

CENTRAL ADMINISTRATIVE TRIBJNAL
PATNA BENCH, PATNA

O.A. No.250 of 2006

Patna, this the ^T 28 day of May, 2010

CORAM

The Hon'ble Mrs. Justice Rekha Kumari, M(J)

Banarasi Devi, widow of Late Tirath Rai, Ex-Carriage Fitter, resident of
Village-Balbakuari, PO-Hajipur, District Vaishali.

Applicant

By Advocate Mr. Sudama Pandey

versus

1. The Union of India through General manager, E.C.Railway, Hajipur.
2. The Divisional Railway Manager, E.C. Railway, Samastipur.

Respondents

By Advocate Mr. P.K. Tiwary

ORDER

JUSTICE REKHA KUMARI, M(J):- The applicant has filed this O.A. for giving direction to the respondents for grant of family pension to her with effect from 31.07.1979 with interest instead of ex-gratia pension. There is also prayer for quashing the order dated 08.08.2005(Annexure-A/1) of the DRM refusing to grant her family pension.

2. The case of the applicant is that her husband Tirath Rai was working as a Carriage Fitter under DRM, E.C. Railway, Samastipur. He was appointed on 28.1.1952 and died in harness on 30.07.1979. He was

in a pensionable establishment and had opted for Liberalised Family Pension Scheme, 1964. The applicant is a poor illiterate widow not aware of the rules. However, after the death of her husband, she made representation for grant of family pension and also exercised option but no action was taken. After a lapse of about 10 years of the death of her husband in 1989, she was sanctioned ex-gratia pension with effect from 01.01.1986 instead of family pension with effect from 31.07.1979.

3. It is also the case of the applicant that the respondents have admitted that though the applicant had opted for family pension but the same was done after six months of payment of Provident Fund and SC to Provident Fund much after the expiry of the date for exercising option, but the fact is that the date was extended up to 31.08.1983 and she had given option prior to that.

4. The respondents have filed written statement opposing the prayer. Their case in the written statement and the impugned order is that the applicant does not come under the Family Pension Scheme. Her husband Tirath Rai on 27.06.1964 had opted to continue under the existing SRPF (Contributory) Scheme. He never changed his option before his death. As per his option, settlement dues was paid to the applicant as per rules. The Railway Board by letter dated 22.02.1981 had extended the period of exercising option up to 22.02.1981. During this period the applicant did not submit any application for change of option and payment of family pension. She submitted an application for the same after the closing of the

option and as such, her application was not entertained. Later on, the applicant opted for ex-gratia payment with effect from 01.01.1986, and, accordingly, she was paid ex-gratia pension with effect from 01.01.1986.

5. The applicant, thus, is not entitled to family pension and the impugned order rejecting her prayer for family pension is legal.

6. Learned Counsel for both sides were heard.

7. Learned Counsel for the applicant submitted that in view of the Railway Board's letter dated 26.07.1985 for implementation of judgment of Hon'ble Supreme Court and Rule 75 of Railway Services (Pension) Rules, 1993, the applicant is entitled to family pension whether she had opted for it or not. He further contended that the respondents in their letter dated 05.01.1982 (Annexure-A/4) has admitted that the applicant had exercised her option in August 1981 and the Railway Board, by letter dated 09.11.1982, extended the date for exercising option up to 31.08.1993 and, therefore, the option was exercised within time. His contention then is that the applicant is ready to adjust the special contribution to Provident Fund already paid to the applicant.

8. Learned Counsel for the respondents supported the impugned order and contended that in view of the impugned order, the applicant cannot be granted family pension.

9. I think in this regard the relevant portion of the Railway Board's letter dated 26.07.1985 relied on by the learned Counsel for the applicant

may be referred to. The same reads thus:-

"As per the existing orders, there are at present two Family Pension Schemes as incorporated in Chapter VIII of the Manual of Railway Pension Rules, 1950, namely the Liberalised Railway Pension Rules, 1950 and the Family Pension Scheme for Railway Employees, 1964. The 1950 Scheme was of a restricted nature. The Family pension Scheme for Railway Employees, 1964 as issued vide this Ministry's letter No.F(P)63-PN-1/40 dated 2.1.1964 applies to-

- (a) A railways servant who entered in the Railway service in a pensionable establishment on or after the 1st January, 1964; and
- (b) a Railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for Railway employees, 1964 contained in this Ministry's letter No.F(P)63 PN.1/40, dated 2.1.1964 as in force immediately before the issue of this order.

2. Initially, the Family Pension Scheme for Railway employees, 1964 was a contributory one and employees eligible for the benefits of the Scheme were required to contribute two months emoluments out of the D.C.R.G. However, with effect from 22.9.1977, this pre-condition was done away with.

3. Sometimes back a section of widows of erstwhile Railway servants who were not covered by the Family Pension Scheme, 1964, had filed writ petition in the Supreme Court of India claiming that the benefits of the Family pension Scheme, 1964 may also be extended to them.

4. During the hearing of these petitions, the Government made a statement on 15.4.1985 before the Court on their own stating as to what extent the Government would be prepared to accept the claim of the widows. Keeping in view the statement filed by the Government and clarifications subsequently given to the Honourable Court by the Government, the Supreme Court of India delivered its judgment on 30th April, 1985 extending

w.e.f.22.9.1977 the benefit of the Family Pension Scheme, 1964 to the families of those Railway servants who were/are borne on pensionable establishment and are not presently covered by that Scheme, namely, the families of those Railway employees who retired/died before 31.12. 1963 and of those who were alive on 31.12.63 but who opted out of the Family Pension Scheme, 1964.

5. Consequent upon the above judgment of the Supreme Court, the President has been pleased to decide that-

- (a) the benefit of Family Pension Scheme, 1964 may be extended to all the eligible members of the family in accordance with the provisions of this Ministry's letter No.F(P)63-PN1/40 dated 2.1.1964;
- (b) all the eligible persons, including dependents, shall be allowed the increased pension rates as introduced from 1.1.1973;
- © the arrears of family pension may be granted w.e.f.22.9.1977 (the date on which contribution of two months' emoluments by pensioners was dispensed with) or from a subsequent date they become eligible for family pension whichever is later. The benefit will also be available in cases where the death of the pensioner occurs hereafter;
- (d) persons who are now to be granted the benefit of family pension will not be required to contribute two months' emoluments. Similarly, no demand for refund of contribution already made by pensioners will be entertained by the Government; and
- (e) Life-time arrears of family pension would also be payable in respect of widows/eligible members of the family of the deceased Railway employees who were alive on 22.9.1977 and who died subsequently to this date, for the period from 22.9.1977 to the date of death.

6, 7, 8, 9, 10 xxx

11. With a view to extend the benefits of these orders to the Railway Pensioners who retired or died before

1.1.1964 as well as in respect of those who opted out of Family Pension Scheme for Railway Employees, 1964 and retired or died subsequently, the Board desire that wide publicity be given to these orders by all possible means/ways i.e. by publishing the contents of this letter in local newspapers, Notification through Railway Gazette, etc.”

10. The relevant portion of Rule 75 of the Railway Services (Pension) Rules, 1993, is also extracted below:-

(1) The provisions of this rule shall apply:-

- (a) to a railway servants entering service in a pensionable establishment on or after the 1st January, 1964; and
- (b) to a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for railway employees 1964, contained in Railway Board's letter No.F(P)63/1/40, dated the 2nd January, 1964 as in force immediately before the commencement of these rules.

NOTE: The provisions of this rule has also been extended from 22nd September, 1977, to railway servants on pensionable establishments who retired or died before the 31st December, 1963 and also to those who were alive on the date had opted out of the 1964 Scheme.

(2) Without prejudice to the provisions contained in sub-rule where a railway servant dies:-

- (a) after completion of one year of continuous service, or
- (b) before completion of one year continuous serve provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway

service;

© after retirement from service and was on the date of death in receipt of pension, or compassionate allowance referred to in Chapter V, other than the pension referred to in rule 53:

the family of the deceased shall be entitled to a family pension."

11. Thus, from the perusal of the above letter of the Railway Board and Rule 75 of the Railway Pension Rules it is clear that in view of the decision of the Hon'ble Supreme Court, it has been incorporated in the Railway Services (Pension) Rules that the Family pension Scheme, 1964 would be extended with effect from 22.09.1977, also to those Railway servants who were in service on 31st December, 1963 and had not opted for the 1964 Scheme.

12. In this case the husband of the applicant was in service on 31.12.1963 and died after 22.09.1977 and so even if it be admitted that he had opted out of the 1964 Scheme, he was also covered by the Family Pension Scheme. Hence, the applicant would be entitled to family pension whether she had given option in time or not.

13. Then, if it be assumed that it was necessary for the applicant to give option, the letter of the Railway Board (Annexure-A/4) shows that they admit that she had given option for family pension though, according to them, she had given option in August 1981 after the expiry of the period

fixed for giving option. But the applicant in her OA has categorically stated that by the Railway Board's letter dated 09.11.1982, the date was extended up to 31.08.1983. The parties have not filed the copy of the letter to show the conditions, etc. of exercising option, but the respondents in their written statement have not specifically denied it. So, if the date for giving option was extended and prior to the expiry of the extended period, the applicant had exercised option, even though there may be some defect on her part being illiterate, she was entitled to family pension.

14. Accordingly, the impugned order is set aside and the respondents are directed to sanction family pension to the applicant from the due date and pay the arrears after adjusting the special contribution to P.F. and the ex-gratia payment made to her within four months from the receipt/production of copy of this order with interest at the rate of 5% per annum.

15. With the above directions, the OA is allowed. No costs.

Rekha Kumari
(REKHA KUMARI)
MEMBER (J)

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