-8), the Railway Board has put certain restrictions and interpreted that the ex-gratia payment is admissible only to those who had retired on superannuation subject to fulfillment of the condition that the superannuated SRPF(C) beneficiaries should have rendered at least 20 years of continuous service prior to their



superannuation. The rationality and reasoning of this order has been challenged in various Tribunals. In a similar situation, the Madras Bench of this Tribunal in O.A. No.1106/2000 has held that the applicant therein was entitled to ex-gratia payment. The matter was taken before the High Court of Tamil Nadu in Writ Petition No.12949/2001 and W.M.P.No.19041/2001 which were dismissed. Special Leave Petition(R.1 dated 9.1.2002) against the said decision was dismissed by the Apex Court. Following by the said decision, this Bench of the Tribunal in O.A.No.737/2002 has set aside the clarificatory order of the Railway Board dated 13.11.1998 and directed to pay ex-gratia payment despite the fact that the applicant therein retired voluntarily. Again this Bench of the Tribunal had occasion to consider in detail an identical case in O.A.No.210/2002 and by order dated 4.3.2004 the Tribunal allowed the application granting ex-gratia payment to the applicant therein. For better elucidation, the relevant portion of the order is reproduced as under:

".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 granted exgratia payment at the rate of Rs.150/- p.m. to the widows/familites of deceased P.F. retirees. The Vth Central Pay Commission also 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 1st April, 1957 and 31st December, 1995, on condition, inter alia, that they should have put at 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 exgratia 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 are 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 recommendation of the Vth Central Pay Commissioner, the President is pleased to grant exgratia payment to the SRPF(C) beneficiaries who retired between the period 1st April, 1957 to 31st December, 1985 at the rate of Rs.600/- p.m. w.e.f. 1st November, 1997, subject to the condition that such persons should have rendered at least 20 years of continuous service prior to their superannuation for becoming eligible to the exgratia payment. They will also be entitled to Dearness Relief at the rate of 5% w.e.f. 1.11.1997.

2. The exgratia 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.R1) that SRPF(C) beneficiaries who retired from service otherwise than on superannuation would not be entitled to the exgratia 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 exgratia payment was not accepted by the Madras Bench of the Central Administrative Tribunal in O.A.1106/2000. The bench held that the applicant in that case was entitled to the exgratia 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 in 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 O.A.737/2002 KK Mathai Vs Union of India and others set aside the clarificatory order of the Railway Board dated 13.11.98 (Annexure.R1 in this case and A.7 in O.A.737/02). It was held that the applicant in that case who after 24 years of service retired voluntarily was entitled to the exgratia payment. I am in respectful agreement with the view taken by the Madras bench of the Tribunal as also by this Bench. Even those were compulsorily retired, voluntarily retired and retired on medical invalidation and those who were in the receipt of any pension were entitled to revision of pension resultant to successive Pay Commission Reports. Therefore, the benefit of exgratia 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 exgratia payment. In this 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 exgratia payment a person who resigned from service would not be entitled to the benefit because according to para 311 of the Manual 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 manual of pension rules itself is state

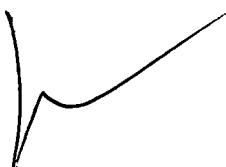


that voluntary retirement from service after 30 years of service in terms of para 620 or 622 would not constitute resignation within the meaning of these Rules. As observed by us supra for SRPF(C) beneficiaries the manner of quitting of service after 30 years either by way of resignation which is accepted 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 satisfied 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 U.P. and another (1990 SCC L&S 570) at para 8 of the judgement.

"...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."

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 application 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 exgratia payment under RBE No.19/98(A1).

11. The judgement of the Mumbai Bench of the Tribunal in O.A.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 O.A. 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 of 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 exgratia payment which is granted dehors the Pension rules. The reliance placed on this ruling by the Mumbai Bench of the Tribunal, I observe with great respect, was misplaced."

7. In the result, I declare that A-8 is no longer in existence. If A-8 goes, it follows that the applicant is entitled to get the benefit as prayed for. Respondents are directed to make available to the applicant the ex-gratia payment as admissible under A-4 order dated 27.1.1998 within a period of two months from the date of receipt of copy of this order. No costs.

Dated, the 12th July, 2004.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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