

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.392/1995.

this the 30th day of August 2000.

Coram: Hon'ble Shri D.S.Baweja, Member (A),

Smt. Champabai Gajanan Worlikar,
A-15, 3rd floor,
Kamgar Co-op. Society,
Sion (E),
Bombay - 400 032.
(By Advocate Shri V.G.Pashte)

...Applicant.

Vs.

1. Union of India through
General Manager,
Central Railway,
Bombay V.T.
2. Chief Workshop Manager,
Matunga Workshop,
Central Railway,
Matunga,
Bombay.
(By Advocate Shri V.S.Masurkar)

...Respondents.

: O R D E R :

{Per Shri D.S.Baweja, Member (A)}

This OA has been filed by the applicant seeking ex-gratia payment.

2. The husband of the applicant Shri Gajanan Shivram Worlikar was appointed in Central Railway, Matunga, Bombay on 17.8.1942 as a Machinist. Her husband resigned from service from 1.1.1976 due to ill health after a service of more than 33 years. The husband of the applicant was governed by State Railway Provident Fund Rules (SRPFR) and the retirement dues were paid accordingly. The husband of the applicant died on 16.8.1976. She further submits that she came to know about the scheme of grant of ex-gratia in terms of O.M. dt. 13.6.1988 of Department of Pension & Pensioners' Grievances and therefore made a representation on

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24.8.1989 followed by reminders, the last reminder being 20.1.1994. The request of the applicant however was rejected as per the order dt. 24.12.1994 indicating that she is not entitled for ex-gratia pension as her husband had resigned from service. Feeling aggrieved, the present OA has been filed on 21.2.1995.

3. The main case of the applicant is that, she is similarly situated as the applicant in OA No.20/90 viz. Mrs. Evelyn Gracies decided on 3.7.1990 and therefore entitled for the same benefit by taking the resignation of her husband after completion of more than 33 years of service as voluntary retirement.

4. The respondents have filed written statement opposing the claim of the applicant. At the outset, the respondents have opposed the application stating that it is highly barred by limitation and also beyond the jurisdiction of the Tribunal. The Respondents submit that late husband of the applicant resigned from service on 18.12.1975 and died on 16.8.1976 and therefore the Tribunal has no jurisdiction. Further, the relief of ex-gratia pension as being sought now ~~is~~ after a period of more than 20 years and ^{is} barred by limitation, delay and laches. On merits, the respondents' stand is that since the applicant's husband had resigned from service, the applicant is not entitled for ex-gratia pension in terms of Railway Board's letter dt. 27.12.1988 and also as per the provisions of Rule 41 (3) of Railway Servants (Pension) Rules, 1993 and corresponding Rule 311 of the Manual of Pension Rules, 1950, as per which the resignation of Railway servant from service shall lead to forfeiture of service. It is also stated that the claim of the applicant is belated, as the late husband of the applicant had several opportunities of option to come onto pension scheme by

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various notifications issued from time to time, but he did not avail of the same.

5. The applicant, through amendment application sought the relief of a declaration that resignation of applicant's husband after completion of more than 30 years of service should be treated as voluntary retirement from Railway Service. This amendment application was allowed. The respondents have also filed a reply to this amendment application stating that the legal heirs of the deceased employee have no locus standi to challenge the resignation tendered by the late husband of the applicant and accepted by the Competent Authority after the demise of the Railway employee.

6. I have heard the arguments of Shri V.G.Pashte and Shri V.S.Masurkar, learned counsel for applicant and respondents respectively.

7. It is an admitted fact that the late husband of the applicant resigned from service after completion of more than 33 years of qualifying service. The applicant has mainly relied on the order dt. 3.7.1990 in OA 20/92 in the case of Mrs.Evelyn Gracies Vs. DRM, Central Railway (Annexure - 'C'). On going through this order, it is noted that the facts and circumstances ~~as~~ of the present OA are similar as in OA 20/90. In OA 20/90, the issue was whether the resignation of a Railway employee after completion of more than 30 years of qualifying service is at par with voluntary retirement and if it is so then whether the widow is covered by the scheme of payment of ex-gratia pension as laid down by the Railway Board's Orders. The Bench while deliberating on the issue, noted that as per para 101 of the Manual of Railway Pension Rules, 1950, it is provided that benefits are admissible

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to all permanent railway servants except those who are dismissed from service or resigned from it before the completion of 30 years^{of} qualifying service. This would imply that the employee who resigns from service after completion of more than 30 years of service, then he will be entitled for the benefits as per the Manual of Railway Pension Rules, 1950. Further, Railway Board's letter dt. 23.1.1967 providing ex-gratia payment was also noted, wherein it was implied that an employee who resigned from service after completion of 30 years of service is eligible for ex-gratia pension by excluding those employees who resigned from service with less than 30 years of service. Keeping in view these provisions, the Bench concluded that a Railway employee who resigns from service after completion of 30 years of service then his resignation would amount to voluntary retirement and not resignation. On this conclusion, the Bench held that the applicant i.e. the widow of the late Railway employee is entitled for ex-gratia payment in terms of O.M. dt. 13.6.1988 of the Department of Pension and Pensioners Association. The counsel for the applicant during hearing also relied upon the recent order of the Tribunal in OA 633/1993 Smt. Padibai Vinayak Patil Vs. Union of India decided on 7.3.2000. On going through this order, I find that the same view as taken in OA 20/90 has been held in this OA relying upon the order dt. 3.7.1990 in OA 20/90. Here also the issue was the same whether the late Railway employee who has resigned from service after completion of 30 years of service, his resignation will be voluntary retirement as per the extant rules prevailing at that time. On review of these two orders, I find that the case of the applicant is squarely covered by the decisions in these two OAs. The late husband of

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the applicant also resigned from service after completion of more than 30 years of service in 1975 and therefore was governed by Manual of Railway Pension Rules, 1950 and the Railway Board's order dt. 23.1.1967. Accordingly, I am of the opinion that the applicant is entitled for payment of ex-gratia pension.

8. The respondents have taken a plea of maintainability of the OA before the Tribunal stating that the cause of action has arisen in 1975 i.e. beyond the period of 3 years of the constitution of the Tribunal. I am unable to accept this contention of the Respondents as the relief prayed for is grant of pension which is a recurring cause of action and therefore, the Tribunal has jurisdiction on the matter agitated in this OA.

9. The respondents have also taken a plea that the OA is barred by limitation. The counsel for Respondents strongly argued on this point during the hearing relying upon the Judgment of the Hon'ble Supreme Court in the case of Narayan Singh Solanki Vs. Union of India & Ors. (JT 2000 (7) SC 560), wherein as per the counsel for respondents, the Hon'ble Supreme Court has held that any request for change in option for coming over to pension scheme cannot be entertained after a long period. After carefully going through the facts of the case in the Judgment, I am of the opinion that the law laid down by the Hon'ble Supreme Court in this Judgment does not apply to the facts of the present case. In the case of Narayan Singh Solanki, the issue was with regard to exercising of option for coming over to pension scheme in respect of an employee who had resigned from service under the SRPF scheme and wanted ^{to} take his resignation as voluntary retirement and then allow to exercise option for pension scheme and ^{be} entitled for pension. The petitioner had not opted for

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change over to pension scheme inspite of repeated opportunities provided by the administration to him. The Hon'ble Supreme Court rejected the claim of the petitioner stating that after having resigned from service and accepted the retiral benefits in 1963, the petitioner cannot seek a relief after a period of nearly 28 years to permit him to come over to pension scheme. In the present case, the issue is not of exercising any option as deliberated earlier. The main issue is whether in case of a Railway employee who resigns from Railway service after completing 30 years of service, his resignation is at par with voluntary retirement in terms of extant rules prevailing at that time. As discussed in the order in OA 20/90 the extant rule prevailing at that time when the applicant retired, the resignation after 30 years of service was as good as voluntary retirement. Therefore, I am of the considered opinion, that the ratio of what is held in the case of Narayan Singh Solanki does not apply to the facts of the present case.

6. The counsel for respondents also cited another judgment in the case of Union of India and Ors. Vs. Kailash (1998 SC (L&S) 1531) to support his plea that any denial of benefit to the applicant on the ratio of similar benefits allowed in other OAs will not be discriminatory. After going through this judgment, I find that the same is not relevant to the issue. In this Judgment, the issue was whether the non-inclusion of employees retired under PF scheme in the pension scheme was discriminatory. The Hon'ble Supreme Court has held that those employees under PF scheme had been given ample opportunity for exercising option for change over to pension scheme by the cut off date and if not opted are not entitled to be included in the pension scheme. As

delebrated earlier, the issue in the present OA is not of coming over to pension scheme, but is whether the resignation after 30 years of service is same as if the employee has taken voluntary retirement as per the extant Rules prevailing at that time.

7. In the result of the above, I find merit in the OA and the same is allowed with the direction to the respondents to make ex-gratia payment as per extant rules. The payment will be due from the date of filing of this OA and the applicant will not be entitled for payment of any arrears for the earlier period or any interest for payment as due from the date of filing of this OA. No order as to costs.


(D.S. BAWEJA)
MEMBER(A)

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