

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(10)

O.A. No. 528/94
T.A. No.

199

DATE OF DECISION 7.2.1997

Smt. Prafulla Ghosh Petitioner

Mr. V.K. Mathur Advocate for the Petitioner (s)

Versus

Union of India and others Respondent

Mr. U.D. Sharma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. RATAN PRAKASH, MEMBER (JUDICIAL)

The Hon'ble Mr.

- 1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
- 2. To be referred to the Reporter or not ? ✓
- 3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
- 4. Whether it needs to be circulated to other Benches of the Tribunal ?


(RATAN PRAKASH)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT JAIPUR BENCH
J A I P U R.

O.A. NO.528/94

Date of order: 7.3.1997

Smt. Prafulla Ghosh Widow of late Shri
Jyanendra Kumar Ghosh, Plot No.3, Jawahar
Nagar Colony, Near Glass Factory, Tonk
Road, Jaipur-302015.

: Applicant

Versus

1. The Union of India through the Secretary,
Ministry of Railway, New Delhi.
2. The General Manager, Western Railway,
Churchgate, Bombay.
3. Accounts Officer, Carriage & Wagon (Workshop)
Western Railway, Ajmer.
4. Deputy Chief Mechanical Engineer,
Carriage and Wagon Workshops, Western
Railway, Ajmer.

: Respondents

Mr. V.K. Mathur, counsel for the applicant
Mr. U.D. Sharma, counsel for the respondents

CORAM:

HON'BLE SHRI RATAN BHAKASH, MEMBER (JUDICIAL)

O R D E R
(PER HON'BLE SHRI RATAN BHAKASH, MEMBER (JUDICIAL))

Smt. Prafulla Ghosh Widow of late Shri Jyanendra
Kumar Ghosh who served the Railways w.e.f. 10.10.1996
to 6.4.1948 has approached this Tribunal under
Section 19 of the Administrative Tribunal's Act,
1995 to quash the order dated 12.2.1994 (Annex.A-1)
issued by the Deputy Chief Mechanical Engineer (CSW)
Workshop, Western Railway, Ajmer denying Ex-gratia
payment to her.

2. Facts which are not in dispute, in brief, are
that applicant's late husband Shri Jyanendra Kumar
Ghosh entered the Railway Service (Erst-while B.S.

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& C.I. Railway) on 16.10.1916 and his resignation was accepted by the Railways on 6.4.1948. He was at that time holding the post of Head Clerk and drawing pay of Rs. 160/- per month. He died at Ajmer on 17.3.1949.

3. It is the case of the applicant that when her late husband submitted his resignation he had completed more than 32 years service and as such as per Rule 101 of Manual of Railway Pension Rules, 1950 (hereinafter referred to as 'M.R.P.R. Rules') was entitled to all terminal benefits. It is further the case of the applicant that vide Office Memo dated 13.6.1988 Ex-gratia pension is allowed at the rate of Rs. 150/- per month to widows of Central Provident Fund holders of retiring after 30 years service and as her late husband had resigned after 30 years service, she is entitled for the said pension. A representation dated 3.8.94 (Annex.A/3) made by her son Shri N. Gosh to respondent No.4 claiming the same having been rejected by Annexure A-1, the applicant has been constrained to file this application to claim the aforesaid relief.

4. The respondents have opposed this application by filing a counter and also by filing an additional reply to the original application. The stand of the respondents has been that Para 101 of the M.R.P.R. Rules, 1950 are applicable only to the persons who had opted to the Pension Scheme and are not applicable to non-pension optees. The deceased husband of the applicant being a C.P.F. beneficiary and even though has resigned after 30 years of service, is not

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entitled to the benefit of Ex-gratia payment as laid down in the OM dated 13.6.1988 (Annex.R-1). It is also averred on behalf of the respondents that the Railway Board vide their letter dated 27.12.1988 (Annex. R-2) have clarified that the families of the Railway employees who were governed by the S.R.P.F.(C) Rules and who had resigned were not eligible for Ex-gratia payment on the analogy that the families of the Railway Employees governed by the Pension Rules are not eligible for pension under the Pension Rules under similar circumstances. Further more, the OM dated 13.6.1988 (Annex.R-1) was circulated by the Railway Board to all the General Managers of Indian Railways vide their letter dated 30.6.1988 (Annex.R-3) and in its turn by the General Manager (E) Western Railway Bombay to all concerned vide their letter dated 13.7.1988 (Annex.R-3). It has accordingly been urged that the application has no merit and should be dismissed.

5. I have heard the learned counsel for the applicant Shri V.K.Mathur and Shri U.D.Sharma for the respondents at great length and have examined the record in great detail.

6. The only point for determination in this OA is whether a Railway Employee governed by the State Railway Provident Fund (C) Rules (SRPF (C)Rules) who has not opted for the pension scheme is entitled to Ex-gratia payment even after completion of more than 30 years of service on resignation ?



7. It has been argued by the learned counsel for the applicant that the applicant being widow of Shri Jyanendra Ghosh is entitled to Ex-gratia payment in pursuance of Rule 101 of the M.R.P.R. Rules 1950 as her husband has completed more than 30 years of service before resigning from Railway service. In support of his argument, the learned counsel has placed reliance upon a decision of Central Administrative Tribunal, New Bombay Bench in the case of Mrs. Evelyn Gracles V. The Divisional Railway Manager, 1990(3) (CAT) SLJ 385. On the basis of this authority, it has been urged that the deceased husband of the applicant having completed 30 years of qualifying service is governed by Rule 101 of M.R.P.R., 1950 and is entitled to receive Ex-gratia payment accordingly. The other line of the argument of the learned counsel for the applicant is that even under the scheme of Ex-gratia payment to families of deceased CPF retiree and who have retired from service prior to 1.1.1986, are entitled to be granted Ex-gratia payment at the rate of Rs. 150/- per month from 1.1.1986 or from the date falling ^{on} ~~on~~ the date of death of the deceased employee, whichever is later.

8. As against this, the learned counsel for the respondents has vehemently urged that the authority of New Bombay Bench relied upon by the learned counsel for the applicant is not applicable in the present case; more so when the clarificatory order issued by the Railway Board on 27.12.1988 ^{and} circulated to all concerned vide their letter dated 11/27.2.1989 (Annex.R-2) makes it abundantly clear that the

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families of the Railway Employees who are governed by the SRPF(C) Rules and had resigned are not eligible for Ex-gratia payment. It has, therefore, been urged that the judgment of Hon'ble the New Bombay Bench is per incuriam as the relevant circular Annexure R-2 has not been brought to the notice of the Bench. On the plea that the applicant is entitled to receive an Ex-gratia payment at the rate of Rs. 150/- per month in pursuance of the Office Memorandum dated 30.6.1988, it has been urged that the wordings of this Memorandum show that it is applicable only to the widows and dependant children, of the CFF retirees who have retired from service prior to 1.1.1986. The emphasis is on the word 'Retire' and not on every category of railway employee. It has been argued that since the applicant's deceased husband has resigned and not retired, the benefit available under this Memorandum is not available to the applicant.

9. I have given anxious thought to the able arguments addressed by both the learned counsels.

10. At the outset, it is necessary to reproduce the relevant portion of the Clarification dated 27.12.1988 incorporated in the letter dated 11/27.2.1989 (Annex.R-2) which reads as under:-

"It is clarified that the families of Railway Employees who were governed by the S.R.P.F.(C) Rules and had resigned are not eligible for ex-gratia payment on the analogy that the families of Railway employees governed by the pensions Rules are not eligible for family pension under the Pension Rules under similar circumstances. In this connection, your attention

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is invited to para 8(4) of Department of Pension and Pensioners' Welfare's Office Memorandum dated 13.6.1988 forwarded under Board's letter No. FC IV/87/Imp/1 Fy. 30.8.88.

The families of those employees who were compulsorily Retired and medically in-capacitated are eligible for ex-gratia payment."

In the judgment of the New Bombay Bench there is no reference to this clarification issued by the Railway Board. With due respect, the judgment of the New Bombay Bench in the case of Mrs. Evelyn Gracles (supra) is per incuriam as the clarification issued vide letter ~~no. 17/27.1.1989 was neither~~ appears to have been placed, nor considered by the Bench. This judgment is, therefore, of no help to the applicant. Moreover, vide Annexure F-3 dated 13.7.1988 a copy of the OM dated 13.6.1988 has been circulated to all concerned by the General Manager (E). It, therefore, cannot be said that the OM dated 13.6.1988 (Annex. R-1) was not applicable to the railway employees including the applicant where he was working. As observed earlier, the OM dated 13.6.1988 has been made applicable only to the widows or dependant childrens of CPF retirees who had retired from service (emphasis supplied) prior to 1.1.1986. It is not in dispute that the deceased husband of the applicant had not retired but sought resignation which was accepted by the Respondents Railways on 6.4.1948. Therefore, the factum that the applicant had completed more than 30 years of service and he should be equated with those employees who retired prior to 1.1.1986 cannot be accepted.

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11. The learned counsel for the applicant has also drawn attention to a judgment of this bench of the Tribunal in the case of Smt. Sheela Mathur Vs. Union of India in OA No. 606/92 decided on 15.9.1993. I have carefully gone through this judgment. In the case of Smt. Sheela Mathur, the learned Tribunal has relied upon the decision of N. Bombay Bench of the Tribunal in the case of Mr. Evelyn Gracles (supra) which has already been discussed above and which has been found held to be a judgment per incuriam. In the case of Smt. Sheela Mathur as well, the clarification issued by the Railway Board vide their letter dated 27.12.1988 in respect of the Office Memorandum dated 13.6.1988 and referred to above which was circulated to all concerned vide letter dated 11/27.2.1988 (Annex. B-1) has not been considered, nor appears to have been placed before the Hon'ble Tribunal at the time of its decision. In view of this, the judgment of this Tribunal in the case of Smt. Sheela Mathur is also of no assistance to the applicant.

12. Another argument of the learned counsel for the applicant has been that the applicant's case is governed by Rule 101 of the M.R.P.R. Rules, 1950 which makes a provision for payment of family pension to the Railway Servants who are removed and dismissed from service or resigned from it before completion of 30 years qualifying service. On the analogy of this provision, it has been argued that the deceased husband of the applicant having completed more than 30 years of qualifying service, she is entitled to family

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pension within the aforesaid Rule 101 of the M.R.P.R. Rules. On the contrary, the argument of the learned counsel for the respondents in this regard has been that the applicant being governed by the S.R.P.F.(C) Rules and having not opted for pension, this Rule 101 of the M.R.P.R. 1950 is not applicable and the argument to the contrary is without any foundation. Rule 101 of the M.R.P.R. Rules, 1950 is reproduced as under:-

*101(4) The retirement benefits under these rules for a permanent railway servant comprise of two elements viz:

(i) (a) ordinary/gratuity/pension:

and

(b) death-cum-retirement gratuity; and

(ii) Family Pension.

The benefits are admissible to all permanent Railway Servants except those who are removed or dismissed from services or resigned from it before completion of 30 years qualifying service."

From a perusal of above provision, it is apparent that the benefit of ordinary gratuity/pension and death-cum-retirement gratuity and/or Family Pension is available to those permanent Railway Servants who have opted for the pension under these Rules. The applicant has failed to aver as to how the M.R.P.R. Rules, 1950 are applicable in the case of her deceased husband when these Rules came into effect in the 1950, whereas the deceased husband of the applicant resigned from railway service on 6.4.1948 and eventually died on 17.3.1949. It has also not been made clear on behalf of the applicant as

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to what exactly were the rules and guidelines applicable in the case of the railway employees who are governed by the S.P.P.F.(C) Rules. Further more, the deceased husband of the applicant having received the benefits under the S.P.P.F.(C) Rules, the applicant being a widow of the deceased employee cannot now ask for benefits, which were available to a pension optee. Accordingly, Rule 101 of the MRR Rules, 1950 is held to be inapplicable in the instant case.

13. For all the aforesaid reasons, I do not find any merit in this original application which is hereby dismissed with no order as to costs.



(RATAN PRAKASH)
MEMBER (J)