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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIFUR.

O.A. No. 325/1996

Date of order: 21.1.98.

Smt. Sugni Devi, Widow of late Shri Jai Narayan, Resident of House No.119/21, Sukhadia Nagar, Usri Gate, Ajmer.

: Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Works Manager, (Loco Workshops) Western Railway, Ajmer.

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: Respondents

Mr. W. Wales, counsel for the applicant

Mr. B.S. Mathur, counsel for the respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O-R-D-E-R-

(P.P.-HON'BLE-SHRI-RATAN-PRAKASH, MEMBER-(JUDICIAL))

The applicant herein Smt. Sugni Widow of deceased Railway employee Shri Jai Narayan has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to seek a direction to the Chief Works Manager (Loco Workshops), Ajmer, respondent No.2 to grant her Ex-gratia payment of Rs. 150/- + usual allowances w.e.f. 03.1.1988; the date of the death of her husband with arrears in terms of the Railway Board circular letter dated 30.6.1988 (Annex.A/4) and thereafter continue to pay the same monthly till her death or otherwise, as per rules.

2. The facts in brief, as stated by the applicant are that her husband Jai Narayan joined the service in the Railways on 28.5.1930 and was holding the post of Chargeman in the Loco Workshop at the time of his quitting the service on 31.8.1962

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and had rendered by then over 32 years of service. It is the case of the applicant that her husband Jai Narayan being a low paid employee did not opt for pension Scheme introduced in the year 1957 as he was not aware of the merits and de-merits of the Scheme. According to the applicant, her husband Shri Jai Narayan expired on 23.1.1988 at Ajmer leaving her as the sole survivor. It is further the case of the applicant that upon the decision by the President of India to decidethat the widows and dependant children of the deceased Railway CFF beneficiaries who had retired from Railway Service prior to 1.1.1986 should be granted Ex-gratia payment @ Rs. 150/- per month w.e.f. 1.1.1986 or from the date following the date of death of the deceased Railway employee, whichever is later; the Ministry of Personnel, Public Grievances and Pension (Department of Pension and Pensioners' Welfare), New Delhi issued Office Memorandum dated 13.6.1988 (Annex.A/3) holding that these orders would also apply to Railway employees governed by SRPF Rules. This OM was also circulated to all the General Managers over Indian Railways vide their Circular dated 30.6.1988 (Annex.A/4). Having come to know about it, the applicant preferred a representation addressed to respondent No.2 during the year 1987 requesting to grant her Ex-gratia payment of Rs. 150/- per month in terms of OM dated 13.6.1988 (Annex.A/3). According to the applicant, her late husband during his life time also made a representation on 21.3.1987 (Annex.A/2) to allow him to opt for pension Scheme, but the Railways did not respond to it. Having failed to receive any response to her representation dated 20.9.1994 she has approached this Tribunal to seek the aforesaid reliefs.

3. The respondents have opposed this application by filing a written reply to which the applicant has also filed a rejoinder. The stand of the respondents has been that the

applicant did not submit any representation in the prescribed form to grant Ex-gratia payment to the Deputy C.M.E. (Loco) Ajmer on 30.9.1994. She, however, made an application Annexure A/1 requesting the Deputy CME (Loco Workshop) Ajmer to provide her the service particulars of her late husband for fighting family pension case. Hence, such an application cannot be treated as a representation to grant Ex-gratia payment as per Railway Rules. According to the respondents, her late husband Shri Jay Narayan also submitted an application to the Minister of Pension, Nirvachan Sadan, Parliament Street, New Delhi on 21.2.1987 for option for pension to Provident Fund Retirees, but in this application in para No.4, he has simply urged for passing necessary orders for Ex-gratia option, but he did not opt for the pension Scheme. It is denied that her husband submitted any representation for grant of Ex-gratia payment in terms of OM dated 13.6.1988 to the Chief Works Manager (Loco Workshop) Ajmer in 1987. It is also the stand of the respondents that Shri Jay Narayan, the deceased husband of the applicant, never retired from Railway Service, but on his own accord resigned from service on 31.8.1962 and till the date of his resignation he did not opt for Pension Scheme. It has also been averred that the expression 'resignation' and 'retirement' cover different modes to bring the service to an end and the resignation tendered by Shri Jay Narayan deceased cannot be deemed to be a retirement for the purpose of granting Ex-gratia payment to the applicant. The policy adopted by the Railway administration as contemplated in OM dated 13.6.1988 (Annex.A/3) and Railway Board letter dated 30.6.1988 (Annex.A/4) was subsequently clarified by the Railway Board vide its letter dated 27.12.1988 (Annex.B/2) and that the applicant is not entitled to get any relief in this O.A.

4. We heard the learned counsel for the applicant and for the respondents at length and have examined the material on record in great detail.

5. In this O.A. the only point for determination is:-

"Whether a Railway employee governed by the State Railway Provident Fund (C) Rules, (SRPF (C) Rules) who has not opted for pension scheme is entitled to Ex-gratia payment even after completion of more than 30 years of service, before resignation ?

6. The argument of the learned counsel for the applicant has been that the applicant being widow of Shri Jay Narayan is entitled to Ex-gratia payment 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 New Bombay Bench of the Central Administrative Tribunal in the case of Mrs. - Evelyn - Gracels - Vs. The - Divisional - Railway - Manager, - 1990 - (3) - (CAT) - 31J - 385 as also three decisions of this Tribunal in OA - No. - 606/92 - Smt. - Sheela Mathur - Vs. - UOI, - decided - on - 15.9.93; - OA - No. 47/93 - Smt. - Ganga - Vs. UOI - decided - on - 22.3.94 - and - in - OA - No. 293/93 - Smt. - Shanti Devi - Vs. UOI, - decided - on - 5.4.1994 being Annexures A/5, A/6 & A/7 to the rejoinder filed by the applicant. The other line of argument of the learned counsel for the applicant has been that under the Scheme of Ex-gratia payment to the families of deceased CEP retirees who have retired from service prior to 1.1.1986 they are entitled to be granted Ex-gratia payment @ Re. 150/- per month from 1.1.1986 or from the date following the date of death of the deceased employee, whichever is later.

7. As against this, it has been vehemently urged by the learned counsel for the respondents that the authority of the New Bombay Bench relied upon by the applicant is not applicable in the present case; more so when the clarificatory order issued by the Railway Board on 27.10.1988 and circulated to all concerned vide their letter dated 11/27.2.1989 (Annex.R/2) makes it abundantly clear that the families of the Railway Employees who are governed by the SRPF (C) Rules and had resigned are not eligible for Ex-gratia payment. The argument is that the judgment of Hon'ble the New Bombay Bench is per incuriam as a relevant circular as at Annexure R-3 has not been brought to the notice of the Hon'ble Bench while disposing of the case of Mrs. Evelyn Gracles. On the plea that the applicant is entitled to receive an Ex-gratia payment @ 150/- per month in pursuance of the OM 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 CPF 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, therefore, been argued that since applicant's deceased husband had 'resigned' and had not 'retired'; the benefit available under this Memorandum is not available to the applicant.

8. We 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 27.10.1988 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 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.PCIV/87/Imp/1FY. 30.8.88.

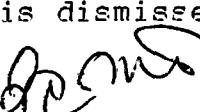
The families of those employees who were compulsorily retired and medically in-capacitated are eligible for ex-gratia payment."

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 dated 11/27.2.1989 appears to have neither been placed, nor considered by the New Bombay Bench. This judgment, therefore, is of no help to the applicant. Moreover, vide Annexure A/3 dated 30.6.1988 OM dated 13.6.1988 besides being circulated to all concerned by the General Manager (E) has also been made applicable to the Railway employees including the applicant where her deceased husband was working vide RRE No.147/88 dated 30.6.1988 (Annex.A/3). The argument, therefore, that the OM dated 13.6.1988 is not applicable to the applicant or to the employees dependants has no force. 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 has not retired but after seeking resignation resigned from the Western Railway on 31.8.1962. Therefore, the factum that the applicant had completed more than 30 years of service and that

he should be equated with those employees who retired prior to 1.1.1986 cannot be accepted.

10. The reliance placed by the learned counsel for the applicant on the decisions of this Bench in the case of Smt. Sheela Mathur and Smt. Ganga are also of no assistance to the applicant as they have been decided relying upon the decision of a New Bombay Bench of the Tribunal in the case of Mrs. Evelyn Gracles which has already been dealt with and has been found to be a judgment per incuriam. The decision in Smt. ^{case} Shanti Devi ^{decided on 6.4.1994 (Annex.A/3)} does not contain the necessary details and being a judgment of the single bench would also of no assistance to the applicant. Even in the case of Smt. Sheela Mathur and Smt. Ganga the clarification issued by the Railway Board vide their letter dated 27.12.1989 (Annex.R/3) in respect of the Office Memo dated 13.6.1989 which was circulated to all concerned has not been considered, nor appears to have been placed before the Hon'ble Tribunal at the time of disposal of these cases. In view of this, the judgments of this Bench in the aforesaid cases of Smt. Sheela Mathur and Smt. Ganga are also of no help being judgments in per incuriam and having been decided relying upon the judgment of a New Bombay Bench in the case of Mrs. Evelyn Gracles. Our answer, therefore, to the question raised in this OA is in the negative and it is held that a Railway employee governed by S.R.P.F. (C) Rules and who has not opted for the Pension Scheme is not entitled to Ex-gratia payment even after completion of more than 30 years of service on resignation.

11. Consequently, the OA is held to be without any merit and is dismissed with no order as to costs.


(RATAN PRAKASH)

MEMBER (JUDICIAL)


(O.P.SHARMA)

MEMBER (ADMINISTRATIVE)