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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

O.A. No.  
T.A. No.

326/96 199

**DATE OF DECISION** 21.1.1998

Smt. Goran Bai

**Petitioner**

Mr. W. Wales

**Advocate for the Petitioner (s)**

**Versus**

Union of India and others

**Respondent**

Mr. J.D. Sharma, Esq

**Advocate for the Respondent (s)**

**CO~~Q~~AM :**

**The Hon'ble Mr. O.P.Sharma, Member (Administrative)**

**The Hon'ble Mr. Ratan Prakash, Member (Judicial)**

1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ?

Yes

✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ?

Yes

✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ?

Yes

  
(Ratan Prakash)

Member (Judicial)

  
(O.P.Sharma)

Member (Administrative)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIFUR FENCH: JAIFUR.

O.A. No. 326/1996

Date of order: 21.1.98.

Smt. Goran Bai, aged 55 years, House No.1050/26, Near Panchori Bhawan, Gautam Nagar, Ajmer.

: Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Deputy Chief Mechanical Engineer (Carriage & Wagon), Western Railway, Ajmer.
3. The Dy. Chief Accounts Officer, (W & S), Western Railway, Ajmer.

: Respondents

Mr. W. Wales, counsel for the applicant

Mr. U.D. Sharma, counsel for the respondents

CORAM:

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

O-R-D-E-R

(PER-HON'BLE-SHRI-RATAN-FRAKASH,-MEMPER-(JUDICIAL))

The applicant herein Smt. Goran Bai Widow of Shri Mool Chand Singh, an employee of the erstwhile Bombay Baroda & Central India Railways (for short 'B.B. & C.I. Railways') has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to set aside the impugned order dated 15.2.1996 (Annex. A/1) rejecting her request to pay her Ex-gratia payment with a further prayer to direct the Deputy Chief Accounts Officer (W&S), Ajmer, respondent No.3 to accept the recommendations of the Deputy Chief Mechanical Engineer (C&W), Ajmer contained in letter dated 7.1.1989 (Annex.A/4) and accord his approval for payment of Ex-gratia payment of Rs. 150/- + usual allowances w.e.f. 1.1.1986.

2. Facts as alleged by the applicant are that Shri Mool Chand Singh, the deceased husband of the applicant joined BB & CI Railways on 1.1.1942 and at the time of his voluntary resignation from Western Railway on 14.11.1973 was holding the post of Grinder Class IV service. He was governed by S.R.P.F. Rules and had not opted for pension scheme on the day of quitting the railway service.

3. The applicant's husband had completed over 31 years of service with the Respondent Railways at the time of quitting his services and he died at Ajmer on 6.6.1983 leaving the applicant as the sole survivor. It is the case of the applicant that her husband being a poor illiterate employee did not opt for the pension scheme introduced in the year 1957 as he was not aware of the merits and de-merits of the pension scheme. The applicant coming to know of the OM dated 13.6.1988, whereby was the decision/taken by the President of India, that the widows and dependent children of deceased Railway CPF beneficiaries who had retired from railway service prior to 1.1.1986 should be granted Ex-gratia payment of 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, and that these orders would also apply to Railway employees governed by SRPF Rules; preferred a representation in early 1989 to respondent No.2 i.e. Deputy Chief Mechanical Engineer (C&W), Western Railway, Ajmer. Respondent No.2 sanctioned the payment in her favour and forwarded the order to Deputy CAO (W&S), Ajmer, respondent No.3 for arranging payment vide letter dated 7.1.1989 (Annex.A/4). Having heard nothing thereafter, she made another representation on 5.2.1996 to respondent No.3 to draw attention to the earlier correspondence with a request to reconsider the claim of the applicant and grant her Ex-gratia

payment of Rs. 150/- as admissible under the Rules. Her request having been finally rejected by communication dated 15.2.1996 (Annex.A/1), she has approached this Tribunal to claim the aforesaid relief.

4. The respondents have opposed the application by filing a written reply to which the applicant has also filed a rejoinder. The respondents in their reply, contrary to the version of the applicant, have stated that the deceased husband of the applicant had joined the Railway Service on 20.1.1941 and that at the time of his resignation from Railway Service on 14.11.1973 he was holding the post of Masson Gr.III. The stand of the respondents has been that the deceased husband of the applicant had not opted for pension scheme till the date of his resignation inspite of having been afforded a number of opportunities on 10.10.1970, 31.7.1971, 29.7.1974, 23.11.1974, 6.3.1975, 22.7.1975, 24.11.1975, 30.7.1976, 9.2.1977, 26.6.1978 and having failed to exercise the option in favour of the pension scheme, it cannot be said that being an illiterate employee he could not opt for pension scheme. It has also been the stand of the respondents that her representations submitted on 7.1.1989 and 7.2.1989 had been rejected and conveyed to her vide letter dated 7.2.1989 (Annex.R/1) and the subsequent communication dated 15.2.1996 (Annex.A/1) is merely a communication about the rejection of the earlier representations made by her. On this basis, a plea of limitation has also been raised by the respondents. It has also been averred by the respondents that under an erroneous impression that the husband of the applicant had voluntarily retired from service, respondent No.3 had issued the sanction order dated 7.1.1989 and forwarded it to the Deputy CAO (W&S) for verification and arranging payment. According to them, however, when the case of

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the applicant was checked up for verification from the record and on discovery that her husband had resigned from Railway service, the applicant was held not eligible for grant of Ex-gratia payment in accordance with the Department of Pension and Pensioners' Welfare OM dated 13.6.1988 as circulated by the Railway Board letter dated 30.6.1988 and accordingly she was informed vide letter dated 7.1.1989 (Annex.R/1) that Ex-gratia payment has not been sanctioned to her. It has also been the stand of the respondents that expressions 'resignation' and 'retirement' cover different modes of bringing the service to an end and both have different implications and connotations with regard to the service conditions and the benefits arising therefrom. The Railway Board vide its letter dated 27.12.1988 (Annex.R/3) had clarified that families of Railway employees, who were governed by S.R.P.F.(C) Rules who had resigned were not eligible for Ex-gratia payment and it has, therefore, been urged that the applicant is not entitled to claim any relief as prayed for in this Q.A.

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

6. In this Q.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 ?

7. The argument of the learned counsel for the applicant has been that the applicant being widow of Shri Mool Chand

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Singh 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 Gracles v. The Divisional Railway Manager, 1990 (3) (CAT) - 813 - 385 as also three decisions of this Tribunal in 9A No. 606/92 - Smt. Sheela Mathur Vs. UOI, decided on 15.9.93; 9A No. 47/92 - Smt. Ganga Vs. UOI decided on 22.3.94 and in 9A No. 293/93 - Smt. Shanti Devi Vs. UOI, decided on 6.4.1994 being Annexures A/6, A/7 & A/8 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 CPF retirees who have retired from service prior to 1.1.1986 they are entitled to be granted Ex-gratia payment @ Rs. 150/- per month from 1.1.1986 or from the date following the date of death of the deceased employee, whichever is later.

8. 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 27.12.1988 and circulated to all concerned vide their letter dated 11/27.12.1988 (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.

9. 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.E/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. FCIV/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

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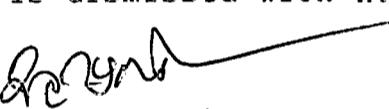
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clarification issued vide letter dated 11/27.3.1989 appears to have neither been placed, nor considered by the New Bombay Bench. This judgment, therefore, is of no help to the applicant. Moreover, vide Annexure A/3 dated 30.6.1988 OM dated 13.6.1988 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 RBE No.147/88 dated 30.6.1988 (Annx.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 14.11.1973. 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.

11. 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. Shanti Devi decided on 6.4.1994 (Annx.A/3) does not contain the necessary details and being a judgment of the single bench is 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 27.10.1989 (Annex.R/3) in respect of the Office Memo dated 13.6.1988 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 *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.

12. 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)