

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 946/1999

Monday, this the 28th Day of August 2000

Smt. Malini w/o Yadav Murari Manjrekar Applicant.
(Applicant Shri R.S.Tulaskar, Advocate)

Versus

Union of India & Ors.... Respondents

(Respondents by Shri R.R.Shetty, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

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

(2) Whether it needs to be circulated to No other Benches of the Tribunal?

(3) Library. No. B.N.

(B.N. Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 946/99

Monday this the 28th the Day of August, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

Smt. Malini W/o Yadav Murari Manjrekar,
Retired Machinist, T.No.58587, Central
Railway Workshop,
Parel, Mumbai 400 012.
and resident of 20/7,
Sahakar Nagar,
Wadala, Mumbai-400 031. Applicant

(Applicant represented by Shri Tulaskar, Advocate)

vs.

Union of India through

- 1) Chairman, Railway Board,
Rail Bhavan, New Delhi.
- 2) The General Manager,
Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai.
- 3) Chief Workshop Manager,
Central Railway Workshop,
Dr. Ambedkar Road, Parel,
Dr. Ambedkar Road, Parel,
Mumbai 400 012. Respondents.

(Respondents represented by Shri R.R.Shetty, Advocate)

O R D E R

(Per B.N.Bahadur, Member (A)):

The Applicant in this case, Smt. Malini Manjrekar, is the widow of the late Shri Yadav Murari Manjrekar and has come up to the Tribunal making out the following case. The Applicant's husband was working with Respondents since 1941, and signed from their service on 11.3.1968, i.e. after a little short of 27 years of service. He was governed by the State Railway Provident Fund Rules (SRPF) then. He was however, provided a reappointment to the very same Railway Department on 21.11.1970 and thereafter

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governed by Railway Pension Rules, etc. The Applicant subsequently retired on superannuation on 31.8.1977.

2. It is averred that the Respondent did not agree to the condonation of break in service which was due to the Applicant as per Rules. The case for ex-gratia pension has also been made out as an alternative prayer, and Railway Board's instructions had been cited. The Applicant, thus comes up before the Tribunal seeking the reliefs, in substance, as follows: (i) hold that applicant's husband was entitled to condonation of break from 11.3.1968 to 20.11.1970 and to pensionary benefits under the pension rules (ii) hold that the present applicant is entitled to family pension and order payment thereof as also order payment of amounts of pension due to applicant's husband between 31.8.1977 to 10.9.1993 and (iii) alternate prayer for a declaration that applicant be held entitled to ex-gratia pension as per O.M. dated 13.6.1988 issued by Dept. of Personnel on 10.9.1993.

3. The learned Counsel for the Applicant, while reiterating all these facts, argued first that the applicant's husband was entitled, as a matter of rule, for condonation of break in service and quoted Rule 1314 as also Rule 2529 of the Indian Railway Establishment Code (IREC) in support of his argument. He argued that in June 1994, the Applicant had applied for such condonation of break but her application was rejected vide letter dated 12.3.1994 (page 10). The mainstay of the arguments of the Applicant rested on a number of Cases cited in support of her Case. These will be discussed ahead.

4. The Respondents have filed a written statement of reply, where it is first stated that applicant's husband was governed under non CPF Scheme i.e. Pension Scheme when he was reappointed

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in 1977. Since the further period of service was less than 10 years qualifying service, Applicant's husband was not entitled to pension, and the present applicant therefore, is not entitled to family pension. It is further averred that the issue regarding break in service from 1968 to Nov 1970 could only have been agitated by the husband of the applicant, and not by the applicant after his death. The case of *Vidhata Varma* decided by Full Bench is cited in this regard. The respondents statement gives, further, parawise replies to the Application.

5. It is stated that benefit of ex-gratia payment was available only to those CPF optees who retired from service prior to 1957 after completing 20 years service and hence the Applicant is not entitled to this benefit. All dues of Mr.Yadav Murari Manjrekar relating to his first phase of employment have been paid to him, and his reappointment was on humanitarian ground as a fresh entrant, and condonation of break in service was thus not possible. The Respondents make and stress the point about Limitation and delay and laches, and also aver that this Tribunal does not have the jurisdiction in this matter, since the cause of action has arisen in 1970 in respect of the husband's case.

6. The learned Counsel of the Respondents argued the case first referred Rules 33 and 43 of the Railway Service Pension Rules. He argued that the Applicant's husband had received the SRPF dues in 1968, and cannot have further claim after receiving such benefits. He reiterated the point regarding delay and laches to assert that Applicant kept quiet for sixteen years before his death. The widow cannot get the benefit of agitating a claim by using the ratio of the case of *Shri M.R. Gupta's* [1995 SCC (L&S) 1273]. He argued that the provisions relating

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to Limitation in the AT Act would otherwise have no meaning.

7. Referring to the claim for ex-gratia payment the learned Counsel stated that a length service of 30 years was the the minimum required for this, along with the requirements as mentioned in para 7 of the reply statement. Hence the Applicant was not entitled to this benefit. Learned Counsel cited the case of *Krishna Kumar* in support of his contentions [reported at AIR 1989 SC 1415].

8. In the first instance, it can be seen that the issue relating to condonation of break is relevant. Without the benefit of such condonation, the service rendered by Applicant's husband falls in two distinct phases viewed separately. These two phases individually fail the test of eligibility as per rule to the different benefits claimed. It is only if condonation is granted that further claims can be examined with reference to rules. Sec.1314 of IREC is not very relevant to the case of the Applicant. In the other section quoted viz. 2529, it is seen that there is a reference to entitlement of Pension after 25 years of qualifying service in the event of resignation. In the first place it is seen that this provision exists in the IREC of 1951 Edition of which the relevant page has been given as an extract at the time of arguments. I notice on checking up with later additions of IREC that these provisions have been deleted. In any case, no pleadings in the application are seen with reference to this provision of IREC and hence the Respondents also could not put in their say on this point. A mere reading does not allow any conclusions to be drawn in isolation from this provision of IREC. Rules No.43 of Railway Servants Pension Rules



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quoted by Counsel for Respondent talks of condonation automatically but clearly states that such benefits will not be entitled in cases of resignation and dismissal etc.

9. Now it is clear that condonation of break cannot come as an automatic entitlement, under any provisions that have been seen or any of the provisions cited. It is true that Applicant has resigned his post, and also that his dues have been settled as per then existing rules. This is something that cannot be ignored. disadvantage. Even if we assume that his resignation should be deemed to be treated as retirement, he fails on the ground that he does not have 30 years of service. The condonation of the break having been refused by competent authorities, and I do not have any basis to hold that such condonation should now be ordered in order to provide the benefits of family pension or ex-gratia payment to the present applicant.

10. The point about Limitation and delay and laches taken on by the Respondents is indeed of relevance and carries weight in the facts and circumstances of the case, and the legal position. Unfortunately, the applicant had not even agitated this issue ever since 1970, when he was employed again. The period between his superannuation and his demise is also very long indeed and delay and laches are evident in the light of the long span of time.

11. I now take up the examination of the cases cited by learned counsel for the Applicant. The case of *A.M. Gambhir* decided by Principal bench (D.A. 1032/1986) refers to a benefit granted in the case of break in service to Applicant therein because of the peculiar circumstances, where there was a break in

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his services with the undivided Punjab Govt. before partition and his subsequent service. This case cannot provide any assistance to the applicant. In the case of *R. Srivastav* decided by Supreme Court [(1996) SCC L&S, 147] the issue on condonation being pressed in the current circumstances was not decided *per se*. It was only that in the circumstances of that case, the Supreme Court had provided the benefit of counting of a particular period for pensionary benefit only. This cannot become the basis of a claim in the present case. Similarly in the case of *S.R. Bhanrale vs. UOI* decided by Supreme Court [(1996) SCC L&S 1384], it was a case where it was decided first that claims other than pension had been *wrongfully withheld* by Respondents, and that in such case Limitation would not operate. This case also cannot apply to the present case. Similarly, the case of *S.K.Y. Jha* decided by the Supreme Court [(AIR 1986 SC 1636)] cannot give ground for condonation of break, or for the issue relating to laches as a perusal of the case shows.

12. Two other cases have been cited by Counsel for applicant but both these relate to interpretation under the Industrial Disputes Act and we obviously cannot go into this aspect. The case decided by Principal Bench in *D.A. 730/91* i.e. the case of *Smt. Vimla Devi* is totally irrelevant.

13. In the Full bench judgement made by this Tribunal in *D.A.159/93 (Mumbai 30.4.1998)* i.e. in the case of *Smt. Vidhata R. Varma*, the difference between a right to file and right to continue an application by legal representative/heir of a deceased employee has been discussed. It has been concluded that in that particular case the legal heir did not have a right to file an application and agitate for relief. The present applicant can be said to be aggrieved perhaps to the limited

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extent that she is deprived of family pension. But such aggrievement can be justifiable only if pension was due to the husband. Since that has not been held to be due without condonation of break, it is difficult to conclude that the present applicant has a justifiable reason for filing this case.

14. I have also considered the issue relating to entitlement by the Applicant for ex-gratia payments. Learned Counsel for applicant placed the Govt. of India's orders dated 27.1.1998 on the subject, for my perusal. I have also seen the contention on this point made by Respondents at para 7 of their Reply Statement. According to both of these, the Applicant does not become entitled to ex-gratia payment.

15. Both on the question of merit as on the point of delay and laches, the case of the applicant does not fit into the requirements of the rules/law. It would not be open for this Tribunal, under the circumstances, unfortunate as they may be, to order condonation of the break in service and on that basis order recalculatation of benefits/payments family pension. Thus I am unable to interefere in this case.

16. In the consequence, this Application fails and is hereby dismissed. There will no orders as to costs.

B.N.Bahadur

(B.N.Bahadur)
Member (A)

sj*

28/08/2000