

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.408/86.

Mrs. Shakuntala K.Rokade,
RB-I/977/38, Rly.Qr.,
Kolsewadi,
Kalyan.

... Applicant

V/s.

1. Union of India through
the General Manager,
Central Railway,
Bombay V.T.400 001.

2. The Divisional Railway Manager,
Central Railway,
Bombay V.T.

... Respondents.

Coram: Hon'ble Member(A), Shri J.G.Rajadhyaksha.

Appearance:

Mr.D.V.Gangal, advocate
for applicant.

Mr.R.K.Shetty, advocate
for respondents.

JUDGMENT:

(Per Shri J.G.Rajadhyaksha, Member(A)) Dt. 1.2.1988

This application filed on the 18th day of November, 1986 is made by the widow of a deceased Railway Servant being a Coach Attendant under Chief Ticket Inspector, Central Railway. He died on 21.7.1981. The applicant maintains that the deceased had opted for pension but the Railway Authorities state that he had not. The applicant avers that even she as a widow can opt for and ask for pension/family pension. All her representations made from the 21st of September, 1981 have proved futile. She has not even received the late employee's Provident Fund, Gratuity, Insurance, Arrears of pension etc., She, therefore, prays that she should be held to be entitled to pension and pensionary benefits since the date of the death of her husband, and even if there is no

option on record she should be allowed to exercise that option now and get pension and family pension. The Respondents resisted the application by their written statement filed on 14th March, 1987. They state therein that the application is time barred. The family of a railway servant appointed to railway service prior to 1.1.1964 does not become automatically entitled to pension unless the railway servant had opted for pension. It is open for the Railway Administration to throw open the options or close them. Applicant had not applied for the pensionary benefits. Rules permit that if an employee died of heart failure, the widow could be entitled to apply for pensionary benefits. But the husband of the applicant had died of Septic Meningitis. She was not, therefore, entitled to any relief of the nature asked for. They brought to my notice their Circular dt. 4.10.1982 which gave another opportunity to Railway employees to opt for Railway Pension Rules including Family Pension Scheme. The option was open to those Railway servants who were in service on 31.8.1982 and who quit or retired on or after that day. The option could be exercised within about 4 months time. The circular further said that in the case of deceased railway servant who died on or after 31.8.1982 without exercising option within the time limit allowed the option for pensionary benefits may be allowed on the request by nominee validly nominated or by all members of the family of the deceased. Their ex.R-II was a reply dt.30.8.1985 to the applicant. It is reproduced below:

"Sub: Request for grant of family pension
and final settlement dues etc.

....

Your application dt. 4.1.1985 addressed

...3.

to Shri Bansilal Hon'ble Minister for Railways and copies to all concerned. The cases has been further examined and you are advised that as per Board's instructions issued under their letter No. F(E)III-68-PN I/37 dated 16.7.1971 only in case of sudden death of Railway employee governed by SRPF Rules who dies due to Heart Failure can be considered for opting pensionary benefits and if so desired by the family of such employees.

In this case Shri K.R.Rokade, died due to septic Meningitis as per CMO BB's report your request for the pensionary benefits cannot be considered. As regards your settlement dues the required forms have not been filled in by you in spite of repeated requests made whenever you have visited this office. Unless you fill up the necessary forms, you will not be paid settlement dues. For filling up the forms kindly contact Welfare Inspector of your depot."

2. Mr.D.V.Gangal the learned advocate for the applicant and Mr.R.K.Shetty the learned advocate for the respondents have argued their respective cases.

3. It is Mr.Gangal's argument that in terms of paragraph 2(II), of letter dt. 4.10.1982 in principle, the family of a deceased employee who might not have exercised option for pension can exercise such option for family pension. The option was expected to be exercised within 3 months and applicant had done so by her letter dt. 3.9.1981. This letter was not replied to nor were any proforma furnished to her. It was respondents' duty to send a Welfare Inspector to attend to her problems, but even this normal courtesy was not extended to her. She has never received the alleged letter of 26.12.1981 (in Hindi). Therefore, the question of her complying with it does not arise. Mr.Gangal further argues that curiously enough that letter written by respondents on 30.8.1985 cites instructions dt. 16.7.1971, according to which only in case of sudden death in accident/heart failure can the family of the deceased employee opt for pensionary benefits. Mr.Gangal argues that this letter deserves to be struck down as being discriminatory. He then turns to annexure 'H'

to the application which is an extract of the Register of Deaths maintained at the village, Katemanivli under Panchayat Samiti, Kalyan. Column 12 shows the cause of death as heart failure. It is surprising therefore, that the Railways dispute the applicant's claim to family pension. He concludes by arguing that the respondents' attitude defeats not only logic but also law and prays that the applicant should be declared as eligible for family pension and granted the relief she prays for.

4. Mr.R.K.Shetty contends, for the respondents, that the employee died on 21.7.1981 but annexure 'H' refers to the date of death as 25.7.1981. Ex.R-II to the reply certifies that applicant's husband died of Septic Meningitis. Therefore, Annexure-'H' is unreliable. He then added that Railway Doctor's certificate about applicant's hospitalisation and death were not available. Relying upon Ex.R-I which is the circular dt. 4.10.1982 Mr.Shetty argues that according to para.1 the scheme is not available to the applicant as her husband had died before the prescribed date. He further contends that the settlement dues could not be given to the applicant as she had failed to fill up certain proformae. Ultimately he argues that the application made in November, 1986 about the cause of action which arose in 1981 was hopelessly time barred.

5. Mr.Gangal argues that failure to give pension is a recurring cause of action, not hit by bar of time. He orally pressed for condonation of delay if it is held that there was delay.

6. Having heard both the learned advocates, I asked Mr.Gangal to give me a compilation of orders according to which the option for pension could be opened and closed by the Railway Authorities from time to time as argued by him.

I had also asked the respondents to produce for my perusal the medical report and the service record of applicant's late husband to enable me to assess the facts correctly.

7. Turning to the respondents file first, I find that they have rightly recorded that applicant's husband aged about 45 years expired at the Railway Hospital, Kalyan on 21.7.1981. The Ulhasnagar Municipal Council has issued a cremation certificate on 29.7.1981. The Medical Certificate which normally forms the basis of Municipal permission for cremation of a body is amongst the papers and it mentions as the cause of death Cardio Vascular failure and the date of death 21.7.1981. This is the record of the Kalyan Municipal Council. The original of the annexure 'H' to the application is in the Railway file and it shows the date of death as 21.7.1981 and cause of death as heart failure. The file then reveals that applicant's husband was admitted into the hospital on 19.7.1981 and expired on 21.7.1981; the cause of death is given as Septic Meningitis. The file also contains internal correspondence between the Medical Officer and his superiors from which it is seen that the medical opinion is that though in all cases of death the immediate cause of death is mentioned as Cardio Respiratory Failure, the disease responsible for the death was mentioned separately in this case as Septic Meningitis. This cause was not mentioned in the Doctor's Certificate. The Divisional Railway Manager, Bombay had made enquiries about the certificate of death to which a clarification was given that cause of death was Septic Meningitis which brought about Cardic Respiratory Failure (Heart Failure). All these

notings go to show that the authorities wished to ascertain whether the death of applicant's husband was sudden or after a prolonged illness. While the anxiety of Government as expressed in their letter dt. 16th July, 1971 is understandable, their intention clearly seems to be to extend certain concessions and benefits to Railway employees who suddenly expired due to heart failure. They have said that such benefits are available to families of railway employees who are killed or ^{if so} died as a result of injuries sustained in the due performance of their duties. The intention appears to be to provide for the families of employees who die in circumstances which prevent them from making adequate provisions for their families. They seem to feel that sudden death in accidents and heart failure could be such case. In the instant case, however, it appears that the applicant's husband suffered from high fever etc. and his disease was diagnosed as Septic Meningitis. It is not clear if during hospitalisation he was conscious, semi-conscious or un-conscious. But he seems to have expired on the third day after his admission to the Hospital. Even without examining the medical officer, general knowledge would make it clear to anybody that in a case of Septic Meningitis the patient would be either un-conscious or semi-conscious or delirious and incoherent in his thought and speech. I do not know if the Railway Orders would cover cases of Cerebral Haemorrhage in which the patient may be unconscious and be reduced to the state of a vegetable throughout his illness. It would be cruel to exclude such cases from the Railway Orders

covering accidents and heart failures. It may therefore, be necessary for the railways to re-examine their orders of 1971 with a view to expanding their scope of a more humane and reasonable footing.

8. This general recommendation apart, I feel that in the peculiar circumstances of this case it would be just and proper for the respondents to hold that the applicant's husband died in the circumstances akin to accidental death or heart failure and consider the applicant's case in that light.

9. Mr. Gangal's compilation of policy pronouncements of the Railways from time to time between 1968 and 1985 contains only "available" letters. This means that this is not necessarily an exhaustive compilation. In fact such a compilation should be available with the respondents either for refuting the applicant's claim or for fairly bringing to the notice of the Tribunal the correct position. I find from these papers that Railways have from time to time been extending the scheme to persons in service or those who have retired or who were deceased. When the orders were made effective, some date lines are mentioned therein. It would not be unfair to infer therefrom that as benevolent employers Railways have been extending the date for exercise of option by those in service on a particular date or upto a particular date, about to retire on or after that date or the families of those who die on or after that date. The intention seems to be to see that pension/family pension is made available to an employee or his family even after his retirement or death, retrospectively.

Whether he had exercised his option or pension while in service or had failed to do so, the more beneficial scheme could be opted for by the employee or his family if he was deceased; the condition precedent was that the retiral benefits obtained from the State Railway Provident Fund would have to be refunded in a lump sum. The respondents in this case before me have resisted the application, but a comprehensive study of the scheme of pension/family pension and the Railways' approach to it convinced me that the applicant's case is a fit one for extension of relief.

10. I therefore, pass orders as follows:

1. The application is partly allowed.
2. The respondents are directed to furnish to the applicant all requisite proformae enabling her to exercise option for pension/family pension and for obtaining the settlement dues which would have been available to her deceased husband. This should be done within a month from the date of this order.
3. The respondents shall pay to the applicant the appropriate amount of family pension as may be due to her from the day following the date of the death of the railway employee who was her husband i.e. w.e.f. 22.7.1981. They shall calculate arrears of pension as might be due from time to time inclusive of the reliefs payable thereon, and settle the arrears within a period of 4 months from the date of receipt of this order.
4. The respondents shall pay to the applicant the settlement dues viz. (a) Provident Fund as may be payable, with interest thereon at the approved rate until the date of payment, (b) amount of Group Insurance, as might fall due to the applicant on the demise of her husband who was covered by the Group Insurance Scheme, (c) the amount due as encashment of E.L. if any, as on 21.7.1981.
5. They shall pay to the applicant the DCRG as may be due after deducting at appropriate rates the rent payable by her for the

occupation of quarters, if she was in occupation of the railway quarters after the death of her husband, until the date of vac-
cation by her of quarters.

6. In the circumstances of the case however, the parties should bear their own costs.

~~(J.G.RAJADHYAKSHA)~~
MEMBER (A)

Delivered today.