

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No. 824 of 2005

PATNA, dated the 22nd December, 2006

CORAM: The Hon'ble Mr S.N.P.N.Sinha, M[A]

Baso Devi, wife of Late Raghu, Ex-Oil Furnishing Incharge, Grade 'B' Group 'D', Ex-T.N.K. 1445/Rolling Mill, Jamalpur Railway Workshop, Eastern Railway, Jamalpur [Munger] residing at Village Ratanpur, P.S. Bariarpur, District Munger.

By Advocates: Mr Nand Gopal Mishra .. Applicant
Mr. Satyendra Prasad

versus

1. The Union of India through the General Manager, Eastern Railway, Koyalaghata, Kolkata.
2. The Chief Workshop Manager, Jamalpur Rly. Workshop, E.Railway, Jamalpur.
3. The Divisional Rail Manager, E.Railway, Maldah Division, Maldah.
4. The Workshop Accounts Officer, Jamalpur Railway Workshop, E.Railway, Jamalpur.

By Advocate: Mr N.K.Sinha .. Respondents

O R D E R

S.N.P.N.Sinha, M[A]:-

The present application has been filed by the widow of Late Raghu, who was appointed as Khalasi at Rolling Mill, Jamalpur Workshop on 5.8.1938. He was promoted as Oil Furnishing Incharge. He died in course of duty by burning injuries on 2.3.1966 at the Railway Hospital, Jamalpur. The applicant was an illiterate lady living in the village. It is claimed that the applicant made several representations for grant of Gratuity, Provident Fund, Family Pension, etc. On 11.4.1989, she was sanctioned ex-gratia payment of Rs.150/- plus Dearness Allowance per month with effect

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from 1.1.1986 [and not from the date of the death of the applicant's husband, i.e., 2.3.1966] under the signature of Workshop Accounts Officer, Eastern Railway, Jamalpur Workshop. It is claimed that the applicant is entitled to Family Pension Scheme introduced in the Railways in the year 1957 [for employees who retired during the period from 1.4.1969 to 14.7.72]. The employees were to exercise option before 31.3.1958 for State Railways Provident Fund or pensionary benefits. Any employee who did not exercise such option within the time-limit prescribed or whose option was incomplete or ambiguous was deemed to have opted for pensionary benefits. It was also provided that when an employee dies on or after 1.4.1957 without exercising any option for the Family Scheme, his dues will be paid on Provident Fund system. The case of V. Viswanath Iyer vs. Union of India and others [1994 [27] ATC 209] was cited. Employees opting for Provident Fund Scheme and not Pensionary Scheme are equally entitled to the benefit of Pension Scheme. Judgment of the Apex Court in the case of R. Subramanian vs. Chief Personnel Officer, Central Railways [AIR 1995 SC 83] was cited in this regard. It was further claimed that the applicant's husband had made contribution to the Provident Fund till 31.3.1962, statement of Railway Provident Fund Institution Account dated 6.11.1962 has been annexed with the application. It was submitted that Family Pension Scheme was introduced in 1964 and was made part of Railway Services [Pension] Rules, 1993. Rule 75 regarding Family Pension Scheme provided that it would apply to a Railway employee entering service in pensionary establishments on or after 1.1.1964 as well as to an employee who was in service on 31.12.1963 and came to be governed by the provisions of Family

Pension Scheme for Railway employees. It was also applicable to such employees of pensionable establishments who retired or died before 31.12.1963 and also to those who were alive on that date but had opted out of 1964 Scheme. The family of such employees was entitled to Family Pension after death of the employee if he had completed one year of continuous service or was medically examined and declared fit even though he had not completed one year of service. It was further submitted that Contributory Family Pension Scheme of 1964 was made non-contributory in 1977 by removing pre-condition of employee's contribution. The applicant also applied for medical allowance of Rs.100/- per month from the date of her husband's death as she had not availed medical facilities at Rail Hospital, Jamalpur, but no such payment was made. She was also informed by one Satyendra Narain Yadav, who was a similarly situated employee at Jamalpur Workshop, that he was getting full pension. She in her representation also mentioned a judgment of this Tribunal in the case of Birja Devi vs. Union of India [2002 BCCL [5] page 28]. But no action was taken on this. It is said that in that case, the Tribunal allowed grant of family pension to the applicant even after 33 years from the date of cause of action. The denial of Death Gratuity, Provident Fund, unutilised Earned Leave benefits and Family Pension has been a continuing loss and cause of action.

2. It was submitted on behalf of the respondents that the application is barred by limitation as the matter relates to the period 40 years ago. From a photo copy of the Provident Fund Slip [annexed with the OA], it appears that the applicant's husband was governed under State Railway Provident Fund [Contributory] Rules,

which is applicable in case of non-pensionable staff. The amount shown in the slip under column 2 is the contribution of the staff, whereas the amount shown under column 3 is bonus, that is, Government contribution to the P.F which is allowed only to non-pensionable staff. So, in this case, Family Pension is not admissible, nor is pensionary benefits like DCRG. So far as the question of payment towards Group Insurance Scheme and Earned Leave is concerned, there was no provision of such benefits at the material time, Leave Encashment and GIS were introduced in 1977. It is said that all the balance towards Provident Fund is paid after retirement/death of the employee and the same must have been paid in this case. In accordance with O.M. Of Govt. of India, Ministry of Personnel, Public Grievances and Pensions [No.4/1/87 dated 13.6.88, circulated under CPO Serial No.135/88 dated 30.6.88] widows/dependent children of a deceased CPF beneficiary, who had retired from service prior to 1.1.1986 shall be granted ex-gratia payment of Rs.150/- per month with effect from 1.1.1986 or from the date following the date of death of the deceased employee, whichever is later. The applicant was granted such ex-gratia payment which has since been revised to Rs.605/- plus relief admissible and payable from 1.1.1997, as per 5th Pay Commission recommendation. It has been admitted on the respondents' behalf that Pension Scheme was introduced in Railways from 1957. Employees were asked to exercise their option for Pension Scheme or Contributory Provident Fund Scheme. By circular dated 8.5.1987, it was provided that all CPF beneficiaries in service on 1.11.1986 should be deemed to have come under the Pension Scheme. The applicant's husband's case, however, relates to 1966.

It is also said that such old records are not available in the office of the respondents. It is said that the provision of Family Pension was applicable to pensionable establishments and not to CPF beneficiaries who are entitled to ex-gratia payment. Similarly, the grant of medical allowance is also admissible to the pensioners and family pensioners. It was further said that the benefit of ex-gratia payment was not granted to Birja Devi [OA 388/2000] cited by the applicant. Her husband was a pensionable staff.

3. Various rulings cited on the applicant's behalf have been perused. In S.K. Mastan Bee vs. General Manager, S.E. Railway and another [2003] 1 SCC 184], the Apex Court by its order dated 4.12.2002 observed that the appellant in the case, the widow of a Railway employee, who died in harness on 21.11.1969, claimed that she was entitled to Family Pension, but because of ignorance and lack of legal assistance, she could not stake her claim till 12.9.1991. The applicant's claim was rejected by the Railways on the ground that her husband on the date of her death was not in the service of the Railways because he was earlier medically invalidated. A Singal Bench of the High Court Andhra Pradesh allowed the writ petition and directed the Railways to fix and pay Family Pension with arrears with effect from the date of death of the appellant's husband. In an appeal preferred by the Railways, a Division Bench of the same Court revised the order and made it applicable from 1.4.1992, the date on which a legal notice was given by the applicant. It was held by the Apex Court that the appellant, being illiterate did not know of her legal right and had no access to any information as to the right to Family Pension. On the other

hand, it was obligatory for husband's employer,i.e., the Railways to have computed the Family Pension and offered it to her without driving her to litigation. The Apex Court set side the order of the Division Bench of the High Court and ordered for payment of pension with effect from the date of death. In another judgment in the case of R. Subramaniam vs. Chief Personnel Officer, Central Railway [AIR 1995 SC 983] dated 16.1.1995, the Apex Court allowed the case of the petitioner, who was a Railway employee and who retired in 1971, did not opt for Pension Scheme as introduced by the Railway Board in 1957, rather paid for Provident Fund Scheme and sought direction to grant him the same benefit as granted to others by CAT, Bombay Bench, in respect of Railway employees who were similarly placed like the applicants, that is, those who retired during the period from 1.4.1969 to 14.7.1972 and who had indicated their option in favour of the Pension Scheme either while they were in service or after retirement and who now desired to opt for the Pension Scheme. The Apex Court held that since the petitioner opted for the Pension Scheme in terms of the order of the Tribunal in 1999, the petitioner is entitled to similar reliefs. Two other cases were also cited on the applicant's behalf. S.R. Bhanrale vs.Union of India & others [1996 LAB IC 2756] related to the case of an Assistant Director General,Telecommunication, whose claims for retiral benefits like encashment of Earned Leave, increment of arrears, Special Pay Due and LTC remained unsettled for a period much later than his retirement. It was claimed by the Department that these were barred by time, but, however, paid later on notice being issued by the Court in the SLP. The Apex Court observed that appellant was

made to run from pillar to, post to get his legitimate dues and ordered the respondents to pay a sum of Rs.2 lakh towards interest compensation and expenses. Similarly, in Smt. Poonamal vs. Union of India and others and Pramilobai Vishnu Dixit vs. State of Maharashtra [AIR 1985 SC 1196] [related to Civil Services Pension Rules, 1972 and Family Pension Scheme, 1964] it was observed by the Apex Court that Family Pension came to be conceptualized in 1950. When a Government servant dies in harness, family pension was devised to help the surviving widow or minor children. Certain liberalisation was also effected. One such provision was introduced in 1964. The Scheme was subject to the condition that the Government servant had in his life time agreed that he shall contribute an amount equal to two months emoluments or Rs.5000/- whichever is less out of DCRG. It was further provided that dependents of Govt. servants who died prior to 1964 were not eligible for the benefit. The other class which was left out was those Government servant who opted out of Family Pension Scheme of 1964. In 1977, the contribution of two months emoluments was done away with. The Apex Court reiterated that pension is a right, not a bounty or gratuitous payment. The payment of pension does not depend on the discretion of the Government but is governed by relevant Rules and for any one entitled to pension under the Rules and Scheme, it is a matter of right. The respondents in both the cases finally agreed to the relief claimed by the appellants.

4. From the arguments of the two sides and the material on record, it appears that certain specific procedure and rules had been laid down by the Railways with regard to Contributory



Provident Fund Scheme and Pension Scheme as well as Family Pension and Medical Allowance provisions. The specific circulars have been annexed with the WS filed on the respondents' behalf. The applicant has been granted ex-gratia payment, as provided in the Rule from 1986 at the rate of Rs.150/- per month plus Dearness Allowance and at an enhanced rate of Rs.605/- plus relief admissible from 1997. The relevant circulars are No. PC/IV/87/13/881/3 dated 30.6.1988 with a of the memo of Ministry of Personnel, Public Grievances and Pensions and No.PC-IV/87/IMP/PNI dated 8,5,1987 and No.PC-V/98/1/7/1 dated 21.4.1999. There appears to be no justification for interference in the matter.

5. The application is, in the result, dismissed. No order as to costs.



[S.N.P.N. Sinha]
Member[A]

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