

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.809/99.

Friday, this the 24th day of December 1999.

Coram: Hon'ble Shri Justice Ashok Agarwal, Chairman,

Kashinath Rambhau Jadhav,
4, Mayur Pankh,
Opp. UCO Bank,
Tilak Nagar,
Dombivali (E) - 421 201,
Dist. Thane.

(By Advocate Shri R.S.Thakur)

...Applicant.

Vs.

1. The Divisional Railway Manager (DRM),
Central Railway, CST,
Mumbai.

2. The Secretary,
Union of India,
Ministry of Transport,
Department of Railways,
New Delhi.

(By Advocate Shri R.R.Shetty).

...Respondents.

: O R D E R (ORAL) :

(Per Shri Justice Ashok Agarwal, Chairman)

Whether the applicant is entitled to the grant of ex-gratia payment under the Railway Board Circular dt. 27.1.1998 (Ex. 11) is the short question which arises for consideration in the present OA.

2. Applicant has served as a Senior Clerk in the Grade of Rs.330-560 (PS) in the Railways (Central Railway) of the Respondents for the period 6.5.1954 to 8.12.1975 i.e. for a period of 21 years 7 months and 2 days. At the end of the aforesaid period applicant tendered his resignation. According to the applicant the scheme of voluntary retirement was not in vogue at the relevant time and hence he was constrained to

...2.

resign, Had that scheme been available, it would not have been necessary for him to have resigned but he would have retired voluntarily.

3. The Railway Board on the 27th January, 1998 issued a circular, whereby SRPF(C) beneficiaries who retired between the period 1st April, 1957 to 31st December, 1985 were granted ex-gratia payment at the rate of Rs.600/- p.m. with effect from 1.11.1997 subject to the condition that such persons should have rendered at least 20 years of service prior to their superannuation for becoming eligible to the ex-gratia payment. The relevant portion of the circular insofar as is relevant for the purpose of deciding the issue at hand / recites as under :

"Based on the recommendations of the Vth Central Pay Commission, the President is pleased to grant ex-gratia payment to the SRPF (C) beneficiaries who retired between the period 1st April, 1957 to 31st December, 1985 at the rate of Rs.600/- p.m. w.e.f. 1st November, 1997, subject to the condition that such persons should have rendered at least 20 years of continuous service prior to their superannuation for becoming eligible to the ex-gratia payment. They will also be entitled to Dearness Relief at the rate of 5% w.e.f. 1.11.1997.

The ex-gratia payment is not admissible to (a) those who were dismissed/removed from service and (b) those who resigned from service."

4. It has been contended on behalf of the applicant that he has rendered the qualifying service of 20 years as provided in the Circular. According to him, though he has resigned, his retirement should be construed as one of voluntary retirement or retirement on superannuation. If this is done, the applicant will be entitled to the benefit of ex-gratia payment as provided in the circular.

5. In support of his contention Shri Thakur, the learned counsel appearing in support of the OA has placed reliance on a

decision of this Tribunal in the case of Smt.Laxmibai Vishnoo Yadao. Vs. Union of India and Another in OA No.222/91 decided by Shri M.Y.Priolkar, Member (A) and Shri T.Chandrasekhara Reddy, Member(J) on 1.8.1991. In that case, a widow of a Contributory Provident Fund optee who had not retired from service, but had actually resigned from service had claimed for the benefit of ex-gratia payment sanctioned to family of the deceased CPF optee based on the Government of India letter dt. 30.6.1988. The aforesaid decision takes note of a Judgment of the Mumbai Bench of this Tribunal in the case of Mrs.Evlyn Gracies Vs. The Divisional Railway Manager, Central Railway, Bombay V.T. (OA No. 20/90) decided on 3rd July, 1990, wherein it has been observed as under:

"7. There is a dispute as to whether the husband of the applicant retired from service voluntarily or submitted his resignation. It was submitted by the counsel of the applicant that even assuming that a letter of resignation was given it has to be deemed as retirement for the purpose of grant of pensionary benefits, including the benefit under O.M. dt. 13.6.1988, as the husband of the applicant rendered more than 30 years of service on 21.5.1977, the date on which, according to the respondents, he resigned from service. In support of the submission, counsel brought to our attention Rule 101 of the Manual of Railway Pension Rules, 1950, where the retirement benefits for a permanent railway servant are specified. It is provided that the said benefits are admissible to permanent railway servants except those who are removed or dismissed from service or resigned from it before completion of 30 years qualifying service. (Emphasis added). It is not disputed that retirement benefits including family pension are being allowed to permanent railway servants even in the cases of those who resigned after completion of 30 years of qualifying service. From the aforesaid provision, it is evident that for the purpose of pensionary benefits, who retires from service or resigns after rendering 30 years qualifying service."

We have thus held that for the purpose of pensionary benefits there is no distinction between a railway servant who retires from service or resigns from service after rendering 30 years of qualifying service.

6. Placing reliance on the aforesaid decision ex-gratia payment was directed to be paid to the widow of the deceased who was a CPF optee.

7. Shri Thakur has placed further reliance on a decision in the case of Om Prakash Singh Maurya Vs. Union of India and Ors. (OA No.353/94) by the Lucknow Bench of this Tribunal on 14.9.1998, wherein it has been observed as under :

By this OA the applicant has claimed pension w.e.f. 1.2.1978. As per the respondents, the applicant served the department for 14 years 4 months and 26 days with effect from 1.2.1978. The main objection of the respondents is that as the applicant resigned from service, he is not entitled to pension in terms of Rule 26 of the Central Civil Services (Pension) Rules, 1972. A similar matter came up for consideration before the Division Bench of the Central Administrative Tribunal in OA No. 623/1991, A.P. Shukla Vs. UOI and Ors. decided on 13.10.1995. In this case, the applicant had rendered resignation on 11.5.1971 after completing 17 years 9 months and 10 days service. The applicant therein was a Railway servant. The objection of the respondents was that since the applicant had resigned from the job, he was not entitled to pension under Rule 311 of the Manual of Railway Pension Rules, 1950. This question was dealt with by the Jabalpur Bench in paras 4, 15 and 16 of its order. The same is reproduced below:

"Para.4. The first question to be considered is whether the resignation tendered by the applicant can be treated as retirement for purposes of grant of pension. The applicant has relied on M/s. J.K.Cotton Spinning and Weaving Mills Company Ltd., Kanpur Vs. State of U.P. and Ors. (AIR 1990 SC 1808) in which the employees request contained in the letter of resignation was accepted by the employer and that brought to an end the contract of service. The meaning of the term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is a act by which he voluntarily gives up his job. Therefore, the resignation of the applicant could be treated as superannuation for all purposes.

Para.15. The Apex Court in the case of M/s.J.K. Cotton Spinning and Weaving Mills Company Ltd., Kanpur (supra) held that the resignation amounts to voluntary retirement. The applicant after all has

served the department for 10 years. Had he not tendered his resignation he would have received pension. As such when there is voluntary resignation, there is a termination of service which for the purpose of pension may be treated as voluntary retirement though under the rule this benefit is available only on completion of 30 years.

Para.16. Why a person who could get pension on completion of 10 years of service should not be equated with a person who has tendered resignation after 17 years of service as having performed his service for 10 years for purpose of obtaining pension.

Learned counsel for the applicant has also placed reliance on another Division Bench decision of the Central Administrative Tribunal, Principal Bench, New Delhi in the case of Smt. Bimlar Devi Vs. UOI and Ors. (1992 (2) SLJ 310). In this cited case also the applicant had submitted resignation. It was held that the applicant therein was entitled for pension. In view of the decisions in these cases, I am of the view that pension cannot be forfeited in terms of Rule 26 of the CCS (Pension) Rules, 1972."

The aforesaid decision takes into account the earlier decisions rendered by the Tribunal, as also a decision rendered by the Supreme Court and all these decisions ~~has no answers to~~ support the contention advanced by Shri Thakur that though the applicant has submitted his resignation, it ought to have been treated as one of voluntary retirement or retirement on superannuation for all purposes. Applicant, ordinarily would ^{have} ~~be~~ ordinarily ^{been} entitled to the relief claimed in this OA. However, Shri Ravi Shetty, the Railway Counsel appearing for the respondents has brought to my notice a latest circular issued by the Railway Board on 13.11.1968 (Annexure - 'B'). The circular, insofar as it is relevant provides as follows :

" With reference to Board's letter of even number dt. 27.1.1998, instructions have been issued for grant of ex-gratia payment at Rs.600/- p.m. w.e.f. 1.11.1997 to the surviving SRPF(C) retirees of the period from 1.4.1957 to 31.12.1985 subject to the condition that such retirees should have rendered at least 20 years of continuous service prior to their superannuation for becoming eligible to the ex-gratia payment.

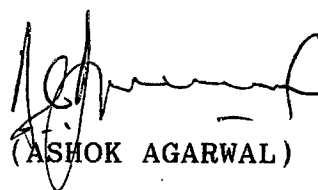
2. A reference has been received from one of the Railways seeking clarification as to the applicability of these instructions to cases of retirement on medical invalidation, voluntary retirement etc. It is hereby clarified that in terms of instructions contained in Board's letter dt. 27.1.1998 ibid, ex-gratia payment is admissible only to those who had retired on superannuation subject to fulfilment of the condition that the superannuated SRPF (C) beneficiaries should have rendered at least 20 years of continuous service prior to their superannuation. Those SRPF (C) beneficiaries who had retired from service other than on superannuation, viz., on medical invalidation, voluntary retirement, compulsory retirement as a measure of penalty, premature retirement, retirement on permanent absorption in or under a Corporation or Company or body corporate or incorporate, etc., are not eligible for grant of ex-gratia payment.

3. In case any SRPF (C) beneficiary, who had retired from service otherwise than on superannuation, has been sanctioned ex-gratia payment, immediate action may be taken to stop further payment thereof and a report in this respect furnished to the Board."

According to Shri Ravi Shetty, the Board has now ~~answered terms and~~ clarified the earlier circular issued on 27.1.1998. According to him the Circular dt. 27.1.1998 will have to be read in the light of the circular dt. 13.11.1998. If this is done, applicant will not be entitled to claim ex-gratia payment provided under the Circular of 27.1.1998.

7. It is true that if the circular dt. 27.1.1998 is to be construed in the light of the decisions which have already been referred, the contention advanced on behalf of the applicant would have been accepted. However, since the Railway Board has issued a further circular dt. 13.11.1998, the circular of 27.1.1998 will have to be read and construed in terms or as clarified by the later circular dt. 13.11.1998. The later circular stipulates that the benefit of ex-gratia payment is available only to those who retired on superannuation and to none others. The benefit is not available to those who ~~may~~ have

retired on medical invalidation, voluntary retirement, compulsory retirement as a measure of penalty, premature retirement, retirement on permanent absorption in or under a Corporation or Company or body corporate or incorporate, etc., ~~are not eligible for grant of ex-gratia payment.~~ In my view, it is always open to the Board to amend its circulars even after the same has been construed by the Court to provide ^{for an amended classification} contrary to the decision rendered by the Courts. ~~This,~~ In the circumstances, I find that though the applicant would have ordinarily been entitled to the benefit under the earlier circular dt. 27.1.1998, he will not be so entitled in view of the later circular issued on 13.11.1998. In the circumstances, I find that the present OA is devoid of merit, the same is dismissed. No order to costs.


(ASHOK AGARWAL)

CHAIRMAN

B.