

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No. 386 OF 2014**

Dated:- 26<sup>th</sup> day of September, 2017.

Coram: Hon'ble Shri Arvind J. Rohee, Member (J)  
Hon'ble Mr. R. Vijaykumar, Member (A).

**Smt. Hashmatbi M. Yusuf Shaikh**  
Age 80 Years, Occupation: Housewife  
Widow of Late Mahammad Yusuf Shaikh  
R/A 163, South Kasaba,  
Solapur. ...Applicant.  
**(By Advocate Shri V.N. Bolinjikar)**

**Versus**

1. **Union of India.**  
General Manager, Central Railway,  
CST, Mumbai 400001.
2. **Divisional Railway Manager,**  
Solapur 413007. ...Respondents.

**(By Advocate Shri V.D. Vadhavkar)**

Order reserved on : 07.09.2017.  
Order pronounced on : 26.09.2017.

**O R D E R**

**Per: Hon'ble Mr. R. Vijaykumar, Member (A).**

This O.A. has been filed on 26.11.2013 by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

*"(a) To allow the Original Application;*

*(b) To direct the respondent to fix the pension on the basis of last salary drawn by Late Mahammad Yusuf Shaikh and further to calculate the the Family Pension payable to*

*the applicant since death of her Husband Late Mahammad Yusuf Shaikh on 16.12.1998;*

*(c) To direct the respondent to pay Family Pension to the applicant since 16.12.1998 along with an interest @ 12% p.a."*

2. The factual matrix of the applicant's case is as follows:-

3. The applicant's OA as verified by her thumb impression dated 03.09.2012, has complained of the lack of the response from the respondents to her request for family pension from the date of demise of her husband. On the issue of limitation she has argued with, she had filed Civil Suit No. 854/2006 for redressal of her grievance which was dismissed on 27.04.2009 and thereafter, she filed a Civil Appeal No. 153/2009 which set aside a orders of the lower Court and on the issue of jurisdiction, directed the applicant to approach the CAT, Mumbai Bench. She had, thereafter, filed an OA No. 133/2013 through a power of attorney holder which was rejected for this reason and a fresh application was then filed which has now come up for final disposal.

4. The applicant states that she is the widow of her husband Late Mahammad Yusuf Shaikh who joined the services of the respondents in the year 1943 as a Basic Fitter. He retired from service on 08.10.1959 and died on 16.12.1998 whereupon applicant became entitled for family pension under the provisions of Rule 2 and 75 of Railway Service (Pension) Rules, 1993. These pension rules affirm the availability of pension to group D Railway Servants whose services were pensionable before the introduction of Pension System for Railway Servants on 16.11.1957 and any non-pensionable railway servants who were in service on 16.11.1957 and who elected to be governed by these rules and who are in service on 01.01.1986 and did not opt to be governed by the State Railway Provident Fund (Contributory) Rules; and any person entering railway service on or after 16.11.1957. Applicant has also pleaded applicability of the family pension under the rules preferred in 22.09.1977 and applied to railway servants on pensionable establishments who retired or died before 31.12.1963 on satisfaction of certain

conditions. She has argued that before deciding the issue on jurisdiction in Civil Appeal No. 153/2009, the Civil Court held and concluded that the applicant's husband had been removed from service and that he had never applied to set aside the order of removal for which she accepts that she has no documentary evidence in support of her husband's retirement but asserts that the respondents have also not produced any records except making bare statements to support their contentions that the applicant's husband was removed from the services. She has enclosed seven annexures with her application which includes a free pass No. 2683/1957 of 10.04.1957; statements of provident fund balances in 1955 and in 1956; statement of gratuity payments made on 13.10.1959; and an undated recommendation for maintenance grant from the Staff Benefit Fund citing leave on medical certificate from 05.12.1956 which also records his date of appointment as 27.04.1943. Annexure A-6 encloses orders on Civil Appeal No. 153/2009 and Annexure A-7 is the order on withdrawal of initial application filed before this Tribunal.

5. Respondents in joint reply argued that the application suffers from laches and limitation; for the latter, no request for condonation of delay has been made now. In support of their objection on limitation, the respondents have mentioned a series of the judgments from various Courts and Tribunals. In **UOI Vs. M.K. Sarkar reported in (2010) 1 SCC (L&S) 1126,** it is held that limitation should be applied from date of original cause of action. In the case of **State of Uttaranchal V/s. Shiv Charan Singh reported in 2013 ALL SCR 3211,** it was held that a claim should be made within reasonable time and that the delay of two decades should not have been entertained by the Tribunal or the Hon'ble High Court. Further the Hon'ble Supreme court held in CA no. 6974/2013 dated 22.08.2013, that if a wrong order is passed by a judicial forum, the higher Courts cannot be pressed to repeat or multiply the same error.

6. Further, the applicant has to show sufficient cause and without satisfactory explanation, Courts cannot condone delay as in cases of **Mahindra Land and Building**

Corporation Ltd., V/s. Bhootnath Benerjee & Ors., AIR 1964 SC 1336, Lala Matadin V/s. A Narayanan AIR 1970 SC 1953; Parimal V/s. Veena @ Bharti AIR 2011 SC 1150; and Maniben Devraj Shah V/s. Municipal Corporation of Brihan Mumbai AIR 2012 SC 1629.

7. In conclusion they have argued that the rigour of law as felt cannot be basis for condoning acts of the past that have long since become stale. On the factual aspects, they have agreed that the deceased employee Mahammad Yusuf Shaikh Basic Fitter at Daund left railway service on 09.01.1959 but assert that he was actually removed from the service. They argue that this circumstance is supported by the fact that all the contributions of the deceased employee were duly paid to him and that he never made any application for pension during his lifetime nor has his family produced any evidence by way of copy of PPO and pension drawing bank details to support the entitlement to family pension. The applicant has also not produced any documents by way of post retirement complementary pass available under the Railway Servants (Pass) Rules, 1986 -

Schedule IV to show her bonafides. In response to the Annexures A-1 to A-5 enclosed with the application they argue that these documents are not relevant to the claim of family pension by the applicant. On the issue of non-availability of the records, they have stated that the department has no records pertaining to the deceased railway servant who was removed from service 55 years back and through whom claims are being made 15 years after his death. The behavior of the deceased husband after leaving service clearly shows that he was aware that he was not entitled to any pension.

**8.** A rejoinder was filed by the applicant claiming that although there is a delay of more than 54 years, the cause of action is a continuous one and therefore, limitation shall not apply. They have thrust the burden of producing documents in support of the removal of service of the applicant's husband in 1959 upon the respondents and confirmed that they have no such records in their possession. They assert that the absence of documents with the respondents proves the bonafides of the applicant.

**9.** The Sur-rejoinder of the respondents has brought the notice of this Tribunal to the fact that the verification of the rejoinder has been made by a thumb impression dated 03.09.2012 which is identical to the one made in the OA but a later date has been printed on the verification in token of the current submission. The respondents argue therefore that this bogus verification supports their contention that the OA itself lacks any merits not only for heavy delay and laches but also for its contentions. They have, thereafter, also reiterated the contentions made in their original reply.

**10.** When the case was called on 07.09.2017, Applicant as well as her counsel were absent. Such absence of the counsel for the applicant has been frequent in this case, it is noted. In particular, the learned counsel for applicant was directed to file his explanation for the irregular verification during the hearing on 19.09.2016 and reminded again but showed no interest in this matter nor on the issue of impleading legal heirs. Shri. V.D. Vadhavkar counsel for the respondents

appeared and invited the attention of the Court to the proceedings of 09.02.2017 in which the learned counsel for the applicant had informed the Court that the applicant had expired on 10.03.2015 and that he would take necessary steps to bring his legal heirs on record. No submissions have been made or process undertaken by the learned counsel for the applicant in this regard.

**11.** During the final hearing, in the absence of applicant and his counsel, the learned counsel for the respondents urged the issues of laches and limitation and the lack of any application for condonation of delay. He urged reference to the fact that the applicant's husband never made any application for pension during his lifetime and that only after his demise, has his family sought such relief but without any documents in support of their contention.

**12.** The Tribunal has gone through the O.A., along with Annexures A-1 to A-7 and Rejoinder filed by the applicant.

**13.** The Tribunal has gone through the reply and additional reply filed on behalf of

the respondents.

**14.** The Tribunal has heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts, circumstances, law points and rival contentions in the case.

**15.** On the issue of laches and limitation, with reference to claims for pension, the law is settled by the Hon'ble Supreme Court Union of India V/s. Tarsem singh(2008) 8 SCC 648 and adopted in **Asger Ibrahim Amin V/s. Life Insurance Corporation of India in SCC 2015 (6).**

**SLR 731** that laches (as in Writ Petitions) and limitation (as in cases before Tribunals) will not apply for claiming of pension which are continuous although relief would be limited to a prior three year period. Therefore, limitation rules will not apply and delay in seeking relief itself penalizes the applicant but does not rule out his claim provided he is so entitled.

**16.** On the issue of entitlement, the applicant throws the burden of proof and burden of producing documents on the respondents and can only produce some documents which do not

help his case. It is noted that relaxations were provided under the Railway Pension Rules, 1993 as amended from time to time including as recently as in order of the Railway Board in No. F(E) 111/2003/PN1/5 of 09.05.2005 and clarified in the order of even No. dated 04.11.2008 to enable railway employees who had retired from railway service to make claim who satisfy requisite conditions. The applicant has shown in evidence of steps taken to avail of these opportunities. Her expiry in 2015 also rules out such possibilities. Further, the order of the Hon'ble District Court, Solapur in Civil Appeal No. 153/2009 enclosed as Annexure A-6, after noting that the Railway retains records only for 20 years, records at para 16 that:-

"16. One letter dated 07.02.2007 from the office of the Divisional Railway Manager P/Branch, Solapur, Central Railway by which the Divisional Railway Manager, Solapur in which it also informed Mahammad Yusuf while chasing the case with available records maintained in the associated Account Office, Solapur it is noticed that his name is available at Sr. No. 416 of Payment Register of Optg/ Mech for year No. 1956 to March 59. The below entries are made with signature of Official of Accounts Office.

Shri. Mohammad Yusuf, Basic

*Fitter/DD has removed from service from 09.01.1959. the following payment had been passed in case in his favour.*

<i>PF- 737.38 Overdrawn Wages</i>	<i>-</i>	<i>9.97</i>
<i>EPF</i>	<i>-</i>	<i>00.30</i>
<i>Festival Advance</i>	<i>-</i>	<i>17.00</i>
<i>Total recovery</i>	<i>-Rs.</i>	<i>25.27.</i>

*Net payment Rs. 737.38- Rs. 23.37  
= Rs. 712.11 passed Au 7 No. 43 dated:-  
27.03.1959."*

**14.** Apart from the general lack of documents to establish entitlement, the above mentioned evidence tendered in the Hon'ble District Court goes clearly against the applicant since her husband is shown as having been removed from service. The applicant's late husband, having forfeited his service period by virtue of removal, loses his entitlement to pension and, therefore, so does the applicant and this renders this application devoid of merits.

**15.** In the circumstances, the OA is dismissed. No costs.

**(R. Vijaykumar)**  
**Member (A)**

**(A. J. Rohee)**  
**Member (J)**

*srp/H.*

