

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 77/96

Date of Decision: 17-4-1997

Smt. S.V.Kedari

.. Applicant

Shri D.V.Gangal

.. Advocate for  
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Shri R.R.Shetty

.. Advocate for  
Respondent(s)

CORAM:

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

The Hon'ble

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to  
other Benches of the Tribunal ? X

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A.77/96

THURSDAY this the 17th day of APRIL 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Smt.S.V.Kedari,  
C/o. H-4/22,  
Ordinance Factory Estate,  
Bhusaval - 425 203.

By Advocate Shri D.V.Gangal .. Applicant

-versus-

1. U.O.I.  
through  
The General Manager,  
Central Railway,  
Mumbai V.T.
2. The Divisional Railway Manager,  
Central Railway,  
Bhusaval - 425 201.

By Counsel Shri R.R.Shetty .. Respondents

- : O R D E R :-

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

In this O.A. the applicant, the widow of a deceased compulsorily retired railway employee has claimed the relief of grant of pension to her husband and family pension to herself in terms of Railway Board instruction dt. 8-5-1987 relating to change over of Railway employees from the SRPF (Contributory Scheme) to Pension Scheme. The facts are as below:

2. The applicant's husband <sup>by way of penalty</sup> was removed from service on 29-4-1981 and the same was confirmed in appeal on 17-6-1983. Applicant's husband had gone to Civil Court and the civil suit being converted into T.A.No.313/86 was decided by the Tribunal on 16-4-87 by remanding the matter to the General Manager for deciding the appeal afresh after giving a personal hearing. General Manager by his order dt.2-12-1987 converted the penalty of removal from service to that

of compulsory retirement ~~as~~ a matter of clemency, of compulsory retirement. He also directed that the penalty would take effect from the date the penalty of removal from service was made effective viz. 29-4-1981. The applicant's husband had approached the Tribunal in O.A. 939/88 against the decision of the GM and the same was disposed of on 25-8-1993 by this Tribunal by the following order :

"All that we need direct while dismissing the present application is that legal representatives of the deceased Vasant Shantaram Kedari make an application for pensionary and terminal benefits within one month from today and if such an application is made, the authorities should consider under the rules whether the legal representatives are entitled either to the pension which the deceased would have drawn and the family pension if any. This action be taken within three months after the filing of the said application. If the application is defective, the authority will see that the application is rectified without delaying the matter."

It may be noted that during the pendency of the O.A. the railway employee, the husband of the applicant, expired on 12-11-1989. In terms of Tribunal's order dt. 25-8-1993 the widow represented but the same was turned down by the respondents by their letter dt. 10-5-1995 informing her that she cannot get the pension. This reads as below :

"With reference to your representation cited above, you are hereby to advise that the following settlement dues were already been arranged in favour of your late husband by Sr.DAO BSL vide Sr.DAO BSL sett.case No.92/136

P.F.	11,272.00
CDS	83.00
REIS	47.70
Total	11,402.70

Passed vide No.034520016 dt.7-6-82

(2) SC to PF Rs. 5855.50 passed vide  
No.034520 0013 dt. 5-12-83 in cash  
through SS BSL

Regarding pensionary benefit form Ex-gratia  
were already handed over to you in person  
Since the above dues were paid to your late  
husband under SRPF Rule.

You are advised to please submit the  
above mentioned form duly executed and  
attested so that Ex-gratia pension can be  
authorised at this end."

3. It is this communication which is impugned  
in this O.A. The contention of the applicant is that  
on the date General Manager passed the order viz.2-12-87  
her husband was very much in the railway service.  
In this connection he refers to Rule 18 of the  
Railway Servants(Discipline and Appeal)Rules,1968  
explanation to which states that the expression  
'Railway Servant' includes a person who has **ceased**  
to be in Railway service. Secondly the applicant  
contends that prior to passing of the order by the  
General Manager viz. 2-12-87 the Railway Board  
had issued the orders about pension dt. 8-5-1987  
in terms of which CPF beneficiaries who were in  
service on January 1,1986 but had since retired  
and in whose cases the CPF amount has not already  
been paid, will be allowed retirement benefits  
as if they were borne on pensionable establishments,  
unless they specifically opt by 30-9-1987 to have  
their retirement benefits settled under the CPF  
Scheme. The counsel for the applicant contends that  
the deceased employee wasnot informed about the circular nor  
asked to exercise any option that by virtue of operation  
of the order dt. 8-5-87 her husband was deemed to be  
brought on pensionable establishment and the  
General Manager by an order passed subsequently  
viz. 2-12-87 cannot create a fiction of deemed  
compulsory retirement from retrospective effect

so as to deny the pensionary benefits to her husband and family pension to herself. In this connection he also relies on the Supreme Court judgment in State of Punjab vs. Amar Singh Harika, AIR 1966 SC 1313 in which the Supreme Court has observed as below:

"The mere passing of an order of dismissal is not effective unless it is published and communicated to the officer concerned. An order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it does not take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published.

Held that the order of dismissal passed against the officer on the 3rd June, 1949 could not be said to have taken effect until he came to know about it on the 28th May, 1951."

Counsel for the applicant contends that in view of the ratio of the Supreme Court Judgment above applicant could not be said to have been compulsorily retired <sup>much.</sup> from a date earlier to the date of passing of the order viz. 2-12-87.

4. Respondents have contended that the applicant's husband was not entitled to pension because he had opted for CPF scheme w.e.f. 17-3-1958 and he stood compulsorily retired from railway service w.e.f. 29-4-1981 and he was not in railway service as on 1-1-86 and therefore the question of grant of pension to the deceased railway employee does not arise. At the most, <sup>widow</sup> she is entitled to ex-gratia payment but she has refused to accept the same.

5. In my view the Supreme Court judgment on which the applicant has relied does not help her.

However, the question to be considered is whether the General Manager could have passed an order "in praesenti" creating a fiction of compulsory retirement of the applicant from the date of removal thus denying him a right to which he was entitled on the date of passing of the order by virtue of Railway Board's instruction dt. 8-5-87. Considering the course of litigation viz. Tribunal's two orders dt. 16-4-87 and 25-8-93 I am unable to take the view that General Manager could have created such a fiction. I am required to hold that the deceased husband of the applicant was very much in service as on 1-1-86 and that the nature of penalty came to be decided only on 2-12-87 when the GM passed the order. It follows that the period from removal till the date of passing of the order by the GM is required to be decided by the GM by passing of an appropriate order as per rules including an order denying backwages to the employee to which applicant may not raise any objection.

6. I am, therefore, of the view that the Railways may pass such an order and also pass an order regarding grant of pension to the deceased railway employee from 2-12-87 till the date of death viz. 12-11-89 and family pension to the widow of deceased employee from the date of death. Applicant's late husband is entitled to arrears of pension subject to adjustment of CPF dues already drawn by him

and the applicant is entitled to arrears of family pension. In the circumstance of the case, however, I am not inclined to grant interest. Action in this regard may be completed within three months of the passing of the order.

7. There will be no order as to costs.

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