

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 721/92
T.A. No. ---

198

DATE OF DECISION 20-12-93Smt. Sarojini Waman Shinde PetitionerMr. D.V. Gangal

Advocate for the Petitioner(s)

Versus

U.C.I. & Ors.

Respondent

Mr. N.K. Srinivasan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice M.S. Deshpande, Vice-Chairman

The Hon'ble Mr.

1. ~~Whether Reporters of local papers may be allowed to see the Judgement?~~
2. To be referred to the Reporter or not? *no*
3. ~~Whether their Lordships wish to see the fair copy of the Judgement?~~
4. Whether in needs to be circulated to other Benches of the Tribunal? *no*


 (M.S. DESHPANDE)
 VC

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.721/92

Smt.Sarojini Waman Shinde,
R.No.6, Watve Bldg.
Rajendra Prasad Road,
Datta Nagar, Dombivli,
Dist. Thane.

.. Applicant

-versus-

1. Union of India
through
General Manager,
Western Railway,
Churchgate,
Bombay.

2. Chief Workshop Manager,
Lower Parel Workshop,
Western Railway,
Bombay.

.. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande
Vice-Chairman.

Appearances:

1. Mr.D.V.Gangal
Advocate with
Mr.V.G.Pashte
Advocate for the
Applicant.

2. Mr.N.K.Srinivasan
Counsel for the
respondents.

ORAL JUDGMENT:
(Per M.S.Deshpande, V.C.)

Date:20-12-93

The applicant is ^{the} a widow of Shri Waman Bhikaji Shinde who was working as Fitter in the Dy. CME Lower Parel, Western Railway, Bombay since 1948 and resigned on 1-7-76. He died on 5-6-78. The applicant became aware of the family pension scheme for the employees covered by the CPF scheme after his death and she applied for being granted family pension under the scheme. She made a representation and that representation was turned down on the plea that she was not covered by the scheme as her husband had resigned from railway service. The applicant has approached this Tribunal for relief under the scheme.

2. The scheme which is at annexure 'C' is dt. 13-6-1988 and was formulated upon the recommendation of the IVth Pay Commission in Part II of its report regarding grant of relief to the families of deceased civilian Central Government employees who were governed by Contributory Provident Fund Scheme. The President was pleased to decide that the widows and dependent children of the deceased CPF beneficiaries who had retired from service prior to 1-1-86 shall be granted exgratia payment of Rs.150/-p.m. w.e.f. 1-1-86 or from the date following the date of death of the deceased employee whichever is later. The submission on behalf of respondents was that the sanction of ex-gratia payment under para-3 of the scheme was subject to various provisions one of them being "(4)The other provisions of eligibility prescribed for family pension under the CCS(Pension)Rules, 1972, though not specifically mentioned above, shall also apply for purpose of regulating grant of exgratia payment under these orders"

3. A Division Bench of this Tribunal while deciding O.A.20/90 on 3-7-90, Mrs. Evelyn Gracios vs. DRM CR Bombay VT, after considering the scheme observed that "it is evident that the Railway Administration have been consistently treating the railway employees who resigned from service after 30 years qualifying service on a par with the employees who retired on ~~the~~ superannuation for the purpose of grant of ~~netio~~ pensionary benefits. The ex-gratia payment under the O.M. dtd. 13-6-1988 is indeed a pensionary benefit for the widows and dependent children of the CPF beneficiaries. As such, merely because the O.M. does not

specifically refer to those who had resigned from service after completion of 30 years qualifying service, the respondents cannot refuse payment to the applicant. It may be pointed out in this context that even in Rule 101 of the Manual of Railway Pension Rules, 1950, or in the letter of the Railway Board dt. 23-1-1967 relating to the grant ex-gratia pension, there is no positive mention that the pensionary benefits of the ex-gratia pension shall be payable to those who have retired after rendering 30 years qualifying service." The Division Bench observed that "inference on that behalf is available only from the negation of the benefits to those who resigned from service before completion of 30 years of service."

4. Learned counsel for the respondents urged that in Evelyn Gracios's case the employee has rendered 30 years of qualifying service and that was the consideration which in the Tribunal's judgment entitled the widow of the applicant to the benefit under the scheme while in the present case the applicant had not rendered 30 years of qualifying service but had put in 27 years and 8 months of service. In this context the clarification given by the Railway Board's letter dt. 27-12-88 addressed to G.M. Central Railway, Bombay VT which was reiterated in the letter dt. 11/27-2-89 becomes relevant. It was clarified that the family of the Railway employees who were governed by the S.R.P.F.(C) Rules and had resigned are not eligible for ex-gratia payment on the analogy that the families of the Railway employees governed by the pension rules are not eligible for family pension under the pension rules under similar circumstances. It also mentioned that the families of

those employees who were compulsorily retired or medically incapacitated are eligible for ex-gratia payment. It is difficult to see the reason for exclusion of the category to which the applicant belongs. Evidently the benefits ^{clearly} under the present scheme would not have been entitled to family pension at all, unless provision~~s~~ was made for them under the scheme. Even the families of those employees who are compulsorily retired, medically incapacitated were eligible for ex-gratia payment irrespective of the fact that the employees in those cases had not put in the qualifying period of service. It does not stand to reason that only the persons who had resigned should be excluded from the operation of the scheme.

5. Learned counsel for the respondents is right in urging that the applicant's case could not be covered ~~as per~~ ^{by} the judgment in Evelyn Gracios case or by the clarification issued by the respondents. It is ^{exactly} ~~exclusively~~ this position that the learned counsel for the applicant urged was arbitrary because if the object was to make provision~~s~~ for the family of the deceased employee which was in indigent ^{not} circumstances then the classification would ~~have~~ have any nexus to the objective to be achieved and people placed in similar circumstances would be excluded. This will clearly therefore be a case where the scheme would work arbitrarily, and, on the same lines on which this Tribunal held in O.A.20/90 decided on 3-7-90, I would hold that the order rejecting the applicant's application

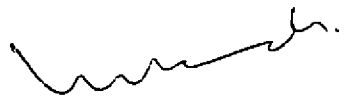
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for family pension by railway administration is illegal and arbitrary and violative of articles 14 and 16 of the Constitution.

6. With regard to the arrears of family pension the applicant would be entitled only for arrears one year before filing of the application in view of the provisions u/s.21 of the AT Act.

7. The application is allowed.
It is hereby declared that the applicant was unlawfully denied the right of ex-gratia payment and that her case is covered by the Govt. of India, Ministry of Personnel, Public Grievances & pensions (Deptt. of pensions & Pensioners' Welfare)
O.M.No.4/1/87-P&PW(PIC) dt. 13-6-1988.

M



(M.S.DESHPANDE)
Vice-Chairman