

**Central Administrative Tribunal
Principal Bench**

OA No.3526/2015

New Delhi this the 2nd day of August, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Smt. Diwano, Aged 61 years,
W/o Late Sh. Chajoo,
Gangman under Sr. Sec. Egineer,
Meerut City,
R/o 1155/3, Maliyana, Meerut (UP) - Applicant

(By Advocate: Mr. Yogesh Sharma)

Versus

1. Union of India through
The General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
State Entry Road, New Delhi
3. The Sr. Section Engineer (P.Way)
Northern Railway, Meerut City (UP) -Respondents

(None)

ORDER (Oral)

Learned counsel for the applicant appears and has claimed the following reliefs:-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the order/communication dated 12.6.2015 (A/1), declaring to the effect that the whole action of the respondents not granting the Lump-sum-Ex-gratia compensation of Rs.10 Lakhs to the applicant, is illegal, arbitrary, against the Govt. of India and Railway Board instructions and

consequently to pass an order directing the respondents to grant the Lump-sum Ex-gratia Compensation of Rs.10 Lakh to the applicant with 18% interest,

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.

2. It is the contention of the applicant that her husband was working as a Gangman, under Senior Section Engineer (P.Way), Meerut City, in Delhi Division, died while performing his bonafide duty on tract on 22.11.2006 and leaving behind her and children in very critical situation. It is submitted that the 5th Pay Commission recommended for grant of lump sum compensation to the wards of Govt. servant who died while performing his duties and while accepting the recommendation of 5th Pay Commission, the Department of Pension & Pensioners' welfare, Ministry of Personnel, Public Grievances & Pension, vide letter dated 11.09.1998, decided to grant lump sum compensation of Rs.5 lakh to wards of Govt. servants died while performing duties, which was subsequently increased to Rs.10 lacs w.e.f. 1.1.2006 i.e. after 6th CPC. The Railway Board, vide circular dated 05.11.1999, decided that the above orders of the Govt. shall be applicable to the Railway servants mutatis mutandis. The Railway Board clarified that the above

circulars dated 05.11.1999 and 11.09.1998 are also applicable to the persons who are governed by the Workman Compensation Act and same is additional benefit to the family of deceased employee other than the compensation under Workman Compensation Act. It is, thus, submitted that the husband of the applicant was died while performing bonafide duty and, therefore, the applicant is entitled for the lump sum compensation of Rs.10 lakh with interest.

3. The applicant also contents that she approached many times in the offices of the respondents for the last more than one year, but to no avail. It is submitted that she also sent a legal notice for payment of ex-gratia amount to her, through counsel on 01.06.2015.

4. It is also submitted that the respondent no.2, vide letter dated 12.06.2015, informed the applicant through her counsel, that there is no such case was registered in the name of the husband of the applicant in Delhi Division for lumpsum ex gratia compensation till date since 22.11.2006 and directed to contact with SSE/PWay.NUT to enquire about the case of deceased which is totally arbitrary and illegal reply given by the respondent no.2 as the DRM office is only competent to consider and to recommend for granting the lumpsum ex gratia

compensation, for which is no need for registered of any case and there is no such criteria to registration of any case and for granting lumpsum ex gratia compensation.

5. It is also submitted that the applicant also sent a legal notice to the respondent no.3 through counsel, but the same was not accepted by the respondent no.3 and the same was returned with the remarks 'the name of the SSE has not been mentioned, where as the legal notice was sent to the particular authority with designation and not by name.

6. The applicant thus submitted that the whole action of the respondents not considering and not granting the lumpsum ex gratia compensation to her is totally illegal, arbitrary and against the Railway Board circulars.

7. It is found that nobody appears for the respondents but they have filed the counter affidavit. In the counter affidavit, it is stated that the husband of the applicant did not die while performing his duties but unfortunately he died when he was going to home after finished his duty. As the employee was neither on duty at the time of accident nor accident occurs while performing his bonafide official duty, therefore, the question of ex gratia payment does not arise.

8. It is also submitted by the respondents that there was no WCA case was registered in the name of the husband of the applicant in Delhi Division for lump sum ex gratia ADEN/MUT. It was clearly stated that her husband expired after hitting by 4645 Shalimar Exp. on 22.11.2006 at 17.57 while he was going to his home after finishing/completing his duty. It is held by Hon'ble High Court of Delhi that "As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded.' As the employee was neither on duty at the time of accident nor accident occurs while performing his bonafide official duty, therefore, the question of ex gratia payment does not arise. On these grounds, the respondents asked for the dismissal of the OA.

9. The counsel for the applicant controverted the above by showing newspaper report about the accident in which his claim is fully supported. Further he drew attention to previous decisions of this Tribunal dated 28.09.2010 and dated 10.10.2012 in the OA Nos. 1917/2010 and 906/2012 respectively. He contends that the claim of the applicant for lump-sum ex gratia compensation has been

summarily dismissed without even attempting to find out the veracity of the claims of the applicant and in view of the judgments quoted by him above, the applicant's claim should at least be examined in detail and thereafter only final speaking order be passed on the same.

10. Heard and record perused.

11. The most important point, the learned counsel for the applicant, shows is that the applicant sent a legal notice to the respondent no.3 which was not accepted by him simply because the applicant could not send the same by name of the SSE as the applicant did not know the name of SSE being widow of the deceased employee. Accordingly, learned counsel for the applicant requests that respondent no.3, i.e. SSE be directed to accept the representation and legal notice of the applicant and pass a detailed order thereon.

11. A perusal of the record, it becomes amply clear that legal notice to the respondent no.3 was returned with remarks that 'the name of SSE has not been mentioned whereas the legal notice was sent to the particular authority with designation and not by name'. This clearly shows the casual and irresponsible attitude of the respondents. Hence, the Railways have not chosen to accept the legal notice of the applicant, they are directed

to accept the same along with representation and pass a reasoned and speaking thereon, within a period of 45 days from the date of receipt of a certified copy of this order. Previous order of the respondents dated 12.06.2015 is quashed and set aside.

12. With the above directions, the OA stands disposed of. No costs.

(NITA CHOWDHURY)
MEMBER (A)

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