

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

CIRCUIT CAMP AT BILASPUR

Original Application No. 906 of 2002

Bilaspur, this the 9th day of September, 2004

Hon'ble Mr. M.P.Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Smt. Namita Ghosh Widow of late B.C.Ghosh Ex PW I/III, Bilaspur
Division S.E. Railway Resident
of Raipur (Chhattisgarh).

APPLICANT

(By Advocate - Shri Pankaj Agrawal)

VERSUS

1. Union of India through the Secretary for Railway Department, Rail Bhawan, New Delhi.
2. The General Manager, S.E. Rly Garden-reach, Kolkatta-43.
3. Chief Personnel Officer, (Pension Section) S.E. Railway, Garden-reach, Kolkatta-43.
4. Divisional Railway Manager, South Eastern Rly, Bilaspur (Chhattisgarh).
5. Senior Divisional Personnel Officer (Settlement Section), South Eastern Railway-Bilaspur, (Chhattisgarh).

RESPONDENTS

(By Advocate - Shri M.N.Banerjee)

ORDER (ORAL)

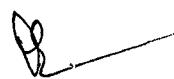
By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought the following main reliefs :-

"(i) Fixation of family pension to the applicant by paying arrears with interest @ 18% per annum till today from 1.4.1981 as per Annexure-A-8.

(ia) The Annexure A-16 be quashed, by holding that applicant is entitled to family pension which was wrongly refused by the non applicant No.2"

2. The brief facts of the case are that the applicant had earlier filed an application in this Tribunal alongwith death certificate and service particulars of late B.C. Ghosh. The earlier OA was decided in the admission stage on 24.7.2002 (Annexure-A-9), whereafter the applicant had made



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a representation to respondent No.2 and 3 for decision. A reply was made by respondent No.5 on 2.9.2002(Annexure-A-11). On 1.9.2002 the same was replied by the applicant then again on 12.9.2002 respondent no.4 had issued a letter which was again replied by the applicant on 23.9.2002. Thereafter the respondents have passed an order dated 31.12.2002 alongwith a detailed order both are filed as Annexure-A-16. The refusal of grant of family pension is wrong because no option is necessary in view of circular 1985. According to the applicant, the stand of respondent no.2 in his reply to Annexure-A-16 dated 27.12.2002 regarding refusal to family pension is illegal because in the reply in line 'S' it is written that option was extended upto 22.2.81 and the husband of the applicant died on 4.1.81 much prior to the last date of option. Hence the action of the respondents was not legal. Aggrieved by this the applicant has filed this OA.

3. Heard the learned counsel for the applicant and respondents and carefully perused the records.

4. It is argued on behalf of the applicant that the applicant earlier had filed an OA No. 484/2002. The Tribunal vide order dated 24.7.2002 directed the respondents to pass a reasoned and speaking order on the representation of the applicant. The respondents have sought time for complying with the aforesaid direction of the Tribunal by filing MA No. 1389/02 and vide order dated 8.11.2002, the respondents were permitted to comply with the direction and the time was extended, as prayed for. The learned counsel for the applicant further argued that the time was extended for submitting the option by the husband of the applicant up to 22.2.81. But, he died much earlier i.e. on 4.1.81 without exercising the right of option. The applicant has submitted a number of representation to the authority concerned from time to time. She also served a legal notice by her learned counsel. submitted that



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as the husband of the applicant died on 4.1.81 i.e. much earlier to the extended time for filing his option i.e. up to 22.2.81, her husband could have filed the option but due to misfortune he could not file the option. Therefore, the applicant is legally entitled for family pension.

5. In reply, the learned counsel for the respondents argued that the deceased Government servant was born on non-pensionable establishment on 28.8.1950. He was governed by SCPPF rules. The pension scheme came into force from 16.11.1957 and the family pension scheme was introduced w.e.f. 1.1.1964. Consequent on introduction of the pension scheme and family pension scheme, options were called for from time to time from staff born on Non-pensionable establishments. The last date of submission of such option for switching over to the pension and family pension schemes was 22.2.1981. Shri Ghosh did not avail any such opportunities to switch over to pension and family pension schemes but continued to remain under non-pensionable scheme. Shri Ghosh expired on 4.1.1981 and accordingly all the settlement dues as per non-pensionable scheme were paid to his wife Smt. Namit Ghosh, being the legal heir of the deceased Government servant, Shri B.C. Ghosh, and of the applicant. The representations were duly considered and decided by the respondents.

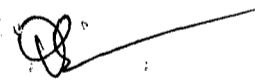
6. After hearing the learned counsel for both the parties and careful perusal of the records, we find that according to the version of the respondents the last date of submission of such option for switching over to the pension and family pension schemes was 22.2.1981 and the husband of the applicant, Late Shri B.C. Ghosh, who was employee in the department of the respondents died much earlier to the aforesaid date i.e. 4.1.81. Hence, he could not avail the opportunity of submission of the said option regarding pension and family pension. The argument advanced on behalf of the applicant that the husband of the applicant could have

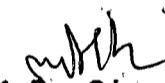
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certainly availed the opportunity of submission of option about pension and family pension positively up to the extended date i.e. on 22.2.1981 but unfortunately he died on 4.1.81. Hence he was deprived of such opportunity due to his earlier demise. This argument of the applicant seems to be appropriate and justified as such option was apparently beneficial to the husband of the applicant and in case of his death, the applicant is entitled for family pension.

7. After considering all the facts and circumstances of the case, we are of the considered opinion that the OA deserves to be allowed. Accordingly, the OA is allowed. The orders dated 31.12.2002 and 27.12.2002 are quashed and set aside. The respondents are directed to calculate and pay the family pension to the applicant in accordance with the rules within a period of three months from the date of receipt of a copy of this order. The applicant is also entitled to get the arrears of Family Pension and interest there on be also granted as per prevalent rate. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

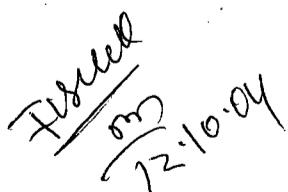
पृष्ठांकन रो/न्या.....जबलपुर, दि.....
skm चुपिलिपि अचो ठिक -

(1) रमेश उल्लामान दास द्वारा दिलाई गई जबलपुर
(2) लालेश देवी/किरणी/द्वा.....को राउंसल
(3) धर्मेश देवी/किरणी/द्वा.....को राउंसल
(4) विजय देवी/किरणी/द्वा.....को राउंसल

P. Agrawal
MN Banerjee

संस्कार एवं आवश्यक कार्यकारी द्वा

उप रजिस्टर


Fisred
on
12.10.04