

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 739/2001
DATED THE 2nd DAY OF April 2002**

CORAM:HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Smt.Indira Namdeo Lad,
Mother of Late
Shri Prakash Namdeo Lad,
Ex Fitter Sk Gr.III T.No.5915,
Recl/Parel Western Railway,
Lower Parel Workshops,
residing at 17,Dr.Joshi Niwas,
Laxman Nagar, Kurar Village,
Malad(East), Mumbai. ... Applicant

By Advocate Shri K.R.Yelwe

V/s.

1. Union of India through
The Secretary to the Government of India,
Ministry of Railways (Railway Board),
Rail Bhavan,
New Delhi - 110 001.

2. The General Manager,
Western Railways,
HQ, Churchgate,
Mumbai.

3. The Chief Works Manager,
Carriage Workshops,
Western Railway,
N.M.Joshi Marg, Lower Parel,
Mumbai - 400 013. ... Respondents

By Advocate Shri R.R.Shetty

(ORDER)

Per Smt.Shanta Shastry, Member(A)

By this OA the applicant is claiming the second Family Pension from the date of the death of her son, late Shri Prakash Namdeo Lad. She has also sought a direction to the respondents to grant death cum retirement Gratuity, encashment of leave standing to the credit of the deceased employee and other retiral benefits. The applicant has prayed to quash and set aside the

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memo dated 18/7/2001 whereby she has been denied the Family Pension on the death of her son.

2. The applicant is the wife of late Shri Namdeo Lad who was serving in the Western Railway and retired on superannuation in 1985. He expired on 26/6/91 and the applicant was granted Family Pension after the death of her husband. The applicant's son was not married and was also governed by Pension Rules. The applicant's son died on 14/11/93 leaving behind the applicant and two major unemployed brothers.

3. The applicant submits that under Rule 92 of the Railway Servants Pension Rules, 1993 the respondents ought to have granted her Family Pension on their own. The applicant has also relied on judgement and order of Calcutta Bench of the Tribunal in the matter of Usha Rani Choudhary V/s. Union of India & Ors reported in 1991(3) ATJ 147. The applicant urges that the Family Pension which she is receiving on the death of her husband does not dis-entitle her from receiving Pension in relation to the services rendered by her deceased son. Therefore denial of Family Pension on the death of her son is arbitrary and unreasonable on the part of the respondents.

4. The respondents submit that the applicant cannot be paid Family Pension for the 13 years service rendered by her son who died on 14/11/93 as the Railway Servants Pension Rules do not provide for two Family Pensions. The respondents are relying on sub rule 18 of rule 75 of the Railway Servants Pension Rule of 1993 wherein it is clearly laid down that Family Pension admissible under the Rule shall not be granted to a person who is

already in receipt of Family Pension or is eligible therefor under any other Rules of the Central Government or a State Government or a Public Sector Undertaking, Autonomous Body, or Local Fund under the Central or the State Government. Provided that a person is otherwise eligible for Family Pension under this Rule may opt to receive family pension under this rule, if he foregoes Family Pension admissible from any other source. Accordingly, the applicant was replied to vide order dated 18/7/2001. She was advised that if she foregoes Family Pension which she is already in receipt of by virtue of being the wife of deceased Shri Nathuram Lad, she can be considered for the Family Pension for the service rendered by her son from 1/1/98 after fulfilling all the prescribed conditions.

5. According to the respondents para-3 of Rule 92 of the Railway Servants Pension Rule 1993 mentioned by the applicant does not indicate that the mother is entitled for Family Pension. As per Family Pension Rules of 1964, the parents who were fully dependent on the Government Servant when he/she was alive provided the deceased employee had left behind neither a widow or a child are made eligible for Family Pension w.e.f. 1/1/1998 as per OM dated 5/3/1998 by Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioner's Welfare. But since the applicant is already in receipt of one Family Pension, the applicant cannot be granted the second Family Pension unless she foregoes the earlier Family Pension.

6. The respondents submit that all other dues i.e. Provident Fund, Death Gratuity, CGEIS have already been paid to the applicant.

7. The respondents also deny that the judgement and order of the Calcutta Bench of the Tribunal in the case of Smt.Usha Rani Choudhary is helpful to the applicant's case. It is not similar at all.

8. I have heard the learned counsel for the applicant as well as the respondents and have given careful consideration to the pleadings.

9. It is not denied that the applicant is receiving one Family Pension for the service rendered by her late husband Shri Nathuram Lad from 1991 onwards.

10. The learned counsel for the applicant has also pointed out that since the applicant's son late Shri Prakash Nathuram Lad died without wife or children, as he was not married, the applicant is entitled to the Family Pension for the service rendered by her late son. No doubt the applicant is entitled to receive the same. However the Railway Pension Rules also specify that a person cannot receive two Family Pensions. Ofcourse, a person can opt for the better of the two Family Pension. Even Rule-92 is subject to the provision under Rule 75 of the Railway Servants Pension Rules 1993.

11. The applicant has relied on the letter dated 11/5/98 from the Western Railway whereby the OM dated 5/3/98 of the Department of Pension and Pensioner's Welfare was forwarded. In para-1 of the aforesaid OM it has been stated that the Definition of Family for the purpose of Family Pension shall also include parents who are wholly dependent on the Government servant when he/she was alive provided the deceased employee had

left behind neither a widow nor a child. In short even parents are entitled and accordingly had not the applicant been receiving one Family Pension already, she certainly would have been entitled for the Family Pension for the services rendered by her son. This is not disputed.

12. Applicant has cited the judgement in the case of Usha Rani Choudhary supra. In that case, the employee had died in harness leaving no widow or children being a bachelor and the applicant therein who was the mother of the deceased employee was wholly dependent on him and had no independent earning. It was therefore held that the claim of the applicant for Family Pension cannot be denied. It was further held that the parents of the deceased employee can get Family Pension subject to fulfilment of two conditions, that they were wholly dependent on the deceased employee when he was alive and they have no earning of more than Rs.2550/-per month. In the judgement the OM dated 5//3/98 which has been discussed in para- 10 above was also considered. Usha Rani was not in receipt of any other family pension is applicable only to the extent that it holds that parents are entitled to Family Pension for the service rendered by their son. The similarity ends there. The applicant is already getting one Family Pension which was not the case of Usha Rani Choudhary in the judgement cited.

13. Thus, all that the Railway Servants Pension Rules 1993 provide for is that even parents are entitled to Family Pension subject to certain conditions. But the rules do not say that a person can get two Family Pensions. Rule-92 of the Railway

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Servants Pension Rules has to be read alongwith Rule 75(18). get the second Family Pension in my considered view.

14. I therefore hold that the applicant is not entitled for a second Family Pension for the service rendered by her late son. She is ofcourse free to opt for the better of the Family Pensions as already advised by the respondents.

15. In view of the reasons recorded above, the application fails. Accordingly the OA is dismissed without any order as to costs.

Shanta S
(SMT.SHANTA SHASTRY)
MEMBER(A)