

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 9/2011

This the 27th day of January, 2011.

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Smt. Kamla Mishra wife of late Shri Jagdish Narain aged about 62 year
r/o House No. 511/74, Old Badshah Nagar, New Hyderabad, Lucknow.

Applicant

By Advocate: Sri Raj Singh

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Dy. Chief Mechanical Engineer (Works), Carriage and Wagon Workshop, Alambagh, Lucknow.
3. The Senior Accounts Officer (Works) Carriage and Wagon Workshop, Alambagh, Lucknow.

Respondents

By Advocate: Sri B.B. Tripathi for Sri N.K. Agrawal

ORDER (Dictated in Open Court)

By Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Heard both counsel for the parties.

Applicant's husband late Jagnish Narain Mishra T. No. 219/A was a railway employee who was removed from service w.e.f. 17.6.1978. Nevertheless, he was entitled to his G.P.F. amount to the tune of Rs. 7653/ which was not paid to him during his life time. After his death, his widow, the present applicant is entitled to get it. Therefore, she filed an O.A. No. 142/2010, which was decided on 9.4.2010 with a direction to the Dy. Chief Mechanical Engineer Works and Sr. Accounts Officer Works Carriage and Wagon Workshop, Alambagh, Lucknow i.e. Respondent No. 2 and 3 to dispose of the pending representation of the applicant dated 17.12.2009 within a period of one month from the date of supply of its copy by passing a reasoned and speaking order. In furtherance of that order, respondent No. 2 has passed an order dated 1.6.2010(Annexure No. A-1) rejecting the representation on the ground that after lapse of 21 years, the GPF amount has been sought and in the absence of record, it is difficult to ascertain as to whether or not the late

husband of the applicant had received the payment. It is further mentioned in this order that in compliance of the Tribunal's order dated 9.4.2010 passed in O.A. No. 142/2010, a letter was sent to Account Section which has informed that on account of matter becoming time barred, this payment can not be made.

2. On behalf of the respondents some more time is being sought for seeking instructions which is vehemently opposed on the ground that the matter has already consumed about more than two decades. Otherwise also, in the earlier O.A. 142/2010 and in the impugned order, the entire case of respondents has already come on record. It is only the validity of the impugned order which has to be looked into now. Concededly, the GPF amount belonged to the late husband of the applicant and after husband's death, she is entitled to get it. There is no dispute regarding her entitlement. The payment is being denied on the ground of it becoming time barred as mentioned in the above impugned order. The entire case of the respondents has already come before this Tribunal in the form of aforesaid impugned order. Nothing remains to be brought on record. Therefore, there is no justification in giving more time to the respondents. They already had sufficient time. Copy of this O.A. was supplied to the learned counsel for the other side on 5.1.2011. The case was taken up on 7.1.2011 but unfortunately, lawyers abstained from judicial work on that day, therefore, it was directed to be listed on 21.1.2011. Then it has been listed today i.e. 27.1.2011. Thus, the learned counsel for the respondents did have sufficient opportunity to seek new instructions if any. Therefore, in view of the peculiar facts and circumstances of this case, this Tribunal proceeds with the matter to decide it finally.

3. Applicant's late husband was given a charge sheet in respect of unauthorized absence from duty. Though, he submitted a medical certificate for the period but it was not accepted and he was removed w.e.f. 17.6.78. He preferred appeal/ petition/ mercy petition against his removal but the same were rejected. Ultimately, he made several representations for payment of his retiral

dues. One of such representation dated 8.7.96 (Annexure A-2) also makes a mention regarding payment of Provident Fund. With this representation, copies of some old representations made in the years 1991, 1993 and 1996 were also enclosed. Earlier, a letter dated 14.2.89 (Annexure A-3) from Up Mukhya Yantrik Abhiyanta, Carriage and Wagon Workshop, Alambagh, Lucknow to Sr. Accounts Officer, Alambagh, Lucknow says that the GPF amount of Rs. 7653/- has been passed but on account of non receipt by the employee, it has become unpaid. It further says that now the employee has applied on 10.1.1989 for payment of GPF amount which may be arranged so that payment may be made. Similar representation dated 13.8.1991 (Annexure A-4) was also in respect of payment of GPF amount. Ultimately husband of the applicant died in December, 2003. Thus, during his life time, he made repeated requests for about 20 years for refund of his meager GPF amount but the Department did not pay any heed. After his death, his widow applied for the same but her request has been declined vide impugned order (Annexure A-1). It is really heartening to know that respondents who are senior responsible officers belonging to such a huge establishment of Railways can deal a poor class IV employee and his legal heir in such a manner, particularly in respect of final payment of GPF which is the own money of an employee and the respondents are merely trustees. Firstly, the impugned order is self contradictory. In this order, it has been admitted that about 31 years have gone by when the employee was removed and that in 1989, applicant had made a complaint in respect of non-payment of GPF amount and after 20 years, now the widow has made the similar application. On one hand it is mentioned that on account of non-availability of such an old record, it is difficult to ascertain as to whether payment was received or not. On the other hand, it is mentioned that the claim has become time barred and therefore, payment cannot be made. Since, the respondents were keeping this amount as trustee, it was their duty to have ensured the payment. Concededly, they have no record to show that the payment was ever made either to the late employee or his widow (applicant). Therefore, the respondents cannot deny to make payment on the ground of it becoming time barred particularly

when several representation in respect of final payment of GPF were given to them. They have also not mentioned any particular rule or provision in the impugned order showing any prescribed period for payment of GPF. Otherwise also, where is question of it becoming time barred when the employee had been regularly asking for it by making several representations. After his death, his widow came forward. It appears that she could lay her hands on some of the such representations made by her late husband copies whereof she had brought on record as mentioned hereinbefore. The question of a claim becoming time barred arises only when it is not raised continuously for several years during the prescribed period if any and then it is raised for the first time after the expiry of that prescribed period. The law had indeed prescribed period of limitation for several matters but in respect of GPF amount, plea of limitation appears to be a new thing. As said above any rule or provision have also not been quoted in support of this plea. It is simply mentioned in the impugned order that the Accounts Section was moved and it has been informed by that Section that it has become time barred and therefore, payment can not be made. Even if one of the Section working under them i.e. the Account Section has raised this frivolous and unjust plea, the respondent No. 2 being Head of Office or Head of Department ought to have taken a correct view by ignoring such an unjust and frivolous objection. Instead of doing it, the respondent No.2 has rejected the claim of the applicant. It also shows that instead of taking a pragmatic and humanitarian approach, the respondents have taken a pedantic and unjust approach in the matter which is against the principle of natural justice. They themselves have contributed to this inordinate delay and must have incurred litigation expenses many more times than the petty amount in question i.e. Rs. 765^{At}3/-. However, this Tribunal is refraining itself from making any strictures against respondents 2 and 3.

4. In view of the above, this O.A. is allowed. The impugned order dated 1.6.2010 is hereby quashed. The respondents No. 2 and 3 are directed to make payment of G.P.F. amount to the tune of Rs. 7653/- along with an

interest of 6% per annum from the relevant date when the amount became payable. Further, a token cost of Rs. 1000/- shall also be paid to the applicant by the respondents.

Alok Kumar Singh
(Justice Alok Kumar Singh)
Member (J)

HLS/-