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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 586/89 198
TxxxNx

DATE OF DECISION 9.2.1990

Smt. Shobha M. Zhende & Anr. Petitioner

Mr. G. S. Walia Advocate for the Petitioner(s)

Versus

Union of India & Another. Respondent

Mr. N. K. Srinivasan. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman,

The Hon'ble Mr. M. Y. Priolkar, Member(A):

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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?

9/2
 (G. SREEDHARAN NAIR)
 VICE-CHAIRMAN.

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

Original Application No.586/89.

Smt. Shobha M. Zhende & Ors. ... Applicants.

V/s.

Union of India & Another. ... Respondents.

Coram: Hon'ble Vice-Chairman, Shri Sreedharan Nair,
Hon'ble Member(A), Shri M.Y. Priolkar.

Appearances:-

Applicant by Mr. G.S. Walia and
Respondents by Mr. N.K. Srinivasan.

JUDGMENT:-

Dated: 9.2.1990

(Per Shri G. Sreedharan Nair, Vice-Chairman)

Shri Maruti N. Zhende was working as a Messenger under the second Respondent. He passed away on 16.11.1988. The first applicant in this application is his widow and the second applicant is his son.

2. It is alleged that since Zhende was not keeping well, on 12.10.1983 he wrote to the D.M.O. for declaring him unfit for duties, and thereafter, on 16.12.1983 he wrote to the Works Manager to accept his resignation and to appoint his son, the second applicant on compassionate grounds. The resignation was accepted w.e.f. 10.1.1984, but the request for appointment of the second applicant was not agreed to. Hence Zhende, on 11.10.1984 made an application for giving him re-appointment. By the order dt. 11.5.1988 he was offered fresh appointment but by the communication dt. 17.8.1988 the offer of re-appointment was treated as withdrawn in view of the certificate of ~~the~~ unfitness issued by the D.M.O. Within three months thereafter Zhende expired.

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2. After the death of her husband the first applicant continued to submit applications for the appointment of the second applicant. Since it has not been allowed the applicants have prayed to direct the respondents to appoint the second applicant.

3. It is alleged that Zhende had completed about 28 years of qualifying service, but was not paid pension or gratuity. Hence the applicants have also prayed to treat the letter of resignation given by Zhende as an application for voluntary retirement and to allow the pensionary benefits to the first applicant.

4. In the reply filed on behalf of the respondents it is stated that since the father of the second applicant died after the resignation from service the question of compassionate appointment of the second applicant does not arise. As regards the pensionary benefits it is contended that since the husband of the first applicant resigned from service it cannot be allowed. With respect to gratuity it is stated that as the applicants have not vacated the Railway quarter occupied by Zhende, it has not been disbursed. The plea for treating the resignation letter as one for voluntary retirement is resisted as not maintainable.

5. At the time of hearing, Counsel of the applicants did not rightly press the claim for compassionate appointment of the second applicant, evidently in view of the fact that Zhende died after resigning from Railway service. However, the claim for pensionary benefits was seriously pressed by him, the only ground on which the respondents have disputed the claim for pensionary benefits is the resignation by Zhende. Counsel of the applicants brought to

our attention Rule 101 of the Manual of Railway Pension Rules, 1950, which provides that the retirement benefits under these rules are admissible to all permanent Railway Servants except those who are removed or dismissed from service or resigned from it before completion of 30 years qualifying service. The subsequent amendment reducing the period of qualifying service to 20 years was also relied upon by him. It was stated that as it is not disputed that Zhende had rendered more than 20 years of qualifying service the factum of resignation does not deprive him of the retirement benefits.

6. It was submitted by Counsel of the respondents that since Zhende had opted for the ^{Contributory} Provident Fund scheme and was not a pension optee the question of payment of pension does not arise and that it is not open to the applicants to claim the same. No such specific plea is raised in the reply that has been filed and there is no material before us to determine whether Zhende was not a pension optee or whether the contributions to the Provident Fund had been received by Zhende or the applicants.

7. In the circumstances we are of the view that the applicants have to be directed to make a proper representation before the respondents for grant of the pensionary benefits. If such a representation is made within two months of the date of receipt of the copy of this order the respondents shall duly consider the same and dispose it of in accordance with the

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relevant rules, as expeditiously as possible.

8. The application is disposed of as above.

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by
9.2.90

(M.Y.PRIOLKAR)
MEMBER(A)

every
9.2.1990

(G.SREEDHARAN NAIR)
VICE-CHAIRMAN.

Judgment dtd. 9.2.90

Send to parties

on 2-3-90.

stamped.

Judgment dtd. 9.2.90

served on R. No.

1 & 2 on 5/3/90.

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12/3/90