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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 660/89

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198

DATE OF DECISION 3-4-1991

1. Smt. S.B. Bagwe Petitioner
 2. Smt. S.C. Moses

Shri D.B. Dave Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri A.L. Kasture & Mr. N. Krishnan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice-Chairman

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

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

(M.Y. Priolkar)
 Member (A)

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

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Original Application No.660/89

1. Smt. Shushila B.Bagwe
2. Smt. Shantagauri C.Moses

... Applicants

V/s

Union of India & Others

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr.L.B.Dave, Advocate, for
the applicants and Mr. A.L.
~~Kasturirao and Mr. N.Krishnam,~~
~~Advocates, for the respondents.~~
~~None~~

JUDGEMENT:

Dated : 3-4-1991.

(Per. M.Y.Priolkar, Member (A))

The two applicants in this case are the widows of two employees of Western Railway who had died while in service. The husband of Applicant No.1 died on 31.12.1970 while the husband of applicant No.2 died on 29.1.1971. Their grievance is that, though according to them, they are entitled to family pension with effect from 1.1.1971 and 30.1.1971, respectively, the respondents have neglected to pay any family pension to them, inspite of representations in this regard by the applicants.

2. The applicants' husbands while in service had not opted at any time for the Pension Scheme which was introduced in the railways with effect from 1st April 1957 and accordingly they were deemed to have continued under

Provident Fund and benefits as admissible under the Railway Provident Fund Scheme rules were paid to the applicants after the death of their husbands.

Subsequently, the Railway Board issued an order on 19.9.1972 giving an option to families of employees who had died while in service between 1.4.69 to 14.7.72 without exercising option to be governed by the Pension Scheme, to come over to the family Pension Scheme for Railway employees on the condition that the Government contribution and the excess, if any, of the special contribution to Provident Fund already paid over the death-cum-retirement gratuity due, should be recovered from them, before allowing the option. It was also stipulated that the contents of this order should be brought to the specific notice of the families of all the non-pensionable deceased railway servants who died while in service during the period from 1.4.69 to 14.7.1972, simultaneously advising the amount recoverable which was to be asked to be refunded within a period of one month from the date of receipt of communication of the order. The last date by which such options were to be exercised was 31.12.1972.

3. The applicant No.1 states that she was not advised about the contents of the Railway Board's letter dated 19.9.72. She applied for family pension for the first time on 2.2.1987. The applicant No.2 was, however, given the option to come over to family pension scheme in terms of the Railway Board's order, by the Divisional Railway Manager's letter dated 2.2.72 (p.21 of the application - the date should be 2.11.72

as per the postal stamp). In this letter, she was also asked to refund Rs.5,565.00 if she desired to opt for the pension scheme. Although, this applicant has claimed in the application that she wrote back to the railway administration that there was an excess amount of Rs.686 in the figure of recovery worked out by the railway and that she did not have with her even the remaining amount refundable by her, the respondents have denied that any such communication was received from her. The respondents' written reply also states that it was only by her letter dated 12.7.1988 (p.22 of the application) that she requested for ex-gratia pension as recommended by the 4th Pay Commission. The recommendation of the 4th Pay Commission also lays down that there shall be no option for Provident Fund employees who retired or expired prior to 1.1.1986 to opt for pension. In view of this, the question of any refund by this applicant did not arise. Accordingly, the respondents have paid to her an amount of Rs.7,552.00 as arrears of ex-gratia pension for the period from 1.1.1986 to 31.8.1989 through her bank account in UCO Bank, Muglisara Branch at Surat and, thereafter, she is in regular receipt of the said ex-gratia payment as is confirmed by the said UCO Bank in their letter dated 27.1.1990 (Exhibit-I). The respondents contend that since both these applicants had not applied and requested for pensionary benefits and family pension

within the prescribed time limit, namely, 31.12.1972, they are not entitled to the benefits of the pension scheme admissible under the Railway Board's order dated 19.9.1972. Both these widows are, however, now receiving the ex-gratia pension (plus the dearness relief) from 1.1.1986 onwards against their claim for regular family pension.

4. On behalf of the applicants it is contended that the cut-off date of 31.12.1972 prescribed in Railway Board's order dated 19.9.1972 for opting for pension scheme has the effect of giving the benefit to some who can complete all requirements and refusing or denying the same to others who fail to comply for reasons beyond their control amounts to discrimination violating Article 14 of the Constitution. The applicants have cited a number of judicial pronouncements based on the principle enunciated in the Supreme Court's decision in Nakara's case [(1983) 1 SCC 305] that the pensioners form a homogenous group and, therefore, grant of options to retired employees during certain time periods but not during others, would be discriminatory and violative of Article 14 of the Constitution. This issue has, however, been finally decided recently in a 5 Judges bench of the Supreme Court [(1990) 14 ATC 846] dated 13.7.1990 in which the Hon'ble Supreme Court has negatived the various contentions raised ~~on~~ the basis of the earlier Supreme Court decision in the case of Nakara as well as

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of this Bench of the Tribunal in the case of Ghanashyam Das (T.A.No.27 of 1987). In this judgement dated 13.7.1990, the Supreme Court has drawn a distinction between the retirees under the Provident Fund Scheme and those under Pension Scheme on the basis that in the case of Provident Fund retirees, the obligation of the Government crystallizes on the date of their retirement whereas in the case of pension optees, the obligation of Government continues till their death. The Supreme Court has further held that in each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option and there was, therefore, no discrimination in options being available during certain periods but not during others. In the light of this judgment, the Supreme Court, the applicants' contention that fixing of a cut-off date for giving option is discriminatory has to be rejected.

5. It is also contended on behalf of the applicants that the Department of Pensions and Pensioners Welfare, Government of India, in their letter dated 11.2.1986 (p. 27 of the application) has clarified that the family pension scheme is applicable to all those who retired from pensionable establishments or died while serving such establishments irrespective of any cut-off date, and therefore, the applicants can opt for family pension scheme at any time as a matter of right. It is, however, seen that this clarification is only in respect of those who retired from pensionable establishments

or died while serving such pensionable establishments.

Admittedly, the Railways have or at least at the relevant time had two distinct establishments; one was pensionable and the other non-pensionable (that is, governed by contributory provident fund) and the applicants' husbands, not having exercised their option for pension before their death, although they had the opportunity to do so, were rightly deemed to have continued under the provident fund scheme and, on death, their families paid in accordance with the relevant Provident Fund rules. The contention that the cut-off date does not apply to the option now given by the applicants has also, therefore, to be rejected.

6. On the basis of the foregoing discussion we do not see any merit in the claim for family pension of Applicant No.2 which is, accordingly, rejected. As regards applicant No.1, she states that she was not advised about the contents of the Railway Board's order dated 19.9.1972 as required in para 3 of that order. Although the respondents in their written reply dated 15.3.1991 have stated that this applicant had not made any request for family pension "inspite of demand for the same by the Railway administration videlicet their letter dated 1/2.2.1972 (placed at page 21 of the application)", it is seen that this letter at page 21 of the application is addressed to Applicant No.2 only and not to Applicant No.1. There was also no representation by the respondents during the hearing. In the circumstances, we have to hold that Applicant No.1 was never informed about the option for pension available under the Railway Board's

order dated 19.9.1972, although this was specifically required to be done under para 3 of that order. In view of a number of decisions of this Tribunal in similar cases, viz. AIR 1988 (2) CAT 49, 1989 (3) SLJ (CAT) 449 and O.A. 732 of 1987 of this Bench, we hold that it was incumbent on the part of the Railways to have informed Applicant No.1 of the contents of the Railway Board's order dated 19.9.1972 so that she could have exercised her option to come over to the pension scheme. The Applicant No.1 should, therefore, be entitled to the benefits of the Family Pension Scheme. However, since she has approached this Tribunal only on 20.6.1989 although she is in receipt of ex-gratia pension from 1.1.1986 and her representation for family pension was finally rejected by the General Manager, Western Railway on 19.10.1987, we would restrict her claim for family pension to one year before the date of filing this application, following the latest judgements of this Bench in similar cases viz. in OA 732 of 1987 and OA 842 of 1989.

7. For the reasons stated above, we hold that Applicant No.1 is entitled to the benefit of Pension Scheme. The respondents are directed to fix the family pension of this applicant within a period of three months from the date of receipt of a copy of this judgement, according to the rules in existence on the date of death of the applicant's husband on the basis of the Railway Board's order dated 19.9.1972, with consequential revisions as applicable from time to time.

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Regular monthly payment of family pension shall be made to the applicant within four months as far as possible, from the date of receipt of this order.

However, the arrears of pension due to the applicant will be limited to a period of one year before the filing of this application, that is, the arrears will be paid from 1.7.1988. The respondents are at liberty to recover from the applicant all amounts which would not have been due to her if her husband had opted for the pension scheme prior to her death. The amount so arrived at will be set off against the arrears of pension payable to the applicant from 1.7.1988. In case the amount to be recovered from the applicant is in excess of the arrears of family pension to which the applicant is entitled, the excess amount so arrived at may be recovered in monthly instalments from the family pension of the applicant.

8. The application is partly allowed as above. There will be no order as to costs.

By
3/4/81

(M.Y.Priolkar)
Member (A)

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(U.C.Srivastava)
Vice-Chairman