

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 8 OF 1998.

Date of Decision : 10.9.98

Smt. Rashilaben Rameshchandra Panchal, Petitioner.

Shri S. P. Inamdar,

Advocate for the
Petitioner.

VERSUS

Union Of India & Another

Respondents.

Shri V. S. Masurkar,

Advocate for the
Respondents.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 8 OF 1998.

Dated this Thursday, the 10th day of September, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

Smt. Rashilaben Rameshchandra
Panchal,
W/o. Late Mr. Rameshchandra K.
Panchal,
13, Laxmi Niwas,
Coal Dongri No. 3,
Mumbai - 400 065.

... Applicant

(By Advocate Shri S. P. Inamdar)

VERSUS

1. Union Of India through
The General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.

... Respondents.

2. The Chief Work Manager,
Western Railway,
Carriage Workshop,
Parel Workshop,
Lower Parel,
Mumbai - 400 013.

(By Advocate Shri V.S. Masurkar)

O R D E R

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. The applicant's case is as follows :-

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Applicant's husband, Late Mr. Rameshchandra Panchal, was working in Western Railway from January, 1953 to ~~January~~, 1978. Applicant's husband retired/resigned on 13.01.1978 as a Carpenter from Western Railway, Bombay. He was governed by the Contributory Provident Fund Scheme. He, therefore, did not get any pensionary benefit. He died on 08.09.1997. Since applicant's husband had put in 25 years of service or more, it would not have made any difference if he had sought voluntary retirement instead of resignation. If he had applied for voluntary retirement, he would have got the benefit of five more years of service for the purpose of retirement benefits. That the husband used to tell the applicant that he had retired from service. The applicant is an illiterate woman. She is not aware of the service rules. She came to know that persons like her are entitled to ex-gratia payment as per Government Circular dated 13.06.1988. She made necessary application to the competent authority but it has been rejected on the ground that applicant's husband had resigned and had not retired from service. The applicant has remained unmarried after her husband's death. Her plea is that her husband's resignation should be treated as voluntary retirement from service. She is, therefore, approached this Tribunal with a prayer that she should be granted ex-gratia payment plus dearness relief as per the Government Order dated 13.06.1988 and to quash the order of rejection dated 19.01.1998 and grant the arrears of ex-gratia payment from the date of death of her husband, namely - 08.09.1997 and till her life time.

3. Respondents have filed reply justifying the action taken by them in refusing the claim of the applicant. It is stated that since applicant's husband resigned from the job, he is not entitled to pensionary benefits or ex-gratia payment under the 1988 Order. Further, it is stated that the claim of the applicant is barred by limitation, delay and laches. The applicant's husband's resignation cannot be treated as a request for voluntary retirement. That a person governed by Contributory Provident Fund scheme is not entitled to pension and then the legal representative of an official who resigned from service is not entitled to either pension or ex-gratia payment. Hence, it is prayed that the application be dismissed.

4. The Learned Counsel for the applicant confined his claim only to ex-gratia payment under the 1988 Order. He is not claiming Pensionary benefits at all. The Learned Counsel for the respondents' only contention is that the applicant is neither entitled to pensionary benefits nor ex-gratia payment, since her husband had resigned from service. He also contended that the claim is barred by limitation, delay and laches.

5. As far as the question of limitation, delay and laches are concerned, it will apply only if the applicant was asking pensionary benefits. If the applicant's husband had kept quite without taking any action of exercising option for the pension scheme, he cannot ask for pension and, therefore, after his death, his widow cannot ask for family pension. The Learned Counsel for the respondents is, therefore, right in his submission that since the husband of the applicant

did not exercise option to switch over to Pension Scheme within the time granted by the Railways and extended from time to time, then neither he nor after his death, his wife, can claim pensionary benefits under the Pension Scheme. So far there is no dispute. Since the applicant's counsel is not claiming pensionary benefits, the question of delay or limitation does not arise at all.

6. Now the only question is, whether the applicant is entitled to ex-gratia payment under the 1988 Order ? The ex-gratia payment can be paid only if a retired railway official under the Contributory Provident Fund Scheme dies. Therefore, the cause of action for the applicant to claim ex-gratia payment arose only when her husband died on 08.09.1997. The present application is filed within few months after the husband's death and, therefore, the question of limitation does not apply to the claim for ex-gratia payment.

7. The Government Order dated 13.06.1988 is at page 26 of the Paper Book. It provides for ex-gratia payment to the families of deceased Government servants who were governed by the Contributory Provident Fund Scheme. No doubt, the rule says that it is payable to the families of the Government servants who had retired from service prior to 01.01.1986. In the present case, the applicant's husband had resigned/retired prior to 01.01.1986. But the only question is,

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since this is a case of resignation and not a case of retirement, whether the applicant is entitled to the benefit of ex-gratia payment ?

8. The applicant has stated that her husband used to tell her that he has retired from service. It is further stated that there was no impediment or difficulty for taking voluntary retirement instead of tendering resignation. In other words, the applicant's plea ^{as could} be gathered from the original application and the rejoinder is that, it was a case of voluntary retirement, though the letter might have been styled as a letter of resignation. The applicant is a poor illiterate lady, she may not know the difference between retirement and resignation. Respondents have not produced the resignation letter or any other office record to show the nature and contents of the request of applicant's husband seeking termination of service. If the letter of resignation/retirement had been produced, then it would have thrown some light as to what was the intention of the applicant's husband. Having regard to the facts and circumstances of the case and the pleadings, and having regard to the illiteracy and poverty of the applicant, we can conclude or draw a legitimate inference that it must have been a case of request for voluntary retirement than a case of ~~simplicitor~~ ~~resignation~~.

9. It is well settled and in fact, recently decided by a Full Bench decision of the Tribunal that it is the substance and not ~~the~~ the form which should decide the intention of ~~an~~ official. The Full Bench

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has observed that in a given case it is open to the Tribunal to decide that a letter of resignation was in fact or intended to be a letter seeking retirement (vide 1997 (2) ATJ 305 (Smt. Shobha M. Zende V/s. Union Of India & Others) which is a decision of the Full Bench of the Tribunal).

After the opinion of the Full Bench, the matter was placed before the Single Bench for passing final order. Then the Learned Single Member of the Bench disposed of the said Original Application by order dated 14.08.1997 (copy of the order is at page 35 of the Paper Book) by holding that in the circumstances of the case, the resignation letter must be deemed to be held or treated as a request for voluntary retirement and on that ground, allowed the application and granted ex-gratia pension. I am in respectful agreement with the observation of the Learned Single Member of the Bench, which clearly applies to the facts of the present case.

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Then we refer to order dated 20.12.1993 in
O.A. No. 721/92 (Smt. Sarojini Waman Shinde V/s. Union of India & Others) where the then Vice-Chairman of this Tribunal took the view that no distinction can be made between resignation and retirement for the purpose of granting ex-gratia payment under the 1988 Circular. It has been observed in that judgement that to deny ex-gratia payment to the families of officials who resigned from the job is arbitrary.



Therefore, the Tribunal in that case allowed the application and granted ex-gratia payment as per 1988 Circular to the widow of the deceased who had resigned the job.

The Learned Counsel for the applicant also placed reliance on another unreported judgement of this Tribunal dated 03.07.1990 in O.A. No. 20/90 (Mrs. Evelyn Gracios V/s. D.R.M. & Others) where also an identical question arose for consideration. Even in this case it is observed that no distinction should be made between the case of an employee who has resigned and employee who has retired. Though it was a case of resignation, the Tribunal allowed the application granting ex-gratia payment to the widow as per the official memorandum dated 13.06.1988.

10. After considering the facts and circumstances of the case, I hold that this is a case of voluntary retirement in substance, though not in form. Therefore, the applicant is entitled to ex-gratia payment under the 1988 Circular.

11. In the result, the application is allowed. The respondents are directed to consider the case of the applicant for ex-gratia payment w.e.f. the date of death of her husband, namely - 08.09.1997 in terms of the official memorandum dated 13.06.1988 by treating applicant's husband's letter of resignation as a letter of voluntary retirement and then grant whatever

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ex-gratia payment is permissible as per the said 1988 memorandum. The respondents are directed to comply with this order within three months from the date of receipt of this order.

In the circumstances of the case, there will be no order as to costs.

R. G. Vaidyanatha 10.9.98
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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