

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 415/1996

Date of Decision: 2/12/96

Smt. Anandibai Chandrika Shirkar Petitioner/s

Shri V.G. Pashte Advocate for the  
Petitioner/s

V/s.

Union of India & Anr. Respondent/s

Shri R.R. Shetty Advocate for the  
Respondent/s

CORAM:

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

Hon'ble Shri

- (1) To be referred to the Reporter or not ? X
- (2) Whether it needs to be circulated to X  
other Benches of the Tribunal ?

abp.

M.R. Kolhatkar  
(M. R. KOLHATKAR)  
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6,PRESOT RD, 4TH FLR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO.415/96.

DATED THIS 2ND DAY OF DECEMBER, 1996.

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

Smt.Anandibai Chandrika Shirkar,  
Residing at 92, BDD Chawl,  
Room No.52, Worli,  
Bombay - 400 018.

... Applicant.

By Advocate Shri V.G.Fashte.

v/s.

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

2. Chief Work Shop Manager,  
Parel Work Shop C.Rly.,  
Parel, Bombay.

... Respondents.

By Advocate Shri R.R.Shetty.

ORDER

X Per Shri M.R.Kolhatkar, Member(A) X

In this case the applicant seeks the relief of  
ex-gratia payment as widow of deceased Shri Chandria Rama  
Shirkar late <sup>railway employee</sup> / in terms of Railway Board's endorsement  
No.4/1/87-P&PW(PIC) dated 13/6/88.

2. It is not in dispute that the applicant's husband  
resigned from service on 11/12/76 after having put in about  
35 years of service having been appointed on 11/6/41. The  
reason for denying the benefit is that the applicant's  
husband was not a retiree and since ex-gratia is permissible  
only subject to other applicable rules and since an employee  
who resigns forfeits the qualifying service, /she is not

entitled to the ex-gratia payment.

3. It is further contended that the scheme came into force from 1986, that the applicant's husband had resigned in 1976 and expired in 1985 and the application itself is filed on 21/3/96 and therefore it is barred by limitation.

4. I am not inclined to deny the relief on the ground of limitation in view of the judgement of the Supreme Court in M.R.Gupta's case read with Subramaniam's case, from which it is clear that the right to receive the pension is a recurring cause of action which arises every month on the occasion of payment. However, delay in application may have implications for the relief as to arrears.

5. The applicant has relied on several cases including Everlyn Gracios v/s. Divisional Railway Manager in OA No.20/90 decided on 3/7/90. In this case, in para-9 it is stated that

"Thus, it is evident that the Railway Administration have been consistently treating the railway employees who resigned from service after 30 years qualifying service on a par with the employees who retired on superannuation for the purpose of grant of pensionary benefits."

6. This case is distinguishable from several other cases the applicant has relied on from the ratio of which I had occasion to differ viz.

Smt.Laxmibai Vishnoo Yadeo v/s. Union of India in OA No.222/91, Gangubai Yadu Dalvi v/s. Union of India in OA No.231/91, Sarojini Waman Shinde v/s. Union of India in OA No.721/92 and Smt.Prema G Naik v/s. Union of India in OA No.359/90 decided on 17/1/94.

7. In all these latter cases other than Gracios case, the condition of completion of 30 years service was not

satisfied and therefore they are not in the same category as the case of Gracios.)

8. In view of judgement in Gracios's case and in view of the fact that the applicant's husband had completed more than 30 years of service at the time of resignation, it is evident that this issue is no longer res-integra and that the applicant is entitled to relief.

9. OA is therefore allowed. Respondents are directed to grant ex-gratia payment to the applicant on a monthly basis in terms of Department of Personnel Public Grievances and Pension O.M. dated 13/6/88 adopted by the Railways vide their endorsement dated 13/6/88. So far as the arrears of ex-gratia are concerned, the same are restricted for one year prior to the filing of the OA namely 21/3/95 onwards. No orders as to costs.

abp.

M/R to Kolhatkar  
(M. R. KOLHATKAR)  
MEMBER (A)