

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 95/2200.

Friday this the 7th day of July, 2000

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri Govindan S. Tampi, Member (A).

Smt. Khatijabhai Hussainmiya,
Jama Masjid Trust Building,
Room No.4,
Dr. Ansari Road,
1st Rabodi,
Thane (W) - 400 601.
(By Advocate Mr.G.S.Walia)

...Applicant.

Vs.

1. Union of India, through
General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai - 400 001.
2. Divisional Railway Manager,
Bombay Division,
Central Railway,
Mumbai CST,
Mumbai - 400 001.
3. The Chief Workshop Manager,
Central Railway,
Carriage & Wagon Workshop,
Matunga,
Mumbai - 400 019.
(By Advocate Mr.A.I.Bhatkar)

...Respondents.

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant claiming ex-gratia payment. Respondents have filed reply. We have heard Mr.G.S.Walia, the learned counsel for the applicant and Mr.A.I.Bhatkar, the learned counsel for the respondents.

2. The applicant's husband Hussainmiya Usman was working in the Central Railway. He joined the Railway service on 16.2.1940.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 198/99.

this the day of 2000

Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman,
Hon'ble Shri Govindan S. Tampl, Member (A).

Smt. Khattijabai Hussainiya,
Jama Masjid Trust Building,
Room No. 4,
Dr. Ansari Road,
1st Floor,
Thane (W) - 400 601.
(By Advocate Mr. G.S. Wallia)

vs.

1. Union of India, through
General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai - 400 001.

2. Divisional Railway Manager,
Bombay Division,
Central Railway,
Mumbai CST,
Mumbai - 400 001.

3. The Chief Workshop Manager,
Central Railway,
Carriage & Wagon Workshop,
Malunga,
Mumbai - 400 019.
(By Advocate Mr. A.I. Bhaskar)

... Respondents.

: O R D E R (ORAL) :

(Per Shri Justice R.G. Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant claiming
ex-gratia payment. Respondents have filed reply. We have heard
Mr. G.S. Wallia, the learned counsel for the applicant and
Mr. A.I. Bhaskar, the learned counsel for the respondents.
2. The applicant's husband Hussainiya Usman was working in
the Central Railway. He joined the Railway service on 15.2.1949.

... 2.

He resigned from that post some time in 1975. According to the applicant it was on 31.7.1995, but according to one of the documents it was on 31.1.1975 (vide Ex. 'B' at page 11). The applicant's husband died on 4.4.1997. In the meanwhile, the Government issued circular viz. O.M. dt. 13.6.1988 granting ex-gratia payment to families of deceased Contributory Provident Fund retirees. The applicant claims that she is entitled to get ex-gratia payment as per rules. It is not disputed that this O.M. of 1988 has been adopted by the Railway Board. She made a claim to the respondents, but it was rejected. Hence, she has come up with the present application for a direction to respondents to grant her ex-gratia payment under the 1988 O.M. from the date of death of her husband till her life time.

3. The respondents have taken the stand that applicant is not entitled to ex-gratia payment, since her husband had resigned from service and did not retire from service. It is stated that under the 1988 O.M. only in case of CPF optees retiring from service, the family is entitled to ex-gratia payment.

4. The learned counsel for the applicant relying on some decisions of this Tribunal and also on Rule 101 of the Manual of Railway Pension Rules, 1950 contended that the applicant is entitled to this ex-gratia payment. On the other hand, the learned counsel for the respondents by relying on Rule 311 and 620 of Manual of Railway Pension Rules, 1950 and other Railway Board letters/circulars contended that the applicant is not entitled to ex-gratia payment.

5. After hearing both sides and perusing the materials on record, we are satisfied that the claim of the applicant is covered by number of decisions of this Tribunal. In particular,

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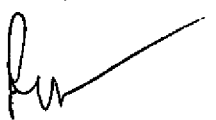
we refer to a Division Bench ^{decision} of this Tribunal in Mrs. Evelyn Gracies Vs. The DRM, Central Railway, Bombay V.T. & Ors. (1991 (1) ATJ 1999), where it is held that if a person has resigned after 30 years of service, his family is entitled to this ex-gratia payment. A distinction is made between a resignation by an official who has put in less than 30 years of service and an official who has put in above 30 years of service. It is also on record and even admitted that against this order of this Tribunal, the respondents preferred an SLP in the Supreme Court which came to be dismissed.

Then, we have a Judgment of a Single Bench in the case of Smt. Bhikhiben D. Panchal Vs. Union of India & Ors. (O.A. No. 91/96 decided by the Bombay Bench on 30.4.1996), where an identical view is taken following earlier decisions of this Tribunal and including the above case of Mrs. Evelyn Gracies.

Then, we have two Division Bench Judgments of this Tribunal to which one of us was a party (R.G. Vaidyanatha, Vice-Chairman) dt. 7.3.2000 in OA 633/93 and dt. 8.3.2000 in OA 1305/95, where identical view is taken that in case of employees who have ^{resigned} retired after 30 years of service, the family is entitled to ex-gratia payment and in particular, reliance was placed on Rule 101 of Manual of Railway Pension Rules, 1950.

Since the point is no longer res-integra and is covered by a number of decisions of this Tribunal, we cannot unsettle the settled position. Even though we have heard the arguments of learned counsel for the respondents in detail, we do not find any reason to take a different view or to refer the matter to a Larger Bench. The decision given by this Tribunal in the above cases flow from the interpretation of Rule 101 and other Rules

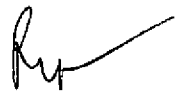
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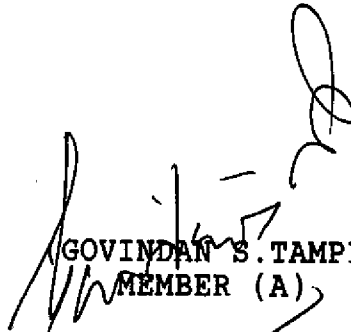
which are referred to in these orders. We do not want to examine this question again on first principles as now pressed before us by the learned counsel for the respondents. Hence, we do not find any reason to take a different view than the view taken by different Benches of this Tribunal in the above cases. Hence, agreeing with those decisions, we hold that the applicant who is the widow of the employee who had resigned from the post after 30 years of service is entitled to ex-gratia payment under 1988 O.M. In this connection, we may also mention that applicant's husband had applied for resignation due to his illness as made out in the OA. ~~Since~~ It makes no difference for a CPF optee, either ^{to} resigned or asked for voluntary retirement after 30 years of service. In a recent Full Bench decision viz. Smt. Shobha M. Zende Vs. Union of India and Ors. (1997 (2) ATJ 305), it has been held that in ^{the} given case, the Tribunal ^{can} ~~has~~ gone into the question of fact and decided whether particular resignation was in ^{relation to} request for voluntary retirement. In the facts and circumstances of the case, having regard to the illness of the applicant it is quite likely that he intended to take voluntary retirement, but since it made no consequence, he might have resigned from his job. Any how, we need not go into the this question in view of the law declared by number of decisions of this Tribunal.

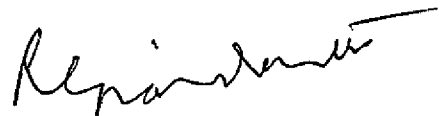
6. In the result, the application is allowed. It is declared that the applicant is entitled to ex-gratia payment under the O.M. dt. 13.6.1988 from the date of death of her husband viz. 4.4.1997 till ^{he} life time as per Rules. Consequently, the respondents reply rejecting the claim of the applicant dt.

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10.10.1998 is hereby quashed. The respondents are directed to comply with this order within three months from the date of receipt of copy of this order. No order as to costs.


(GOVINDAN S. TAMPI)
MEMBER (A)
B.


(R.G. VAIDYANATHA)
VICE-CHAIRMAN