

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 671/99

Date of Decision : 4.5.2000

S.P.Padave Applicant.

Shri S.P.Inamdar Advocate for the  
Applicant.

VERSUS

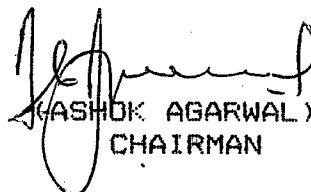
Union of India & Others, Respondents.

Shri V.S.Masurkar Advocate for the  
Respondents.

**CORAM :**

The Hon'ble Shri Justice Ashok Agarwal, Chairman

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other No  
Benches of the Tribunal ?
- (iii) Library No

  
(ASHOK AGARWAL)  
CHAIRMAN

mrj\*

A

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.671/99

Thursday this the 4th day of May, 2000.

CORAM : Hon'ble Shri Justice Ashok Agarwal, Chairman

Smt. Sumati Pandurang Padave,  
W/o Pandurang Dhaku Padave,  
Mechanist tool room,  
BIT Chawl No. 13, Room No. 62,  
3rd Floor, Belasis Road,  
Mumbai.

... Applicant

By Advocate Shri S.P. Inamdar

V/S.

1. Union of India through  
The General manager,  
Western Railway,  
Churchgate,  
Mumbai.
2. The Chief Works manager,  
Western Railway Carriage Workshop,  
Parel Workshop,  
Lower Parel, Mumbai.

... Respondents

By Advocate Shri V.S. Masurkar

O R D E R (ORAL)

(Per: Shri Justice Ashok Agarwal, Chairman)

Applicant is a widow of an ex-Western Railway employee. By the present OA. she claims grant of ex-gratia payment in terms of Office Memorandum dated 13.6.1988 at Annexure-'A-10'. She impugns an order passed by the Chief Works Manager on 23.12.1998

..2/-

*[Signature]*

at Annexure-'A-1' whereby her aforesaid claim for grant of ex-gratia payment has been rejected on the ground that her late husband had not retired from Railway service but had resigned. Aforesaid Memorandum of 13.6.1988 grants ex-gratia payment to widows of dependent children of the deceased CPF beneficiaries who had retired from service prior to 1.1.1986. Applicant's husband had not retired from service but had resigned from service prior to 1.1.1986. Hence application of the applicant for grant of ex-gratia payment is rejected. As already stated, aforesaid order is impugned in the present OA.

2. Short facts which have led to the filing of the present OA. are as follows :-

Applicant's husband joined Central Railway way back on 24.12.1941. He joined as Temporary Fitter. By order passed on 1.1.1942, his services were continued. He was a member of the State Railway Provident Fund. Documents annexed at Annexures 'A-4' to 'A-7' establishes the fact that he was a contributory to the provident fund. On 25.1.1975, he tendered his resignation. He later expired on 4.2.1976. After the death, applicant's husband's provident fund dues were paid over to the applicant on 12.4.1976 as per Annexure-'A-6'.

3. Ministry of Personnel, Public Grievances & Pensions (Dept. of Pension & Pensioners' Welfare) by its Office Memorandum

dated 13.6.1988 has issued a Scheme for grant of ex-gratia payment to the families of Ex-CPF retirees. The gratuity recital contained in the Office Memorandum "..... The President is pleased to decide that the widows and dependent children of the deceased CPF beneficiaries who had retired from service prior to 1.1.1986 (Emphasis provided) --- --."

4. Short controversy that is raised in the present OA. is whether applicant can claim the aforesaid ex-gratia payment even though her husband had not retired but had resigned. This question is no longer res-integra. The same has been the subject of numerous decisions of this Tribunal. To cite a few, it has been decided in :-

- (i) OA.NO.20/90 dated 3.7.1990
- (ii) OA.NO.721/92 dated 20.12.1993
- (iii) OA.NO.1384/95 dated 27.8.1997
- (iv) OA.NO. 8/98 dated 11.9.1998
- (v) OA.NO.633/93 dated 7.3.2000 etc.

that widow and dependent children of an ex-employee is entitled to the grant of ex-gratia payment even through the employee may have resigned provided he has put in a qualifying period prior to his resignation. In the case of M/s. J.K.Cotton Spg. & Wvg.Mills Company Ltd., Kanpur vs. State of U.P. & Ors.. AIR 1990 SC 1808, it has been observed as under :-



" In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of Cl.(i) of Sec.2(s) of the State Act."

If one has regard to the aforesaid decision of the Supreme Court as also the meaning assigned to the term resignation as found in the Shorter Oxford Dictionary <sup>as being synonymous to</sup> ~~to quote~~ retirement, which definition has been accepted by the Supreme Court, a conclusion is irresistible that aforesaid O.M. would <sup>be</sup> applicable also to widows and dependent children of deceased CPF beneficiaries who had resigned from service prior to 1.1.1986 provided they had put in requisite qualifying service. The claim made by the applicant in the circumstances is found to be fully justified.

5. Shri V.S.Masurkar, learned Standing Counsel appearing on behalf of the respondents has however contended that the applicant is not so entitled in view of a Circular issued by the Railway Board on 27.12.1988 at Annexure 'R-1'. The same inter alia seeks <sup>to make</sup> a clarification that families of Railway employees who were governed by the S.R.P.F.(C) Rules and had resigned are not eligible for ex-gratia payment. In my view, the aforesaid Circular cannot affect the right of the applicant to receive



ex-gratia payment. As far as the applicant's husband is concerned, he has resigned much prior to the aforesaid Circular on 25.1.1975. He <sup>has</sup> thereafter expired on 4.2.1976. The claim raised in the present OA. is based on O.M. dated 13.6.1988. Resignation, as already pointed out has been treated on par with retirement. By reference to Shorter Oxford Dictionary and the same has been endorsed by the Supreme Court, applicant's husband therefore has to be treated as having retired. Once he is held to be a retired Government servant, a right flowing from the aforesaid O.M. of 13.6.1988 cannot validly be withdrawn by the aforesaid Circular of the Railway Board issued on 27.10.1988. The said contention of Shri Masurkar based on the aforesaid Circular is accordingly rejected.

6. For the foregoing reasons the present OA. is allowed. The order of 23.12.1998 at Annexure-'A-1' rejecting applicant's application for grant of ex-gratia payment is accordingly quashed and set aside. The present OA. is allowed in terms of prayers contained in <sup>paras</sup> 8.1, 8.2, 8.3 and 8.4 which are in the following terms :-

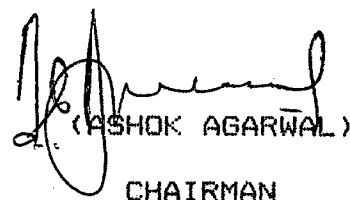
8.1 The Honorable Tribunal may please to quash and set aside the letter No. E 789/CW/8/98, dated 23.12.1998 (Exhibit A1), the impugned order, rejecting the claim of the applicant for payment of the Ex-gratia.

8.2 The respondents may be directed to treat the resignation of husband of the applicant as a notice of retirement as the circumstances as discussed in the OA. herein above. And treat the applicant is entitled for payment of Ex-gratia.

8.3. The respondents may be directed to treat the applicant as entitled for payment ex-gratia with effect from 1.1.1986, accordingly necessary directions may be issued to the respondents to pay the arrears of ex-gratia.

8.4 The respondents be directed to pay the payment of ex-gratia of Rs.150 as envisaged in the government notification dated 13.6.1988 (Exhibit A10) with DA as the case may be from time to time.

Necessary payment is directed to be made over to the applicant expeditiously and within a period of three months from the date of service of this order. No order as to costs.

  
(ASHOK AGARWAL)  
CHAIRMAN

mrj.