

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 946 OF 1998.

Dated this _____, the 29th day of November, 2000.

Smt. Parvatibai Satyawan Pol. _____ Applicant.

Shri J. M. Tanpure, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri S. C. Dhavan, _____ Advocate for
Respondents.

CORAM : Hon'ble Smt. Shanta Shastry, Member (A).

(i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches of the Tribunal ? } NO
(iii) Library. Yes

Shanta ♀
(Smt. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 946 of 1998.

Dated this _____ the 29th day of November, 2000.

CORAM : Hon'ble Smt. Shanta Shastry, Member (A).

Smt. Parvatibai S. Pol,
W/o. Late Satyawan Shankar Pol,
Ex-Book Binder, T.No. 414,
Byculla Printing Press of
Central Railway, Byculla, Bombay.
Residing at - 1093/A,
Budhwar Peth, Jijamata Chowk,
Talegaon Dabhade, Tal. Maval,
Dist. Pune.

... Applicant.

(By Advocate Shri J. M. Tanpure)

VERSUS

1. Union of India through
The Secretary,
Ministry of Railways,
Rail Bhavan,
New Delhi - 110 011.

2. The Manager Personnel/
Establishment,
Byculla Printing Press,
Central Railway,
Bombay - 400 027.

3. The General Manager,
Central Railway,
Pension Branch,
Bombay V.T. - 400 001.

... Respondents.

(By Advocate Shri S. C. Dhavan).

O R D E R

PER : Smt. Shanta Shastry, Member (A).

In this O.A. the applicant has sought following
directions to be issued to the respondents :

(i) To convert the application of the applicant's husband for
resignation from service as an application for voluntary
retirement.

(ii) To pay the life time arrears of pension of the husband of the applicant from the date of resignation till 08.08.1979 when he expired and thereafter arrears of family pension and monthly family pension to the applicant with 18% interest thereon.

(iii) Alternatively, to pay ex-gratia payment from 01.01.1986 with 18% interest on arrears thereon with monthly payment.

2. The applicant was appointed as a Junior Book Binder on 01.12.1952. He resigned from service in April, 1975 due to old age and ill health, especially since he had to travel 180 Kms. from his residence in Talegaon Dabhade to Byculla, Bombay. The husband of the applicant expired on 08.08.1979.

3. The applicant sent an application for family pension on 10.03.1995. She also claims to have visited the office of the Respondents but she received no reply. She submitted another application on 07.04.1995. She received the acknowledgement but no favourable reply.

4. It is the contention of the applicant that since her husband had resigned after completing 23 years of service, his application for resignation should have been converted/treated as an application for voluntary retirement. The applicant is placing reliance on the judgement of the Full Bench in the case of Smt. Shobha M. Zende V/s. Union of India & Others decided on 08.07.1997 in O.A. No. 1384/95 [1997 (2) ATJ 305] wherein it was held that the applicant was entitled to life time arrears of pension of her husband and family pension. The applicant has also cited the cases of J. K. Cotton Mills V/s. State of U.P.

[AIR 1990 SC 1808] which also held that resignation may be treated as voluntary retirement and, therefore, the petitioner is entitled to pensionary benefits. Further, the applicant is also drawing support from the order dated 04.05.2000 in O.A.No. 871/99 in the case of Smt. Sumati Pandurang Padave v/s. Union of India & Anr. The applicant has also placed reliance on the order in O.A. No. 1384/95 reported in 1997 (3) ATC (S) 219 (FB) in support that applicant is entitled to ex-gratia payment.

5. The Learned Counsel for the respondents has contested the O.A. The Learned Counsel for the Respondents submits that the cause of action, if any, arose in 1979 when the applicant's husband expired. The applicant's husband was governed by the S.R.P.F. Rules and had not opted for pension at any time before he resigned in April, 1975. therefore, he is not entitled to family pension. Secondly, the applicant has been made belatedly and is barred by the law of limitation. Thirdly, even if the resignation given by the applicant's husband were to be treated as voluntary retirement, still the scheme of voluntary retirement after twenty years of service was introduced in November, 1977. Also, the request for change of resignation into voluntary retirement is not permissible and is against the policy. No old record pertaining to the particulars of applicant's husband are available at such a late stage. The Learned Counsel has, therefore, opposed to the grant of any pension/family pension in this case.

6. The respondents have also contended that the applicant is not entitled to any ex-gratia pension either. The ex-gratia

payment is to be granted to widows of Railway employees who were governed by the S.R.P.F. Rules and had retired after putting in thirty years of service as per Railway Board's letter dated 27.12.1988. Further, the ex-gratia payment was not payable to the widows of the employees who had resigned from service.

7. The respondents have submitted that the applicant's representation dated 10.03.1995 was considered by the respondents and it was found that the applicant's husband who was working as Binder at SPS/Byculla, had resigned from railway service w.e.f. April, 1975. He had been paid the S.R.P.F. and other dues amounting to Rs. 11,276/- In terms of Manual of Railway Pension Rules, 1950, Rule 311, no pension can be granted to a railway servant who resigns from service.

8. The applicant was conveyed the decision on 07.08.1995. The applicant has failed to make out any case for grant of the reliefs being sought by her. The Learned Counsel for the Respondents has cited the latest judgement of the Hon'ble Supreme Court in the case of Narayan Singh Solanki V/s. Union of India reported in JT 2000 (7) SC 560 wherein it has been held that delay defeats the purpose. The Learned Counsel contends that even in the matter of pension, inordinate delay cannot be overlooked. Limitation applies in such cases also. The Learned Counsel maintains that the judgements cited by the applicant do not help the applicant. In Krishena Kumar V/s. Union of India reported in AIR 1990 SC 1782 it has been held by the Hon'ble Supreme Court that employees who retired under Contributory Provident Fund Scheme form a distinct class from those who retired on Pension Scheme and both cannot be equated. The

Learned Counsel has also produced an order dated 29.02.2000 in O.A. No. 1121/94.. (Smt. Sukharani Biharilal V/s. Union Of India & Anr.) wherein a similar application for pension/family pension and ex-gratia payment was considered in depth taking into account the various judgements, including the Full Bench Judgement in the case of Smt. Shobha M. Zende (supra) O.A. No. 1384/95, O.A. No. 8/98 in the case of Rasilaben Ramesh Chandra Panchal V/s. Union of India & Others decided on 10.09.1998 by the Mumbai Bench, O.A. No. 20/90 .. Mrs. Evelyn Gracias V/s. Divisional Railway Manger, Central Railway, Mumbai, O.A. No. 721/92.. Smt. Sarojini Waman Shinde V/s. Union of India & Others, Om Prakash Singh Maurya V/s. Union of India & Others reported in Swamy's Publication and Lt. Col. P.S. Bhargava V/s. Union of India reported in 1997 SCC (L&S) 290. The O.A. was dismissed as being devoid of merits.

9. I have heard both the Learned Counsel for the applicant as well as Respondents. It is not disputed that the applicant's husband was governed by the S.R.P.F. Rules and had received the benefits of the Contributory Provident Fund. He certainly had not opted for the pension scheme. No material to show that he had opted for the pension scheme was produced by the applicant. Therefore, the applicant's husband could not be considered entitled for any pension. It is to be noted that the applicant's husband died in 1979, after he had resigned in 1975. He had four years time to apply for pension. Also the scheme of voluntary retirement came into force in 1977 but the applicant's husband does not seem to have relied on the scheme to claim benefits of pension during the period he was alive. Under the circumstances, I do not consider that the applicant's husband had any case for pension and in turn, that the applicant has any case for claiming

family pension. The scheme of voluntary retirement cannot have retrospective effect.

10. As regards ex-gratia payment again, even assuming that the applicant's husband had put in twenty three years of service, the office memo dated 13.06.1988 is applicable to only those who retired on superannuation. The Learned Counsel for the Respondents has stated that ex-gratia payment is not payable to the widows of employees who had resigned from service. It can be paid only when the retired employee had put in 30 years of service as per Railway Board's circular dated 27.12.1988. The O.M. dated 13.06.1988 describes the scheme of ex-gratia payment to those employees who were members of the Contributory Provident Fund Scheme and who had retired from service prior to 01.01.1986. Such ex-gratia payment would be admissible w.e.f. 01.01.1986 to the widows and dependent children of the C.P.F. beneficiaries who died while in service prior to 01.01.1986. There is no stipulation regardin the number of years of service as far as this particular O.M. is concerned. However, later on such a condition came to be included. There were circulars issued, such as the circulars dated 27.01.1998 and 13.11.1998 by the Railway Board. The latter circular clearly stipulated that the benefit of ex-gratia payment is available only to those who retired 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, pre-mature retirement, retirement on permanent absorption in or under a Corporation or Company or Body Corporate or incorporate, etc. Therefore, though the applicant would have originally been entitled to the benefit under the earlier circular dated 27.01.1998, he would not be so entitled in view of the latter circular of 13.11.1998.

11. The matter relating to ex-gratia payment to the widow of an employee who had resigned from service as he was not keeping good health, was considered in depth in O.A. No. 1121/94 decided on 29.02.2000 by this Tribunal in the case of Smt. Sukharani Biharilal V/s. Union of India & Another. On the basis of the circular dated 13.11.1998 the O.A. was dismissed and it was held that the applicant was not entitled to ex-gratia payment. The circumstances in the present case are similar to those in the aforesaid O.A. Hence, I am unable to grant any relief to the applicant in terms of ex-gratia payment.

12. In the result, the O.A. is dismissed. No costs.

Shanta Shastray
(Smt. SHANTA SHAstry)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Review Application No.1/2001
in Original Application No.946/98.

Date: 31/1/2001

CORAM: Smt. Shanta Shastry, Member(A)

Smt. Parvatibai. S. Pol

... Petitioner

V/s.

Union of India & Ors.

... Respondents

This RP has been filed against the order dated 29/11/2000 in OA No.946/98. The OA was dismissed.

2. The Review Applicant is now seeking review of the aforesaid order on the ground that when the OA was filed, the earlier OM of the Railway Ministry dated 27/1/98 was in operation and the circular dated 13/11/98 was issued by the Railway Administration later on. The applicant had filed OA on 5/11/98. It is the contention of the applicant that had the circular dated 27/1/98 not been followed by the circular dated 13/11/98, the applicant would have been entitled to the benefit of the ex gratia payment under the earlier circular. The applicant has re-argued his case that once the applicant's husband was held to be retired Government servant in terms of the judgement of the Hon. Supreme Court in M/s. J.K. Cotton Spinning and Weaving Mills case, the right flowing from the OM dated 13/6/1988 cannot validly be withdrawn by the later circulars of 27/10/88.

3. At the time of final hearing of the OA-946/98, and at the time of pronouncement of the order instructions in operation were those incorporated in the circular dated 13/11/98 and as such there is nothing illegal or wrong in holding review applicant as

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not being entitled to the ex gratia payment in terms of the circular dated 13/11/98. This cannot be a ground for review. The Review Petition cannot be raised to re-agitate the issue. Accordingly the Review Petition is not maintainable and the same is rejected.

Shanta Shastri

(SHANTA SHASTRY)
MEMBER(A)

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