

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 569/87 198
TAXX No.

DATE OF DECISION 25.2.1988

Smt. Laxmi Vishnu Patwardhan Petitioner

Mr. P. V. Deshpande Advocate for the Petitioner(s)

Versus

Secretary, Railway Board, Rail Bhawan, Respondent
New Delhi and another.

Mr. P. R. Pai Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B. C. Gadgil, Vice Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? — Yes
2. To be referred to the Reporter or not? — Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal? } No

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

O.A.NO. 569/87

Smt. Laxmi Vishnu Patwardhan,
Sushrushti Apartment,
Charai, Thane.

APPLICANT

v/s.

Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

2. Senior Personnel Officer, (R),
Central Railway Head Office,
Personnel Branch,
Bombay V.T. 400 001.

RESPONDENTS

CORAM : Hon'ble Vice Chairman B C Gadgil

APPEARANCE :

Mr.P.V.Deshpande
Advocate
for the Applicant

Mr.P.R.Pai
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 25.2.1988

(PER: B.C.Gadgil, Vice Chairman)

Unfortunately, this is a litigation which should not have come to this Tribunal and it was expected that the department should settle the matter without intervention by us.

2. The applicant is the widow of Vishnu Mahadeo Patwardhan. This Vishnu entered railway service on 16.5.1919. He retired on superannuation on 9.6.1957. Prior to that from 9.12.1955 to 8.6.1957 he was on LPR. The Railway Administration introduced the pension scheme for the railway servants. It appears that this decision was taken on 16.11.1957, Annexure 1 to the reply ..2/

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is a copy thereof. It is not necessary to give all the detailed provisions of that scheme. Suffice it to say that an employee who was in service on 1.4.1957 has to exercise an option to have the benefit of this pension scheme. On doing so, he would be entitled to a pension on his repaying the Government contribution to the Provident Fund. Para 10 of the letter states that arrangement should be made to write to every retired individual asking for his option. It appears that such intimation was not given to Vishnu. This is clear from the correspondence which is attached to the application, for example, Annexure 1 to the application is a letter written by the Financial Adviser and Chief Accounts Officer of the railways on 1.7.1971 to the Chief Personnel Officer stating therein that the Railway Board's instructions contained in Para 10 of the letter dated 16.11.1957 have not been followed in the case of Vishnu through an oversight. This position has been re-iterated on the next day i.e. 2.7.1971 (vide Annexure 2 to the application). This is a letter by the General Manager to the Railway Board stating that above mentioned para 10 has remained to observe through oversight. This letter further gives the details of the Provident Fund. They are as follows :

Employees Contribution	-	Rs.8601.42
Govt. Contribution	-	Rs.8488.67
Special Contribution (by Govt.) to the P.F.	-	Rs.3450.00

3. It appears that before the claim by Vishnu for the pension was finally decided, he died on 13.3.1972 leaving behind his widow that is the present applicant. The applicant made an application to the Railway Administration claiming benefits of the pension scheme.

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That application is dated 19.8.1986 (vide Annexure 3 to the application). The Railway Administration rejected the claim of the applicant by a communication dated 24.9.1987 (vide Annexure 4 to the reply). In the communication it is said that Vishnu had ample opportunities to come over to pension scheme while in service and also even thereafter. Mr.Deshpande, Advocate has a grievance about this aspect. I will consider it a little later.

4. The respondents have resisted the claim of the applicant on various grounds. It was submitted that the applicant has not exercised an option to come under the pension scheme. It was then contended that the family pension scheme was introduced on 1.4.1957 and that by communication dated 16.11.1957 the pension scheme including the family pension scheme was made available w.e.f. 1.4.1957 even to retired employees. According to the respondents the decision of the Railway Board rejecting the claim is quite legal and proper.

5. I have already observed that para 10 of the communication dt. 16.11.1957 contemplates a positive action on the part of the department, namely, that the retired servants should be individually informed that they should exercise option. It cannot be disputed that such an intimation has not been given to Vishnu. Mr.Pai wanted to get over this position by submitting that Vishnu was a Head Clerk in the Accounts Section at the Headquarters of the Central Railway and that he was expected to know the provisions regarding pension scheme and the requirement to exercise option thereunder. In my opinion this submission of Mr.Pai is not well founded for obvious reasons. Though the pension scheme is made retrospectively operative from 1.4.1957, the decision in ..4/-

Perh.

that respect has been taken on 16.11.1957 i.e. after Vishnu retired from service. In the background of this position it would be impossible to imagine that Vishnu would be knowing the pension scheme that was introduced after he retired from service. Thus the Railway Administration cannot claim exemption from the operation of paragraph 10 by saying that Vishnu was already knowing about option.

6. It was then urged that the present application is barred by time. Vishnu would have been entitled for pension from 9.6.1957. It appears that he has been representing to the department and the above two letters dated 1.7.1971 and 2.7.1971 give an impression that the department was considering his claim. However, before a decision was taken by the department Vishnu unfortunately died on 13.3.1972. Thus no decision one way or the other appears to be taken. His widow, that is the applicant, made an application for pensionary benefit on 19.8.1986. The grievance of the Railway Administration is that she should have moved the department earlier. But one cannot ignore the circumstance that the applicant is a widow without any male child in the house. In my opinion it will be cruel on the part of the department to raise the contention of the limitation for the purpose denying the claim for pension. I hold that a just claim for pension and family pension cannot be allowed to be whittled down on the ground of delay. It is true that the applicant has not specifically claimed arrears of pension payable to Vishnu Patwardhan, however, it is necessary to bear in mind that applicant is an indigent woman who is practically illiterate, though she is able to sign.

She was able to file this application with the help of free legal aid and Mr. Deshpande has appeared in the matter as per the instructions from the District Legal Aid Committee, Thane. Mr. Deshpande orally prayed that he may be allowed to amend the application also for claiming arrears of pension upto 13.3.1972. This oral amendment is granted.

7. The net result, therefore, is that Vishnu would be entitled to pension from 9.6.1957 on the hypothetic that he has exercised an option. In addition, the applicant would be entitled to family pension according to rules. Of course, the Government contribution amounting to Rs.11,938.67 (i.e. Rs.8,488.67 + 3,450,00) has to be repaid. The amount repayable by the applicant would carry interest. I do not think it would be necessary for the applicant to pay interest as I order that the arrears of the pension would also not carry interest. The applicant who is present today in the court said that the amount of Rs.11,938.67 may be deducted from the amount which the Government would pay to her. This statement appears to be quite reasonable. Hence, I pass the following order.

O R D E R

The application succeeds. The respondents are directed to calculate the pension payable to Vishnu Mahadeo Patwardhan from 9.6.1957 till 13.3.1972 at the rate prevailing from time to time. They are further directed to calculate the family pension payable to the applicant from 14.3.1972 till 30.4.1988. From the amounts so calculated the respondents should deduct the amount of Rs.11,938.67 and should pay remaining amount to the applicant before 10.5.1988. The respondents are further directed to pay to the applicant family pension w.e.f. 1.5.1988. Parties to bear their own costs of this application.


(B.C. Gadgil)
Vice Chairman