(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.320/87, O.A.385/87 & O.A.453/87

1. Kashinath Bapuji Bopardikar,
Datar Blocks,
Agra Road,
Kalyan,
Dist.Thane .. Applicant in O.A.320/87

2. Smt.Laxmibai,widow of
Keshav Gopal Ganpule,
Datar Blocks,
Agra Road,
Kalyan. .. Applicant in O.A.385/87

3. Smt.Bhagirathibai,widow of
Pandurang Deshpande,
Datar Blocks, Agra Road,
Kalyan,
Dist.Thane. .. Applicant in O.A.453/87

v/s.

The Divisional Railway Manager,
Central Railway,
Bombay V.T.
Bombay. .. Respondent in all the above applications.

Coram:Shri P.S.Chaudhuri,Member(A)

Appearances:

1. Shri L.K.Masand,
Advocate for all
the applicants.

2. Shri P.R.Pai
Advocate for the
Respondent.

JUDGMENT Date: 13-1-1989

(Per P.S.Chaudhuri,Member(A)

All these three applications were filed on 12-6-1987 under Section 19 of the Administrative Tribunals Act,1985. In all the three applications the prayer is that the applicant be paid dues of Family Pension with effect from 22-9-1977 onwards. The matter thus comes within the ambit of para 1(h) of the Chairman,Central Administrative Tribunal's order dtd. 21-3-1988 and can be dealt with by a Bench consisting of a Single Member.

... 2/-

The facts and circumstances in all the three applications are the same and hence these may conveniently be dealt with in a single judgment.

2. (i) The relevant facts are set out below: In O.A.320/87 the applicant's father, late Bapuji Narayan Bopardikar, was working as a Cabin ASM on the Central Railway. He retired in 1956 and thereafter died on 8-8-1963.

(ii) In O.A.385/87 the applicant's husband, late Keshav Gopal Ganpule, was working as a Cabin ASM on the Central Railway, He retired in 1954 and died on 26-1-1961.

(iii) In O.A.453/87 the applicant's husband, late Pandurang Anant Deshpande, was working in a Clerical post in the office of the Divisional Railway Manager, Bombay V.T. He retired in 1954 and died in 1959.

3. In all the three applications the concerned deceased railway employee was governed by the State Railway Provident Fund Rules at the time of his retirement. After he retired but before he died the Railways introduced a Pension Scheme which came into force from 16-11-1957. Thereafter(and also after he had died) the Railways introduced the Family Pension Scheme for Railway Employees from 1-1-1964. Thus, at the time of the retirement of the concerned railway employee there was neither a Pension Scheme nor a Family Pension Scheme in force applicable to him.

4. The mother of the applicant in O.A.320/87, Smt.Gangabai Bapuji Bopardikar, made an application to the Supreme Court of India on 2-12-1985 for a direction praying that the Railway Board be directed to award

family pension to the widows of all the Railway servants who had taken Provident Fund as there was no provision of a Pension Scheme at the time of the retirement of their husbands. The applicants in the other two applications also made similar applications to the Supreme Court of India. The applicants stated that these applications were made on the basis of the judgments of the Supreme Court reported in AIR 1983 SC 130 - D.S.Nakara and Others vs. Union of India, AIR 1985 SC 1196 - Smt.Poonamal etc. vs. Union of India & Ors. and Premilobai Vishnu Dixit vs. State of Maharashtra. The Supreme Court of India referred these applications to the Secretary,Railway Board, New Delhi. Eventually the Divisional Railway Manager, Central Railway, Bombay V.T. by separate letters dated 19-6-1986 informed the applicant's mother in O.A. 320/87 and the applicants in the other two applications that they were not entitled to family pension as the concerned railway employee was not drawing pension but was governed by the State Railway Provident Fund Scheme.

5. The respondents have contested the applications by filing the written statement of Shri L.B. Daswani, Senior Divisional Personnel Officer.

I heard Shri L.K.Masand, learned advocate for the applicant and Shri P.R.Pai, learned advocate for the respondents.

6. Shri L.K.Masand's first contention was that widows whose husbands did not opt for, and who also did not contribute towards, the liberalised Family Pension Scheme, 1964 become eligible for the latter scheme because of the judgment of the Supreme Court in Smt.Poonamal's case cited above. It was his contention that by denying this benefit to the applicants the Railway was making a distinction between two classes of retired employees.

Shri P.R.Pai countered this by emphasising that in D.S.Nakara's case the Supreme Court had held that "though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation." It was his contention that it was not as if a mini-classification was being made in a class designated as pensioners. What was being done was a classification between two totally disparate sets of retired railway employees - viz. those governed by the State Railway Provident Fund Rules and those governed by the Railway Pension Rules.

In view of this discussion, I cannot hold that the classification between the pensioners governed by the Railway Pension Rules and the retired railway employees governed by the State Railway Provident Fund Rules is unreasonable.

7. Shri L.K.Masand's second contention was that the deceased railway employee connected with these applications stood on a better footing than the employees who were in a position to, and did, opt for the Pension Scheme but specifically did not opt for the contributory liberalised Family Pension Scheme 1964. He submitted that widows who were initially denied the benefits of the contributory liberalised Family Pension Scheme,1964 on the ground that the Govt. servant concerned had not agreed to make the required contribution had now become eligible for these benefits. It was his contention that the deceased railway employees connected with these applications were on a better footing as they had not even had a chance to exercise any option in the matter.

Shri P.R.Pai countered this by asserting that entry into the pension scheme was a sine qua non for getting the benefits of the family pension scheme. It was his submission that a valid differentiation had been made between the two classes of employees - viz. those governed by the Railway Pension Rules and those governed by the State Railway Provident Fund Rules - and that it was only those governed by the Railway Pension Rules who came within the ambit of the judgment of the Supreme Court in Smt.Poonamal's case cited above.

In view of this discussion, I hold that entry into the pension scheme is an essential pre-requisite for getting the benefits of any family pension scheme. Thus, the applicants are stopped at the very threshold regardless of whether they are or are not on a better footing than widows whose husbands had specifically not opted for the liberalised family pension scheme.

8. Shri P.R.Pai contended that the applicants had moved this application over 30 years after the concerned railway employees had retired and that this alone was sufficient to deny them the reliefs asked for. I do not see any force in this contention as the matter had come up before the Supreme Court and the applicants had thereafter pursued the matter with such diligence as permitted by their limited means and abilities. Shri P.R.Pai also contended that it would be difficult to verify the service particulars and other relevant facts at this distant date. I do not find any force in this contention for the reasons set out in the succeeding paragraph.

...6/-

9. In Original Applications No.385/87 and 453/87, Misc.Petitions have been filed on 26-10-1988 bringing to our attention the Ministry of Railways announcement regarding making regular monthly ex-gratia payments to the families of deceased employees who were governed by a contributory provident fund scheme. This announcement is based on the Department of Pension and Pensioners' Welfare O.M.No.4/1/87-P&PW(PIC) dtd. 13-6-1988 which appears at page 325 of Swamy's News August,1988. Para-1 thereof is reproduced below:

"Ex gratia payment to families of deceased CPF retirees. - The undersigned is directed to state that the recommendation of the 4th Central Pay Commission in Part II of its report regarding grant of relief to the families of deceased civilian Central Government employees, who were governed by Contributory Provident Fund Scheme, has been under consideration of Government. The President is pleased to decide that the widows and dependent children of the deceased CPF beneficiaries who had retired from service prior to 1-1-1986 shall be granted ex gratia payment of Rs.150/-p.m. with effect from 1-1-1986 or from the date following the date of death of the deceased employee whichever is later. The ex gratia payment shall also be admissible with effect from 1-1-1986 to the widows and dependent children of the CPF beneficiaries who died while in service prior to 1-1-1986."

In terms of this order cases of persons such as the applicants will now have to be dealt with. Hence I do not find any force in Mr.Pai's contention that verification of facts would pose a problem.

10, Shri L.K.Masand's final contention was that ex-gratia payment under the order of June,1988 was limited in scope in as much as it resulted in a pension of only Rs.150/- per month as against the minimum pension of Rs.375/- per month under the Family Pension Scheme(both figures being exclusive of dearness relief) and, besides, even this lesser amount is payable

only from 1-1-1986 instead of 22-9-1977 as is applicable under the Family Pension Scheme. It was his contention that pension is not a static issue but has to be considered "in the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up". He forcefully stated that the payment made should enable the widow to live and not to merely exist.

It is true that the ex gratia payment is less than the family pension but this does not constitute a valid ground for covering the applicants by the Family Pension Scheme.

11. Based on these discussions, I am of the view that the applicants are not entitled to any family pension in terms of the Family Pension Scheme for Railway Employees,1964. The applications do,however, succeed partially to the extent that the applicant's mother in O.A.320/87 and the applicants in O.A.No.385/87 and 453/87 are entitled to regular monthly ex gratia payments with effect from 1-1-1986 in terms of the O.M.No.4/1/87-P&PW(PIC) dated 13-6-1988.(The payment in O.A.No.320/87 will be for a very limited period as the widow also died on 7-2-1986.)

12. The respondents are directed to send a competent railway servant to meet the applicant in each of these three cases, assist him/her in filling up the relevant forms and assist him/her in the expeditious finalisation of his/her case for ex gratia payment as due. With this assistance I would expect that the payments would be made to the applicants by 30th April,1989 and continue regularly thereafter as warranted in the specific circumstances of each of the three applications.

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13. In the circumstances of the case there will be no order as to costs.

14. The original copy of this order may be kept on O.A.320/87 and copies placed on the other case files.