

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Original Application No.326/2016
Misc. Application No. 86/2016
Dated the 1st March, 2018.

CORAM :

Hon'ble Sh. Jayesh V. Bhairavia, Member (Judicial)
.....

Godavariben Widow of Late Sh. Raghavjibhai Ramjibhai Savadiya, aged 80 years, Resident of Rushabnagar 3, Near Milan Water Tank, Jyoti General Store, Morvi-2, - 363642.

.....Applicant.

[By Mr. B.B.Gogia, Advocate]

Vs.

- 1) Union of India, owing and representing Western Railway through General Manager, Western Railway, Churchgate, Mumbai – 400 020.
- 2) Chief Workshop Manager, Western Railway, Bhavnagar Para, Bhavnagar – 364 003.

.....Respondents.

[By Mr. M.J.Patel, Advocate]

O R D E R (ORAL)

BY THE COURT :

Heard the learned counsel for the parties and perused the records.

2. As regards the Misc. Application No. 86/2016 filed by the applicant for condonation of delay, is concerned, the reasons stated for condonation of delay are found to be satisfactory. Further, the learned counsel for applicant has relied on the law laid down by the Hon'ble Apex Court in the case of Shiv Das Vs. Union of

India and Ors. reported in 2007 (9) SCC 274 rendered in Civil Appeal No. 274 of 2007. Considering the issue involved in the main O.A. i.e. relating to family pension / ex gratia payment and, the reasons stated in the M.A., the long delay caused in filing the OA is hereby condoned in the interest of justice. Therefore, in the facts and circumstances of the present case, the delay caused in preferring this O.A. is hereby condoned accordingly M.A. 86/2016 is allowed.

3. By filing this O.A. the widow of the deceased Government employee Shri Raghavjibhai Ramjibhai Savadiya had claimed ex gratia payment after treating the deceased employee as 'Voluntarily retired' instead of 'Resigned'.

4. The facts relevant for the issue are that husband of the applicant was engaged as a Skilled Trimmer in the Railways on 12.7.1947. After rendering considerable long period of service, he was relieved from Railway service w.e.f. 25.9.1970 and subsequently, he died on Feb., 13, 1989.

5. The widow of late employee Shri Raghavjibhai submitted an application on 29.9.2015 under Right to Information Act before the respondents and sought information with regard to entitlement of ex gratia family pension for the services rendered by her husband. The concerned authority under the Right To Information Act of Railway Department i.e. the Public Information Officer (WR), Bhavnagar had furnished certain information vide their letter bearing No. G. 542 2/1/2015 dated 24.10.2015 (Annex.A/4). In the said letter it has been stated that "you are not entitled for Ex-Gratia pension, as your late husband had tendered resignation from Railway Service".

Thereafter, applicant through some social worker sought some more details with regard to service record of her late husband. The applicant then, approached this Tribunal straight way making a claim for Ex gratia pension by filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985.

6. The learned counsel for applicant submitted that applicant is an illiterate lady and, is not aware with the Rules and procedure of the Railway Department. It is further contended that applicant had rendered more than 23 years of service which

needs to be considered as Qualifying service for becoming eligible for grant of Ex - gratia payment.

The learned counsel has placed reliance on certain judgments rendered by the Hon'ble High Court of Gujarat in SCA No. 15371/2004 dated 30.11.2004, SCA No. 29937/2007 dated 26.2.2013 and also an order passed by this Tribunal in OA No. 498/2002 dated 18.03.2004 contending that the case of the applicant is squarely covered in view of the law laid down by the Hon'ble High Court. It is laid down that "Railway cannot deprive an employee from receiving pension after putting in the qualifying service, even if he has resigned voluntarily or otherwise." He has further pleaded that the decision of Division Bench of the High Court was affirmed by the Hon'ble Supreme Court in SLP (C) No. 5843/2005 and he further contended that even if, it is to be treated a case of a resignation, since the employee has completed more than 20 years of qualifying service, he is entitled for pensionary benefits / Ex-gratia payment as per the existing scheme." It is further contended that the respondents had issued Pension Payment Order in favour of Jasabhai Alahbhai Rathod vide order dated 4.3.2014 (Annex.A/8). The said Shri Jasabhai was ex employee of the Railway Department and was petitioner of SLP No. 29937 of 2007

decided on 26.2.2013 by Hon'ble the Gujarat High Court. The applicant's case is also identical and, therefore, she is entitled for the benefit of ex gratia payment.

7. On behalf of the respondents, learned counsel Mr. M.J. Patel submitted that the applicant had not filed any application before the concerned competent authority. Not only that after the resignation of late Shri Raghavjibhai, she is survived till 13.2.1989, and had never submitted any application for grant of ex gratia pension or any other retiral dues. However, if the present applicant submit an appropriate application before the respondent No. 2, the same will be considered in accordance with the existing rules.

8. In view of above, I deem it appropriate, without entering into further merits of this case, as the counsel for both the parties are also agreed and, the interest of justice would be meted if this Tribunal direct the respondents to consider the case of applicant in view of the law laid down on the issue of grant of ex gratia payment by Hon'ble the Gujarat High Court and Hon'ble the Apex Court, as referred to above. Hence, the respondents are directed to consider this O.A. as an application by the applicant and examine her claim and take a decision within six weeks from the date of receipt of a copy of this order. It is open for the applicant to submit any additional

application/representation or documents in support of her claim of ex gratia payment within 15 days from the date of receipt of a copy of this order. Thereafter respondents shall consider the same and communicate the same to the applicant within the time frame as mentioned above.

9. Accordingly, the O.A. is disposed of with no order as to costs.

(Jayesh V. Bhairavia)
Member (J)

Mehta

