

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1028/97

Dated this, Thursday, the 21st Day of December, 2000

Smt. Sushilabai widow of late Mr. Narayan Pandurang Shinde ....

Applicant.

(Applicants by Shri S.P.Inamdar, Advocate)

Versus

Union of India & Ors. .... Respondents  
(Respondents by Shri S.C.Dhawan, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

(3) Library. No

B-N  
(B.N. Bahadur)  
Member (A)

sj\*

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

Original Application No.1028/97

Dated this Thursday the 21<sup>st</sup> Day of December, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

(21-12-2000)

Smt. Sushilabai widow of  
Late Mr. Narayan Pandurang Shinde  
age about 62 years, presently residing at:  
Shivkripa Niwas, Bhattwadi,  
Kisan Nagar No.3,  
Wagle Estate, Thane 400 604. .... Applicant  
(Represented by Shri S.P.Inamdar, Advocate)

Vs.

1. Union of India through  
The General Manager,  
Central Railway, Mumbai,  
C.S.T. Mumbai 400 001.
2. The Chief Security Commissioner/Inspector General,  
Railway Protection Force,  
C.S.T., Mumbai 400 001.
3. The Director General  
Railway Protection Force,  
Railway Board, Rail Bhavan,  
New Delhi 110 001. .... Respondents.  
(Represented by Shri S.C.Dhawan, Advocate)

ORDER

[Per B.N.Bahadur, M (A)]

The Applicant in this case, Smt. Suhilabai widow of late Shri Narayan Pandurang Shinde, seeks the relief from this Tribunal for the grant of ex gratia payment, plus Dearness Relief, from time to time and the consequential reliefs of arrears. The case made out by the Applicant is that, her deceased husband retired on 17.9.1993, after putting in more than 25 years of service as Head Constable in the Railway Protection Force (RPF). He was governed by the Scheme of CPF, and hence not in receipt of pension. Shri Shinde died on 26.11.1992.

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*B.N.*

2. After his death an amount of Rs.203.45 was paid to the husband of the Applicant. (A.1) Since the couple moved to their village in a remote area, the Applicant avers that she was unaware of her eligibility for ex gratia payment. Applicant claims that the copy of the letter received from Respondents dated 14.3.1977 shows that Applicant's husband had in fact resigned from Govt. w.e.f. 19.7.1993. The Applicant further details out the chronological developments in the case, and is aggrieved by the non sanction of the ex-gratia as claimed by her.

3. The Respondents have filed a reply in the case resisting the claim of the Applicant. They first raise the issue regarding limitation, averring that the cause of action arose around 1988. It is further stated that the Applicant's husband, Shri N.P.Shinde actually resigned in the year 1973, and this resignation was accepted. It is denied that the Applicant retired on this date (R.2). Respondents says they paid his dues under SRPF Rules. It is further stated in the Written statement by Respondents that the Applicant does not fulfil the required conditions for eligibility to exgratia payment since her husband had resigned from his post and not retired from it.

4. I have seen the papers in the case, and have heard Learned Counsel on both sides. The case law cited have also been seen carefully, since it is important to this case.

5. Learned Counsel for the Applicant Shri S.P. Inamdar, took me over the facts of the case stating that it has to be concluded that the Applicant's husband had, in fact, tendered voluntary retirement from post, in view of the decisions of this Tribunal and other Courts. It was contended by him that the case of Smt. Sarojini M. Shinde vs. Western Railway [O.A.No.20/90] and the case of Smt. Prema G. Naik clearly favour the


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Applicant. The former was decided by this Bench of the Tribunal in O.A. 721/92 and the latter by the same Bench in O.A.359/90. Several other cases have also been cited importantly the case of *J.K.Cotton Spg. & Wvg Mills Co.Ltd. vs. State of U.P.* [AIR 1990 SC 1808] has been relied upon. And the Full Bench judgement of this Tribunal <sup>120</sup>and in the case of *Smt. Shobha Zende* decided by this Bench on 8 July 97 (OA 1384/95).

6. Counsel for the Respondent referred to the Scheme of 30.6.1998, and Rules 101 and 311 of the Pension Rules to make the point that the Applicant is not eligible to Ex Gratia benefit in accordance with these rules. If service is less than 30 years no benefits could accrue. It was contended by learned Counsel for Respondents, Shri S.C.Dhawan, that the Full Bench judgement quoted in the case of *S.W. Shinde* was wrongly applied by Single Bench also the benefits sought as per judgement in the case of *Prema Naik* also was not justifiable. Shri Dhawan cited the case of *Smt. Sukharani Bhiharilal* decided by Single Bench of this Tribunal in O.A.No.1121/94, Mumbai Bench. He also cited the case of *Narayan Singh Solanki vs. UOI & Ors.* (JT 2000 (7) SC 560.

7. At the outset, it must be stated that in terms of the ratio of the case of *J.K.Cotton Mills*, and ~~in~~ the case of *Smt. Shobha Zende* decided by this Bench on 8th July 1997 (OA.1384/95), it can certainly be concluded that the resignation rendered be considered as a voluntary retirement *per se*. However, this will not be enough in itself to provide the benefit sought; the eligibility will need to be examined with reference to the Scheme under which the benefit has been provided by the Govt. and with reference to the case law cited. It is clear from Rule 414 and from the case law in the case of *Smt. E. Gracious*, and

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some others, that ex gratia pension Rules were not Applicable to those who resign from service less than 30 years, before Superannuation. Now had the Applicant's husband put in 30 years of more of service, the relief could have been available. Here admittedly, the service rendered by late Shri N.P.Shinde, was of the order of 25 years and three months i.e. clearly less than 30 years. The matter has been very clearly dealt with in the important case of Smt.Evelyn Gracious by this Bench in its order dated 3.7.1990, in O.A. 20/1990. In fact this judgement has been relied upon in later judgements by the Tribunal.

7. Nevertheless, we have to examine here, <sup>the</sup> judgements in two cases, which were sought to be relied upon by the learned Counsel for the Applicant on the ground <sup>that</sup> in these cases the Applicant's respective husbands had put in less than 30 years of service but were granted benefits of ex gratia. These cases are:-

(1) *Sarojini Waman Shinde vs Western Railway O.A.No.721/92* (decided on 20.12.1993) (2) *Prema Naik vs. UOI* in O.A.359/90 decided on 17.1.1994. We must also note here that both cases referred to above are decided by Single Member Benches. In the case of *Sarojini Waman Shinde* a view has been taken that no discrimination should be made in the granting of this benefit. Hence in spite of a service of less than 30 years, there, the benefit has been given. *Smt. Prema Nayak's* case, has been decided on the basis of the *Sarojini Shinde's* case.

8. We have to now interpret whether the Applicant has to be provided with relief merely because of relief provided to the aforesaid two individuals viz. *Smt. Sarojini Shende* and, on that basis to *Smt. Prema Naik*. It is to be seen that the crucial point is that the basic issues of *Smt. Evelyn Gracious* had by implication decided that 30 years service was necessary for entitlement to ex gratia. This is, in fact, admitted in the Single



Bench case which took a contrary view differing on the grounds as stated above. We also have the case of *Smt. Padibai Vinayak Patil* decided by a Division Bench, of this Tribunal (to which I was a party) where the issue of 30 years of service was examined threadbare. And it is after very considered conclusion that 30 years service was accepted was the relief granted. In view of the DB decision I am convinced that I am not bound in this case by the decision in the case of *Mrs. Prema Naik* based on the case of *Mrs. Sarojini Shinde* (Single Bench) and cannot grant the relief sought.

9. In the consequence this Application is hereby dismissed.

No orders as to costs.

*B. N. Bahadur*

(B. N. BAHADUR)  
MEMBER (A).

21-12-00

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