

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 377/2001

Dated this Friday, the 12th day of October, 2001.

Sushilabai Narayan Applicant.

Shri R.D. Deharia Advocate for the Applicant.

VERSUS

Union of India & anr. Respondents.

Shri R.R. Shetty. Advocate for the Respondents.

CORAM

Hon'ble Mr. B.N. Bahadur - Member (A)

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other X
Benches of the Tribunal ?
- (iii) Library. X

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(B.N. Bahadur.)
M(A)

OS*

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ORIGINAL APPLICATION NO.377 OF 2001

Dated this the 12th day of October, 2001

Coram: Hon'ble Mr.B.N.Bahadur - Member (A) -

Smt.Sushilabai Narayan,
W/o late Narayan Yadav,
aged 50 years,
R/o Railway Quarters No.RBI/53-C,
Opposite Raja Tractors,Jalgaon,
District Jalgaon (Maharashtra)
Pin Code 425 001.
(By Advocate Shri R.D.Decharia) - Applicant

VERSUS

1. Union of India
through the General Manager,
Central Railway,CST,Mumbai,
Pin - 400001.
2. The Divisional Railway Manager,
Divisional Office,
Central Railway,
Bhusawal (Maharashtra)
Pin Code 425 201.
(By Advocate Shri R.R.Shetty) - Respondents

ORDER

Per: Hon'ble Mr.B.N.Bahadur - Member (A)-

The applicant in this case states that her late husband, Shri Narayan Yadav, was working as a Cleaner Boy Mukkadam with Central Railway, Bhusawal, and while so working was found missing from 7.8.1975. She avers that missing employees have to be deemed, to be dead, after seven years the date from when they are missing as per law, and that since her husband was governed by State Railway Provident Fund Rules (in short 'SRPF'), the applicant is not entitled to family pension. She states

further that she was offered appointment on compassionate grounds vide order dated 23.10.1978. Her prayer now is for grant of ex-gratia payment. She had applied for this benefit (Annexure-A-3). The Applicant avers that the respondent no.2 turned down her claim vide impugned order dated 24.5.2000 (Annexure-A-1) on grounds which, she contends, are false and unreasonable.

2. It is contended by the applicant that ex-gratia payment of Rs.150/per month claimed through this OA is permissible to widows of Railway employees who were governed by SRPF Rules and who died prior 1.1.1986. The applicant also takes ground that the copy of Office Order dated 23.10.1978 providing compassionate appointment is sufficient co-lateral evidence to show that her husband was deemed to have died. It is with such grievances that the applicant comes up to this Tribunal seeking the relief for a declaration that she has a right to receive ex-gratia payment of Rs.150/per month w.e.f. 1.1.1986. A prayer is also made for setting aside of the impugned order dated 24.5.2000 (Annexure-A-1) and for payment of arrears, with interest.

3. The respondents have filed a written statement of reply stating that the applicant was provided a job purely on humanitarian grounds from 16.11.1978 and this fact cannot create in her any right. She has been working since then. Support is sought from Railway Board's order dated 30.6.1988 and O.M. dated 13.6.1988 for taking the stand that the question of granting

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ex-gratia payment to a widow whose husband has been removed from service does not arise. It is asserted that the applicant's husband was removed from service for unauthorised absence on 7.6.1978. Evidence is provided for such removal through orders at Exhibit- R-1 and other documents and the point made that dues of the late government servant were settled. Thus, the main ground taken for the non-eligibility of the applicant to ex-gratia payment relates to the fact that the applicant's husband had been removed from service.

4. The respondents also state in the written statement that the application is barred by limitation, and also suffers from the malady of delay and laches. The further part of the written statement attempts to meet, parawise, the averments made in the OA by the applicant:

5. I have heard the learned counsel on both sides and have perused the papers in the case including the case law cited. The learned counsel for the applicant Shri R.D.Deharia first took me over the facts of the case to reiterate that the husband was indeed missing and that all efforts were made to trace him. He made the point that, at that time, an FIR was also lodged but the applicant is not possessed of a copy of that document.

6. The learned counsel for the applicant referred to the application made by the applicant for compassionate appointment and reiterated that the fact that such appointment was provided

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showed that respondents considered her husband's case to be one of deemed death after seven years of missing status. There is no punishment order in her knowledge according to the learned counsel. In fact, it was argued that this was not a case of removal and in cases of removal of government servant, the widow is not provided with any compassionate appointment. Also that in removal cases, SRPF dues are not paid, which was the case here.

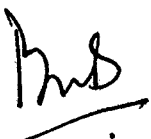
7. The learned counsel sought to draw strong support from the following case law:-

(a) Order in OA 164/95 made on 28.2.1996 by Madras Bench of this Tribunal (N.Radha Bai Vs. Union of India & others).

(b) Order in OA 1336 of 1995 made on 22.7.1997 by Mumbai Bench of this Tribunal (Sidharth Kadam Vs. Union of India & others).

8. The learned counsel, Shri R.R.Shetty, argued the case in detail for the respondents stating that it was a important fact that the applicant had been removed from service w.e.f. 7.6.1978. This was evident from the documents filed as at Annexure-R-1 by respondents, that the case of the applicant's husband was one of removal and such entry made therein Shri Shetty argued on the infirmity of the case vis-a-vis limitation, delay and laches.

9. In regard to the 1991 circular (Page 41) (Annexure-RJ-1) it was argued that there was no annulment of the order in actual fact. The learned counsel stated that there was no proof to the



effect that the applicant's husband was really missing. Also that, even if there was no infringement of instructions in regard to the compassionate appointment that was granted to the applicant, such weakness in the action of the respondents could not provide any right/s to the applicant, as sought. He contended that illegality cannot be perpetrated by awarding of "ex-gratia". The learned counsel cited the case of State of Punjab & others Vs. Gurdev Singh, 1991 SCC (L&S) 1082. Regarding the case of Madras Bench, depended upon by the learned counsel for the applicant, the stand taken by Shri Shetty, was that the aspect of delay was not discussed in the Madras Bench judgment.

10. Reagruing briefly on the aspect of limitation and delay the applicant learned counsel stated that it was firstly, a continuous cause of action. Also, that the circular, providing the relief sought came in 1988, with clarification issued in 1991, and that the applicant filed a representation when she came to know of this. Also that such representation has been rejected by the respondents by impugned order as late as in the year 2000.

11. Taking first the point of limitation and delay and laches argued by the respondents there is no doubt that it is in the first place this is a continuous cause of action and the delay in this regard has to be considered in the background of the case of M.R.Gupta Vs. Union of India & others, 1995 SCC (L&S) 1273. The argument made by learned counsel for the applicant about the date


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of circular and clarification is also relevant and more so the fact that the representation of the applicant has been comprehensively rejected in the year 2000. In view of this plea of limitation, delay and laches made by the respondents need to be rejected. Reliefs no doubt can be governed if provided as per the ratio decendi in the case of Jai Dev Gupta Vs. State of Himachal Pradesh & another, JT 1997 (7) SC 650.

12. I have carefully gone through the facts of the case and have first tried to see whether they are relatable to the facts basically with reference to the case of N.Radha Bai (supra) decided by the Madras Bench. The headnote of the said judgment reported in 1996 (2) ATJ 522 reads as follows:-

"Ex-gratia Pension - Whereabouts of the applicant's husband not known w.e.f. 30.3.1968 - Disciplinary Proceedings initiated for unauthorised absence - Applicant informed the authorities about his missing and asked for terminal benefits- A certificate from the concerned police that the applicant's husband was not traceable submitted as required by the respondents-Provident fund amount paid-Penalty of removal in disciplinary enquiry cancelled-Compassionate appointment to her son given-Applicant was sanctioned ex-gratia pension payment and dearness relief w.e.f. 1.1.1986 vide order of Feb., 1994-Before payment was made an objection regarding non submitting of FIR and office Police report, raised - Held no further report can now be called for - Direction given to pay the amount of Ex-gratia pension along with interest and costs."

13. A careful reading of the full judgment vis-a-vis the facts of the present case shows that the present case is indeed



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covered by the orders made by the Madras Bench. Even the aspect about the dismissal has been covered inasmuch as there are clear government orders on the subject which are clarified in the letter of the Railway Board dated 22.8.1991 (Annexure-RJ-1). It is also clear that orders of disciplinary action made in cases where the applicant was really missing should be treated as annulled. It is, in fact, stated that no review or revision procedure will be needed for this and hence even procedure is consciously dispensed with. This will be relevant in the case of the present OA.

14. A careful reading of the order of the Madras Bench shows that all aspects argued by the learned counsel for the respondents have adequately met and covered in the judgment. It is therefore not necessary for me to reiterate these reasons again. It is clear that the applicant has a good case.

15. The application is therefore allowed to the extent and in terms of the following orders:

The impugned order is quashed and set aside. It is held that the applicant is entitled to ex-gratia payment as per rules. Nevertheless, since she has come to the Tribunal only on 30.4.2001, the entitlement of arrears will only be from one year

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prior to the month in which she filed the OA i.e. from 1.4.2000. Such arrears shall be paid to the applicant within a period of three months from the date of this order. No interest shall be payable.

16. There shall be no order as to costs.

B.N. Bahadur

(B.N. Bahadur)
Member (A)

12/10/2001

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