

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 83/96

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SECTION OFFICER (Judl.)

25.11.18

DA No. 83/96

MP No. (DA)

RA No. (DA)

CP No. (DA)

Smt. P. N. Chandray APPLICANT(S)
VERSUS

CHOG & ORS. RESPONDENT(S)

Mr. AS Bhattacharjee, Mr. K. Basu Advocate for the applicant.
Mr. D S Bhattacharjee, Mr. S. Samra, Mr. K. Paul.

Mr. B.K. ... Sharma R G Advocate for the Respondents.

Office Notes 57 Court's Orders

Application Ad in
form and within time
B. F. of Rs. 50
deposited vide
PO No. 346127
24.5.96

R P
4.6.96

18.6.96

Mr D.S.Bhattacharjee for the
applicant. None for the respondents
List on 28.6.96 for considera-
tion of admission.

Member

pg

28.6.96

Mr D.S.Bhattacharjee for the
applicant. Leave note of Mr B.K.
Sharma.

Issue notice on the respon-
dents to show cause as to why this
application should not be admitted
and the reliefs sought granted.
Returnable on 26.7.96.

List for show cause and con-
sideration of admission on 26.7.96

Member

pg

26.7.96

None present.

Show cause has not been
submitted. List for show cause
and consideration of admission
on 19.8.96.

Member

show cause has not been
b/w

25/7

16.8.96

Notice duly served
on Respond No. 1-4 through
counsel of respondents.

show cause has not been
b/w

16/8

trd

26/7

2

O.A. 83 of 1996

19.8.96

Mr. S.Sarma for the applicant.

Show cause reply has not been submitted.

List for show cause and for further orders on 18.9.96.

60
Member

trd

an
19/8

18.9.96

None is present. Show cause has not been submitted.

List for show cause and consideration of admission on 3.10.96.

60
Member

nkm

3.10.96

Mr. S.Sarma for the applicant.

None for the respondents.

Show cause has been served on the respondent Nos. 1 and 4 but they are not responding. Heard Mr. S. Sarma for admission and perused the contents of the application with the additional documents furnished in M.P. 142 of 1996. The application is admitted. Written statement within six weeks.

List for written statement and further orders on 18.11.1996.

Pendency of this application shall not be a bar for respondent No. 4, Chief AcAccounts Officer, N.F.Railway, Maligaon to pay the admissible family pension to the applicant.

60
Member

trd

m
3/10

13.5.97.

NO Written Statement has been submitted.

L
13/5

Show Cause has not been filed.

SD
17/9

Show Cause has not been filed.
1/10.

13.5.97.

16.6.97
Circuit Court at KDM
W.E.P. 16.6.97. Adj. 15 2.7.97.
By order

1.7.97

- 1) No written statement has been filed.
- 2) Memo of appearance not yet filed.

2/17.

14.5.97

Mr S. Sarma for the applicant.
None for the respondents.

No written statement has been submitted in spite of the fact that notices have been served on respondents No. 1 to 4 through the counsel.

List for hearing on 11.6.97.

62
Member

pg

15/5

2.7.97

Learned counsel Mr S. Sarma for the applicant. Mr M. Chanda mentions that Mr B.K. Sharma could not be present in the court due to his personal difficulty. The written statement has not been submitted by the respondents though the application was filed as early as 30.5.1996 and notice was issued and served on respondent Nos. 1 to 4 on 16.8.1996. Even memo of appearance of counsel of Railways has been submitted only today, 2.7.97. This is an application by the widow of a Railway employee who retired in 1954 seeking pensionary benefits. The applicant herself is aged more than 78 years. It is unfortunate that the Railway Administration did not take any steps even to respond to the application filed by the applicant.

However considering the mention made by Mr Chanda hearing is adjourned to 16.7.97.

The respondents may submit written statement before the date of hearing.

Send copy of this order to the General Manager, N.F. Railway, Maligaon, by name, immediately.

62
Member

4.7.97

Copy of order dtd 2.7.97 issued to the General Manager on 4.7.97.

Bon

Pl. Comply order dated 2.7.97.

2/37

7.7.97

Copy of order dtd 2.7.97 issued to G.M. on 7.7.97.

nkm

3/7

Bon

W/s. ch. not. filed
2/15/7

16.7.97

Mr S.Sarma, learned counsel for the applicant seeks adjournment for further instruction. Prayer allowed. Hearing adjourned to 3.9.97.

60
Member

pg

2/8
19/9

3-9-97

On the prayer of learned counsel for the parties case is adjourned for hearing on 17-9-97.

60
Member

lm

2/8
1/9

17.9.97

Mr S.Sarma, learned counsel for the applicant is present. There is no representation for the Railway respondents. However, for the ends of justice hearing of this application is adjourned for the last time to 29.10.97.

Send copy of this order to the respondents.

60
Member

29.10.97

Learned counsel Mr R. Dutta prays for adjournment on behalf of Mr D.S. Bhattacharjee and Mr S. Sarma, learned counsels for the applicant as they are unable to be present due to their personal difficulties. Mr B.K. Sharma, learned Railway Counsel, also prays for a short adjournment. Hearing adjourned to 12.11.97.

60
Member

No. w/s has been filed.

2/8
1/9

w/s. has not been filed.

2/8
1/9

19.9.97

Copy of order dtl
17.9.97 issued to
the concerned
respondents.

bon

pg

2/8
19/9

12.11.97 On the prayer of Mr S.Sarma, learned counsel for the applicant the case is adjourned to 10.12.97 for hearing.

Member

pg

13/11

10.12.97 There is no sitting of Single Bench. A Bench to 21.1.98.

21.1.98 There is no representation by either side. However, for the ends of justice list on 4.3.98 for hearing.

Member

pg

22/1

4.3.98

Mr S.Sarma, learned counsel for the applicant submits that the applicant has since obtained the relief and the application has become infructuous.

The application is therefore disposed of as infructuous. No costs.

Member

pg

5/3

17.3.98

Copy of the order has been sent to the D/Sec. for issuing the order to the applicant alongwith G.M. N.F.R.

vide memo no - 703 to 706 dated 17-3-98.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under Section 19 of the Administrative
Tribunals Act, 1985)

Title of the case : O.A. No. 83 of 1996

Smt. Fulla Nalini Choudhury ... Applicant

- Versus -

Union of India, & Others ... Respondents

I N D E X

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For use in Tribunal's Office

Date of filing : 30.5.96

Registration No.: 83/96

REGISTRAR

Recd Copy
B. Das
Adm. 28.5.96
Sc. Smt. B.K. Sharma
Rly. Adm.

Filed by, Krishnendu Paul
Advocate 30.5.96.

3

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 83 of 1996

BETWEEN

Fulla Nalini Choudhury,
Satsang Asram Road,
Silchar, Cachar
Assam, PIN - 788007

... APPLICANT

AND

1. Union of India,
represented by the Secretary,
to the Government of India,
Ministry of Railway,
New Delhi.
2. The Divisional Railway Manager,
Varanashi, U.P.
3. The General Manager (P)
N.F. Railway,
Maligaon, Guwahati-11
4. The F.A. and Chief Accounts Officer,
N.F. Railway,
Maligaon, Guwahati-781011.

... RESPONDENTS

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDERS AGAINST WHICH
THE APPLICATION IS MADE :

The instant application is not made against any particular order but is made against the deemed refusal by the respondents towards the payment of ex-gratia/family pension to the applicant.

2. JURISDICTION OF THE TRIBUNAL :

0 The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

Contd...P/2.

K. Paul, Adv.

3. LIMITATION :

The applicant further declares that the application is filed within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 Thae the instant application has been filed by the applicant making a grievance against the non-payment of her family pension by the respondents which was due to her from 1976. Instead of her best efforts and repeated representations as well as intimations respondents did not release her family pension which caused her a great financial hardship. Time to time, she was asked to furnish fresh applications alongwith relevant documents, but to linger and delay the process illegally she was asked again and again for some more new documents. In this process several years have passed away but no result in affirmative has yielded by the same.

Being aggrieved by the action/inaction committed by the respondents towards payment of her due family pension she left no stone unturned and finally she is compelled to file this application under Section 19 of the Administrative Tribunals Act, 1985 for seeking a direction for payment of her family.pension.

This is the crux of the subject matter which leads to circumstances compelling her to come under the protective hands of this Hon'ble Tribunal.

Contd....P/3.

K. Paul, Adv.

4.2 That the applicant abovenamed is an old lady of 78 years and is counting her days with an weak and ailing health. The applicant is the legal married wife of Late Abnash Chandra Chakraborty.

4.3 That on 5.4.54, the husband of the applicant abovenamed retired as Station Master of Mirzapur Ghat under N.R. Railway. He was serving under the respondents from 7.2.27 and on 2.4.54 on superannuation he was retired from the services of the respondents.

A copy of letter dated 19.5.54 is annexed herewith and marked as ANNEXURE: A.

4.4 That suddenly on 18.5.76, the husband of the applicant passed away. Till his death, he was drawing his monthly pension. The husband of the petitioner has applied for transfer of his pension accounts to Maligaon Head Quarter, N.F. Railway during his life time and allowing his prayer the said account was transferred to Maligaon by the Divisional Accounts Officer, Varanasi vide Office Order No.BSB/AD/67/93/21 dated December 1972.

A copy of the said communication dated December 1972 is annexed herewith and marked as ANNEXURE: B.

4.5 That after the sudden death of the husband of the applicant, the applicant has applied for her due ex-gratia/family pension to the concerned authority

Contd....P/4.

K. Paul, Adv.

and the said authority has sent her the formats. As per the formats, the applicant submitted the relevant documents and necessary papers but in fact she could not furnish the C.P.F. number. It will be pertinent to mention here that in Clause 8 of the application for ex-gratia pension form it is clearly mentioned that C.P.F. number may be given if known to the applicant.

The applicant craves leave of this Hon'ble Tribunal to produce a copy of form at the time of hearing of the instant application.

4.6 That the applicant begs to state that after filing this form for pension the respondents made a query to the applicant regarding the documents which she has filed and asked more copies of documents in triplicate to settle her due payments.

4.7 That as per the query made by the respondents the applicant produced all the relevant documents as per ~~xxx~~ their instructions but the applicant was not served with any positive reply. Time to time she was asked for new documents and accordingly on a bonafide expectation, she has been producing the same but no result in positive has been served with her.

A copy of one of such representations dated 28.12.94 is annexed herewith and marked as ANNEXURE: C.

Contd.....P/5.

K. Paul, Adv.

4.8 That in reply to the representation of the applicant, it is stated by the respondents that the payment of exgratia/family pension to the applicant is impossible in absence of C.P.F. number. The applicant has been representing time to time that she did not know the C.P.F. number of her deceased husband but instead of the fact she has been asking for the same.

A translated copy of the said communication dated 3.1.96 is annexed herewith and marked as ANNEXURE: D.

4.9 That the applicant begs to state that there is no dispute regarding her entitlement of her due family pension. The respondents have agreed upon her entitlement of her due family pension, but only narrow questions remains as regards the C.P.F. number. The applicant in her representation as well as communications clearly stated that she was not in a position to declare the C.P.F. number of her husband. Again in the said form for ex-gratia/family pension in clause 8, it is clearly stated that, C.P.F. number may be furnished if it is known and the applicant as because did not know the C.P.F. number has left the column unmarked. It is the duty of the respondents that they should furnish the C.P.F. number if the same is not known to the applicant.

4.10 That the applicant begs to state that the action/inaction on the part of the respondents are in gross violation of the rules and it is clear from the form that has been supplied to the applicant that the

Contd...P/6.

K. Paul, Adv.

declaration of the C.P.F. number is not a mandatory one. Therefore, there is no earthly reason as to why the applicant has not yet been paid her due ex-gratia/family pension.

4.11 That the applicant states that repeatedly she approached the authority i.e. G.M.(P) Maligaon regarding her abovenoted grievances and she was assured that she would get her family pension if she furnishes the C.P.F. number which she does not know. However, till date nothing has been communicated to her regarding the payment. Thus the applicant is at the verge of starvation alongwith her family members. This has resulted in violation of the constitutional mandates as well as laws framed thereunder.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the applicant cannot be made to suffer by depriving her from her due pensions as because she could not furnish the C.P.F. number which is not mandatory.

5.2 For that admittedly she is entitled for her ex-gratia/family pension and there cannot be any justified grounds for depriving her from the same.

5.3 For that justice demands that furnishing of the C.P.F. number is not mandatory as per the forms prepared by the respondents itself and the applicant of her own did not suppress the C.P.F. number to cause financial loss to herself.

Contd....P/7.

K. Paul, Adv.

5.4 For that the proposition of law is well established that if the person is entitled to get pension under the rules and if he/she fulfils the eligibility for the same, then the pension must be given to him/her. In such a case the pension becomes a right and the payment of it does not depend upon the discretion of the Government, but is governed by the Rules and a Government servant coming within those rules is entitled to claim pension. In the instant case the competent authority by not giving pension to the applicant has acted contrary to rules. This violation of the extant rule by the competent authority is a continuous violation inasmuch as the same has resulted in a continuous wrong committed against the applicant. Even if the failure on the part of the applicant to agitate this matter on an earlier date (which she has not done) against the wrong committed by the Railways cannot extinguish ~~her~~ her right to claim pension at this stage inasmuch as the same is her right which flows from the rules.

5.5 For that in any view of the matter, the action/inaction towards the payment of the applicant's due exgratia/family pension is in gross violation of the principles laid down ~~by~~ by the Constitution of India as well as it controverts the provisions of administrative fairplay and accordingly, a judicial interference is called for from this Hon'ble Tribunal.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that she has no other alternative efficacious remedy than to come under the protective hands of Your Lordships.

Contd.....P/8.

K. Paul, Adv.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING
BEFORE ANY OTHER COURT :

The applicant further declares that she has not filed any other application, writ petition or suit before any other authority or any other Court of law or any other Bench of this Hon'ble Tribunal, ~~xxxx~~ in respect of the subject matter of this application, nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT :

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and after hearing the parties and on perusal of the records, the following orders may be granted.

- 8.1 To direct the respondents to the current as well as the arrear ex-gratia/family pension on revised scale to the applicant at the earliest.
- 8.2 To direct the respondents to pay 18% interest to the applicant alongwith adequate compensation and other pensionary benefits due to her immediately.
- 8.3 Cost of this application
- 8.4 Any other relief or reliefs to which the applicant is entitled under the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the instant application, the applicant prays that an interim order be issued directing the respondents to pay the current family pension as per the rules guided by the present schemes/circulars.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

(i) I.P.O. No. : 09 346 127
(ii) Date : ~~22~~ 24-5-96
(iii) Payable at : G.P.O. Guwahati

12. LIST OF ENCLOSURES :

As stated in the Index.

V E R I F I C A T I O N

I, Smt. Fulla Nalini Choudhury, wife of Abanesh Chandra Choudhury, aged about 78 years, resident of Satsang Asram Road, C/O Prof. J.L. Choudhury, Silchar, Cachar, Assam, PIN-788007, do hereby solemnly verify and state that the statements made in the application in paragraphs 1 to 4 and 6 to 12 are true to my knowledge ; those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 30th day of ^{May}~~April~~ 1996.

Fulla Nalini Choudhury
(FULLA NALINI CHOUDHURY)

K. Paul, Adv.

NORTH EASTERN RAILWAY
THE BENGAL AND NORTH WESTERN RAILWAY G. 49.
LD.
 (Incorporated in England.)

No. 11

Certified that Shri Abinash Chandra Chowdhury
 son of Kate Adhar Ch. Chowdhury Nationality Indian
 caste Kayastha
 born at Agoo Zillah Sylhet
Traffic Department of this
 Railway from 7-2-1927 to 1-4-1954
 and when leaving was employed as Station Master
 at Mirzapur Gho.
 His pay then being Rs one hundred forty nine (Rs 149/-)
 (To be written both in
 words and figures.)
 Reason for leaving Retired under age limit

Thumb of employee
 for purposes of identifica-
 tion.

Signature

1st Lt Traffic Supdt.Designation N. E. Railway, Benaras Cantt.

Date

19-5-54.

NOTE.—This certificate is only granted to an employee leaving after 12 months' continuous service and no duplicate copy will be given.

Attested
19.5.54
 Addl. Deputy Commissioner

Attested
S. Pratta Akr.
28/5

N.E. RAILWAY.

OFFICE OF THE
DIVISIONAL ACCOUNTS OFFICER,
VARANASI.

No. BSN/AD/09/93/21

DATE: December, 1972.

The F.A. & Chief Accounts Officer,
N.E. Railway, MALIGAON, Assam.

Sub:- Transfer of ex-gratia pension Account
of Shri A.C. Chowdhury ex. S.M.-(PPO No.
BSN/17).

Ref:- PA & CAO/PN/GKP's No. PN/XGR/67/656/1/606
dated 2-11-72.

The above noted pensioner has applied for transfer of his
ex-gratia Account so that he may get his payment at Maligaon which
falls under your control.

The pensioner has been paid upto July/72 with arrear from
1-9-69. His relevant records with Photo is sent herewith for arranging
payment of his ex-gratia pension at Maligaon.

Encl:- 5
B inol. Ex-gratia
Pension orders &
Application form.

DIVISIONAL ACCOUNTS OFFICER/BSN.

Recy.
6/12 7040 21/12

✓ Copy forwarded to Shri A.C. Chowdhury ex. S.M. C/o Prof: J.L. Choudhury,
R.K. Mission Road, P.O. SILCHAR, Distt. CACHAR (Assam).

Attached
J. Mallick Adv.
28/5

DIVISIONAL ACCOUNTS OFFICER/BSN.

The Divisional Railway Manager(P)
Varanasi
North East Railway
Varanasi.

28.12.1994

Subject: Payment of Ex-Gratia of late Abinash Chandra
Chowdhury Ex S.M. Mirzapur Chat.

Reference:: E/O/PE/207/Ex-Gratia/Cptg dt. 7.8.1992.

Dear sir,

With reference to your letter
I have the honour to say that I was in fact asked to
submit my application and all other relevant documents
in triplicate only. However, as advised by you, I am
furnishing herein another copies of the application and
the documents.

I would like to say that despite my best efforts I could
not find out the CPF Number. I have been able to mention
this reference EX-Gratia pension was paid to my husband
under DAO/BSB/N.E.Rly's authority no. BSB/AD/69/93/21/
3556 of 26/30.5.1973.

As my health is fast deteriorating, I would request you
to expedite settlement of my case.

Awaiting an early disposal of my case,

With warmest of regards,

Yours faithfully,
Fulla Nalini Chowdhury
(Fulla Nalini Chowdhury)
c/o Prof. J L Chowdhury
Satsang Ashram Road
Silchar-788007
Assam.

Attached
S. Mohan Adv.
28/5

L.B. Rai.

Date : 03.01.1996.

/Varanasi.

Memo. No. Illegible/Phulanalini Choudhury.

Dear Nagendra Ram

Sub. :- In regard to ex-gratia payment to Smti Phulanalini Choudhury.

Ref. :- Your letter No. Wed/E/207/Illegible/Phulanalini Choudhury, dated 13.12.95.

With regard to the above mentioned subject you are informed that the above named incumbent (widow) submitted an affidavit for realisation of the ex-gratia amount after the death of her husband wherein she has not been able to give the C.P.F. No.. She has also further stated that she will not be able to give the C.P.F. No. as she is not aware of it.

Illegible/Varanasi, has returned it with the objection that without C.P.F. No. it will not be possible to look into the matter. It has been further stated that without the C.P.F. No. the relief sought by the petitioner will not be possible to grant.

Yours sincerely,

L.B. Rai

Copy to :-

Nagendra Ram

.....

Smti Phulanalini Choudhury,
Sangam Ashram Road, Silchar-788007......
Varanasi.

Attended
J. Maiti Adv.
28/5

रसो-टीएचए.

प्रभाषि/भारती

आपका सं/परीक्षा/207/ए030/पूजा नमिनी धीपरी Page 01.96

प्रिय नागेन्द्र राम.

विषय:- प्रेमती पूजा नमिनी धीपरी के एकत्रितित्त
मुक्तान के सम्बन्ध में।

संदर्भ:- आपका आपसं03/207/तेरि/1x/पूजा नमिनी
धीपरी व दिनांक 12.12.95 ।

उक्त संदर्भ में आपको सूचित किया जाता है कि
मुक्तान के एकत्रितित्त को आपका नामकर मुक्तान पारित करने
के प्रयास किए गए थे क्योंकि विधवा द्वारा अपने पति का
संविधानिक संस्था उपलब्ध नहीं कराया गया है। साथ ही साथ
विधवा को उपलब्ध कराने में अपनी अक्षमता व्यक्त की।

प्रभाषि/भारती ने इस आपत्ति के साथ बेल वापस
कर दिया कि विधान संस्था में आवश्यक प्रमाणित नहीं की गयी
है। संविधानिक संस्था के अभाव में प्रभाषि की आपत्ति दूर
नहीं की जा सकती क्योंकि इसके बिना स्थापन एवं प्रमाणित
असंभव है।

आपका,

श्री नागेन्द्र राम
प्रभाषि/भारती

रसो धीराय

प्रमाणित पूजा

1- प्रेमती पूजा नमिनी धीपरी
द्वारा प्रोफेसर अयान धीपरी
संविधान आदेश रोड.
सिल्वर 7-8007
आसाम

Alister

Prasanna Agv
28/5

श्री गण्डन रेन प्रभाषि/भारती
भारती