

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.414/1999

Dated: 8.8.2000

Smt.Meerabai Ratanlal Rathod

Applicant.

Shri R.D.Deharia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.D.Vadhavkar

Advocate for
Respondent(s)


CORAM :

Hon'ble Shri D.S.Baweja, Member (A),

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

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

(3) Library? f


(D.S.BAWEJA)
MEMBER (A)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.414/99.

this the 8th day of August 2000.

Coram: Hon'ble Shri D.S.Baweja, Member (A).

Smt.Meerabai Ratanlal Rathod,
C/o. Shri Chandrakant Sadhu Chavan,
Railway Quarter No.RB I/8/229,
Near DRM Office,
Modikhana, At P.O. - Solapur (M.S.)
PIN - 413 001.
(By Advocate Shri R.D.Deharia)

...Applicant.

Vs.

1. Union of India through
The General Manager,
Central Railway,
Mumbai CST.,
PIN - 413 001.
(By Advocate Shri V.D.Vadhavkar)

...Respondents.

: O R D E R :

{Per Shri D.S.Baweja, Member (A)}

The applicant is widow of Shri Ratanlal Moolchanddas Rathod who was working as a 2nd Fireman in Solapur Division, Central Railway. The applicant submits that in the month of August, 1985 her husband was transferred from Solapur to Daund and he was to report on 28.8.1985. Her husband left the house on the afternoon of 27.8.1985 and thereafter his whereabouts were not known to the family. Enquiries were made with the Railway Authorities, friends and colleagues, but of no avail. Finally, after a long wait, on 12.4.1993 a FIR was lodged with Sadar Bazar Police Station under FIR No.12/93. The Police authorities, finally as per letter dt. 25.3.1994 advised that after enquiry it is confirmed that whereabouts of Shri Ratanlal Moolchand are not known and he is still missing. Thereafter, the applicant approached Respondent No.2 i.e. Divisional Railway Manager,

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Solapur as per her letter dt. 12.5.1994 making a request to grant the permissible retiral benefits viz. family pension and other dues to her in terms of the Railway Board letter dt. 27.3.1991. After conducting the requisite enquiry, the applicant was conveyed as per letter dt. 22.5.1995 that the Competent Authority has approved grant of family pension and other benefits. Based on this letter, the applicant completed all the formalities by filling necessary forms. However, without making any payment of family pension and other settlement dues, the applicant was asked to vacate the quarters as per letter dt. 21.11.1995. The applicant vacated the quarter on 28.2.1996. No payment of settlement dues and family pension was done inspite of repeated reminders to the Department. The respondents vide letter dt. 21.7.1998 again asked for a fresh certificate from the Police authorities with regard to missing of her husband and this demand was also complied with by furnishing the fresh certificate on 10.8.1998. Thereafter, the respondents advised the applicant that she is entitled for retiral benefits of only Rs.15,186/- and against this, the recoveries to be made are more and therefore she is required to deposit Rs.44,612/-. Feeling aggrieved by this inaction on the part of the respondents, the applicant has filed the present OA on 26.4.1999 seeking the following reliefs:

- (a) Respondents be ordered to arrange payment of family pension from 12.4.1994 with all arrears and interest at the rate of 12% p.a. thereof.
- (b) To compute the settlement dues afresh taking into account the grant of family pension from 12.4.1994.
- (c) To waive the recovery of Rs.49,577/- in view of the peculiar circumstances of her case.

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2. Subsequent to filing of the OA, the applicant through an amendment application has sought for an amendment to the relief of entitlement of family pension from 12.4.1993 instead of 12.4.1994 placing reliance on Railway Board's circular dt. 21.1.1994.

3. The respondents have filed a written statement opposing the OA. The respondents submit that the applicant's husband was transferred from Solapur to Daund. However, he did not join on transfer and remained on unauthorised absence from 28.8.1983 onwards. For this unauthorised absence, disciplinary proceedings were initiated against him and a punishment of reversion from the post of 2nd Fireman to that of a Group 'D' post was imposed. As regards the claim of the applicant that her husband was missing from 1985, the respondents contest the same stating that applicant has not come out with true facts. It is submitted by the respondents that the husband of the applicant was present in the office of the Divisional Railway Manager (DRM) on 6.10.1992 when he had sought for an interview with the DRM and during the meeting he had requested for voluntary retirement. The necessary file to this extent will be produced at the time of final hearing of this case. The applicant did not join at Daund and remained on unauthorised absence till the date of his superannuation on 31.3.1994. Keeping in view the report of the Police authorities on the FIR lodged on 12.4.1993, the applicant has been allowed family pension from 1.4.1994 i.e. after a period of one year from the date of lodging of F.I.R. The family pension has been sanctioned from 1.4.1994 as the one year period from the date of filing of FIR expires on 12.4.1994 which is beyond the date of superannuation. The house rent was not paid by the applicant since 1.6.1983 till the vacation of the quarter on 28.2.1996 and

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therefore the rent of Rs.49,577/- became due. The total recovery including the electrical charges works out to Rs.55,904/-. Against this recovery due from the applicant, the payment of settlement dues is only Rs.15,186/-. In view of this, a recovery of Rs.44,612/- is due from the applicant. In view of these submissions, the respondents submit that the applicant is not entitled to any of the reliefs prayed for.

4. The applicant has filed a rejoinder reply controverting the submissions of the respondents and reiterating the stand taken in the OA. The applicant has maintained that her husband was missing from 20.8.1985 and she is not aware of her husband's appearance for an interview before the DRM on 6.10.1992.

5. Heard the arguments of Shri R.D.Deharia, the learned counsel for the applicant and Shri V.D.Vadhavkar, the learned counsel for the respondents.

6. During the hearing, the learned counsel for the applicant made a statement that she does not press for the waiver of recovery of Rs.49,612/- towards the rent of the quarter occupied by her husband and confines to the relief with regard to grant of family pension from 12.4.1993 instead of 12.4.1994 as has been granted by the respondents. In view of this, the deliberations are restricted to grant of family pension from 12.4.1993.

7. Now, coming to the relief of grant of family pension from 12.4.1993, it is noted that the applicant has filed the OA originally seeking grant of family pension from 12.4.1994. The respondents during the pendency of the OA have allowed the family pension to the applicant from 1.4.1994. However, the applicant has subsequently filed a Miscellaneous Application seeking

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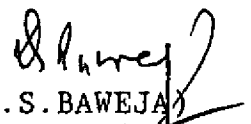


amendment in the relief clause making a prayer for grant of family pension from 12.4.1993 instead of 12.4.1994 and this amendment was allowed. However, the respondents have not filed any reply for the amended relief of the applicant. From the facts brought out earlier, it is noted that the applicant had filed ^a ~~an~~ FIR on 12.4.1993 with regard to missing of her husband. The Police authorities closed the case declaring the husband of the applicant as missing as per the report dt. 25.3.1994. Based on the report, the respondents have allowed the family pension to the applicant relying upon the Railway Board's Circular dt. 27.3.1991 which provides that the widow will be eligible for family pension after one year from the date of filing of the FIR. Based on the date of filing of the FIR, the due date for family pension eligibility becomes 12.4.1994. However, the respondents have allowed the family pension from 1.4.1994, as the husband of the applicant would have superannuated in the normal course on 31.3.1994. These facts clearly bring out that the respondents have admitted the claim of the applicant that her husband is missing and have allowed the family pension as per the extant rules. The applicant has sought the pension from 12.4.1993 instead of 12.4.1994 relying upon the Railway Board's circular dt. 21.1.1994. This circular has been issued in modification of the earlier circular dt. 27.3.1991, based on which the claim of the applicant for family pension has been decided. As per the latest circular, the family pensions is to be allowed not after the expiry of one year of the lodging of the FIR, but from the date of lodging of the FIR. Therefore, once it has been admitted by the respondents that the applicant's husband was missing and

FIR was lodged on 12.4.1993, then the claim of the applicant for family pension from 12.4.1993 in terms of the Railway Board circular dt. 21.1.1994 cannot be denied. The applicant is entitled for this relief. The counsel for the respondents, however during the hearing sought to make out a case that the applicant has not brought out the correct facts with regard to the date of missing of her husband. He submitted that the applicant has claimed that her husband was missing since 1985, but the office record shows that the applicant had appeared before the DRM on 6.10.1992 and sought for voluntary retirement during the personal interview. The counsel for the respondents produced the personal file of the husband of the applicant. On going through the papers, it is noted that there is a slip indicating seeking of interview with DRM. There is an office note dt. 6.10.1992 put up by the section with regard to the representation made by her husband for voluntary retirement and the DRM has passed orders on the same. These papers may establish that the husband of the applicant was alive up to 6.10.1992. This fact may not be known to the family, as the employee may be not in touch with the family after 1985. However, this fact is not very material to the controversy in the present OA, since based on the subsequent FIR filed in 1993, the Police authorities have confirmed that the husband of the applicant was missing after a detailed enquiry. Further, ~~the respondents' counsel has taken a plea against the action taken by them.~~ The respondents have accepted the missing status of the husband of the applicant and have granted the family pension as permissible. Once having done so, the respondents cannot take a

plea now that the applicant was alive up to 6.10.1992 and not entitled to pension from 12.4.1993.

8. In the result of the above, the OA is allowed with a direction to the respondents to grant family pension to the applicant from 12.4.1993 instead of 1.4.1994. The applicant will be entitled for the payment of arrears of pension as due, based on this order. However, she will not be entitled to any interest on the payment of arrears of pension. The respondents to comply with the above order within a period of three months from the date of receipt of the copy of this order. No order as to costs.


(D.S. BAWEJA)
MEMBER(A)

B.

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

R.P.NO.54/2000 IN OA.NO.414/99.

12TH DECEMBER, 2000.

CORAM: HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

1. Union of India (Through),
General Manager, Central Railway,
Mumbai CST.

2. Divisional Railway Manager,
Central Railway, Solapur.

... Review Petitioners
(Original Respondents)

By Advocate Shri V.D.Vadhavkar

V/s.

Smt. Meerabhai Ratanlal Rathod,
W/o. of late Ratanlal Mulchand Rathod,
Ex. IInd Fireman, Central Railway,
Daund.

... Respondent
(Original Applicant)

By Advocate Shri R.D. Deharia

(ORAL) (ORDER).

Per Smt. Shanta Shastri, Member(A).

Heard Shri V.D.Vadhavkar, learned counsel for the review petitioner and Shri R.D. Deharia for the respondents in the review.

2. The RP has been filed seeking a review of the judgement and order dated 8/8/2000 passed in OA-414/99. The OA was allowed with a direction to the respondents to grant Family Pension to the applicant in the OA, from 12/4/93 instead of 1/4/94. The applicant was also entitled to payment of arrears on pension as due, based on the said order. No interest on the arrears of Pension was allowed. The respondents were to comply with the order within a period of three months.

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3. The respondents in the OA have now filed this Review Petition on the ground that there was an error apparent on the face of the record as the applicant was not missing even as on 6/10/92 as was evident from the office record of a slip which shows that the applicant's husband in the OA had appeared before the Divisional Railway Manager on 6/10/92 and sought a personal interview. The learned counsel for the review petitioner submitted that an employee who appeared in the office on 6/10/92 and ^{was} alive himself could not ^{said to be} be hidden from 1985 and said to be missing from 1985 especially as the Divisional Railway Manager, the highest authority for the department is at Solapur and his family is also at Solapur. He has further pleaded that there has an error apparent on the face of the record. The decision of the petitioners to allow the Family pension to the respondents from 1/4/94 i.e. from the normal date of superannuation of the employee was as a gesture of compassion and that should not be taken as a right of the applicant to claim family pension from earlier date. The learned counsel also took me through the other grounds mentioned in the review application as well as the judgement dated 8/8/2000 in OA-414/99.

4. The learned counsel for the review respondents submits that no new facts have been brought out by the review petitioner to call for a review in this case. The learned counsel has relied upon the judgement dated 2/11/99 of the Hon. Supreme Court in Civil Appeal No. 11811/95 in the case of Ajit Kumar Rath V/s. State of Orissa & Ors. He refers to Headnote (C) and para - 28 & 29 of the judgement. The Hon. Supreme Court held that the power of review is not absolute. It can be exercised on the application of a person on the discovery of new and important

matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was passed. The power can also be exercised on account of some mistake or for an error apparent on the face of the record. A review cannot be claimed or asked merely for fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correcting of patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it.

By The learned counsel therefore submits that there being no new facts or no error apparent, the RP needs to be dismissed.

5. I have given careful consideration to the arguments advanced by both sides. In my considered view, the learned counsel for the review petitioners has not brought out any new facts which were not already there before the Hon. Judge in OA-414/99. The production of the office record disclosing the appearance of the missing husband of the applicant in that OA and also that it cannot be believed that the family did not know about the missing employee [↓] were taken into consideration while passing the order. The Respondents in the OA also had not produced any material to show that the family was aware about the whereabouts of the missing employee.

6. I find that the learned counsel for the review petitioner has merely tried to re-argue the case on the basis of the earlier facts. The RA-54/2000 is therefore not maintainable. Accordingly it is dismissed.

Shanta J.

(SHANTA SHASTRY)
MEMBER (A)