

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 956/94

Transfer Application No.

Date of Decision

7/2/96

Smt.C.G.Meshram & Anr.

Petitioner/s

Shri D.V.Gangal

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents

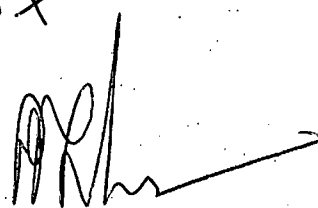
CORAM :

Hon'ble Shri. P.P.Srivastava, Member (A)

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 ? X


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 956/94

Smt.Chandrabhagabai Gorakhnath Meshram & Anr. ... Applicants

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri D.V.Gangal
Advocate
for the Applicants

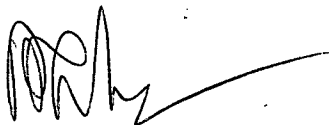
Shri V.S.Masurkar
Advocate
for the Respondents

JUDGEMENT

Dated: 7/2/96

(PER: P.P.Srivastava, Member (A))

The applicant is the widow of the employee Shri Gorakhnath L. Meshram who died of heart-attack while he was working on a Goods Train on 29.6.1973. The applicant No. 2, the son of applicant No.1 and the deceased employee, was minor at the time of death of the employee. The applicant No. 1, i.e. widow of the late employee sought compassionate appointment for her son, i.e. Applicant No. 2 in 1988 but the same was denied on the ground that the Applicant No. 1 herself should have applied for appointment at the time of death of her husband in 1973. The applicant^{No.1} was further informed that applicant^{No.2} became major at the age of 18 years in the year 1985 and should have approached the competent authority for



appointment within six months. Since the Applicant No. 2 approached them in 1988, his case for compassionate appointment is barred by time and cannot be considered. The applicant was replied by the respondents in 1989 as has been brought out in the written statement and she was further informed of the same facts on her representation in 1991 and 1992 vide respondents' letter placed at Annexure-'A-1' & 'A-2'. Aggrieved by these letters, the applicants have approached this Tribunal through this OA. for compassionate appointment of Applicant No. 2 and for declaring that Applicant No. 1 is entitled to Family Pension in terms of Rule 13^{17X6} which is applicable in the case of death on duty by heart-attack in terms of Railway's Circular dated 16.7.1971 placed at Annexure-'C' at page 67.

2. At the outset, the counsel for the respondents has opposed the OA. in terms of Rule 10 of the Administrative Tribunals Act. Counsel for the respondents has argued that compassionate appointment of Applicant No. 2 and the Family Pension of Applicant No. 1 are two different matters and cannot be agitated in one OA. in terms of the above rule. The counsel for the applicant states that these two matters are related and flow out of the consequences of the death of employee and therefore would not attract the provisions of Rule 10. Considering the fact that the widow is the illiterate person as well as in the circumstances of this particular case, I am inclined to accept the arguments of



counsel for the applicant and I am inclined to consider both the matters concerning compassionate appointment and family pension in this application.

3. Counsel for the respondents has also raised the point that the applicant has suppressed vital fact and has not brought out in the OA. that the applicant had filed a Civil Suit in the Court of Civil Judge (Sr.Division) Akola being MJC No. 136/86 and the applicant's application should be dismissed for suppression of the facts. Counsel for the applicant has accepted that it was not brought to his notice by the applicant that a civil suit was filed and as soon as he came to know that civil suit was filed from the written statement of the respondents, he sought details from the applicant and asked for the copy of the judgement in the same civil suit. He produced a copy of the judgement across the Bar. The suit was dismissed by the learned Civil Judge on the ground of jurisdiction and the plaint was returned to the plaintiff for filing in the proper forum.

4. Counsel for the applicant has also expressed his deep regret ^{at the} ~~at~~ the inadvertent mistake of not mentioning of previous court case the facts in the OA. Although, this is a serious matter and normally would have resulted in dismissal of OA, on this ground alone, but taking into account the peculiar circumstances of this case where the employee had died of heart-attack and the widow being illiterate and the sincere regret expressed by the counsel for the applicant,

I am inclined to over-look this point and have decided not to dismiss the case on this ground.

5. The counsel for the respondents has also raised the question of delay, in so far as compassionate appointment is concerned. The counsel for the respondents has mentioned that the widow should have sought employment in the year 1973 and Applicant No. 2, the son of deceased employee, should have sought employment in 1985 when he became 18 years of age. The counsel for the applicant has argued that the widow was under the bonafide mistaken in that her son should pass atleast Higher Secondary Examination before seeking an appointment, therefore, he sought appointment in 1988 after passing Higher Secondary Examination which he passed in 1987, marks of which are placed at Annexure-'A-9'.

6. The counsel for the applicant has relied on the provisions of the Master Circular placed at Annexure-'A-16' and he has quoted Para X at internal page (3) and Para XII^(a) at internal page 15 of the Circular. A reading of Circular would show that Para Circular deals with a minor son when a major daughter was available and therefore the provisions of this para of Circular are not applicable in the present case. Similarly Para 12 deals with :-

"When offering appointment on compassionate grounds to a widow, son, daughter, etc. it need not be checked whether another son, daughter is already working; but in no case should there be more than one appointment against one death/medical incapacitation.



For example, it should not be permitted where the family wants another son or daughter to be employed in lieu or in addition to an appointment already made on compassionate grounds."

is not the ground on which appointment is desired, Since this/there is no direct application of these provisions of Circular in the present case.

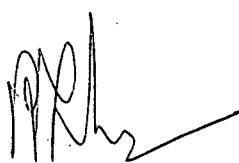
7. On the other hand, counsel for the respondents has relied on the rules wherein it has been laid down that the compassionate grounds appointment in the case of a minor should be applied within a period of six months after attaining majority, i.e. at the age of 18 years and the case of Applicant No. 2 was rejected on the basis that he did not apply for compassionate appointment at which he attained in 1985 the age of 18 years but applied only in 1988. The rejection of the claim of the applicant was within the frame work of the rules.

8. Counsel for the applicant relied on the decision of the Tribunal in the case of Phool Kumari vs. Union of India & Ors. in OA.NO. 78/91 decided on 5.2.1992 reported in (1993) 23 ATC 548 by the Jaipur Bench of this Tribunal. The counsel for the applicant has also quoted the decision of the Tribunal in the case of Smt.S.K.Dhiwar & Anr. vs. G.M.C.Rly, Bombay in OA.NO. 421/91 decided on 8.11.1993. Both these judgements are based on the basis of facts and circumstances as prevailed in those cases and they do not lay down any ratio which

would be applicable in the present case.

9. Counsel for the respondents has quoted the case of LIC vs. Asha Ramchandra Ambekar (Mrs.) & Anr. (1994) 27 ATC 174 decided by the Supreme Court and JT 1994(3) S.C. 525 Umesh Kumar Nagpal vs. State of Haryana & Ors. Counsel for the applicant has argued that the LIC case decided by the Supreme Court concerned appointment in Class II post and therefore the ratio laid down therein would not be applicable in the present case where the appointment sought is in Class IV. However, considering the arguments of both the counsels, I am of the view that these two cases decided by the Supreme Court lay^{ML} down the law as far as compassionate appointment is concerned. It would be instructive to quote from these two judgements some paras which lay down the law and deal with the matter having direct bearing on this OA. In Nagpal case the Supreme Court has observed as under in Para 2, 6 & 7.

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exception carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood.



In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No. other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.



7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis."

In LIC case, the Supreme Court had the occasion to observe in Para 10 as under :-

"10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration."

In Para 11, the Supreme Court has observed as under :-

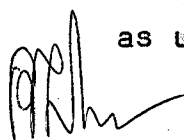
"The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done."

Para 13 of this judgement reads as under :-

"13. It is true that there may be pitiable situations but on that score, the statutory provisions cannot be put aside."

In view of above ratio laid down by Supreme Court, the applicant would not have any legal right for compassionate ground appointment and no fault can be found with the order of the rejection of the request of the applicant for compassionate ground appointment which is based on the rules on the subject.

10. The next question which has been raised in this OA is that of grant of family pension to widow. In this connection, the respondents' administration has issued a Circular which is placed at Annexure-'C' page 67. Since this particular Circular of the Railway Board deals with family pension which is directly applicable in the facts of the present case, it would be desirable to quote the Circular in full, which reads as under :-



"Sub: Grant of option to the families of Late employees on SRPP(contributory) benefits to choose the benefits under the Pension Rules.

In the Railway Board's letter of even number dated 7.10.1970 instructions were inter-alia issued that the request for the pensionary benefits made by the families of the employees who have retained contributory PF benefits and who are either killed or died as a result of injuries sustained in the due performance of their duties, may be considered on merits of each case. Thinking into account the special circumstances and the stresses and strains in which the Railway employees have to carry out their duties Board consider that the cases of sudden death due to heart failure, though not a t par with the cases of the employees who are either killed or died as a result of injuries sustained in the due performance of their duties, can never the less be border line cases. The Board, therefore, desire that in the case of sudden death due to heart failure of the Railway employees governed by Contributory PF Rules, if the families of such employees feel that the option exercised by the late Railway servants was not beneficial to the survivors the request for pensionary benefits may be forwarded to the Railway Board, explaining the nature and extent of the exceptional hardship along with the recommendations of the Railway Administration for consideration on the merits of each individual case."

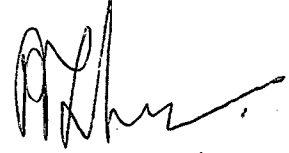
From the pleadings it is quite clear that the contents of this Circular were not brought to the notice of Applicant No. 1 that she had a choice for opting for family pension and that her request is covered by the Railway Board Circular in the facts and circumstances of her case. Considering the facts that the employee had died of heart-attach while he was on duty working on a train, the case of the Applicant No. 1 for family pension is covered by the provisions of this Circular.



Normally, the case of the applicant would be required to be forwarded to the Railway Board by the General Manager taking into consideration the facts and circumstances of the case and exceptional hardship. However, in this case nearly 20 years have passed after the death of the employee and therefore I am inclined to grant the family pension to the Applicant No. 1. The Applicant No. 1 will therefore be entitled to family pension from the date of death of her husband, however, the arrears would be payable from the date one year before the filing of the OA, i.e. from 18.7.1993 since the OA was filed on 18.7.1994.

11. The OA is, therefore, disposed of with the following directions :-

- i) The Applicant No. 1 is entitled to family pension as per rules from the death of the employee, i.e. 29.6.1973. She will be entitled to arrears only from 18.7.1993. All the arrears of payment and the family pension should be finalised and paid to the applicant No. 1 within a period of four months from the date of receipt of this order.
- ii) I see no infirmity in the orders of the respondents dated 5.6.1992 and 3.7.1991 at Annexures-'A-1' & 'A-2' rejecting the claim of the applicant for compassionate appointment and therefore the prayer of the applicant for quashing these two orders is rejected.


(P.P. SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO. 79/96 in OA.NO. 956/94

this the 17th day of April 1997

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

Union of India & Ors. ... Applicants
By Advocate Shri R.R.Shetty
C.G.S.C.

V/S

Smt.C.G.Meshram ... Respondent
By Advocate Shri D.V.Gangal

Tribunal's Order

The OA. was disposed of with the
directions in Para 11 which reads as under :-

- "i) The Applicant No. 1 is entitled to family pension as per rules from the death of the employee, i.e. 29.6.1973. She will be entitled to arrears only from 18.7.1993. All the arrears of payment and the family pension should be finalised and paid to the applicant No. 1 within a period of four months from the date of receipt of this order.
- ii) I see no infirmity in the orders of the respondents dated 5.6.1992 and 3.7.1991 at Annexures-'A-1' & 'A-2' rejecting the claim of the applicant for compassionate appointment and therefore the prayer of the applicant for quashing these two orders is rejected."

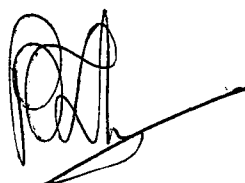
2. Through this Review Petition the respondents in the original OA. were seeking the clarification from the Tribunal to either ask the applicant to return the money paid to her as ex-gratia before paying her family pension for the same period or deduct the amount paid as ex-gratia pay the difference as family pension.



3. The respondent administration has also sought a direction that the applicant be directed to refund the amount of Rs.4805/- Government's Contribution and excess of Special contribution to Provident Fund over Death-cum-Gratuity Rs.595/- i.e. total of Rs.5399/- before the family pension is paid to the applicant.

4. The learned counsel for the respondent administration who are the petitioners in this Review Petition has argued that the clarification is required as the order of the Tribunal is silent on this issue and before the administration makes recovery they are seeking the orders from the Tribunal so that family pension could be paid to the applicant.

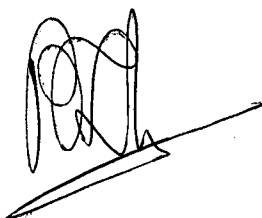
5. The learned counsel for the respondents (OA.)
(applicant in/ has argued that the applicant has received the ex-gratia payment from 1.1.1986 and therefore if the administration wants to recover the amount of ex-gratia payment made to the applicant then the pension should also be paid from 1.1.1986 and then the administration can recover the ex-gratia payment from the family pension. The learned counsel has further argued that alternatively it could be recovered from the arrears of family pension arrears to be paid w.e.f. 18.7.1993, the date from which the family pension is made and the ex-gratia already made from 1.1.1986 cannot be recovered. On issue of recovery of Government contribution to the provident fund and death-cum-retirement gratuity, ex-gratia payment, the counsel has argued that if the arrears are paid from 18.7.1993 onwards for family pension, i.e. the date of the death of the employee, husband of the applicant



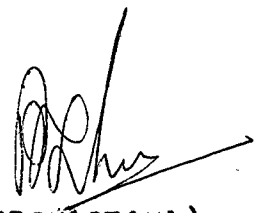
in the original OA. then the adjustment of the Government PF can be made. Since in this case, the payment is being made from 1993, no adjustment is permissible for the Government contribution to provident fund.

6. After hearing both the parties, I am of the view that the ex-gratia payment made between 1.1.1983 to 18.7.1993 cannot be adjusted from the family pension which would be paid from 18.7.1993. However, the administration is entitled to recover the ex-gratia payment made from 1993 onward from the family pension which would be payable to the applicant as a result of the order of the Tribunal in the OA.

7. As far as the question of recovery of Government contribution to SRPF and excess of special contribution to Provident Fund over Death-cum-Gratuity totaling Rs.5399/- is concerned, the same is required to be paid by the applicant as applicant cannot claim the benefit of both SRPF as well as family pension. The family pension becomes payable to the applicant only because of the special circumstances which have been permitted under the relevant Railway Board instructions. The order of the Tribunal mentions that the applicant is entitled to family pension as per rules from the death of employee, i.e. 29.6.1973 and that she will be entitled to arrears from 18.7.1993. When the order is mentioning that the Applicant No. 1 is entitled to family pension, as per rules, it implies that if in terms of rules the applicant in the original



OA. is required to refund the Government contribution to SRPF and excess of Special contribution to Provident Fund over Death-cum-gratuity totalling Rs.5399/- then the same would have to be refunded by the applicant before the family pension is sanctioned. The applicant, therefore, would have to refund the said amount before the family pension can be sanctioned. The Review Petition is disposed of with the above directions.



(P.P.SRIVASTAVA)

MEMBER (A)

mrj.