

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.NO: 1384/95

Date of Decision: 14-8-1997

Smt. Shobha M. Zende

Applicant

Shri S.P. Inamdar

Advocate for Applicant

Versus

U.O.I. & anr.

Respondent


Shri N.K. Srinivasan

Advocate for
Respondent

CORAM:

The Hon'ble Mr. P.P. Srivastava, Member(A)

- (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)
M(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A.1384/95

THURSDAY this the 14th day of AUGUST 1997

CORAM:

HON'BLE SHRI P.P.SRIVASTAVA, MEMBER(A)

Smt. Shobha M. Zende,
C/o. S.P. Inamdar,
Advocate High Court,
NL-2/9 B/8, Sector 15,
Nerul, New Mumbai - 400 706

By Advocate Shri S.P. Inamdar

.. Applicant

-versus-

1. The General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.
2. The Chief Works Manager,
Western Railway, Carriage Workshop,
Parel Workshop,
Lower Parel,
Mumbai - 400 013.

By Counsel Shri N.K. Srinivasan

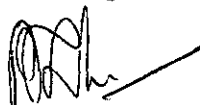
.. Respondents

The application having been heard on 14th August '97
the Tribunal on the same day delivered the following:

-: O R D E R :-

P.P. SRIVASTAVA, MEMBER(A)

The applicant is the widow of Maruti Nana Zende who was Class IV employee under Chief Works Manager, Workshop, Lower Parel. The applicant's husband had become sick for a long period and therefore he was not in a position to serve with the department and submitted resignation letter dt. 10-1-1984 which was accepted on 2-2-84 w.e.f. 10-1-84. This letter of acceptance is placed at Ex. 'E' to the O.A. Applicant's husband expired on 30-10-88. The applicant thereafter applied for pensionary benefits. Subsequently she applied for Ex-gratia



pension on 25-6-1991 as she was not entitled for family pension. However, the respondents did not grant her ex-gratia pension. Aggrieved by that correspondence the applicant filed the present O.A. in which she has prayed for grant of ex-gratia pension to her. The O.A. came up for hearing before the Tribunal and an order was pronounced on 12-4-96 wherein the Tribunal referred the case for being decided ^{by Full Bench} Full Bench on the issue of the entitlement of ex-gratia pension in case where the employee concerned has left the service as a result of resignation although he had enough qualifying service to have sought voluntary retirement. The Full Bench judgment in this case was given on 8-7-1997. The issue was considered by the Full Bench and final order as brought out at para-7 is reproduced below :

"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."

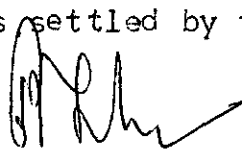
In view of this decision of the Full Bench the applicant would be entitled to be considered as if the applicant's husband had sought for voluntary retirement for the purpose of ex-gratia

pension and the condition of the respondent administration circular that in case the employee has resigned from the service the widow will not be entitled to ex-gratia pension is not applicable.

2. Learned counsel for the respondents has argued that since the resignation of the applicant was accepted without any notice and since the voluntary retirement requires notice of three months the case could not be covered by the decision of the Full Bench and the advantage of Full Bench decision cannot be given in this particular case.

3. I am not agreeable with the counsel for the respondents. The issue has been squarely decided by the Full Bench. I have no doubt in this case concerned employee had enough service and fulfilled the conditions set for voluntary retirement and mere fact that the employee had sought resignation would not come in the way of the employee's widow applying for ex-gratia pension, if otherwise she was entitled to the same.


4. In the facts and circumstance of this case since the only issue which was in the way of the applicant for being granted the ex-gratia pension was the question of resignation of the husband of the applicant and since the question stands settled by the Full Bench decision the



applicant is entitled to ex-gratia pension.

5. I, therefore, order that the applicant be paid ex-gratia pension within a period of three months from the date of communication of this order. Applicant would be entitled to arrears of pension from the date she has become entitled for ex-gratia pension. If the payment is not made within three months and the delay is not because of the inaction on the part of the applicant, the applicant would be entitled to get 12% interest.

6. O.A. is disposed of with above direction.
No order as to costs.



(P.P. SRIVASTAVA)
Member(A)

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