

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 693/90

~~Transferred Application No:~~

DATE OF DECISION

18/1/94

Smt. Taramati G. Sawant Petitioner

Shri V.G. Pashte Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri J.G. Sawant Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri N.K. Verma, Member (A)

The Hon'ble Shri

- ~~1. Whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ?
- ~~3. Whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ?

N.K.V.
(N.K. VERMA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 693/90

Smt. Taramati Gopal Sawant

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri N.K.Verma

Appearance

Shri V.G.Pashte
Advocate
for the Applicant

Shri J.G.Sawant
Advocate
for the Respondents

JUDGEMENT

Dated:

18.1.1994

(PER: N.K.Verma, Member (A))

In this OA. Smt. Taramati Gopal Sawant, a widow of a railway employee has prayed for a declaration that opening and closing of pension option by the Railway Administration is illegal and that she was unlawfully denied the right of family pension due to her illiteracy and ignorance and has therefore further prayed that she is entitled to grant of family pension with effect from 14.2.1979 with payment of arrears due etc. The short facts of the case are that applicant's husband Gopal Govind Sawant was working as Works Mistry at Dadar, Bombay Division, Central Railway died on 13.2.1979 of heart failure. The applicant's husband had not exercised the option to avail the pension facility in preference to the State Railway Provident Fund Rules under which he was governed till the time of his death. Accordingly, after the death of the deceased employee all his settlement dues were paid to him in accordance with the Provident Fund Rules and she was allowed

N.K.V.

the ex-gratia pension subsequently w.e.f. 1.1.1986 in terms of Railway Board's letter dated 13.6.1988. She realised that P.F.Scheme had certain disadvantages and was not enabling the applicant a grant of family pension. She made an application to the Railways for grant of family pension but instead the Railways have given her only an ex-gratia pension. She wrote to the Railways a letter dated 1.5.1990 in which she undertook to refund the ex-gratia pension if family pension is granted to her. Since no reply to the representation was received, hence the OA.

2. The Railway respondents in their written statement have vehemently denied that the deceased official had no opportunity to opt for the pension scheme. The railway pension scheme was introduced in 1957 and as late as 1974 the Railways issued a Circular giving opportunity to all railway officials to come over to the pension scheme if they so desired. This time limit for coming over to the railway scheme was also extended upto 30.12.1978. The Ministry of Railways had desired that widest publicity should be given to this extention so that everybody both in service or who had retired or died during the various extension of time allowed would come to know of it and take the benefit of the option offered. The applicant's husband was in service when he died in December, 1979 and it cannot be presumed that he was no knowledge of offer of option made to serving railway employee.

3. Shri Pashte appearing for the applicant made very strenuous plea that there are various judgements of this very Tribunal where pensioners of the pension scheme were allowed

to agitate for the option successfully like in the case of Laxmi Vishnoo Patwardhan vs. Union of India cited in ATR 1988(2) CAT BDM-48 followed by J.J.Gonsalves vs. U.O.I. in OA.NO. 732/87 in a judgement delivered by this Tribunal on 28.2.1990. He also made the plea that the case is not hit by the law of limitation as grant of pension is a recurring cause of action and is a fundamental right of the pensioners to obtain the family pension after the death of her husband.

4. ~~Rebutting~~ the arguments of the learned counsel for the applicant, Shri Sawant on behalf of the respondents submitted that the application is squarely hit by the law of limitation as the applicant by her own admission had been in receipt of ex-gratia pension since 1.4.1986. The cause of action arose on 13.7.1979 when the applicant's husband expired while he had the opportunity of exercising the option. If the husband by any chance had not exercised the option during his service time due to his sudden heart failure, the applicant herself could have initiated the matter for switching over to the family pension scheme. She applied for grant of ex-gratia pension which was given to her and she had been in receipt of the same till she made a representation on 1.5.1990. The delay in filing this application in 1990 therefore cannot be satisfactorily explained. Moreover, since her husband was on the SRPF scheme, the applicant was not entitled to the family pension as claimed. Shri Sawant also averred that the judgement of this Bench dated 11.11.1987 in the case of Laxmi Vishnoo Patwardhan and followed by Gonsalves were not applicable in the instant case as they related to officials who had retired from service and had not been informed of the option facility available to them. In the instant case, the official was in service when the option period was extended

and he had not exercised that option during that extended period. Hence it cannot be said that he had no information of switching over to this scheme. Thus both on the ground of limitation and on merit the application is liable to be rejected.

5. I have given anxious consideration to this matter more so in view of the fact that a widow of a railway servant is to be given sufficient monetary help to tide over the difficulties of her widowed life. I am, however, persuaded by the arguments by the learned counsel for the respondents that this is not a case where there has been any lapse of railway administration in providing her the necessary financial assistance when the official had died in December, 1979. All his settlement dues were paid to her. When the Railways introduced the Ex-gratia Pension Scheme, the same was also extended to her. The claim for switching over to the family pension scheme is entirely out of the context and not based on any legal rights. The application therefore fails and is dismissed without costs.

N.K. Verma
(N.K. VERMA)
MEMBER (A)

mrj.