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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO.1039/95

Between:

Date of Order:5.2.96.

Smt. Haleemabi @
Smt. Alimnisa

...Applicant.

And

1. The Divisional Railway Manager,
South Central Railway,
Vijayawada.
2. The General Manager,
South Central Railway,
Railnilayam,
Secunderabad.

...Respondents.

Counsel for the Applicant : Mr.G.V.Subba Rao

Counsel for the Respondents : Mr.N.V.Ramana, Addl.CSIC.

CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

contd...

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O.A. 1039/95.

Dt. of Decision : 05-02-96.

ORDER

¶ As per Hon'ble Shri R. Rangarajan, Member (Admn.) ¶

The applicant alleges that her late husband Shri Syed Khader was appointed in the Engineering Department of Vijayawada Division ^{in Railways} on 22-10-35 and expired on 05-07-55 after having put in nearly 20 years of service. It is further stated that her husband was governed by contributory Provident Fund Rules. She further submit that her representation for payment of exgratia pension has been turned down by the impugned letter No.B/P.526/Ex-Gr/1945. dated 17-03-94, ^{on} ~~on~~ the ground that she has not submitted tangible documentary evidence in regard to the fact that her husband was an ex-railway employee and he died in the normal course while serving the department.

2. ~~That~~ setting aside the impugned letter No.B/P.526/Ex-Gratia/1945 dated 17/21-3-94 issued by R-1 as arbitrary, illegal, unconstitutional and violative of Article 14 and 16 of the Constitution and for a consequential direction to the respondents to pay her exgratia pension with effect from 01-01-86, as per instructions of the Railway Board regarding grant of exgratia pension to the widows of the Government servant who retired/died prior to 01-01-86 under CPF Rules without any pensionary benefits and for a further direction to the respondents to pay interest at 12% P.A. for the delayed payment.

3. Railway Board vide letter No.F(E)III/88/PNO (ex-gratia) /46 dated 12-04-90 issued certain instructions for grant of exgratia payment to the families of the deceased CPF retirees. That

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memorandum was circulated by R-1 under his letter No.8/P.500/P dated 13-9-90 (Page 24 of the OA). Railway Board has also given certain instructions in regard to identification of such cases which merit consideration for grant of exgratia payment, Vide memorandum No.1(32)/94-P&PW (E) dated 09-2-95, the relevant portion of which is reproduced below:-

"According to these orders while the prime responsibility for satisfying the Head of Office about her/his entitlement for the benefit including her/his identity lies on the applicant ^{which} for ~~the applicant~~ relevant documents like PPO of the late government servant or other relevant records have to be produced, it is for the administrative authorities to satisfy the claims with reference to official documents and other relevant evidence. It is also laid down that in cases where because of the passage of time it is not found possible for the administrative authorities to establish the genuineness of the claim from the available records, the claimant could be asked to produce the necessary ~~documents~~ for establishing genuineness of the claim and his/her entitlement for the benefit such as succession certificate, affidavit and other documents for the satisfaction of the Head of Department/Pension sanctioning authorities. The intention is that old widows who are prima facie eligible for family pension in terms of O.M. dated 18-06-85 should not be put to any harassment or hardship because of the inability of the administrative authorities to locate the old records".

The memorandum dated 9-2-95 amplifies ^{has been done} the way in which the identification of beneficiaries _{to grant exgratia payment} in case there is dispute in regard to the identification _{in the absence of old records}.

4. The main contention of the applicant is that she has produced the necessary material to prove her bonafides for getting exgratia payment. The marriage certificate submitted by her (Material paper page No.12 and 13), declaration form witnessed by

two serving employees (at polio 20 of the material paper) and the death certificate (material paper Page No.22) signed by Sarpunch Gram Panchayat, Tadepalli and the affidavit executed before the Chief Metropolitan Magistrate (material paper at 18) are the necessary and sufficient proofs to come to the conclusion that the ex-employee was a railway servant governed by CPF Rules. It is also the case of the applicant that her case is squarely covered by the Judgement of the Bombay Bench of the Tribunal in SLJ 1993(1) CAT Page 55 (Smt. Dina M. Vensina Vs. Union of India & others) wherein the similar certificate produced by her had been relied upon to give necessary reliefs in that case.

5. No counter has been filed inspite of repeated directions for filing the same. The learned standing counsel today submitted a copy of the parawise remarks on the application given to him by the respondents for preparing the reply. As per the parawise remarks the applicant was not granted exgratia payment of Rs-150/- per month as she had failed to satisfy the respondents in regard to the authenticity of the claim that her late husband was a railway employee and governed by CPF Rules.

6. Before I go into the various aspects of the case I would like to point out the discrepancy in regard to the declaration form which is signed by two railway officials (enclosed at page-20 of the material paper) and the death certificate issued by Sarpunch Gram Panchayat (enclosed as an enclosure at page 22 of the material paper). In the declaration form at Page-20 it is stated that the ex-employee was a Peon in Mechanical Department of Vijayawada Station in SC Railway, whereas the death certificate indicates that the said employee had worked in DPO office Vijayawada District. From the above certificates one may doubt whether the certificate which is purported to have been submitted for proving the claims of the

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applicant can be taken at its face value as the place or the department where the ex-employee worked is different in the above two certificates. The certificates mentioned above can at best be taken only as an indicative proof and not as a conclusive proof.

7. The applicant relies mainly on the reported case referred to above. In that case the widow of the ex-employee produced before the Tribunal her marriage certificate issued under the parsi-marriage Act to state that her husband was a Guard in the railways. Even that marriage certificate was not taken as a conclusive proof by the learned members of the Bombay Bench as can be seen from the judgement. But that proof was once again authenticated by two witness who were aged at that time 70 and 72 years and they were co-workers in the railways of her late husband. The witnesses in that case were co-workers of the husband of the applicant therein was evident from the fact that they were aged at 70 and 72 years at the time of signing as witness and the applicant also belonged to the same age group were he alive. The two witnesses had also given their designation, the place where they worked and other related matters in their affidavit.

8. In the back ground of that case the present case has to be analysed. The marriage certificate of the applicant in this case shows that the applicant's husband was a Jamader. Though the learned counsel for the applicant submits that he worked as Jamader under permanent Way Inspector, Tuni, there is no such indication in the marriage certificate. Jamader is a common designation in Government departments. This designation is not only common to railways but also to the other departments. Just because it is indicated in the marriage certificate, that he was a Jamader it cannot be taken for granted that he was a Jamader of the railways. Mere ascertainment that he was a Jamader under P.W. Tuni cannot be taken on the face

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value unless there is a clear proof to that effect. In the case decided by the Bombay Tribunal there was a clear indication that the husband of the applicant therein was a Guard of Bhusawal Division headquarters at the Igatpuri Station of the Central Railway. That fact has been further authenticated by his co-workers who also worked in running unit and were headquartered at Kalyan or Igatpur during the period of their service. Hence there was ample material proof for granting the exgratia payment to the applicant in that OA. The witnesses also had given sufficient material by way of their designation, place of posting etc., to substantiate that they are co-workers of the ex-employee in that OA.

9. In this case as stated earlier mere statement that he was Jamader in the marriage certificate is not sufficient proof to come to the conclusion that he was Jamader in railways. The declaration form at Page-20 of the material paper has been signed by two witnesses. Both of them were serving employees of the railways at the time when the declaration form was signed by them. Both are Assistant Engineers of the Engineering Branch of Vijayawada Division. It is evident from the declaration form that they are not co-workers of the ex-employee. Even presuming that they had a maximum service ^{of} 38 years ^{and were about to retire at the time of signing certificate} _{and} they could have joined in the railways only in 1955 and hence cannot be a co-workers of the applicant's late husband. In view of this, the witnesses who signed in the declaration form to the effect that the husband of the applicant was a ex-railway employee, cannot be taken as a conclusive proof. In Smt. Dina M. Venaina's case the witness therein were the co-workers of the husband of the applicant therein and they also worked in the same area wherein the late employee worked. Hence there can be no comparison between the certificate signed by witness in that case and witnesses in the present case.

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10. The applicant relies on the instructions given in the Railway Board's letter No.F(E)III/88/PNO(ex-gratia)/46 dated 12-4-90x and on that basis submits that it is enough if two surities are furnished to come to the conclusion that the exemployee was under the pay roll of railways. But she conveniently omitted to mention further instructions given in the office memorandum No.1(32)/94-P&PW (E) dated 9-2-95. As per this memorandum it is responsibility of the applicant to satisfy the head of the department that her husband was an exemployee governed by CPF Rules.

11. In view of what is stated in the foregoing paragraphs I cannot come to the conclusion that the applicant had proved that the ex-employee worked in railways. The applicant also relies on the affidavit filed by her (material paper No.18) Under serial No.1 of this affidavit it is only stated that she married to exemployee before his retirement from railway service. As I stated earlier it cannot be considered as a requisite proof to come to the conclusion that the employee worked in railways.


12. The next contention of the learned counsel for the applicant is that the respondents fail to verify his service details from the records. Well, this is a point for consideration. But the ^{time} ~~time~~ lapse between the death of the employee and filing of this OA is 40 years. Whether it is possible to maintain old records for 40 years is to be considered. Even if it is maintained, ~~it~~ ^{the said} records will be in shambles and no one can lay hand on these records after a lapse of 40 years. In view of this the respondents cannot be blamed if they are not able to produce the material. However I would like to stress that the respondents have dealt this case in a very casual manner. They could have taken some more pains to establish the facts. But that does not mean that the applicant

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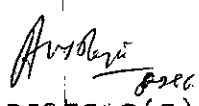
should get relief in the absence of any relevant document to conclusively prove that the exemployee had worked ⁱⁿ railways and is governed by CPF Rules.

13. Finally, the learned counsel for the applicant submitted that the widow is very poor and on humanitarian consideration she has to be given the necessary relief. I sympathize with her. But the Apex Court held in JT 1994 (2) S.C. 183-LIC of India Vs. Mrs. Asha Ramchandra Ambekar & anor. "that High Courts and Administrative Tribunals ought not to confer benediction impelled by sympathetic consideration and disregardful of law".

14. In the result, the OA is dismissed. No costs.


(R. Rangarajan)
Member (Admn.)

Dated : The 5th February 96.
(Dictated in Open Court)


DEPUTY REGISTRAR(J)

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To

1. The Divisional Railway Manager,
South Central Railway,
Vijayawada.
2. The General Manager,
South Central Railway,
Railnilayam,
Secunderabad.
3. One copy to Mr.G.V.Subba Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr.N.W.Ramana, Addl.CGSC, CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.
6. Copy to All the Reporters as per the list of CAT, Hyderabad.
7. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

HON'BLE SHRI A.B.GORTHY : MEMBER(A)

HON'BLE SHRI R. Ranganathan : M(A)

DATED: 5.2.96

ORDER/JUDGMENT.

M.A.NO./R.A./C.A.No.

IN

O.A.NO. 1039/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED ✓

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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