

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 764.2000

the 29th day of Nov., 2002

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

Smt. Housabai Eknath Sapkale
Residing at
Post Kandari
In front of Hanuman Mandir
Tal. Bhusawal, Dist. Jalgaon.Applicant.

By Advocate Shri S.V. Marne.

v/a

1. The Union of India through
The General Manager
Central Railway,
Headquarters Office
Mumbai CST, Mumbai.
2. The Divisional Railway Manager
Central Railway,
Bhusawal Division, Bhusawal.
3. The Union of India through
The Secretary,
Railway Board,
Ministry of Railways.
New Delhi.Respondents

By Advocate Shri

O R D E R
{Per S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for direction to the respondents to grant family Pension and other retiral benefits to the applicant including arrears of family pension and other retiral benefit with effect from 20.9.1978 together with interest at 15% per annum till its realisation. By amendment the relief of declaration that the impugned order dated 6.9.2001 (Annexure A - 13) is illegal, be quashed, is also sought.

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2. The husband of applicant Shri Eknath Sapkale was working as M.S.M. at Badnera under the Chief Signal Inspector, Akola, expired due to Heart Attack on 19.9.1978 without exercising option to remain either under the SRPF Scheme or under the Pension Scheme. The applicant immediately after the death of her husband opted for Family Pension Scheme vide her letter dated 17.11.1978 (Annexure A-1). Respondent No.2 prepared the settlement papers for grant of Family Pension and forwarded the same to the Senior Divisional Accounts Officer. The Senior Divisional Accounts Officer returned the pension case of the applicant vide his letter dated 16.8.1979 stating that the option from the widow should not have been accepted (Annexure A -2) ● prepar the case as per SRPF Scheme.

3. The Railway Board issued the circular dated 23.7.1974 allowing the Railway servant to opt for Pension Scheme who were in service on 1.1.1973 but who died while in service on 1.1.1973 to the last date for exercise of the option. The said option was to be exercised within 6 months from the date of issuance of the circular i.e. upto 22.1.1975, also provide for exercise of the option by the legal heirs of the deceased Railway Servant ● (Annexure A-3). The Railway Board thereafter issued another order dated 29.12.1979 laying down that the exercise of time to opt for the Pension Scheme may be deemed to be applicable in the case of Railway Servants who having been in service on 1.1.1973 retired / quitted service / died in service during the period from 1.1.1973 to 31.12.1978. The option exercised upto 31.12.1978

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may be treated as valid and such cases be regulated in terms of provisions made in para 2 of the circular dated 23.7.1974 (Annexure A-4).

4. The applicant claims that the action of the Divisional Accounts Officer determining the pension case of the applicant vide his letter dated 16.8.1979 is illegal - "that the option from the widow should not have been accepted". The applicant not aware of the Railway Board circular dated 29.12.1979 (Annexure A-4), she came to know about the said order and filed the representation dated 3.8.1998 to Respondent No.2 requesting that her case for grant of Family Pension be considered in accordance with the said order of the Railway Board (Annexure A-5). The applicant was granted and was receiving Ex-gratia payment of Rs.150/- p.m. with effect from 1.1.1986 on the assumption that the husband of the applicant was SRPF Optee. The respondents replied to the representation of the applicant dated 3.8.1998 vide their reply dated 23.8.1999 (Annexure A-6). Thereafter she further represented vide her representation dated 4.10.1999 to respondent No.2 (Annexure A-7) and also approached the Pension Adalat for redressal of her grievances. The applicant further represented the matter on 3.4.2000 and 12.5.2000 (Annexure A-9 and Annexure A-10 respectively). Reply dated 29.6.2000 (Annexure A-11) from respondent No. 2 was received by the applicant. The applicant immediately replied to the same vide her letter dated 10.7.2000 to the respondents categorically stating that she is willing to refund the amount of GC of PF to the Railway

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Administration alongwith interest. The applicant requested the Respondents that she should be paid the amount of DCRG and Family Pension along with interest from the date of death of her husband vide her letter dated 10.7.2000 (Annexure A-12) but the respondents failed to take any steps. The applicant was willing to refund the amount of GC to PF to the respondents alongwith interest as demanded by the respondents vide their letter dated 29.6.2000, the respondents also should pay the interest to the applicant on the amount of Family Pension and DCRG which is wrongly denied to her.

6. When the matter came up for hearing on 14.6.01, the Tribunal passed the order. The operative part of the same is extracted below:

In the meantime, the learned counsel for the respondents submits that the applicant had already opted for the ex gratia payment and she has been getting the benefit of exgratia having enjoyed that, she cannot now claim pension scheme.

According to the applicant this was because she was not paid the pension. However, now the applicant is ready to pay back all the amount subject to pension scheme being made applicable.

The interest received from the applicant has to be submitted by way of proposal to the Chief Personnel Officer (RCSTM) to obtain sanction from the Railway Board for switching over from SRPF to the Pension Scheme. If the Railway Board sanctions the same, then the matter will end. Therefore, the learned counsel for respondents is seeking 8 weeks time from the date of receipt of copy of this order to process the applicant's case for pension.

The respondents are directed to write a letter to the applicant to deposit the exact amount of CPF amount received + interest so as to enable the applicant to switch over to pension scheme.

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Thereafter the respondents passed the order dated 6.9.2001 which is also challenged by way of amendment to the OA.

7. The claim of the applicant is resisted by the respondents on the ground that the alleged cause of action of the applicant for payment of Family Pension accrues with effect from 17.11.1978 is not within the jurisdiction of this Tribunal as the same has not arisen immediately preceding 3 years before the formation of the Tribunal. As such the Tribunal lacks jurisdiction to decide the matter. As per the circular dated 23.7.1974, the applicant has to return the CPF and SRPF contributions along with her application to come over to Family Pension Scheme. Merely writing a letter to the respondents to grant her Family Pension after receiving CPF amount is of avail.

8. Ex-gratia which has been paid with effect from 1.1.1986 is payable only to SRPF Optees which was received the applicant till date. The applicant was paid GC to PF of Rs. 6816/- on 13.11.1979. The amount of interest with effect from 13.11.1979 to 31.10.2000 on calculation comes to Rs. 1,58,873/-. The action of the applicant to accept ex-gratia payable w.e.f. 1.1.1986 after duly filling up form for the same estops her from now going back and seeking Family Pension. As such the OA fails on the ground of estoppel and also barred by limitation.

9. Vide letter dated 16.8.1979 (Annexure A-2), it is being stated that ' how the option from the widow has been accepted by your office and pension papers submitted to this office, when the employee expired on 19.9.1978. The Pension case alongwith SR is returned herewith.

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10. Copy of Railway Board letter dated 23.7.1974 (Annexure A-3) para 2(ii) is worth mentioning which is extracted below:

In the case of deceased Railway Servants covered by these orders the option for Pensionary benefits may be given provided a request for the same is specifically made by the nominee(s) validly nominated by the subscriber or, in the absence of the nomination, by all the members of the family of the deceased as defined in the S.R.P.F. Rules. If the Family includes minor children the request on their behalf can be made by the natural guardian and if there is natural guardian by the legal guardian.

If, in any case, the Government contribution and / or special contribution to the provident fund had already been paid either to the deceased Railway Servant or to the beneficiaries who opt for Pension Rules, the Government contribution and the excess, if any, or special contribution over the death-cum-retirement gratuity due should be recovered from them before accepting the option.

Vide letter dated 29.12.1979 (Annexure A-4) it was made clear that the options exercised in the above cases upto 31.12.1978 may, therefore, be treated as valid and the cases regulated accordingly in terms of the provisions made in para 2 of this Ministry's letter of 23.7.1974, referred above.

11. Vide letter dated 6.10.2000 by Divisional Railway Manager, Bhusawal in reply to applicant's representation dated 10.7.2000 it has been stated that.

"इसकी धोर-आप उर्द्धे दयान की बाबति भरने के लिये सहमत हो मते हम वायलिय द्वारे स्थायित्वे। ताकि आपको केवल नुरामाली कोरा रोड (मालव) दोउं द्वारे उनके मंजूरी होउ-क्रेडिट की जाएगी।"

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On perusal of the same it is clear that the decision is to be taken by Railway Ministry and vide impugned order dated 6.9.2001 the Railway Ministry has declined to accept the said proposal.

12. Prayer regarding Family Pension and other retiral benefits with arrears and interest thereon - Cause of action for the same arises with it is denied. Perusal of the pleadings of the parties makes it clear that for the first time on 16.8.1979 the same was denied to the applicant. As such the cause of action accrues to the applicant in the year 1979. Therefore in view of Section 21 (2) (a) of the Administrative Tribunals Act 1985, this Tribunal cannot exercise the jurisdiction for cause of action which has accrued on 16.8.1979, as it was not immediately preceeding 3 years from the date of Constitution of the Tribunal i.e. 1.11.1985. The denial of Family Pension to the applicant whether rightly or wrongly ought to have been agitated by the applicant at the relevant time to the authorities or competent Court and as such the matter cannot be investigated/inquired adjudicated at this stage.

13. Had the respondents vide letter dated 6.10.2000 agreed to allow the applicant for payment of Family Pension and thereafter denied for the same vide impugned letter dated 6.9.2001, the Tribunal ought to have been examined the matter in detail but as stated above it was only a submission of proposal to Railway Ministry for their approval. As such on the basis of the said letter dated 6.10.2000, there is no fresh cause of action.

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Therefore, the Tribunal does not acquire the jurisdiction to examine/investigate/adjudicate the matter. The Applicant after a long sleep commencing from 16.8.1979 started representing the matter vide representation dated 3.8.1998 which neither revives the cause of action or gives the fresh cause of action to the applicant.

14. Had the Tribunal arrived to a conclusion that the Tribunal has jurisdiction to decide the matter then the finding of the Tribunal is as mentioned below:

Certainly there was an error on the part of the respondents in not accepting, option submitted by the widow of deceased employee namely Eknath Bhivsan Sapkale.

15. The applicant who has submitted the forms for ex-gratia and received the same for a period of more than 12 years, represented in 1998 vide representation dated 3.8.1998 (Annexure A-5), 4.10.1999 (Annexure A-7), 3.4.2000, (Annexure A-9), 12.5.2000 (Annexure A - 10) and also agitated the matter before Pension Adalat on 15.12.1999, whether her case has any merit.

16. The matter was agitated by the applicant after a lapse of 21 years after her right was jeopardised.

17. AIR 1953 SC 135 - The Sales Tax Officer, Banaras & Ors. vs. Kanhaiya Lal Makund Lal Sarat, wherein the Apex Court has held that :-

"When both parties to transaction labouring under mistake of law. Question of estoppel does not arise."

18. It is true that pension is a recurring cause of action. I examine the said proposition, I would like to illustrate it if a pensioner is denied a pension for a particular month/period, he fails to agitate the matter in respect of the said month/period for the subsequent month/period for which he has a right to receive the pension can be agitated by him as pension becomes payable every month. If a pensioner's pension is withheld for a particular period, fails to agitate for the same, then after the lapse of the said period his rights to pension survives, gives fresh cause for the subsequent pension. When right to receive pension is denied, then until and unless the said right is being agitated well in time, it cannot be said that as the pension accrues every month, the claim is based on recurring cause of action. In the present case, the right to pension is denied to the applicant since the year 1978 and the applicant even thereafter kept silence till 3.8.1998. The Tribunal came into existence in the year 1985 and this Tribunal cannot examine the grievance of the applicant which has arisen prior to immediately preceding 3 years before the constitution of the Tribunal. As such, on account of want of jurisdiction in view of Section 21 of the Act, the applicant's case cannot be considered on merits.

19. As the applicant has applied for ex-gratia and the respondents have granted her exgratia, therefore, she is not entitled to family pension, as argued by the learned counsel for the respondents. Suffice to state that an erroneous belief in the mind of both the parties regarding ex-gratia can not deny the applicant if she has a right to family pension in accordance with law.

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20. In the result, OA. is disposed of as the Tribunal lacks jurisdiction to decide the same. The applicant is, if so advised, at liberty to agitate the matter in competent court of law. No order as to costs.

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

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