

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 350 of 2008

Wednesday, this the 26th day of November, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

R, Varadappan,
S/o. Ramasamy,
Door No. 145, Rajapuram,
Sooramangalam, Salem : 636 005

... Applicant.

(By Advocate Mr. TCG Swamy)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai - 3
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
3. The Senior Divisional Finance Manager,
Southern Railway, Palghat Division,
Palghat.

... Respondents.

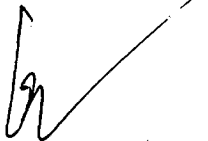
(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 26.11.08, this Tribunal on the same day delivered the following :

O R D E R

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant had retired from Railways on 20.07.1969 with more than 23 years of service on that date. He was not governed under the Pension Rules but under State Railway Provident Fund (Contributory) Rules



and therefore, not granted pension. The applicant was in Group-C service (First Fireman). He is aggrieved by Annexure A-5 order by which the applicant is denied of the enhanced rate of ex-gratia payment for the reason that the ex-gratia payment is being paid to the applicant only because this Tribunal directed the respondents to do so. The applicant is subjected to substantial prejudice and monthly recurring losses. Hence this O.A.

2. Respondents have contested the O.A. According to them, the applicant is not entitled to the claim in view a circular from the Railway Board dated 13.11.98, as per which ex-gratia payment is not available for those who have voluntarily retired.

3. Arguments were heard and documents perused. The main reason spelt out by the respondents in rejecting the claim of the applicant as could be seen from paragraphs 6 and 7 of the counter which read as under: -

"It is humbly submitted that the ex gratia payment is admissible to those employees who had retired on superannuation subject to the conditions fulfilled, and it was specifically clarified in the Railway Board's letter No. F (E) III/97/PNI/Ex-Gr/5 dated 13.11.98. That such of those SRPF Scheme beneficiaries who had retired from service due to (i) Medical Invalidation, (ii) voluntary retirement, (iii) Compulsory Retirements a measure of penalty, Premature retirement, retirement on permanent absorption in or under a Corporation or company or body corporate or incorporate etc., are not eligible for the ex-gratia payment.

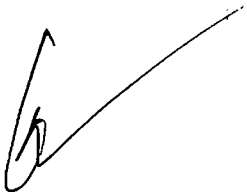
7. *It is humbly submitted that the applicant left service before superannuation on voluntary retirement. Hence, the applicant is not eligible for ex gratia payment as per the instruction of the Railway Board letter No. No. F (E) III/97/PNI/Ex-Gr/5 dated 13.11.98. However, as per the order dated 12-07-2004 of this Tribunal in OA 307/2004, ex gratia payment has been*



arranged in favour of the applicant vide P.P.O. No. 0605219633 dt: 23/09/2008 with effect from 01/11/1997, at the rate of Rs 600/- plus relief @ 5% and from 01/04/2004 at the rate of Rs 900/- plus relief, due to merger of 50% Dearness Allowance as Dearness Pay."

4. Thus, Order dated 13-11-1998 has been pressed into service in denying the applicant the enhanced ex-gratia payment. But, it is this very order dated 13-11-1998, that was annexed as Annexure A-8 in the earlier O.A. 307/2004 as could be seen from para 6 of Annexure A-2 order dated 12th July 2004 of this Tribunal. The Tribunal has held in that order as under: -

"6..... 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 fulfilment of the conditions that the superannuated SRPF© 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 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."

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..."
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5. The respondents had challenged the above order of this Bench before the Hon'ble High Court in CWP No. 34399/2004 & 3609/2005. The High Court has made the following observations in its order dated 7th June, 2005:-

"10. The Ernakulam Bench noticing these, had held that a different view was not possible to be taken, and had allowed the application quashing Annexure A8 which was the circular of Railway Board R.B.E. No. 260/98 dated 13-11-1998. It is submitted by learned counsel for the respondents Sri V. Govindaswamy that there was no appeal from the above said order of the Tribunal. Further such decision had been followed in O.A. No. 210 of 2002 as well and at this time also, the decision was permitted to attain finality. According to the respondents, therefore, there was no legal right for the administration to stick on to the position that order dated 13-11-1998 of the Railway Board still held the field. It stood deleted from the 'Statute Book' and therefore, there was not even necessity for attacking the above order. Tribunal had appreciated the contentions as above and therefore, according to counsel, no interference is warranted.

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14. Although we can rest our judgment accepting the technical contention of the applicants that the Railway Administration was disabled from relying on an order which already been set aside for denying the benefit of ex-gratia, we may just refer to the argument adverted to by the respondents as above. We find that when Ext. P1 order (Annexure A-4) was issued on 27-1-1998, apparently the Administration had no intention to withhold the benefits to a group who had later on been carved out by order dated 13-11-1998, and by way of clarification.

15. We can read the definition of class of persons in almost all circumstances, from the order itself. Paragraph 2 of Ext. P1 order dated 27-01-1998 itself gives the clue as about the persons who perhaps might not have been eligible to the ex gratia benefits. The said clause reads as follows:

'The ex gratia payment is not admissible to (a) those who were dismissed/removed from service (b) those who resigned from service.'

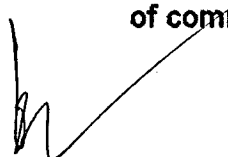
These alone were the categories declared as ineligible.....

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17. XXXXXX We find no merit in the writ petitions
and the same are dismissed..."

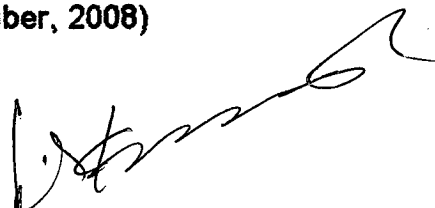
6. On the basis of the above order of the Tribunal as upheld by the High Court, the respondents had already released the ex-gratia to the applicant at the rate as then prescribed. It is, however, through Annexure A-4 order dated 15-11-2006 that there has been certain revision in the quantum of Ex-gratia amount, which was quantified for Group C services at Rs 750/- (of course, plus attendant allowances/reliefs, as admissible) This increase, vide para 4 of Annexure A-4, the authorities had to 'suo-motu' effect to the then existing ex-gratia. This has been denied to the applicant. Such a rejection of the claim is thoroughly illegal. For, the entitlement of the applicant to the ex-gratia has already been ascertained and declared by the Court and acted upon as well by the respondents. Axiomatically, whenever there is any increase in the quantum of the ex-gratia payment, the same should be available to the applicant.

7. Hence, O.A. is allowed. It is declared that the benefit of Annexure A-4 order dated 15-11-2006 is fully available to the applicant. Respondents are, therefore, directed to work out the ex gratia amount payable to the applicant and from the same after deducting the amount already paid, the balance should be paid to the applicant, within a period of three months from the date of communication of this order.



8. Under the above circumstances, there shall be no order as to costs.

(Dated, the 26th November, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.