

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 957/89

~~For Reference to the Registry~~

DATE OF DECISION 12-4-94

Smt. Parvati S. Yadav Petitioner

Shri D V Gangal Advocate for the Petitioners

Versus

Union of India Respondent

Shri J G Sawant

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.R. Kolhatkar, Member (A)

The Hon'ble Shrimati Lakshmi Swaminathan, Member (J)

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 ?

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

NS/

DS

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

O.A.No.957/89.

Smt. Parvati S. Yadav.

... Applicant.

V/s.

Union of India, through
The General Manager,
Central Railway,
Bombay V.T.

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

... Respondents.

Coram: Hon'ble Member(A), Shri M.R. Kolhatkar,
Hon'ble Member(J), Smt. Lakshmi Swaminathan.

Appearance

Shri D.V. Gangal, Counsel
for the Applicant.

Shri J.G. Sawant, Counsel
for the Respondents.

JUDGMENT

Date: 12-4-94

X Per : Hon'ble Member(A), Shri M.R. Kolhatkar. X

The undisputed facts in this case are as below :

The Applicant is widow of a Central Railway employee who, while working as a painter, resigned on 01-02-1975 after completing service of 27 years 3 months and 10 days (Exhibit 'A'). He did not get any pension under the rules. He expired on 22-11-1987. The Applicant applied on 03-12-1988 to Executive Engineer (B & F) Central Railway, Manmad and to Railway Board on 07-03-1989 for grant of ex-gratia payment (Exhibit R II). There was no reply and the Applicant filed an OA before this Tribunal on 02-11-1989. In May, 1990 i.e. after the filing of application, Applicant's representation was rejected (Annexure R III) by respondent relying on Railway Board's letter dated 27-12-1988 (Annexure R IV). The prayer of the Applicant is for (i) grant of pension to her husband from 01-02-1975 to 21-11-1987 i.e. till his death and (2) family pension to her from that date till her death.

2. Railway Board's letter can be understood in the context of the following background. It is gathered from Railway Board's letter No. F(E) III/86/PN-1/4, dated 26-10-1988 (which was produced by Respondents during the course of arguments) that Railway Employees in receipt of pay up to Rs.500/- per month who had rendered not less than 20 years of continuous service & retired prior to 01-04-1957 under state Railway Provident Fund (contributory) Scheme (SRPF(C) were granted exgratia pension at certain rates by Board's letter No.F(P)59-PN1-15PT, dated 23-01-1967. Although the letter dated 23-01-1967 was not produced, there is a cross reference made in para 5 of the letter dated 26-10-1988 that according to para 5 of the letter dated 23-01-1967, the exgratia pension is not admissible to (a) those who were dismissed/removed from service and (b) those who resigned from service. It is the basic case of the Respondent that the Applicant's late husband was not entitled to pension under these Rules.

3. But there was a further development. Ministry of Personnel by its OM No.4/1/87-P & P W (PIC) dated 13-06-1988 has issued instructions regarding grant of ex-gratia payment of Rs.150/- p.m. from 01-02-1986 to families of deceased CPF beneficiaries who had retired from service prior to 01-01-'86 or who died while in service prior to 01-01-1986.

4. These instructions were made applicable to Railway employees by Railway Board under its letter dated 30-06-1988 circulated by Central Railway under letter dated 11-07-1988 (Annexure R-IV). Central Railway made a reference on 07-10-1988 to Railway Board seeking some clarifications. A copy of this letter was produced by Applicant during the course of arguments. As the reply to this letter is relied upon by the Respondents rejecting the claim of applicant for exgratia payment, it would help to reproduce relevant portions of this letter.

" A case has been referred to this office where a case of widow whose husband had resigned from Railway service after putting in 30 years service (period from 08-08-1940 to 07-08-1970) due to indifferent health, requesting for grant of ex-gratia payment. In this context, it may be pointed out that the employees governed by CPF Rules who resign after 15 years' service are entitled for all benefits such as SC to PF and after completion of 20 years' service one set of complimentary passes which is permissible in case of voluntary retirees.

In view of the above, Board are requested to clarify whether the widows/dependent children of CPF beneficiaries who resigned/voluntary retired/medically unfitted/compulsory retired prior to 01-01-1986 will also be eligible for grant of ex-gratia payment of Rs.150/- plus dearness relief as laid down by the Ministry of Personnel, PG & P under their O.M. referred to above.

The Financial Adviser and Chief Accounts Officer of this Railway has remarked as under :-

It is seen from Railway Board's letter No. PC.IV/87/Imp/1, dated 30-06-1988, sub-para (5) & (6) of main Para 3 that those who are in receipt of F.P. under E.O.P. Rules and where a pensioner was subscribing contributionary P.F. on re-employment are not eligible for Ex-gratia payment sanctioned thereunder. It is also seen from Railway Board's orders issued vide their letter No.F(P) 59 PN-1/15 Pt of 23-01-1967 for grant of ex-gratia pension to those retired prior to 01-04-1957 that there are many conditions for grant of ex-gratia pension and the rules of ex-gratia was different for different rate of pay drawn by them at the time of retirement prior to 01-04-1957. In the present case of ex-gratia payment to the families of these retired prior to 01-01-1986 under ERPF (C) Rules, no such conditions have been laid down and the ex-gratia is uniformly fixed Rs.150/-

to all irrespective of the pay drawn by their husband/wife at the time of his/her retirement or death while in service, prior to 01-01-1986. The intention, therefore in granting this ex-gratia payment may not be restricted to only those who retired on superannuation or dies while in service. However, as Board's letter is silent about this, Board are requested to issue suitable clarification in this regard."

5. Railway Board issued a clarification on 27-12-1988 which is seen at 'Annexure R-IV' and is reproduced below:-

"It is clarified that the families of Railway Employees who were governed by the S.R.P.F.(C) Rules & had resigned are not eligible for ex-gratia payment on the analogy that the families of Railway employees governed by the Pension Rules are not eligible for family pension under the Pension Rules under similar circumstances. In this connection, your attention is invited to Para 3 (4) of Department of Pension and Pensioner's Welfare's Office Memorandum dated 13-06-1988 forwarded under Board's letter No. PC-IV/87/Imp/1, dated 30-06-1988.

The families of those employees who were compulsorily retired or medically in-capacitated are eligible for ex-gratia payment."

6. Para 3(4) of Personnel Department's Office Memorandum dated 13-06-1988 to which reference is made in above letter reads as below:-

" 3 The sanction of ex-gratia payment shall be subject to the following conditions :-

- 1)
- 2)
- 3)
- 4) The other provisions of eligibility prescribed for family pension under CCS (Pension) Rules 1972 though not specifically mentioned above, shall also apply for

purpose of regulating grant of ex-gratia payment under these orders."

7. It thus emerges that grant of ex-gratia payment has been made subject to CCS (Pension) Rules 1972 and it is not disputed that the relevant rule is Rule 26 of CCS (Pension) Rules which corresponds to Rule 426 of manual of Railway Pension Rules 1950 of which the relevant portion is reproduced below:-

"426 (1)(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the competent authority or dismissal or removal from service entails forfeiture of past service." It is not in dispute that forfeiture of past service entails loss of pensionary benefits. The stand of the Railway Department, is therefore, that since the husband of the Applicant had resigned, he was not entitled to pension and his family is also not entitled to ex-gratia payment.

8. To this, the contention of the Applicant is firstly that Office Memorandum dated 13-06-1988 & its applicability to Railway employees has come in for judicial interpretation in the following cases and by virtue whereof the Applicant is entitled to ex-gratia payment.

1. Mr. Evelyn Gracios Vs. Divisional Railway Manager, Bombay V.T. 1991(1) A.T.J. 99.
2. Smt. Sarojini Waman Shinde Vs. Union of India being OA No.721/92 decided on 20-12-1993 by a Single Judge Bench of Bombay Bench of C.A.T.
3. Smt. Prema G. Naik Vs. Union of India being O.A.No.359/90 decided on 17-01-1994 by another Single Judge Bench of Bombay Bench of C.A.T. to which one of us is a Party.
9. Since Gracios' case was decided earlier (03-07-1990) and was a Division Bench case on which reliance was placed in Shinde's Case, let us consider

the ratio thereof first. Very briefly, the case proceeded on equivalence of resignation after completing more than 30 years service to retirement for purposes of pensionary benefits and treating ex-gratia payment as a pensionary benefit. Further, reliance was placed on Rule 101 of Manual Railway Pension Rules. This rule may be quoted in extenso.

" Rule 101

(1) The retirement benefits under these rules for a permanent and temporary Railway servant comprise of two elements viz:-

- (i) (a) Ordinary gratuity/Pension; and
- (b) Retirement gratuity and Death gratuity; and
- (ii) Family Pension.

The benefits are admissible to all permanent and temporary Railway servants except those who are removed or dismissed from service or resign from it before completion of 30 years' qualifying service.

(2) In the case of a temporary Railway servant the benefits comprise -

- (a) If he quits service on account of superannuation invalidation or reduction of establishment, a terminal gratuity;
- (b) If he dies while in service -
 - (i) a death-gratuity to his family; and
 - (ii) a family pension ~~is~~, (F(E) III 78-PN 1/12 of 27-02-1979)."

10. In Gracios' case, the Tribunal, from the language of Rule 101 and Railway Board letter dated 23-01-1967 regarding grant of ex-gratia pension referred to by us earlier observed in para 10 of its judgment that while there is no positive mention that the pensionary benefits or ex-gratia payment shall be payable to those who have retired after rendering 30 years qualifying service, an inference in that behalf is available only from the negation of benefits to those who resigned from service before completion of 30 years of service. In that case, undisputedly the husband of the Applicant had completed 30 years of service and the Tribunal

accordingly declared that applicant is entitled to ex-gratia payment in accordance with Office Memorandum dated 13-06-1988.

11. In our view, Gracios case does not help the Applicant in the present case because the husband of the Applicant had not completed 30 years of service before he resigned from service and hence Rule 101 does not apply.

12. The Applicant, therefore, heavily relies on the Shinde case which admittedly was followed in Smt. Prema G. Naik case. In the Shinde case, Applicant's husband had completed only 27 years and 8 months of service before he resigned. In the Prema Naik's Case, "Applicant's husband had completed a little less than 30 years of service at the time he resigned."

13. The reasoning for granting relief in Shinde case is contained in paras 4 & 5 thereof which may be reproduced.

"It ^{is} also mentioned that the families of those employees who were compulsorily retired or medically incapacitated are eligible for ex-gratia payment. It is difficult to see the reason for exclusion of the category to which the applicant belongs. Evidently the beneficiaries under the present scheme would not have been entitled to family pension at all, unless provision was made for them under the scheme. Even the families of those employees who are compulsorily retired, medically incapacitated were eligible for ex-gratia payment irrespective of the fact that the employees in these cases had not put in the qualifying period of service. It does not stand to reason that only the persons who had resigned should be excluded from the operation of the scheme.

Learned counsel for the respondents is right in urging that the applicant's case could not be covered as per the judgment in Evelyn Gracios case or by the clarification issued by the respondents. It is exactly

this position that the learned counsel for the applicant urged was arbitrary because if the object was to make provision for the family of the deceased employee which was in indigent circumstances then the classification would not have any nexus to the object to be achieved and people placed in similar circumstance would be excluded. This will clearly therefore be a case where the scheme would work arbitrarily and on the same lines on which this Tribunal held in O.A.20/90 decided on 03-07-1990, I would hold that the order rejecting the applicant's application for family pension by railway administration is illegal and arbitrary and violative of articles 14 and 16 of the Constitution."

14. The learned counsel Shri Sawant for the Respondents fairly conceded that Applicant must succeed if Shinde case is followed because her husband had completed 27 years 3 month's service. He, however, stated that Shinde case as well as Prema Naik case related to Western Railway whereas/present case relates to Central Railway. He was not aware whether an application for review of Shinde case has been moved but he made following submissions on merits. The vires of Rule 101 of Railway Pension Manual have not been challenged by the Applicant. Secondly, "Gracioso" case had merely interpreted Rule 101 whereas Shinde case had disregarded its provisions which were statutory. Therefore, the learned Single Bench was not correct in equating resignation with these two contingencies. He also urged before us that it would be in order for a Division Bench not to follow the authority of a decision of Single Bench especially if some points had not been brought to the notice of the Single Bench.

15. In order to appreciate the issues involved, it may be desirable to reproduce relevant rules - vide Rule 311 (resignation from service), Rule 312 (Compulsory Retirement from service) and Rule 608 (1) (invalid gratuity/Pension).

"Rule 311 - RESIGNATION FROM SERVICE:- No pensionary benefit (or compassionate grant(s) and/or allowances) may be granted to a Railway Servant who resigns from service, except that voluntarily retired after qualifying service of 20 years.

Voluntary retirement from service after completion of 30 years' qualifying service etc. in terms of Para 620 or Para 622 does not, however, constitute resignation within the meaning of these rules."

"Rule 312 - COMPULSORY RETIREMENT FROM SERVICE :-

A Railway servant on whom the penalty of compulsory retirement from service is imposed, ~~should~~ should ordinarily be granted such pensionary benefits, on the date of compulsory retirement, as he would have been entitled to if he was invalidated out of service on that date. Where however, the circumstances of a particular case so warrant, the authority competent to impose the penalty of compulsory retirement may make such reduction in the pensionary benefits, but not exceeding one-third of the pensionary benefits due, as it may think appropriate. The reduction may be made either in ordinary gratuity/pension or in death-cum-retirement gratuity, or both. It is, however, necessary that the competent authority should express its intention in clear and unequivocal language."

"608 To whom granted : INVALID GRATUITY/PENSION :-

(i) Where the appropriate authority has reason to believe that a Railway servant is suffering from

- (a) A contagious disease or
- (b) a physical or mental disability which in its opinion interferes with the efficient discharge of his duties.

it may direct him to undergo medical examination with a view to retire him from service on invalid gratuity/pension.

A Railway servant also may, if he feels that he is not in a fit state of health to discharge his duties, apply

to the appropriate authority for retirement on invalid gratuity/pension."

16. The learned counsel for the Applicant Shri Gangal argued that there is no condition of qualifying service for the contingencies of compulsory retirement and invalidation and hence a condition of qualifying service of 30 years only in the case of employees who resign is arbitrary. He further argued that a stigma attaches to compulsory retirement. Award of pension without qualifying service to an ^{employee} ~~compulsorily~~ retired amounts to ~~rewarding~~ ^{rewarding} a wrong-doer as against an employee who resigned but who has rendered long years of faithful service which might marginally fall short of the limit of 30 years of qualifying service. He also relied on judgment in "Shinde's case" which held that if the object was to make provision for the family of the deceased employee which was in ~~indigent~~ circumstances, then the classification would not have any nexus to the object to be achieved and this will clearly be a case where the scheme would work arbitrarily and on the same basis on which this Tribunal held in O.A.20/90 (Gracioso Case). It ^{should} hold that the order rejecting the application for family pension is illegal & arbitrary & violative of Art. 14 & 16 constitution.

17. With respect, we are unable to follow the reasoning of the Tribunal in 721/92 (Shinde Case). We are inclined to agree with the learned counsel of the Respondent that in that case, the statutory force ^{of} 30 year-rule for grant of pension to employees who resigned was ~~either~~ not brought to the notice of the Tribunal. This follows from the para 3(4) of Personnel Department in Memo dated 13-6-88 which clearly makes ^{grant of ex gratia condition} other provisions of pension rules including Rule 426 of Railway Pension Rules. The Tribunal purports to rely to Gracioso Case but fails to notice that Gracioso case proceeded entirely on the basis of validity of 30 year rule.

18. Assuming that in view of the pleadings in that

case, the Tribunal held that 30 years' rule was arbitrary as much as it did not apply to medical invalidation and compulsory retirement, then with respect, we would like to point out that the Tribunal's attention was not drawn to the provisions of relevant rules viz. Rule 608 & Rule 312. It will be seen that both these contingencies are clearly distinguishable from the voluntary ~~act of~~ resignation. Medical invalidation takes place to avoid spread of contagious disease or in the interest of efficiency which might be adversely affected by a physical or mental disability of the employee. In the case of compulsory retirement, the competent authority has the power to reduce pension. This both invalidation and compulsory retirement stand on a different footing from ~~resignation~~. As observed by the Hon'ble Supreme Court in J.K. Cottan Spinning & Weaving Mills Ltd. v. State of U.P. (AIR 1990 SC 1808). Resignation implies that the employee has taken a mental decision to sever his relationship with his employer and thereby put an end to the ~~contract~~ of service. Not only is the element of volition absent in invalidation and compulsory retirement but public interest also appears to be involved in rapid departure of the employees described in these rules. Absence of a condition of qualifying service in the case of invalidation or compulsory retirement would, therefore appear to be reasonable.

19. We may consider the argument that the condition of qualifying service is arbitrary because it does not have any nexus to the object to be achieved which is stated to be to make provision for the family of the deceased employee which was in indigent circumstances. With respect, this observation is not borne out by a reading of the scheme of "Grant of ex-gratia payment to families of deceased CPF employees" promulgated by the Department of Personnel.

The scheme is obviously based on recommendations of the 4th Pay Commission. We have, therefore, taken the trouble of locating the relevant recommendation of vol.2 of 4th Pay Commission which is reproduced below.

(Para 9.7)

"Railways have suggested grant of exgratia payment to the Widows & dependant children of deceased employees covered by CPF scheme at 50% of the rate of exgratia payment (which in para 9.6 is recommended to be Rs.300). We agree and recommend ~~it~~ accordingly for those getting pay upto Rs.500/- per mensem. The eligibility of widow's and minor children may be same as laid down under the pension rules". It would thus be seen that the object of the scheme is what is stated in the title of the scheme and it was never contemplated to relax the conditions of eligibility ~~as~~ as laid down under pension rules.

20. It is thus a gross over-simplification to state that the object of any pension scheme is to make provision for the family of the deceased employee which was in indigent circumstances and on that basis to hold 30 years limit of qualifying service in respect of resigning employees as arbitrary. It would be a problematic procedure for a Tribunal ~~exercising~~ powers of judicial review ~~recovery~~ to hold an employee who has put in about 27 years service eligible for pension without considering implications of this: i.e. what ~~should~~ be ^{the} minimum service which can be said to fulfil objectives of the scheme. But this involves the Tribunal in the dangerous zone of rule making.

21. In view of above, we consider that attention of the Tribunal in the case of Shinde was not invited to these aspects and we are not bound by it. The same applies to Prema Nayak's case.

22. In this background, we notice remaining arguments of the applicant.

23. The learned Counsel for the Applicant invited our attention to Rule 102 of Manual of pension Rules which deals with the "Quitting of Service". The relevant rule reads.

"Rule 102; Ordinary gratuity/Pension becomes due on quitting service on account of any one of the following reasons :-

- (a) abolition of post ;
- (b) medical invalidation ;
- (c) retirement on completion of 30 years' qualifying service.
- (d) superannuation.

No ordinary gratuity/pension is, however, payable if the Railway servant dies while in service. A Railway servant who quits service before completion of 10 years' qualifying service is given an ordinary gratuity but no pension. Pension is granted only if a Railway servant quits service after completion of atleast 10 years' qualifying service."

24. We note that quitting service is distinct from resignation. Apart from other contingencies mentioned in the rule which are otherwise dealt with by us, quitting appears to cover quitting after abolition of post in which case, an employee who quits after completion of 10 years' of qualifying service is entitled to gratuity/pension. This rule, is also not helpful to the Applicant.

25. The Counsel for the applicant argued that he is not asking for pension in terms of Railway pension rules. Even if it is held that Railway Pension Rules require 30 years' qualifying service, he is still entitled to relief because her application is for grant of exgratia payment in terms of Ministry of Personnel Scheme contained in Office Memorandum Dated 13.06.1988 which does not

prescribe any qualifying service. This argument is clearly unacceptable since the Office Memorandum dated 13.06.1988 in Para 3(4), in terms, envisages that other provisions of eligibility prescribed for family pension under CCS Pension Rules 1972 though not specifically mentioned above shall also apply for purpose of regulating grant of ex-gratia payment under these orders. We have seen that the relevant Railway Pension Rule is Rule 426 of Manual of Railway Pension Rules corresponding to Rule 26 of CCS (Pension) Rules, 1972.

26. We finally take note of the contention of the counsel for the Applicant that the limit of 30 years is arbitrary because Government is bound to grant the pension (or pension like benefit, in this case ex-gratia payment) to employees after putting in 20 to 25 years' of service as a matter of old age/dependency social security. We note that some averments in this regard are made in para 4.3. of the application. While fully sympathising with the plight of the Applicant who is a widow and whose application for exemption from payment of application fees was allowed by us on ground of indigence, we are unable to accept this argument. Government employees have no fundamental right to pension or ex-gratia payment. It is only a statutory right, governed by rules. We can perhaps do ~~not~~ better than quote the landmark Nakra case (AIR 1983 SC 30), where the Hon'ble Supreme Court relying on the constitution Bench decision in Deoki Nandan Prasad case (AIR 1971 SC 1400) reaffirmed that pension is a right and payment of it does not depend on the Government but is governed by rules and a Government servant coming within these rules is entitled to claim pension (para 20). The Hon'ble Supreme Court again observed in para 31 that pension creates a vested right subject to statutory rules. There is thus no abstract right to pension/ex-gratia ^{benefit} to a Government employee or his family which is un-supported by rules.

27. We, therefore, hold that since the Applicant's husband had not completed 30 years' qualifying service at the time of ~~her~~ resignation she is not entitled to ex-gratia payment in terms of the Office Memorandum dated 13.6.1988. In this matter for the reasons given, we follow the decision of the Division Bench of the Tribunal in Evelyn Gracios case. ^{Shinde case} and But we are unable to follow the [O.A. 721/92] ^{and} Prema Naik case [O.A. (359/90)]. We accordingly dispose of the Application by the following order.

O R D E R

28. Application is dismissed as being without merit.
No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

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