

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 769/99

Date of Decision : 27th May 2002

Smt. S.B.Naik _____ Applicant

Shri T.D.Ghaisas _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri R.R.Shetty _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri S.K.Agarwal, Member (A)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other ~~Ho~~
Benches of the Tribunal ?
- (iii) Library Yes

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO. 769/99

Dated this the 27th day of May 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri S.K.Agarwal, Member (A)

Smt.Sonabai Bhimsha Naik,
R/at DSK Chawl, Near Kastan Chawl,
At PO Daund, Dist.Pune.

...Applicant

By Advocate Shri T.D.Ghaisas

vs.

1. Union of India through
The General Manager,
Central Railway,
Mumbai C.S.T.

2. Chief Personnel Officer,
Central Railway,
Mumbai C.S.T.

3. The Divisional Railway Manager,
Central Railway,
Solapur.

4. Divisional Accounts Officer,
Central Railway,
Solapur.

...Respondents

By Advocate Shri R.R.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application for the declaration that the applicant is entitled to get the benefit of payment of Ex-gratia pension with the direction to the respondents to restart the same which has already been sanctioned w.e.f.30.6.1988 and pay arrears of the same along with interest.

S.L.Jain ...2/-

2. The applicant Smt. Sonabai Bhimsha Naik who is the widow of Shri Bhimsha Iranna Naik entered in Ex GIP/Central Railway on about 28.2.1945. After putting nearly 21 years service he left the service on or about 24.2.1966 while working as First Fireman in the office of Loco Foreman, Daund, Solapur Division. Thereafter, the said Shri Bhimsha Iranna Naik expired on 6.11.1985. He was governed by State Railway Provident Fund Rules and was not in receipt of any pension, as such, no family pension was also granted in favour of the applicant or any member thereof.

3. In the year 1988 the Government of India, Department of Pension and Pensioners' Welfare vide its Office Memorandum bearing No.4(1) 87 - P&PW (PIC) dated 13.6.1988 has granted ex-gratia payment to the widows of the employees who were governed by State Railway Provident Fund Rules.

4. The applicant in pursuance of the aforesaid O.M. dated 13.6.1988 submitted the application on a prescribed form in triplicate along with the documents to the Office of the President, Daund City & Taluka Pensioners' Association, Nene Chawl, Dound, Dist.Pune who in turn had forwarded the aforesaid form to the Divisional Railway Manager, Solapur under its outward No.PEN/2/6 1988 dated 31.8.1988 for necessary action along with Death Certificate, Affidavit, Railway Free Pass, Certificate from Railway Pensioners. The said application was duly filled with all necessary requirements. After verifying the information and particulars filled in the aforesaid application, the Divisional

J.C.D.M. 3/-

Accounts Officer, Central Railway, Solapur had forwarded the aforesaid form together with its documents to the Director of Accounts (Postal), Nagpur vide his letter No.CR/SUR/ECP/1988/64 dated 14.10.1988 along with copy to Divisional Railway Manager, Solapur and to the applicant for arranging payment. The Junior Accounts Officer (Postal), Nagpur vide his letter bearing No.PEN III/C.Rly/276/FP/1287 dated 29.11.1988 addressed to Postmaster, Pune Headquarter endorsing copy thereof to Divisional Accounts Officer, Solapur with reference to his letter dated 14.10.1988, FA & CAO, Bombay and the applicant has arranged the payment of ex-gratia pension to the applicant enclosing all the necessary documents submitted by the applicant (Exhibit-'E'). Immediately, after two days, i.e. on 1.12.1988 the Divisional Accounts Officer Central Railway, Solapur vide his letter No.R/SUR/EGD/1988/64 advised the Postmaster, Daund, Dist.Pune to stop the payment of ex-gratia whether arrears of monthly to the applicant until further orders from his office on the plea that the cases of the staff who had quitted the service on account of resignation or compulsory retirement sanctioned by the Department of Pension and Pensioners' Welfare Office Memo No.4.1.87 P&PW P.I.C. dated 13.6.1988 have been referred to the Railway Board for clarification. She has preferred the representation to the Chairman, Railway Board on 6.1.1989 followed by the representation to the Railway Minister, another representation dated 10.6.1991 to Divisional Accounts Officer, Solapur, in response to the same vide letter No. CR/SUR/EGP/1988/64 dated

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9.7.1991 the Divisional Accounts Officer, Solapur has advised that the Railway Board has decided that Railway employees who are governed by Contributory P.F.Rules and had resigned from service are not entitled to ex-gratia payment and this decision was taken vide their letter No.F(E)111/88/PN-1/27 dated 27.12.1988 which was communicated to the applicant. Hence, this OA. for the above said reliefs.

5. The claim of the applicant is resisted by the respondents.

6. The sole question which is to be decided is whether Shri Bhimsha Iranna Naik who has left the service on or about 24.2.1966 can be termed as Pensioner or not, as in view of O.M. bearing No.4 (1) 87 - P&PW (PIC) dated 13.6.1988 the pensioners' family is entitled to ex-gratia payment.

7. The learned counsel for the applicant relied on AIR 1990 SC 1808 - M/s.J.K.Cotton Spg. & Wvg. Mills Co.Ltd. Kanpur vs. State of U.P. & Ors. which lays down the proposition as under :-

"When an employee voluntarily tenders his resignation, it is an act by which he voluntarily gives up his job. Such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (i) of Section 2(s). It cannot be said that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employee under Section 6N. This was a case of 'voluntary retirement' within the meaning of the first exception to Section 2(s) and therefore the question of grant of compensation under Section 6N does not arise.

Perusal of the same makes it clear that the Apex Court was considering the provision under Industrial Dispute Act, 1947 Section 2(oo) and 25F of the said Act. It is further laid down that tendering of resignation does not amount to retrenchment and the case is covered by voluntary retirement under Section 2 of the said Act.

8. The learned counsel for the applicant relied on 1997(2) ATJ 305 - Smt. Shobha M. Zende vs. Union of India & Ors. (Full Bench decision) wherein it has been held that it is the substance and not the form of any application which is material, any application of resignation may be treated and considered as an application for voluntary retirement in the facts and circumstances of any particular case. On perusal of the said authority, the facts narrated in para 2 makes it clear that the applicant in the said case has submitted the resignation, which was accepted w.e.f. 10.1.1984. The Full Bench answered the question as under :-

"A Railway servant after terminating his employment cannot ordinarily claim post retirement benefit, like pension, family pension and gratuity, or ex-gratia pension or payment, but as the substance and not the form of any application is material, any application or resignation may be treated and considered as an application for voluntary retirement in the facts and circumstances of any particular case."

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9. The learned counsel for the applicant further relied on a decision in OA.NO.633/93 dated 7.3.2000 decided by this Bench wherein it has been held that the applicant which has produced *prima facie* case that her husband is entitled to *ex-gratia* benefits. In the said case, the applicant has resigned on 8.8.1970 before coming into force of Railway Servants (Pension) Rules, 1993.

10. Rule 311 of Manual of Railway Pension Rules, 1950 is extracted below :– Rule 311 Manual of Railway Pension Rules, 1950 a person who has completed 30 years of qualifying service was entitled to pension. In the said circumstances, if a person is held that his resignation which is after completion of 30 years qualifying service can be treated as voluntary retirement, we are of the considered opinion that the said authority does not help the applicant.

11. The learned counsel for the respondents relied on OA.No.1176/2000 decided on 20.11.2000 by CAT, Ernakulam Bench in which the proposition of law laid down was that the applicant who has resigned from service before completing 20 years of service on 30.4.1978 was not entitled to pension, for being entitled to voluntary retirement, a Government servant should have put in a minimum of 20 years of service. The case of J.K.Cotton Mills reported in AIR 1990 SC 1808 referred above was also considered. In our opinion, the said authority do not help the respondents for the reason that the point decided was whether the applicant who has even not put in minimum of 20 years of qualifying service is entitled to pension or not.

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12. The learned counsel for the respondents further relied on a decision of this Bench in OA.No.809/99 decided on 24.12.1999, wherein the Railway Board's letter dated 27.1.1998 whereby SRPF (C) beneficiaries who retired between 1.4.1957 to 31.12.1985 were granted ex-gratia payment at the rate of Rs.600/-p.m. w.e.f. 1.11.1997 subject to the condition that such persons should have rendered at least 20 years of service prior to their superannuation. Taking into consideration the clarification vide Railway Board letter dated 13.11.1998, the claim the applicant was dismissed on the ground that superannuation does not mean retirement on medical invalidation, voluntary retirement, compulsory retirement as a measure of punishment, premature retirement, retirement on permanent absorption in or under a Corporation or Company or body corporate or incorporate etc.

13. The learned counsel for the respondents further relied on an order passed by this Bench in OA.NO.1121/94 decided on 29.2.2000 where various earlier decisions were considered and distinction has been made between retirement, voluntary retirement, retirement on superannuation, etc.

14. The learned counsel for the applicant relied on 2001 SCC (L&S) 707 - Union of India & Ors. vs. Rakesh Kumar along with other civil appeals laying down the proposition before completing the minimum length of qualifying service requisite for eligibility for retirement not eligible to get pensionary

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benefits - Hardship no ground for grant of such benefits. Resignation disentitles the pensionary benefits. In the said authority it has been held that "resignation would mean voluntary act of quitting of job/service and implies that the employee though fit in all respects decides to quit and leave the service. As against this, retirement implies a tenure although it may not be a full tenure having been completed in the job and thereafter the employee leaves the service. Retirement can be at the age of superannuation, compulsory retirement or retirement on exigencies like becoming invalid etc. Resignation of an employee would not mean that he has retired at the age of superannuation or there is premature retirement which may be compulsory or because of other exigencies and, therefore, there is no question of grant of any pension to the employee under the CCS(Pension) Rules".

15. In view of the Apex Court judgement in case of Rakesh Kumar referred above and the earlier orders of this Bench in OA.No.1121/94 - Smt.Sukharani Biharilal, OA.No.809/99 - Kashinath Rambhau Jadhav, OA.NO.633/93 - Smt.Padibai Vinayak Patil, there cannot be any other inference that the applicant's husband Shri Bhimsha Iranna Naik who resigned from service after completing about 21 years service cannot be termed as a pensioner. The resignation being in the year 1966, in case of Railway servants voluntary retirement scheme was not operative and he has not completed 30 years of qualifying service, on completion of which, same, he was entitled to the pensionary benefits. As such, his resignation cannot be treated as voluntary retirement and therefore he was not entitled to the pension as such cannot be treated as pensioner.

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16. In the result, OA. deserves to be dismissed and is dismissed accordingly with no order as to costs.

S.K.AGARWAL

(S.K.AGARWAL)

MEMBER (A)

S.L.JAIN

(S.L.JAIN)

MEMBER (J)

mrj.

~~Order, dated 27/1/62, dispatched
to Appellant, dated 24/1/62.~~