

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

DAIRY NO. 6674 OF 2003
ORIGINAL APPLICATION NO. 750 OF 2001

CP 93/2003

between

Petitioner (s)

Sh. J. B. Jagtap
V G Patel

By (Name of the Counsel, if any)

And

Respondent (s)

W Rly.

Suresh Kumar

By (Name of the Counsel, if any)

REPORT OF THE SCRUTINY OF CONTEMPT OF COURT PETITION (CIVIL/CRIMINAL)

1. Whether the name (including as far as possible, the name of father/mother/husband, age, occupation and address of the petitioner(s) and the respondent(s) are given ?

Yes

NOTE: Where respondent is an office, his name, designation and office address alone area enough.

2. Whether the parties impleaded as petitioner(s) and respondent(s) are proper ?

Yes

NOTE: a) In case of Civil contempt for disobeying the order of the Tribunal, it is the party in whose favour the direction is issued that can be party against who the direction is issued can be impleaded as the respondent.
b) In case of criminal contempt, the party who is alleged to have committed contempt, that can be impleaded as respondent.

3. Nature of the Contempt (Civil or Criminal) and the provisions of the Act invoked ?

Civil

17/3/03

5/9/03

4. (a) Date of alleged Contempt ?
(b) Date of filling of the Contempt Petition ?
(c) Whether the petition is barred by limitation under Section 20 of the Act ?

5. (a) Whether the grounds and materials facts ? Constituting the alleged contempt are given ?
(b) Whether the grounds and facts alleged in the petition supporting documents of certified/photostat (attested) copies of the original thereof ?
(c) If the Petitioner relies upon any other document(s) in his possession whether copy of such document(s) is/are filed alongwith the petition ?

Yes

contd.. 2/.

(d) Whether three complete sets of the paper-book have been filed ?

(e) Whether equal number of extra copies of paper-books have been filed in case there are more respondents than one ?

6. Whether the nature of the order sought from the Tribunal is stated ?

7. Whether the petition is supported by an affidavit sworn to be petitioner verifying the facts relied upon ?

NOTE : No affidavit is required if the motion is by Attorney General/Solicitor General/Additional Solicitor General.

8. Whether the petitioner and his Advocate have signed the petition indicating the place and date ?

9. In case the Civil Contempt whether the petition is accompanied by a Certified copy of the Judgement/ decree/order/Writ/Undertaking alleged alleged to have been disobeyed by the alleged contemner ?

10. a) In case of Criminal Contempt, not covered by Section 14 * of the Contempt of Courts Act, whether the petitioner has produced the consent obtained from the Attorney General/Solicitor General/Additional Solicitor General ?

b) If not, whether the petitioner contains the reasons thereof ?

* Contempt committed in the presence or hearing of the Member(s).

11. Whether the petitioner had previously made a Contempt Petition on the same facts ? if so, have the following been furnished ?

(a) Number of the Petition ?

(b) Whether the Petition is pending ? and

(c) If disposed of, nature / result of the disposal with date ?

12. Whether the draft charges are enclosed in a separate sheet ?

FOR ATTENTION : Order on the administrative side have to be obtained from the Chairman/Vice Chairman or Member designation in case action for Criminal Contempt as required by rule 7(ii) before placing for preliminary hearing.

OBJECTIONS :

we may ask the Counsel to remove the objection first.

Q. 19/03

SECTION OFFICER

JOINT REGISTRAR

dy.

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Yes - 4 Set
Resps. Copies not Signed
by APP/Com

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Affidavit not filed

yes

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

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O.A.NO.750/2001

Monday, this the 17th day of March, 2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Joti Babaji Jagtap
residing at Aphale
PO Mayani, Tal. Khatav
Dist. Satara

(By Advocate: Shri V.G. Paste); ..Applicant

Versus

1. Union of India through General Manager
Western Railway, Churchgate, Mumbai
2. Divisional Railway Manager
Mumbai Central,
Western Mumbai, Mumbai

(By Advocate: Shri Suresh Kumar) ... Respondents

ORDER

Payment of ex-gratia amount is the request made in this DA.

2. S/Shri V.G. Paste and Suresh Kumar, appeared for the applicant and the respondents respectively, during the hearing before me on 6.3.2003.

35. The applicant, who was engaged as a Porter in 1943, retired voluntarily on 10.9.1974, as he was not maintaining good health. He was over 55 years of age then. He was given all his dues under State Railway Provident Fund Rules. After a long time, he sought grant of ex-gratia amount, which was repelled by the ~~Respondent~~ ^{Respondents}, holding that being a voluntary retiree, he was not entitled for the same, by letter No.E/S/789 dated 28.8.2001. In terms of Railway's instructions, ex-gratia amount was payable since 1.11.1997, as it was the failure of the Railway administration to have not asked for

(6) change over to pension scheme from SRPF which was the basis of his present differntly and penurial condition. Tribunal had held in OA-20/90 on 3.7.1990 and in OA-392/95 on 30.8.2000 that an employee, who had resigned after 30 years of qualifying service, was on par with those who retired on superannuation for the purposes of grant of pensionary benefit. He was, therefore, entitled for the ex-gratia payment. According to the applicant, as he had retired voluntarily on 10.9.1974, i.e., prior to 1.11.1997, he was correctly entitled for the grant of ex-gratia payment and that denial of the same to him, as he had retired after putting in 30 years of qualifying service, was improper and illegal. The applicant had been discriminated and his case called for Tribunal's intervention to have justice rendered, pleads Shri Paste. The Tribunal has also filed an affidavit stating that it was for the respondents to trace out the old records of his service, as he was an old and illiterate person.



Reply on behalf of the respondents, their learned counsel Shri Suresh Kumar that ex-gratia payment @ Rs. 600/- PM plus 5% dearness relief was admissible w.e.f. 1.11.1997, in terms of Railway Board's letter dated 27.1.1998 to surviving SRPF beneficiaries, but was not allowed to those who have been dismissed, removed or resigned. It was further clarified on 13.11.1998 that it was admissible only to those who retired on superannuation. The applicant was, therefore, not entitled for the same and had been accordingly advised on 28.8.2001. The applicant was a SRPF retiree and was not entitled for pensionary benefits. He would have been covered by the scheme of ex-gratia payment, as he had retired voluntarily and not on superannuation. Therefore,

(7)

the action of the respondents cannot be assailed. Reliance placed by the applicant in the decisions of the Tribunal in OA-20/90 dated 16.7.1990, OA-392/95 dated 30.8.2000, OA-28/99 dated 29.6.2000 and OA-633/93 dated 7.3.2000 did not help the applicant. On the other hand, the orders of the Tribunal upholding the action of the respondents by this Bench in OA-809/99 on 24.12.1999, OA-764/9 on 3.1.2000 and by Hyderabad Bench in OA-1537/99 on 27.6.2000, hold the field. Applicant's plea should, therefore, be rejected, pleads Shri Kumar.

5. I have carefully considered the rival contentions in the light of the facts and circumstances brought out in the case. The applicant in this case is aggrieved that in spite of being a SRPF beneficiary and, therefore, not receipt of pension, he had been denied the benefit of ex-gratia payment granted by the Railways by their letter dated 28.8.2001, which reads as under:-



"Your representation received through Shri V.G. Pasthe, Advocate, on behalf of you has been examined carefully & it is stated as under:-

As you had retired voluntarily from Railway Service w.e.f. 10/9/74, you are not entitled for Ex-gratia payment at this stage in terms of Rly. Bd's letter No. F (E)- III/98/PN1/Ex. Gr./S dated 13/11/98 (RBE No. 260/98) circulated under GM (E). CCG's Office letter No. E(S) 789/8 Vol.III dt. 27/11/98 (PS No. 247/98).

This is for your information please."

While the respondents feel that they are justified in doing so on the basis of a clarification issued by the Railway Ministry in 1998. It is not disputed that the applicant is a SRPF beneficiary, who retired voluntarily on 10.9.1974 on account of ill health, after serving just

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over 30 years, he was, therefore, not granted any pensionary benefits. In terms of Railway Board's instructions contained in letter No.F(E)III.97.PN1.Ex. Gr.5 dated 27.1.1998 "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. 1.11.97". The order further pointed out that "The ex-gratia payment is not admissible to (a) those who were dismissed/removed from service and (b) those who have resigned from service". The applicant in this case is a SRPF beneficiary, who retired after 1.4.1957, after completing nearly 30 years of continuous service prior to his retirement and was not one, who was dismissed, removed or resigned from service. He had in fact retired on voluntary basis on account of ill health. Still, the respondents have taken recourse to the clarification circular dated 13.11.1998, which reads as under:-

"ex-gratia payment is admissible only to those who was retired on superannuation subject to the fulfillment of the condition that the SRPF (C) beneficiaries should have rendered at least 20 years of continuous service prior to their superanuuation, 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".

We also note, as the learned counsel for respondents have pointed out, three decisions of the Tribunal in the same issue, wherein the plea of the applicant has been

negatived and these are the decisions in OA-809/99 passed on 24.12.1999 (Kashinath Rambhau Jadhav Vs. The Divisional Railway Manager & Anr.) and OA-764/97 passed on 3.1.2000 (Smt. Putalabai Vs. Union of India & Ors.) of this Bench and OA-1537/99 passed on 27.6.2000 (Malkaiah Vs. The Railway Board & Ors.) by the Hyderabad Bench of this Tribunal. At the same time, we also find that this Bench of the Tribunal, while disposing of OA-633/93 on 7.3.2000, had upheld the plea of the applicant. This Division Bench's decision had also examined the decision in OA-809/99 referred to above. The same was followed in OA-1305/95 again by the Division Bench on 8.3.2000. That being the case, there are two decisions of the Division Bench in favour of the applicants for grant of ex-gratia payment and two or three decisions of the Single Bench against. The decision of the Division Bench naturally takes precedence. Even otherwise, the correct interpretation of the Railway Board's instructions of 27.1.1998 originally did not deny the benefit of ex-gratia payment to SRPF beneficiaries on the ground that such persons retired voluntarily that too after completing more than 20 years of continuous service. The clarification subsequently issued on 13.11.1998 has brought in a concept which was not there in the original letter of 27.1.1998. The same, however, would not come in the way of the applicant, as he had retired, though voluntarily, only after completing nearly 30 years of service, much more than the period of 20 years of continuous service before superannuation, prescribed in terms of the Railway Board's circular of 27.1.1998. That being the case, the applicant could have been denied the grant of ex-gratia payment in terms of the Scheme from 1.11.1997 till date



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My finding is fortified by the decision of the Division Bench of the Tribunal, referred to above in this para. The respondents cannot take any plea that the files have been misplaced in their Office and cannot be laid at the door of the applicant.

6. In the above view of the matter, OA succeeds and is accordingly allowed. The impugned order dated 28.8.2001 is quashed and set aside. The respondents are directed to grant the benefit of ex-gratia benefit @ Rs.600/- per month from 1.11.1997 along with 5% Dearness Relief also from the same date. The amount so payable should be worked out and disbursed to the applicant within a period of four months from the date of receipt of a copy of this order. No costs.



SRI
(GOVINDAN S/ TAMPY
MEMBER (A))

1/sunil/

Certified True Copy

Date 21/03/02

Parvez
Section Officer
Central Admin. Tribunal,
Division Bench.

Attested by my
agent
Parvez