

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1121/94

Date of Decision: 29th Feb, 2000

Smt. Sukharani Biharilal

Applicant.

Shri R.D.Deharia

Advocate for
Applicant.

Versus

Union of India and others

Respondent(s)

Shri S.C.Dhawan.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. S.L. Jain, Member(J)

Hon'ble Shri.

- (1) To be referred to the Reporter or not? Yes
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No
- (3) Library. Yes.

S.L. Jain
(S.L. Jain)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1121/94.
DATED THE 29th DAY OF Feb, 2000.

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J).

Smt.Sukharani Biharilal,
residing at
Chak-Pira Shah Takiya,
(Rasta Chak-Pira Shah Ka Takiya)
Post:Budhiana, Manohitpur,
Dist:- Raibareli (UP).

... Applicant.

By Advocate Shri R.D.Decharia

v/s.

1. Union of India, through
The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
Bombay V.T.

... Respondents.

By Advocate Shri S.C.Dhawan.

ORDER

(Per Shri S.L.Jain, Member (J))

This is an application under Section-19 of the Administrative Tribunals Act 1985, for a declaration that the letter No.BB/P-Sett-311-EGP-88/3408 dt. 9/11.5.94 issued by the Railway Administration is illegal, non-operative and the applicant is entitled to Grant of Ex-Gratia payment with effect from 6/11/1993 alongwith costs.

2. There is no dispute between the parties in respect of the fact that applicant's husband Biharilal Gurudayal was working as 'Fitter' under the control of respondent in Loco Shed, Central Railway, Kalyan.SRPF Subscriber, submitted an application dated 10/10/77 for resignation from service as he was not keeping good health due to advance age and ailing from Tuberculosis, the respondent No.2 accorded sanction for accepting resignation and accordingly he stopped working since 12/10/77. The applicant's husband died on 5/11/1993. She filed an application for Ex-Gratia payment on 31/1/94, which was

Jy

received by the respondents on 20/4/94 and rejected vide order dated 9/11.5.94 on the ground that her husband resigned from the service, hence not entitled for Ex-Gratia.

3. The applicant claims that her husband Biharilal joined the service on 25/3/44, resigned on 11/10/77, settlement dues were paid at the Rate of Rs.278/- per month contribution to P.F.2937/- and she is entitled to Ex-Gratia in view of Office Memorandum dated 13/6/1988.

4. The period of qualifying service is disputed by the respondents and it is alleged that the qualifying service was about 25years, old record is not available and the claim is rightly rejected.

5. Office Memorandum dated 13th June, 1988 refers to case of persons retiring before 1/1/1986, and Railway employees Governed by SRPF Rules. In the present case, the applicant's husband did not retire.

6. The learned counsel for the applicant relied on the Full Bench judgement in case of Smt. Shobha M Zende v/s. Union of India and others decided on 8/7/97 which answers the question as under:-

"7. In the light of our discussions aforesaid, our answer to the question before this Full Bench is as follows:-

"A Railway servant after terminating his employment cannot ordinarily claim post retirement benefits, like pension, family pension and gratuity, or ex-gratia pension or payment, but as the substance and not the form of any application is material, any application or resignation may be treated and considered as an application for voluntary retirement in the facts and circumstances of any particular case."

dy -

7. The said proposition was applied in her own OA-1384/95 decided on 14/8/97, OA-8/98 Smt.Rashilaben Ramesh Chandra Panchal v/s. Union of India and Others decided on 10/9/98 by Central Administrative Tribunal, Mumbai Bench. He further relied on OA-20/90 Mrs.Evelyn Gracias V/s. The Divisional Railway Manager, Central Railway, Bombay decided on 3/7/90 by Central Administrative Tribunal, Mumbai Bench, OA-721/92, Smt.Sarojini Waman Shinde V/s. Union of India and Other decided on 20/12/93 considering and following the order in case of Mrs.Evelyn Gracias. The said order further considered Railway Board's letter dated 27/12/1988 addressed to General Manager, Central Railway, Bombay V.T. which was reiterated in the letter dated 11/27.2.89.

8. The learned counsel for the applicant relied on Om Prakash Singh Maurya V/s. Union of India and Others reported in Swami's publication which lays down the proposition that resignation can be treated as retirement if he performs qualifying service.

9. The learned counsel for the applicant relied on 1997 SCC (L&S) 290 Union of India v/s. V.S.Lt.Col. P.S.Bhargava which lays down the proposition that on resignation, if requisite qualifying service, although voluntarily resigned, no automatically dis-entitlement in terminal benefits, contrary instructions in Army Head Quarters letter dated 25/4/81 restrained from being given effect to - In the said authority Pension Regulation for the Army were subject of consideration which is not the case in hand. Hence, the said authority cannot serve as precedent for the reason that no such provision is for consideration in the present case.

10. The learned counsel for the respondents relied on Railway Board circular dated 31/12/97 communicated to all concerned vide letter dated 24/3/98 reiterating the

Sy

circular dated 23/1/67 that Ex-Gratia payment is not admissible to those who resigned from service.

11. The learned counsel for the respondents relied on the order passed in OA-829/99, Kashinath Ram Bhau Jadhav V/s. The Divisional Railway Manager, Central Railway, CST, Mumbai decided on 24/12/99 which takes note of the cases referred above and also O.M. dated 27/1/98 and 13/11/98 and the claim of the applicant was dismissed observing as under:-

"7. It is true that if the circular dated 27/1/1998 is to be construed in the light of the decisions which have already been referred, the contention advanced on behalf of the applicant would have been accepted. However, since the Railway Board has issued a further circular dt. 13/11/1998, the circular of 27/1/1998 will have to be read and construed in terms or as clarified by the later circular dt. 13/11/1998. The later circular stipulates that the benefit of ex-gratia payment is available only to those who retire on superannuation and to none others. The benefit is not available to those who have retired on medical invalidation, voluntary retirement, compulsory retirement as a measure of penalty, premature retirement, retirement on permanent absorption in or under a Corporation or Company or body corporate or incorporate, etc., In my view, it is always open to the Board to amend its circular even after the same has been ^{sc}contrued by the Court to provide for an amendment classification contrary to the decision rendered by the Courts. In the circumstances, I find that though the applicant would have ordinarily been entitled to the benefit under the earlier circular dated 27/1/1998, he will not be so entitled in view of the later circular issued on 13/11/1998. In the circumstances, I find that the present OA is devoid of merits, the same is dismissed. No order as to costs."

JSD / -

11(A) Voluntary retirement, Compulsory retirement and retirement on superannuation, though effect is the same i.e. severance of relation of employer and employee but they proceed at the initiation of different ones, such as voluntary retirement proceeds at the initiation of the employee, compulsory retirement proceeds at the initiation of the employer, retirement on superannuation proceeds on the basis of mutual agreement arrived at the time of joining of service or by law. Hence if a different criteria is adopted for awarding of Ex-Gratia to the different class of persons - as three types of retirees do constitute different classes, in my considered opinion., there is intelligent differentia, hence there cannot be a ground to challenge the same in view of Article 14 of the Constitution of India or on any other provision of Constitution or law.

12. In the circumstances, the applicant is not entitled to ex-gratia payment. I find the present OA is devoid of merit and the same is dismissed. No order as to costs.

S.L.Jain
(S.L.JAIN)
MEMBER (J)

abp*

Review Petition NO.

By Applicant/Respondents

IN

O.A./I.A./ 1121/94

Judgement/Order dated : 1121/94 = 29/2/2000

Coram : Hon'ble Shri. S. L. Jain, M(J)

Per : Hon'ble Shri S. L. Jain, M(J)

O.A./I.A. No. 1121/94 was decided by the Bench
consisting of the Hon'ble Shri. S. L. Jain, M(J)

Hon'ble

on 29/2/2000 (Flag 'A'). Against that Judgement /Order, the
Applicant/Respondents has filed Review Petition No. _____

A copy of Judgement/Order despatched on 3-3-2000
and received by applicant/respondents on 3-3-2000.
Review Petition has been filed on 3-3-2000. So it is
in time/So there is delay in filing Review Petition is by _____
_____ days.

As per rule 49 of the Central Administrative Tribunal
practices Rules 93, the Review Petition is submitted for orders
by circulation, R.A. Rule 1(1)/II (a) of notification under
appendix IV.

Date : 11/4


Deputy Registrar

11/4
13/4
25/2/2000
One R P see LSN for admiss
by me. in Singh's letter
28/3