

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION:633/93.

Date of Decision:7/3/2000

Smt. Padibai Vinayak Patil ... Applicant

Shri V.G.Pashte ... Counsel

for Applicant

V/s.

Union of India & Anr. ... Respondents

Shri S.C.Dhawan

... Counsel for
Respondents

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri B.N.Bahadur, Member(A)

- 1) Whether to be referred to the reporter or not?
- 2) Whether it needs to be circulated to other Benches of the Tribunal?
- 3) Library?


(R.G.VAIDYANATHA)
VICE CHAIRMAN

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:633/93.
DATED THE 7TH DAY OF MARCH,2000

CORAM:Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.
Hon'ble Shri B.N.Bahadur, Member(A).

Smt.Padibai Vinayak Patil,
(died on 19/11/98)
Shri Kamlakar Vinayak Patil,
Shitaladevi Rd, Kopari Colony,
Thane(East) 400 603. Applicant.
By Advocate Shri V.G.Pashte

V/s.

1. Union of India through
General Manager,
Central Railway,
Bombay V.T.
2. Chief Workshop Manager,
Parel Central Railway,
Bombay. Respondents
By Advocate Shri S.C.Dhawan.

(ORDER) (ORAL)

Per Shri Justice R.G.Vaidyanatha,Vice Chairman.

This is an application filed by applicant claiming ex-gratia pension. The applicant has since died and her son has come on record as legal heir. The respondents have filed reply to OA. We have heard Shri Pashte, learned counsel for Applicant and Shri S.C.Dhawan, counsel for Respondents.

2. Applicant's case is that her husband Shri Vinayak Patil was a Railway servant who had worked from 8/8/40 to 7/8/70. He resigned the job on 8/8/70. Applicant's husband died in 1992. The applicant's case is that she is entitled to ex-gratia pension after the death of her husband. She therefore wants a direction to respondents to pay her ex-gratia pension from 26/11/92, the date of death of her husband till her life time. She has also amended the OA and prayed that though her husband had given

...2.



resignation, it must be treated as letter for Voluntary Resignation since he was not keeping good health at that time.

3. Respondents in their reply have not accepted the applicant's plea that her husband had put in 30years of service. It is stated that since the applicant's husband had resigned from service, the applicant is not entitled to ex-gratia pension.

4. The learned counsels appearing on both sides have invited our attention to number of authorities on this point and they have also relied on 1988 circular and earlier circular of 1967.

In our view the earlier circular of 1967 has a very important bearing on the point under consideration. We have secured the file of OA-20/90 since the applicant has relied on a judgement of the Tribunal in that case. In that case the applicant had relied on the circular dated 23/1/1967. A perusal of the circular shows that Provident Fund optees who retired after completing 20years of continuous service are entitled to ex-gratia pension w.e.f. 1/1/67. Then, there is a provision which says that this pension will not be payable to those who resigned from service with less than 30years service.

Therefore, the rule itself is very clear that ex-gratia pension will not be payable to those who resigned with less than 30years of service. Therefore one who resigned after 30years service will be entitled to exgratia. We are not concerned with another clause which excludes dismissal and removal from service, since it is not relevant for our present case. In this connection, we may also refer to Rule 101 of manual of Railway Pension Rules 1920. Rule 101 mentions eligibility for pension.

...3.



Then there is a proviso which says that this pension is payable to permanent Railway servants except those who are removed or dismissed from service or resigned from it before completion of 30years Qualifying service. Therefore, here also the policy is that after completion of 30years qualifying service, he is entitled to Pension, even if he resigned.

Then in 1988, the Government has issued fresh circular where also exgratia pension is granted.

Then we have number of judgements of this Tribunal which are applicable to the applicant's case.

5. We are referring to copies of three judgements which are annexed to the OA, the first judgement is of a Division Bench of this Tribunal dated 3/7/90 in OA-20/90. The Division Bench refers to 1967 and 1988 circular and has come to a conclusion that if an official has put in 30years of service, he is entitled to exgratia both under 1967 and 1988 circular notwithstanding the fact that he has resigned his job. The said judgement has been followed by another Division Bench in OA-231/91 where by order dated 1/8/91, exgratia payment was awarded to an official's family who had resigned from service. The same view has been again taken in another judgement in OA-221/91. One of us (R.G.Vaidyanatha) had occasion to consider a similar matter in OA-8/98 and the application was allowed by order dated 10/8/98 holding that the wife of the official is entitled to exgratia pension notwithstanding that her husband had resigned the job. In that case reference was made to number of earlier judgements of this Tribunal taking similar view.

6. Learned counsel for the respondents contended that since applicant's husband had resigned from service, the wife is not entitled to exgratia payment and placed strong reliance on two judgements of Single Benches of this Bench. One is a judgement dated 24/12/99 in OA-809/99 where the Hon'ble Chairman sitting as a Single Member has taken a view that the applicant in that case is not entitled to exgratia payment since he had resigned his job and had not retired from service. Though the Hon'ble Chairman was inclined to accept the case of the applicant on the basis of earlier judgement of this Tribunal, he was pleased to reject the claim basing his view on the circular dated 13/11/1988 issued by Railway Board where there is a clarification that exgratia payment is not permissible to a person who goes away from service except after Superannuation. That was an OA filed in 1999. Clarification had been issued by Railway Board in 1998. Similaar view has been taken by another Single Member Bench in order dated 29/2/2000 in OA-1121/94. But in those two cases, distinction of resignation after 30years of service did not arise for consideration. But in our present case it is a case of resignation after 30years which is an exception provided in 1967 Rule. We may also refer to 1990 Lab.I.C.1511(J.K.Cotton Spinnign & Weaving Mills Company v/s. State of U>P>, where Apex Court has observed that letter of resignation amounts to voluntary retirement.

8. The applicant's husband is alleged to have put in 30years service; the applicant has produced the xerox copy of the service certificate which is at page-10 of the paperbook and now learned



counsel for applicant produces the original document before us. The original document is dated 1/7/77, it bears the seal of Central Railway on the top and there is a designation seal of Deputy Chief Mechanical Engineer and it bears the signature of the Officer. The document has a very old look. There is no reason to doubt the genuineness of this document. The entries in this document clearly shows the period of service from 8/8/40 to 7/8/70. It shows that applicant's husband had 30years of service, but the learned counsel for respondents wanted to say that there is nothing to show that it was regular qualifying service. When the applicant has produced *prima facie* evidence that her husband has worked for 30years, which is an official document, it is for the respondents to show that the entire service was not regular service or that the entire service does not count as qualifying service. In the absence of any further document, we can base our finding on the fact that the applicant's husband had put in 30years of service and therefore by virtue of 1967 circular, applicant is entitled to exgratia payment.

9. This application was filed by widow of the deceased official. She has now died on 19/11/1998. The OA was filed on 16/1/1993. Her husband died on 26/11/1992 about just 9 months before the date of application. Therefore, the original applicant is entitled to exgratia payment from 26/11/1992 till she died on 19/11/1998. Since she has died during the pendency of the OA, the arrears due to her should be paid to her legal heir, who is her son.

10. In the result, the application is allowed. The respondents are directed to sanction the exgratia payment in favour of applicant, payable to her legal heir. It is made clear that applicant's legal heir who has come on record Shri Kamlakar Vinayak Patil is not entitled to any exgratia payment since he is more than 25 years as on today. He is entitled to claim only the arrears payable to original applicant, his mother.

The respondents are directed to sanction the exgratia payment, to the deceased original applicant Smt. Padibai Vinayak Patil for the period 26/11/1992 till 19/11/1998 and the entire arrears be paid to her son Shri Kamlakar Vinayak Patil within a period of six months from the date of receipt of copy of this order. There will be no orders as to costs.

B.N.Bahadur

(B.N.BAHADUR)
MEMBER(A)

R.G.Vaidyanatha

(R.G.VAIDYANATHA)
VICE CHAIRMAN

abp..