

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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Original Application No. 291 of 1991
this the 18th day of Dec. 1996 .

HON'BLE MR D.C. VERMA, JUDICIAL MEMBER

Smt. Mariyam, aged about 57 years, W/o Mohd.
Sarwar, R/o House No. 390/179 Kha Rustamnagar,
Dariwala, P.O. Saadatganj, Lucknow.

Applicant

By Advocate : Sri L.P. Shukla

Versus

Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway,
Hazratganj, Lucknow.

3. Senior Divisional Accounts Officer, Northern
Railway, Nazratganj, Lucknow.

Respondents

By Advocate : Sri A. Srivastava

O R D E R

D.C. VERMA, MEMBER(J)

Smt. Mariyam, widow of Mohd. Sarwar has,
by this O.A., claimed the following reliefs :

(a) This Hon'ble Tribunal be pleased
to quash the orders contained in Annexure No. A-1
directing the respondents to grant family pension
to the applicant with effect from 18.12.1979 when
her husband, Mohd. Sarwar died together with 12%
interest on the amount of arrear accruing to her.



(b) Any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case be granted to the applicant.

(c) Cost of this application be awarded to the applicant.

2. The brief facts of the case is that late Mohd. Sarwar, an employee of Railway department was seriously ill with Tuberculosis and was absent from duty from 22.9.1975. The department terminated the services of late Mohd. Sarwar vide order dated 22.3.76 without holding any enquiry as in view of the department where about ⁷late Mohd. Sarwar was not known. The said order of termination was challenged before the High Court in Writ petition which was subsequently transferred to the Tribunal as T.A. 1601/87. The said T.A. was allowed vide order dated 28.4.1989. As the reliefs claimed in the T.A. was for retiral benefits such as Pension, Gratuity also, the Tribunal directed the respondents to treat late Mohd. Sarwar in service of the Railway administration until his death in 1979 and to grant retiral benefits as may be admissible to the petitioner (i.e. widow) under the rules within a period of 3 months from the date of receipt of copy of the said order.

3. According to the applicant, the order of the Tribunal passed in T.A. 1601/87 dated 28.4.89 was not completed ^{so} with ^{so} representations were sent by the present applicant, but the respondents instead of granting the family pension, issued the order ^{dated 16.1.9} (Annexure-1 to the present O.A.) ^{dated 16.1.1990} for grant of Ex-gratia payment of various amounts

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mentioned in the said order w.e.f. 1.1.1986.

4. The respondents' case is that late Mohd. Sarwar was governed by Contributory Provident Fund (in short PF scheme) Scheme and he had never opted for pension under the Pension scheme which was enforced from 16.11.1957. According to the respondents, the applicant is not ^{for} entitled/relief of family pension on that ground and also because the present claim is barred by limitation. It is also stated that the subject matter with the present O.A. were also the subject matter in T.A. No. 1601/87; Regarding grant of Ex-gratia pension, it has been mentioned that the Railway Board's order No. 4/1/87-P&PW (PIC) dated 17.6.1988 issued ~~order~~ ^{was} for payment of Ex-gratia pension/effective from 1.1.1986 at the rate of 150/- per month plus relief admissible from time to time. As per the admissible reliefs, various amounts were paid to the applicant vide order dated 16.1.1990 (Annexure-3).

5. In para 9 of the O.A. at page 4 the relief claimed by the applicant in Writ petition No. 2814/84 (T.A. 1601/87) has been re-produced as below :

"(i) to issue a writ direction or order in the nature of certiorari quashing the order dated 22.3.1976;

(ii) to issue a writ direction or order in the nature of mandamus commanding the Opp. parties to treat Mohd. Sarwar on duty upto 18.12.1979;

(iii) to issue a writ, direction or order in the nature of mandamus commanding the Opp. Parties to treat the petitioner entitled to all the post retirement benefits such as pension, gratuity, etc. accruing to her late husband.;

(iv) to issue such orther writ, direction

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or order as deemed just and proper in the circumstances of the case;

(v) to award the costs of the writ petition to the petitioner."

6. Thus, as per the above, one of the relief was for grant of pension. The Tribunal while quashing the order of termination observed "for the reasons mentioned above, we direct the respondents to grant family pension, gratuity etc. as may be admissible to the petitioner under the rules within a period of 3 months from the date of receipt of copy of this order" The contention of the learned counsel for the applicant is that as per order of the Tribunal dated 28.4.1989 but the respondents had no alternative to grant family pension to the applicant treating the applicant's husband in service till the date of his death. It is not challenged that the respondents have not treated the applicant's husband in service till the date of his death as per the directions of the Tribunal. The respondents' learned counsel has submitted that in stead of giving categorical finding, the Tribunal directed the respondents for granting pension etc. as may be admissible under the rules. The respondents considered the case of the applicant and as it was found that the applicant's husband was not entitled for pension, the present ~~present~~ applicant is not entitled for ~~any pension~~ family pension. It is not the case of the applicant that her husband had, at any time, adopted for pension scheme. The Pension Scheme was brought into effect from 16.11.1957 and late Mohd. Shewar was in Railway service w.e.f. 7.5.48 and expired on 18.12.79. During this long period of service 22 years, the applicant's husband never applied

for pension scheme. The applicant being widow of late Mohd. Sarwar is, therefore, not covered with the family pension scheme.

7. In the case of Krishna Kumar Vs. Union of India & others(1990) 4 SCC 207) while dealing with the cut off date of the pension scheme. The apex court held " those who did not opt for the pension had ample opportunity to choose between the two viz. the PF Scheme or the pension scheme. Each option was given for stated reasons related to the options. On each occasion time was given not only to the persons in service on the date of the Railway Board's letter but also to persons who were in service till the stated anterior date but had retired in the meantime. The period of validity of option was extended in all the options except a few. Therefore, the cut-off dates were not arbitrarily chosen but had nexus with the purposes for which the option was given". While observing that the employees, who entered ^{Railway} into/service on or after 1st April, 1957 were automatically covered by the Pension Scheme instead of PF Scheme. The employees who were ^{1st} already in service on April, 1957, were given option either to retain the PF Scheme ~~or~~ to switch over to the pension ^{apex court further} scheme. The ~~apex~~ held that PF retirees who failed to exercise the option within the time, were not entitled to be included in the pension scheme on ground of parity.

8. The learned counsel for the applicant has placed reliance in the apex court's judgment dated 16.11.95 given in Prabha Wati Devi Vs. Union of India