

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 338 of 2005

Thursday, this the 3rd day of August, 2006

C O R A M :

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

1. T. Saraswati,
D/o. M. Devi, C/o. A. Geetha,
No.37, Old Poonnthurai Road,
Back of Central Theatre,
Erode : 1
2. A. Geetha,
D/o. M. Devi,
No.37, Old Poonnthurai Road,
Back of Central Theatre,
Erode : 1
3. R. Kavitha,
D/o. M. Devi,
No.37, Old Poonnthurai Road,
Back of Central Theatre,
Erode : 1

... Applicants

(By Advocate Mr. T C Govindaswamy)

versus

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 Mr. P. Haridas)

This application having been heard on 26.07.06, the Tribunal on 3.8.06 delivered the following:

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

Whether the applicants whose mother, a railway servant expired during performance of official duties, are entitled to the ex gratia payment in accordance with the provisions of DOPT order dated 11-09-1998 as extended to the Railway employees, vide order dated 5th November, 1999.

(a) The applicants are the daughters of Late M. Devi who expired on 20.02.2000 while working as a Sweeper in the health Inspector's Office, Southern Railway, Erode, Palghat Division. Her death was on account of an injury sustained by her in the course of and while in discharge of her duties. The Railway remitted an amount of Rs. 1,89,560/- towards compensation payable under the Workmen's Compensation Act, 1923 before the Commissioner under the said Act at Salem. However, the amount was returned to the Railways on the ground that the applicants herein are the married daughters of the workman and that the married daughters do not come under the definition "dependents", within the meaning of Workmen's Compensation Act.

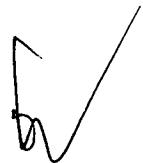
(b) The applicants came to know that they are entitled to be granted the ex-gratia lumpsum compensation as provided for in the Railway Board's order No. R.B.E. 285/1999 dated 5.11.1999. A representation dated 5.10.2004 was addressed to the PensionAdalat conducted by the second respondent. The first

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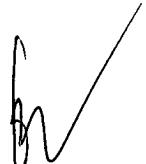
applicant was informed that the matter is under examination. Later, the first applicant received another letter dated 2.12.2004 stating that the applicant's claim was rejected as "normally married daughters do not form part of the family".

2. Respondents' stand in respect of entitlement of the applicants to the claim is as under:-

- (a) The relevant Scheme ^{does} not envisage any rule to entitle ex-gratia payment. There is no illegality and arbitrariness as alleged.
- (b) Married daughters do not form part of family. Once daughters get married the element of dependency does not arise.
- (c) On receipt of reply from the Headquarters to whom the matter has been referred, the papers will be processed as per the decision of the Chief Personnel Officer, Madras.
- (d) Based on the Vth Pay Commission recommendations, the President was pleased to decide that the families of Central Government civilian employees who die on or after 1.8.1997 in harness in the performance of their bonafide official duties under various circumstances shall be paid the ~~following~~ ex-gratia lumpsum compensation. The above decision was communicated by the O.M. dated 11.09.1998. In the said Memorandum, there is no mention regarding the family members eligible to receive the ex-gratia lumpsum compensation. However, it has been stipulated in



Condition No. 14 that any related issues not specifically covered in these orders shall be decided in terms of relevant provisions in this regard contained in the Central Civil Services (Extra Ordinary Pension) Rules as amended from time to time and the instructions issued thereunder. Corresponding to the Central Civil Services (Extra Ordinary Pension) Rules, there is a separate Railway Services (Extra ordinary) Pension Rules for Railway Servants. These rules apply to all Railway servants other than those to whom the Workmen's Compensation Act, 1923 applies. These rules have been made by the President under the proviso to Article 309 of the Constitution for the purpose of providing some compensation in the case of disability or death as a result of accident in the course of service of Railway Servants to whom the Workmen's Compensation Act is not applicable. Thus the purpose of the Railway Services (Extra Ordinary Pension) Rules and Workmen's Compensation Act is to provide some compensation in the case of disability or death as a result of accident in the course of service. The Married daughters are excluded from the definition "dependants" in the Workmen's Compensation Act thus making them not eligible to receive any benefits under that Act in respect of the death of the Railway servant. Similarly, the married daughters are excluded from the benefits under the Railway Services (Extra Ordinary Pension) Rules, as Rule 13(2) (iii) of the Railway Services (Extra Ordinary Pension) rules stipulates that the family pension under this Rule in the case of death of a Railway servant is tenable to unmarried daughter or minor sister until marriage or until she attains the age of 25 years whichever occurs earlier.

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3. Rejoinder has been filed, by and large reiterating the stand taken in the O.A.

4. In the additional reply, the respondents have annexed the Railway Services (Extraordinary) Pension Rules.

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 vs. 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 dependants 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 dependant 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

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wife, husband, son and daughter, there is no condition that they should wholly or partly dependant on the deceased passenger. Since the applicant in this case is no other than the daughter of the deceased, she can be termed as dependant 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 dependant 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."

6. It has also been argued by the counsel for the applicant that there is a provision that under clause 5 of the condition, it has been provided that Railways also pay compensation to the next of kin of passengers killed in train accidents. Therefore, the ex-gratia compensation admissible in terms of clause (a) of para 5 of these orders shall be reduced by the compensation, if any, received by the next of kin of Central Government Civilian Employees killed in train accidents while travelling on duty." This goes to show that the entitlement is to next of kin and as such, in the case of the applicants' mother, save the applicants, there being no other next of kin, the compensation is payable to them.

7. Per contra, the counsel for the respondents invited our attention to the following two clauses attached to the scheme:

(a) Any related issue not specifically covered in these orders shall be decided in terms of the relevant provisions in this regard contained in the Central Civil Services (Extraordinary Pension) Rules as amended from time to time and the instructions issued thereunder.



(b) Where any doubt arises as to the interpretation of the provisions of these orders, it shall be referred to the Department of Pension & Pensioners' Welfare for decision.

8. The learned counsel for the respondents argued that as per para 14, related issue not specifically covered in these orders are to be decided in terms of the relevant provisions in this regard contained in the Central Civil Services (extraordinary Pension) Rules and in the absence of the definition of the term 'family' in the scheme, the same has to be borrowed from the extraordinary pension rules and the same is as under:-

13(1) A family pension shall take effect from the day following the death of the railway servant or from such other date as President may decide.

(2) A family pension shall ordinarily be tenable -

- (i) in the case of a widow or mother until death or remarriage, whichever occurs earlier;
- (ii) in the case of minor son or minor brother, until he attains the age of twenty five years;
- (iii) in the case of an unmarried daughter or minor sister, until marriage or until she attains the age of twenty five years whichever occurs earlier;
- (iv) in the case of a father, life.

Note: The family pension of a widow shall cease on re-marriage; but when such re-marriage is annulled by divorce, dissolution or death of the second husband, her pension may be restored upon proof that she is in necessitous circumstances and otherwise deserving.

9. It is in reply to the above, the counsel for the applicant stated that



ex-gratia payment being a lump sum payment, the definition of the term 'family' as contained in the extraordinary pension rules cannot apply. The counsel also argued that when there is no distinction between married and unmarried son, ousting the married daughter from the membership of the family would amount to gender discrimination.

10. The counsel for the respondents submitted that in case of genuine difficulties in interpreting the provisions, clause 15 of the conditions attached to the scheme should be pressed into service, i.e. reference to the Ministry of Personnel.

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"

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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

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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."

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

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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~~ ^{no} stipulation of time is made limit 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.

(Dated, the 3rd August, 2006)



K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN