

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 640/93

Transfer Application No:

DATE OF DECISION: 3.6.94

Smt. S.B. Panchal Petitioner

Shri G.S. Walia Advocate for the Petitioners

Versus

Union of India & Anr. Respondent

Shri A.L. Kasturey Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

(B.S. HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 640/93

Smt. Samuben Bhika Panchal

... Applicant

V/S.

Union of India & Anr.

... Respondents

CORAM: Hon'ble Member (J) Shri B.S.Hegde

Appearance

Shri G.S.Walia
Proxy Counsel for
the Applicant

Shri A.L.Kasturey
Advocate
for the Respondents

JUDGEMENT

Dated:

(PER: B.S.Hegde, Member (J))

The applicant has filed this application under Section 19 challenging the order of the respondents dated 26.5.1992 (Ex.'B') and also prayed that she may be paid ex-gratia payment in accordance with O.M. dated 13.6.1988.

2. The brief facts are the applicant is a wife of late Blacksmith Bhika Ganesh Panchal, Western Railway, Bombay Central. The ex-Railway servant joined the department in 1940 and worked in the Railways for 36 years and resigned/retired on 31.8.1976. He died on 23.11.1986. It is stated that while on duty he met with an accident as a glowing splinter from the furnace on which he was working struck his eyes and as a consequence whereof he was reduced to blindness and apart from the aforesaid accident as he was continuously working with furnace thereby his eyesight had become weak and aggravated the ailment. It is further stated that he was compelled by the respondents to retire from his service on voluntary basis. Accordingly, Ex-employee had

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submitted his application in June 1976 for voluntary retirement and was relieved from service w.e.f. 31.8.1976. Since his retirement dues were not paid within a period of two years, he made a representation dated 15.2.1978 requesting for payment of retirement dues and also for re-employment.

3. The respondents vide their letter dated 26.5.1992 rejecting the request by saying that "your husband Mr. Bhikha G. Panchal has voluntarily resigned on 31.8.1976 as such the ex-gratia payment is not entitled to you." In furtherance of this the applicant made further representation on 14.9.1992 and 16.11.1992 respectively. Shri Walia proxy counsel for the applicant during the course of hearing pointed out the case of Mrs. Evelyn Gracies vs. The Divisional Railway Manager, Central Railway, Bombay V.T. & Ors. in OA.NO. 20/90. The Tribunal after perusal of the record had come to the conclusion that the applicant in that case was fully entitled to claim the Ex-gratia payment and accordingly quashed the order of the respondents dated 29.8.1989 rejecting the request of the applicant. He also brought to my notice the O.M. issued by the Railway Board dated 23.1.1967 addressed to all the General Managers stating that the Railway Board had decided, with the approval of the President, that the railway employees who retired from Indian Railways on contributory Provident Fund system prior to 1.4.1957 after completing 20 years continuous service and are still alive, will be granted ex-gratia pensions, with effect from 1.1.1967 at the following rates, etc. These pensions will not be payable to those who were dismissed/removed from service and those who resigned from service with less than 30 years' service before superannuation. Further reference is made to O.M. dated 13.6.1988 issued by Ministry of Personnel, Public Grievances and Pensions which speaks of grant of ex-gratia payment to families of deceased

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CPF retirees. It further states that the President is pleased to decide that the widows and dependent children of the deceased CPF beneficiaries who had retired from service prior to 1.1.1986 shall be granted ex-gratia payment with effect from 1.1.1986 or from the date following the date of death of the deceased employee whichever is later.

4. The respondents in the reply only stated that the applicant is not entitled to ex-gratia pension on the ground that her late husband had tender resignation from Railway service as such she is not entitled for any ex-gratia payment. Further they urged that the application is suffered from delay and latches and the same is barred by time. They also contend and say that the applicant's husband had resigned and not took a voluntary retirement.

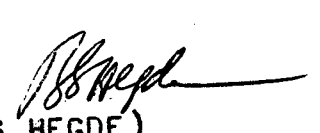
5. I have considered the rival contentions of the parties and have perused the record. The contention of the respondents that the applicant's husband had taken voluntary resignation and not voluntary retirement is not correct. In their admission by the letter dated 26.5.1992 wherein they said that Bhikha G. Panchal has voluntarily resigned on 31.8.1976. It is true that the applicant had submitted his representation in the year 1992, however, considering the capacity of the applicant being illiterate, it is not expected of the applicant to make repeated representations at the time of payment of ex-gratia payment. It is not ^{fair} on behalf of the respondents to deny the benefit on the ground that the applicant's husband had resigned from service. However, they did not mention he resigned in what circumstances and what service he rendered in.

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Admittedly, the applicant had rendered 36 years continuous service, that being so, it is not open to the respondents to deny the ex-gratia pensionary benefits to the applicant on the ground that her husband had resigned from railway service. Indisputedly, the applicant has put in repeated representations vide dated 14.8.1992 and 16.11.1992 respectively and stated that it is not a case of resignation but voluntary retirement after completion of more than 30 years of service. Therefore, even if an application was given by him it should be construed that he had given application for voluntary retirement, nevertheless his request was not acceded to.

6. The short question for decision is whether the applicant is entitled for ex-gratia payment in accordance with O.M. dated 13.6.1988. In this connection, the ratio laid down in OA.NO.20/90 Mrs. Evelyn Gracies's case would squarely apply to the facts of this case and the facts of this case are similar to the case referred to above. Since both were railway employees, the instructions and the O.Ms. of the Railways would be applicable to both. The ex-gratia payment under the O.M. 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.

7. Relying upon the aforesaid judgement of the Tribunal and also the facts of the case, I am of the opinion, that the order dated 26.5.1992 (Ex. 'B') is liable to be quashed and accordingly the same is set aside and quashed. In the result, the application is allowed and the applicant is entitled for ex-gratia payment in accordance with O.M. dated 13.6.1988. The application stands disposed of in the light of the above.


(B.S. HEGDE)
MEMBER (J)